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SUPREME COURT  
OF THE STATE OF WASHINGTON

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SOMETHING SWEET, LLC, a Washington Limited Liability Company;  
KIRK BRANDENBURG and JILL BRANDENBURG, husband and wife,

Appellants.

v.

NICK-N-WILLY'S FRANCHISE COMPANY, LLC, a Colorado Limited  
Liability Company; MICHAEL MOORE; and PATTI MOORE,

Respondents.

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BRIEF OF RESPONDENTS MICHAEL MOORE AND PATTI MOORE

---

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## I. INTRODUCTION

Defendants-Respondents Michael Moore and his mother Patti Moore (“the Moores”) offer this brief in opposition to the Motion for Direct Review filed by the appellants Kirk and Jill Brandenburg and Something Sweet, LLC (“the Brandenburgs”).

This Court should deny the Brandenburgs’ Motion for Direct Review because they have failed to present any of the grounds for direct review that RAP 4.2 requires.

The Court should affirm dismissal of the Brandenburgs’ claims because the registration requirements set forth in the Franchise Investment Protection Act (“FIPA”) were met. Nick-N-Willy’s Franchise Company, LLC (“Nick-N-Willy’s”) registered and timely disclosed its franchise Offering to the Brandenburgs before entering into a franchise agreement with them. and there was no other franchise offer that required registration. FIPA does not require dual registration of the same offer by a franchisor and a subfranchisor. Moreover, neither Michael nor Patti Moore was a subfranchisor. Michael Moore’s area developer agreement did not authorize him to grant, sell or negotiate a franchise within the meaning of those terms as defined and used in FIPA; Patti Moore had never purchased a Nick-N-Willy’s franchise. CP 579 *et seq.* Nick-N-Willy’s Offering Circular disclosed all the relevant information required

under FIPA, and nothing further was required. CP 41, 184 *et seq.*

The superior court correctly dismissed the Brandenburgs' speculative claims that in September 2006 Nick-N-Willy's was planning to stop offering the Outlet type of pizza franchise to future franchisees and that the defendants' failure to disclose this alleged plan was a material non-disclosure that violated RCW 19.100.170(2). The superior court correctly concluded that the Brandenburgs failed to establish that they reasonably relied on the nondisclosure, since they conceded their franchise agreement's terms permitted Nick-N-Willy's to make this change in its operating methods. Their allegation that the change materially impaired the operation of their franchise was speculative and conclusory.

All the evidence on the record shows that the Moores learned of planned changes to future franchise offerings in March 2007, six months after the Brandenburgs bought their franchise. The absence of an issue of fact on this issue alone merited dismissal of this claim as to the Moores.

## **II. ASSIGNMENTS OF ERROR**

### *Assignments of Error*

Respondents Michael Moore and Patti Moore assign no error to the superior court's decision.

### *Issues Pertaining to Assignments of Error*

The Moores disagree with the Brandenburgs' statement of the

issues on appeal, which are more properly stated as follows:

1. Whether the superior court properly dismissed the Brandenburgs' claim that the defendants were in breach of the registration requirements of FIPA, where: (1) Mr. Moore had no right to grant, sell, or negotiate a Nick-N-Willy's franchise under the terms of his area developer agreement and was therefore not a subfranchisor as defined by FIPA; (2) Nick-N-Willy's franchise offer, which was registered, was the sole offer made to the Brandenburgs; (3) FIPA does not require dual registration of the same offer; (4) Patti Moore had not agreed to pay money to Nick-N-Willy's; and (5) registration by Mr. Moore would have been almost entirely duplicative, and any remaining information was immaterial.

2. Whether the superior court properly dismissed the Brandenburgs' claim that the Moores failed to make a material disclosure of a future plan, where the Brandenburgs failed to show (1) that the alleged non-disclosure of the plan was material; and (2) that they reasonably relied on the non-disclosure.

### **III. STATEMENT OF THE CASE**

#### **A. Nick-N-Willy's Area Developer Agreement did not authorize its Area Developers to grant, sell, or negotiate a franchise.**

Nick-N-Willy's sells two kinds of franchises in Washington: a franchise to operate a Nick-N-Willy's pizza store, and an area developer

marketing franchise to solicit and recruit potential franchisees and provide sales and support services for Nick-N-Willy's within a specified area. CP 56-59, 185; *see also* CP 185-430.

Mr. Moore purchased an area developer franchise from Nick-N-Willy's in July 2005. CP 58, 575, 579. Under his area development agreement, Mr. Moore was granted the non-exclusive right to solicit franchisees in a specified area to operate a Nick-N-Willy's pizza store. CP 56-59, 584-87 at § 3.1-3.3, § 4.2-4; CP 591 at § 9.3-6. As an area developer, Mr. Moore is required to provide "sales services," "site services," and "support services." CP 584 at § 3.1, 591-92 at §§ 9.3-9.6. The sales services entail soliciting and screening potential franchisees in accordance with Nick-N-Willy's directions, providing information that is pre-approved by Nick-N-Willy's, assisting the franchisee complete the written application, and submitting this to Nick-N-Willy's, which has the sole power to approve or reject the applicant. CP 57, 586-7 at § 4.2-4; CP 599-600 at §§ 13.10-11. They cannot propose or negotiate terms, which are set out in Nick-N-Willy's Offering Circular. CP 41, 58, 184, 258-315.

Nick-N-Willy's area developers cannot bind Nick-N-Willy's to grant or sell a franchise and have no power to grant or sell a Nick-N-Willy's franchise themselves. CP 58, 586-7 at §§ 4.3-4.4, CP 591 at § 9.3. The franchisees purchase their franchise directly from Nick-N-Willy's.

*Id.*; CP 125-182, 185 *et seq.*, 584 at § 2.3.

Section 3.1 of the area developer agreement provides that Nick-N-Willy's may authorize the area developer, at its sole discretion to serve as landlord or sublessor to Franchisees. CP 584. Mr. Moore has never requested nor been granted this right. CP 58.

Area developers also provide limited site and support services (which Nick-N-Willy's also retains the right to provide) none of which entail granting, selling or negotiating a franchise. CP 584-5 at § 3.1; § 3.3; CP 591-3 at §§ 9.4-9.6. In exchange for the services set forth in his area development agreement, Mr. Moore receives a commission as described in § 6 of the agreement. CP 59, 587-9. He receives no payments from the franchisee. *Id.*, CP 58-9, 593 at § 9.7.

**B. Ms. Moore had not purchased an area development franchise from Nick-N-Willy's.**

Patti Moore began to assist her son Michael Moore in his area development business in 2006. CP 552. Ms. Moore was not a party to the area development agreement between Mr. Moore and Nick-N-Willy's. CP 579 *et seq.* She did not enter into a separate area development agreement with Nick-N-Willy's. *Id.*; *see, e.g.*, CP 527-31, App. Br. at 1-2, 4-5.

(Patti Moore was a member of M.C. Moore & Company, LLC, which entered into a substitute area developer agreement with Nick-N-Willy's in February 2007, several months after Nick-N-Willy's sold the

Brandenburgs their franchise. CP 64 *et seq.*; *cf.* CP 125.)

**C. The Brandenburgs contacted Nick-N-Willy's to buy a Nick-N-Willy's franchise and continued to communicate with Nick-N-Willy's about their purchase.**

**1. At Nick-N-Willy's request, the Brandenburgs also contacted Mr. Moore who provided information and assisted them complete the paperwork under Nick-N-Willy's direction.**

In September 2006, the Brandenburgs entered into a franchise agreement with Nick-N-Willy's to operate a pizza Store. CP 125, 446.

It is undisputed that the Brandenburgs communicated directly with Nick-N-Willy's executives about their franchise purchase. App. Br. at 3-4, CP 448-9, ¶¶ 8-9. The Brandenburgs initially contacted Nick-N-Willy's through its website to express interest in buying a pizza franchise. Nick-N-Willy's referred them to their area developer Michael Moore to obtain information. After an initial meeting with Mr. Moore at a coffee-shop, at Mr. Moore's suggestion they attended an open house where they met directly with Nick-N-Willy's executives. CP 474, 476. Thereafter, they continued to communicate not only with Mr. Moore but also directly with Nick-N-Willy's executives. CP 60, 474. On April 6, 2006, Executive Vice-President Barry Stolbof sent Mr. Brandenburg an email that said:

It was a pleasure to meet you and your wife last night. I apologize that we ran late but the questions were excellent and there were many. ... Mike and his broker should be very helpful with information about Nick-N-Willy's but feel free to contact me if I can also help.

CP 474.

Nick-N-Willy's President and CEO, Richard Weil, was personally involved in the grant of a franchise to the Brandenburgs. CP 60.

The Moores helped the Brandenburgs complete the correct paperwork, provided advice on the process, and provided information on the technical requirements for setting up a Nick-N-Willy's Outlet. *See, e.g.*, CP 483-490. Any information Mr. Moore provided to the Brandenburgs was supplied to him by Nick-N-Willy's. *Id.* In response to many inquiries, Mr. Moore provided them with links to Nick-N-Willy's website. CP 451, 453-56, 479-81, 575-76. Mr. Moore also suggested that the Brandenburgs attend a Nick-N-Willy's discovery day in Denver. CP 481. The Moores did not negotiate any terms of the franchise agreement or grant or sell a pizza franchise to the Brandenburgs. *Id.*; CP 58-59, 575.

The Brandenburgs proceeded with their purchase and executed the franchise agreement on August 21, 2006. CP 125-82. It was executed on behalf of Nick-N-Willy's on September 6, 2006, the effective date of the agreement. *Id.*

**D. The lack of dual registration by the Moores was known to the Brandenburgs and their attorney from a review of Nick-N-Willy's Offering Circular four months before the franchise agreement was executed.**

In May, 2006, the Moores provided the Brandenburgs with a copy of Nick-N-Willy's Offering Circular that was registered with the State of

Washington. CP 41. This contained the full text of the franchise agreement offered by Nick-N-Willy's. CP 184-430. The Brandenburgs' franchise agreement was identical to the form of agreement contained in Nick-N-Willy's Offering Circular. CP 125-82; *cf.* CP 258-315.

The Brandenburgs had the opportunity before they bought their franchise to object that Mr. Moore should have been registered. The Offering Circular that the Brandenburgs received in May 2006, four months before they bought their franchise, contained among other information the area developer agreement and information about Mr. Moore as a Nick-N-Willy's area developer. CP 41, 204, 206-8, 317-430. The Brandenburgs knew at the outset that Mr. Moore had purchased a franchise for the purpose of becoming an area developer. *Id.*; CP 449, ¶ 10. Before the Brandenburgs completed the purchase, their attorney reviewed the franchise documents for FIPA compliance. CP 482.

**E. Although Nick-N-Willy's offered both baked and unbaked products, in 2006 the Brandenburgs chose to limit their franchise to an Outlet, selling unbaked items.**

In 2006, Nick-N-Willy's offered two kinds of models for its pizza Store franchises: Take-N-Bake Restaurants and Take-N-Bake Outlets. CP 189. Both Restaurants and Outlets offering unbaked pizzas for customers to bake at home as well as other uncooked products. *Id.* Restaurants also offered baked pizzas and dining facilities. *Id.* In 2006 Nick-N-Willy's

promoted both its baked and unbaked products. CP 455. Its franchise agreement covers both kinds of Store; it does not require the franchisee to specify which model the franchisee will follow. CP 125 *et seq.* The Brandenburgs chose to open an Outlet Store offering only unbaked items.

**F. Nick-N-Willy's exercised their contractual right to stop future franchisees from opening an Outlet Store.**

**1. In the Spring of 2007, the Moores learned that Nick-N-Willy's were planning to eliminate the Outlet store for future franchisees.**

A plan that all future Stores would offer some restaurant facilities was announced in around March, 2007, seven months after the Brandenburgs signed their franchise agreement and six months after the agreement was executed by Nick-N-Willy's. CP 125, 179, 437. The Moores learned of this plan at the same time as the Brandenburgs. CP 46, ¶ 21; CP 437, No. 8; CP 552, ¶ 2; CP 556, ¶ 3.

Existing Outlets are not required to change. CP 61 at ¶ 18; 576 at ¶ 4; 553 at ¶ 4. Nick-N-Willy's continues to promote its unbaked items, which are offered for sale at all its Stores. *Id.*; CP 446 at ¶ 3; CP 526-27.

**2. The Brandenburgs concede that their franchise agreement allows Nick-N-Willy's to stop using the Outlet model.**

It is undisputed that the franchise agreement allows Nick-N-Willy's to make this change in their operating methods. CP 129-139 at ¶¶ 1.1, 2.1, 8.2; 11.1(d); App. Br. at 9.

**G. In response to the Moores' summary judgment motions, the Brandenburgs filed evidence late and did not request a CR 56(f) continuance.**

The Brandenburgs filed this lawsuit in August 2008. CP 43-49. After the defendants moved for summary judgment in December 2008, claiming *inter alia* that there was no evidence to support the Brandenburgs' allegations, the Brandenburgs did not request a CR 56(f) continuance to obtain further discovery. CP 24-35, 50-55, 524-37. Following dismissal of their claims, the Brandenburgs moved for reconsideration. CP 680-85, 700. The Brandenburgs filed Salesperson forms claiming these supported their position; the Moores objected to their late submission of evidence. CP 730, 756-57. The superior court indicated that responsive pleadings were not required from the defendants in respect of Part B subsection 5 of the Brandenburgs' motion. CP 725. The court denied the Brandenburgs' motion for reconsideration. CP 752.

**IV. SUMMARY OF ARGUMENT**

The purpose of FIPA was fulfilled because it is undisputed that Nick-N-Willy's registered its franchise offering. The Moores were entitled to dismissal of the Brandenburgs' allegation that they had failed to comply with FIPA's registration requirements as a matter of law for two independent reasons. First, Nick-N-Willy's does not grant its area developer the right to grant, sell or negotiate a franchise; therefore,

Michael Moore was not a subfranchisor as defined under FIPA.

Second, FIPA does not require dual registration of the same offer by both a franchisor and a subfranchisor.

Interpretation of a contract and the provisions of a statute are questions of law for the courts. This Court should interpret FIPA by applying the plain wording of the statute. The interpretive statement by the Department of Financial Institutions (“DFI”) is the only Washington authority that the Brandenburs cite. This Court is not required to, and should not, apply DFI’s interpretation here, because (1) the statute is unambiguous, and therefore the Court may not look outside its provisions or those of related statutes; (2) DFI’s opinion interprets an outdated version of FIPA; (3) DFI’s opinion contradicts the current version of FIPA; and (4) the opinion is internally inconsistent. However, if it is considered, DFI’s opinion supports the Moores’ position because Nick-N-Willy’s, not the Moores, “directs and controls” the sale of a franchise.

Dual registration would serve no material purpose, as Nick-N-Willy’s Offering Circular contains all the information that would be provided in the area developer’s separate registration with the possible exception of the developer’s financial statements. These are not material, because Nick-N-Willy’s area developers do not own or control the intellectual property that lies at the heart of the franchise agreement. The

Brandenburgs' argument that these are material because Nick-N-Willy's area developer provides post-sales services is not persuasive because, *inter alia*, (1) FIPA does not define a subfranchisor as a person providing post-sales support, therefore this argument is limited to the facts of this case; and (2) under the terms of Nick-N-Willy's franchise and area development agreements, the franchisee can only enforce the right to services against Nick-N-Willy's not its developer.

The Moores were also entitled to summary judgment dismissal of the Brandenburgs' claim that they had failed to disclose a material fact before the Brandenburgs bought their franchise for several reasons. First, it was undisputed that the Moores did not know of the proposed change until six months after the Brandenburgs bought their franchise, when the Brandenburgs themselves learned of the plan. This Court should affirm dismissal of this claim for this reason alone. Second, as a matter of law the Brandenburgs cannot prove either a material non-disclosure or reasonable reliance on it, as it is undisputed that Nick-N-Willy's were entitled under their agreement with the Brandenburgs to change its operating methods. The Brandenburgs' conclusory, speculative damage claims are therefore immaterial even if they had raised an issue of fact.

## V. ARGUMENT

### A. **The standards of review relating to this appeal support the dismissal of the Moores.**

There are two standards of review relating to the issues before this Court on the motion for direct review filed by the Brandenburgs.

#### 1. **The criteria for direct review under RAP 4.2 are not satisfied.**

The Moores previously briefed the standard of review under RAP 4.2 in their Answer to Statement of Grounds for Direct Review, filed with this Court on April 24, 2009. *See Moores' Answer at 9-15, incorporated herein by reference.*

Dismissal of the Brandenburgs' claim that Mr. Moore should have registered his own franchise offering does not involve a fundamental and urgent issue of public import which requires prompt and ultimate determination where it is undisputed that Nick-N-Willy's Offering was registered, registration by Mr. Moore would have been almost entirely duplicative, and any additional information was immaterial. Nor does dismissal of an allegation of non-disclosure in what is essentially a private dispute constitute an issue of public import. This case does not merit review under any of the other grounds for direct relief under RAP 4.2. Thus, this Court should deny direct review pursuant to RAP 4.2(a)(4).

**B. The superior court properly dismissed all claims against the Moores on summary judgment.**

Appellate review of the trial court's decision on summary judgment is *de novo*. *Troxell v. Rainier Pub. Sch. Dist.*, 154 Wn.2d 345, 350, 111 P.3d 1173 (2005). Additionally, as with all questions of law, the interpretation of a statute is reviewed *de novo*. *Id.*; *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

Because the material facts regarding registration in this case are undisputed, the Court's review turns solely on the proper interpretation of the registration requirements of FIPA. *Id.* Because the provisions of FIPA were correctly applied by the superior court to the area developer agreement between Nick-N-Willy's and Mr. Moore, and because, among other things, the Brandenburgs failed to present evidence of a material non-disclosure and reasonable reliance, summary judgment was properly granted to the Moores.

**C. The Moores did not breach FIPA's registration requirements, because (1) the only offer made to the Brandenburgs was registered; and (2) FIPA does not require dual registration by a franchisor and a subfranchisor.**

**1. This Court may not ignore the language of the statute simply the statute's purpose is remedial.**

At issue is whether a franchise offer must be registered by the franchisor's area developer as well as by the franchisor. FIPA was

enacted in 1971 to deal with sales abuses and unfair practices in the franchising of goods and services. *Craig D. Corp v. Atlantic-Richfield Co.*, 122 Wn.2d 574, 579, 860 P.2d 1015 (1993) (citing *Morris v. International Yogurt Co.*, 107 Wn.2d 314, 317, 729 P.2d 33 (1986)). Although a remedial statute should be construed liberally where necessary “in order to accomplish the purpose for which it is enacted,” *Gray v. Goodson*, 61 Wn.2d 319, 324, 378 P.2d 413 (1963), liberal construction does not warrant ignoring the statute’s plain meaning. *Doty v. Town of South Prairie*, 155 Wn.2d 527, 533, 120 P.3d 941 (2005); *Huntington v. Samaritan Hosp.*, 101 Wn.2d 466, 469-470, 680 P.2d 58 (1984); *Klossner v. San Juan County*, 93 Wn.2d 42, 47, 605 P.2d 330 (1980).

**2. FIPA’s purposes were accomplished where Nick-N-Willy’s franchise offer was registered.**

On the facts of this case FIPA’s purposes were accomplished where the Brandenburgs have never disputed that Nick-N-Willy’s franchise offering was properly registered and disclosed; thus this is deemed established on summary judgment. CP 41, 58 at ¶ 7, 60 at ¶ 14, 184-430; *Parrott Mech., Inc. v. Rude*, 118 Wn. App. 859, 864, 78 P.3d 1026 (2003); *Central Wash. Bank v. Mendelson-Zeller, Inc.*, 113 Wn.2d 346, 354, 779 P.2d 697 (1989). Cf. *Morris v. International Yogurt Co.*, 107 Wn.2d 314, 317-8, 729 P.2d 33 (1986) and *Lobdell v. Sugar ‘N Spice, Inc.*, 33 Wn. App. 881, 888, 658 P.2d 1267, *review denied*, 99 Wn.2d

1016 (1983) (a case interpreting an earlier version of FIPA; *see* § V.C.5 *infra*). In *Morris*, 107 Wn.2d at 317-8, and in *Lobdell*, 33 Wn. App. at 888, the franchise offer was unregistered. Thus, the sales abuses and unfair practices that FIPA was designed to prevent are absent here.

**3. FIPA does not require dual registration by a franchisor and a subfranchisor.**

FIPA does not require dual registration of the same offer by a franchisor and by a subfranchisor. RCW 19.100.020(1) specifies solely that “**the offer of the franchise**” must be registered:

(1) It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless **the offer of the franchise** has been registered under this chapter or exempted under RCW 19.100.030.

RCW 19.100.020(1) (emphasis added).

RCW 19.100.040 also contemplates that an offer will be registered **either** by the franchisor, subfranchisor **or** a person on whose behalf the offer is made. RCW 19.100.040 specifies that

(1) The application for registration of **the offer**, signed by the franchisor, subfranchisor, **or by any person on whose behalf the offering** is to be made, must be filed with the director and shall contain:

(a) A copy of the franchisor’s or subfranchisor’s offering circular which shall be prepared in compliance with guidelines adopted by rule of the director. The director shall be guided in adopting such rule by the guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time;

- (b) A copy of all agreements to be proposed to franchisees;
  - (c) A consent to service of process as required by RCW 19.100.160;
  - (d) The application for registration of a franchise broker, if any;
  - (e) The applicable filing fee; and
  - (f) Such other information as the director determines, **by rule or order**, to be necessary or appropriate to facilitate the administration of this chapter.
- (2) The director may require the filing of financial statements of the franchisor or subfranchisor audited by an independent certified public accountant and prepared in accordance with generally accepted accounting principles. **When the person filing the application for registration is a subfranchisor**, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section.

RCW 19.100.040 (emphasis added).

Nothing in RCW 19.100 requires both a franchisor and a subfranchisor to register the same offer. It is undisputed that Nick-N-Willy's franchise offering was registered, and that the Brandenburgs timely received disclosure of Nick-N-Willy's Offering Circular. Thus, even if, *arguendo*, Mr. Moore was a subfranchisor, which he was not, there was full FIPA compliance because the **offer** was registered.

**D. There was also no breach of FIPA's registration requirements because neither of the Moores was a subfranchisor.**

**1. As a matter of law, Patti Moore was not a subfranchisor because, *inter alia*, she had not agreed to buy a franchise from Nick-N-Willy's.**

Because the Brandenburgs did not allege that Patti Moore was a

subfranchisor in the superior court, they may not raise this now. CP 524 *et seq.*; 700 *et seq.* On review of an order granting or denying a motion for summary judgment, the appellate court will consider only issues called to the attention of the trial court. RAP 9.12; *see also*, RAP 2.5; *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 38 P.3d 1024 (2002); *Van Dinter v. Orr*, 157 Wn.2d 329, 333-34, 138 P.3d 608 (2006).

Should the Court consider this issue, Patti Moore was not a subfranchisor because, *inter alia*, she had not entered into any agreement with Nick-N-Willy's to pay for the right to grant, sell or negotiate the sale of a franchise which is an essential part of the definition of a subfranchisor. RCW 19.100.010(9)-(10).

The following reasons why Michael Moore was not a subfranchisor also apply equally to Patti Moore.

**2. Michael Moore was not a subfranchisor because the Area Development Agreement did not authorize him to sell, negotiate or grant a franchise.**

A subfranchise is defined by RCW 19.100.010(9) as an **agreement**, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the **right** to grant, sell, or negotiate the sale of a franchise. A subfranchise is granted to a subfranchisor. RCW 19.100.010(10).

Therefore, whether Mr. Moore was a subfranchisor calls for

interpretation of his area developer agreement. Interpretation of the terms of a contract is a question of law. *Pacific Indem. Co.*, 28 Wn. App. 466, 468, 624 P.2d 734 (1981).

The Brandenburgs concede that Mr. Moore had no right to grant a franchise. CP 706. As set forth at § III.A, *supra*, the Area Development Agreement sets forth the scope of Mr. Moore's appointment. Mr. Moore was authorized to "(1) solicit prospective Franchisees ... ("Sales Services") as described in § 9.3; (2) perform certain site acquisition and development services described in § 9.4 ("Site Services"); and (3) to render support and other services ("Support Services") ... as ... described in § 9.5." CP 58, 584. Review of § 9.3 through § 9.5 show these contain no provision permitting Mr. Moore to grant, sell, or negotiate the sale of a franchise. CP 591-2.

Section 9.3 Sales Services. AD shall solicit and identify prospective franchisees for NNW'S Stores to be located within the Development Area.

*Id.* § 9.3. The Site and Support Services also contain no right to grant, sell or negotiate a franchise. CP 591-2, § 9.4-9.5.

The area developers are subject to Nick-N-Willy's close scrutiny and supervision in the methods they use to solicit franchisees. CP 57-59, 586-7 at § 4.2-§ 4.4. Any information the area developers provide to a potential franchisee must be pre-approved by Nick-N-Willy's. CP 586,

599 at § 4.3, § 13.10. Nick-N-Willy's trains the area developers and provides them with advertising materials; any other advertising materials must be pre-approved by Nick-N-Willy's. CP 591, 599-600 at § 8.2(b), §§ 13.10-11. Nick-N-Willy's retains a right to veto any person the area developer wishes to employ. CP 591, § 9.1..

The Franchise Sales Procedures limit his involvement to screening and soliciting prospective franchisees within specific guidelines; assisting the franchisee complete the paperwork according to Nick-N-Willy's requirements; and submitting the application to Nick-N-Willy's for approval. CP 57-59, 586-87, 599. Nick-N-Willy's has the sole discretion to approve the prospective franchisees. CP 587, § 4.4.

Nick-N-Willy's area developers cannot bind Nick-N-Willy's to grant or sell a franchise and have no power to grant or sell a Nick-N-Willy's franchise themselves. CP 58, 586-87, 591. Therefore, unlike many salespersons, Nick-N-Willy's area developers lack the delegated authority to bind their principal. CP 57-59, 584, 586-87; 591-92.

The franchisees purchase their franchise directly from Nick-N-Willy's. *Id.*; CP 125-182, 185, 584. Area developers are not a party to or third-party beneficiary of these agreements. *Id.* CP 593 at § 9.7. In fact, they are expressly prohibited from selling anything to a franchisee or receiving money from the franchisee. *Id.* They have no ownership

interest in the franchises or in Nick-N-Willy's intellectual property. *Id.*; CP 58, 594. They have no authority to terminate a franchise or to license a franchise in their own name. CP 58-59, 579.

Area developers have no authority to negotiate or change the terms of the franchise agreement which are pre-determined and already published in the Offering Circular. CP 41, 58, 184, 258-315, 575, 586-87. Only Nick-N-Willy's, if anyone, can revise these. *Id.*

In response to the Moores' summary judgment motions, the Brandenburgs did not dispute that Mr. Moore lacked the authority to agree to or vary terms on behalf of Nick-N-Willy's, CP 58; therefore, this becomes a verity on summary judgment. *Parrott Mech., Inc*, 118 Wn. App. at 864.

While the Brandenburgs pick out specific phrases which they argue support their position, the Court must look at the agreement in its entirety in order to determine its meaning. *Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222 (1990). For example, the Brandenburgs quote an introductory paragraph in § 1.3 that "AD desires to act as a special agent to Franchisor within a certain geographical area enabling AD to sell franchises for Nick-N-Willy's Stores ..., **under the terms and conditions contained in this Agreement**" (emphasis added). However, as discussed, the substance of the agreement that is contained within those terms and

conditions only permits Mr. Moore to solicit prospective franchisees. *See, e.g.,* CP 584, 587, 591-93.

The agreement must be interpreted as a whole and on its own terms to determine if it authorized Mr. Moore “to sell” a franchise as this term is used within FIPA. *Berg*, 115 Wn.2d at 664, 667. In *Berg*, this Court gave the following warning against interpreting words out of context:

In approaching contract interpretation every court should heed the strong words of Corbin: [I]t can hardly be insisted on too often or too vigorously that language at its best is always a defective and uncertain instrument, that words do not define themselves, that terms and sentences in a contract, a deed, or a will do not apply themselves to external objects and performances, that the meaning of such terms and sentences consists of the ideas that they induce in the mind of some individual person who uses or hears or reads them, and that seldom in a litigated case do the words of a contract convey one identical meaning to the two contracting parties or to third persons. A. Corbin, *Contracts* § 536, at 27-28 (1960). Holmes was more poetic: “A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.” 4 S. Williston, *Contracts* § 609, at 402 (3d ed. 1961).”

*Id.* at 664 (emphasis added). The agreement, taken as a whole, shows that Mr. Moore was not granted the right to negotiate or “sell” a franchise as defined within FIPA.

**3. The legislature excluded a person who solicits an offer from the definition of a subfranchisor.**

FIPA distinguishes between the terms “sell” and “offer to sell.”

RCW 19.100.010(15)-(16). The legislature defined the term “offer to sell,” for the purposes of the statute, as including “every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.” RCW 19.100.010(16). Notably, the legislature chose not to include within the definition of a subfranchisor a person who has a right to “offer to sell” or a mere right to solicit offers to buy a franchise. RCW 19.100.010(9)-(10). FIPA clearly distinguishes throughout between “an offer” and “a sale” of a franchise. *See* 19.100.010(4)(a)(i) (a “franchise” is an agreement by which a person is granted the right to engage in ... “offering, selling or ...”); 19.100.010(12), 020(1), 030(1)-(6).

The Brandenburs argue that because RCW 19.100.010(15) defines “Sale or sell” as **including** a contract of sale, contract to sell, or disposition of a franchise, the definition must also include solicitation of an offer. Otherwise, they argue, the term “sell” in the definition of a subfranchisor is indistinguishable from the term “grant” thereby rendering this superfluous. On the contrary, a logical interpretation is that the definition of a subfranchisor is intended to include a person who cannot grant a franchise but who is authorized to agree a binding contract of sale of a franchise on behalf of the franchisor. It is equally reasonable to assume that the legislature included “a contract to sell” within the definition of “sale or sell” to prevent persons arguing that a transaction

that had not yet closed or failed to close entirely was outside the definition. Mr. Moore, however, had neither power.

The Brandenburgs' interpretation does not stand up to scrutiny because the legislature expressly defined an "offer to sell," for the purposes of the statute, as including "every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise." RCW 19.100.010(16). Where FIPA clearly distinguishes between the terms "offer to sell" and "sell" it can be assumed that if the legislature had intended to define "sale or sell" as including the solicitation of an offer it would have included this within the definition "sale or sell" under RCW 19.100.010(15) also. *Cf. Klossner*, 93 Wn.2d at 47 (declining to extend the class of beneficiaries under RCW 4.20.20 to stepchildren where the legislature had defined "child" in some statutes to include "stepchildren" but had chosen not to do so in RCW 4.20.20). "[T]his court's several decisions that the wrongful death statute is to be liberally construed do not mean we may read into the statute matters which are not there." *Id.*

Under the "plain meaning" rule, examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found, is appropriate as part of the determination whether a plain meaning can be ascertained. *Dep't of Ecology*, 146 Wn.2d at 10. Legislative intent is determined from

the “plain and unambiguous” language of a statute “in the context of the entire act” in which it appeared. *Id.* (citing *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 708-09, 985 P.2d 262 (1999) (the court construes an act as a whole, giving effect to all the language used, with related statutory provisions interpreted in relation to one another)); *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993) (statutory provisions must be read in their entirety and construed together, not piecemeal).

[W]hile we apply and interpret the IIA liberally, the relevant definitions of “employee,” “worker,” and “employment” define whether an individual is covered by the IIA at all, that is whether an individual is a “covered employee [] injured in [his or her] employment.” While it cannot be mistaken that the IIA is a remedial statute that should be interpreted in favor of the injured worker, as with all issues of statutory interpretation, our primary goal is to carry out legislative intent and give meaningful effect to the language our legislature enacted. When the statutory language is unambiguous, we derive this intent from the language used in the statute and related statutes, giving effect to every provision.

*Doty v. Town of South Prairie*, 155 Wn.2d 527, 533, 120 P.3d 941 (2005) (citations omitted).

The Brandenburgs urge this Court to ignore the legislature’s clear distinction between “sell” and “offer to sell,” saying that the legislature did not really mean this. The Court may not do so. When interpreting any statute, the court must carry out the legislature's intent as expressed in the

plain language of the statute; it lacks the power to rewrite an unambiguous statute even if the court thinks “the legislature intended something else.” *In re Det. of Martin*, 163 Wn.2d 501, 508-09, 182 P.3d 951 (2008).

**4. The trial court correctly applied the statute’s plain meaning rather than the DFI guideline.**

The Brandenburs fail to cite any Washington precedent holding that dual registration was required in these circumstances. The only authority they rely on is an interpretive statement issued by the Director of Financial Institutions. The meaning of an unambiguous statute is derived from its language alone. *Tesoro Ref. & Mktg. Co. v. Dep’t of Revenue*, 164 Wn.2d 310, 318, 190 P.3d 28 (2008); *Cerrillo v. Esparza*, 158 Wn.2d 194, 201-2, 142 P.3d 155 (2006) (holding that the Court of Appeals erred in looking to a DLI interpretive opinion). Only if the statute is ambiguous is it appropriate to resort to aids to construction, including legislative history. *Dep’t of Ecology*, 146 Wn.2d at 11-12. Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency. *AgriLink Foods, Inc. v. Dep’t of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005). “A statute is ambiguous if susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable.” *Id.*

Where FIPA's definitions clearly distinguish between "selling" and "soliciting an offer to buy" a franchise and where FIPA does not require dual registration of the same offer by a franchisor and by a subfranchisor, the relevant provisions of FIPA are not ambiguous. RCW 19.100.010(9), (10), (11), (15),(16); 19.100.020(1); 19.100.030(1)-(6).

Even if it is admissible, the DFI statement is not binding on the court. RCW 34.05.230. "Current interpretive and policy statements are advisory only." *Id.*; *State ex rel. Graham v. Northshore Sch. Dist.*, 99 Wn.2d 232, 242, 530 P.2d. 38 (1983); *Lang v. Dental Quality Assur'ce Comm'n*, 138 Wn. App. 235, 156 P.3d 919, 928 (2007).

Read as a whole, the interpretive statement is inconsistent, and it substitutes its own rules for the statute that go beyond and contradict the language of FIPA, to the extent that it requires registration by a person who merely solicits offers or dual registration. App. 5, Interpretive Policy FIS-01 at <http://www.dfi.wa.gov/sd/franchiseinterpretive01all.htm>.

Courts will not re-write the clear wording of a remedial statute as this is the responsibility of the legislature. *Huntington*, 101 Wn.2d at 469-70. Its statement that a subfranchisor who is "a substantial factor" in arranging a sale must register the offer rewrites the plain wording of the current version of FIPA if it requires registration by a person who merely solicits an offer or a dual filing. However, it does not require registration

by an area developer who lacks the power to “direct and control” a sale. Therefore, even applying the interpretive statement, Mr. Moore was not required to register a separate offer.

**5. FIPA’s legislative history shows that the interpretive statement predates changes that ended a requirement for sales agents to register.**

DFI adopted the interpretive statement FES-1 on January 1, 1991 **before** the legislature considered and adopted major revisions of FIPA later in 1991 and in 1994. App.5; *cf.* App. 2, Excerpt from Legislative Digest and History of Bills of the Senate and House of Representatives, 52nd Legislature; App. 3, Excerpt from the 1991 Final Legislative Report, Fifty-Second Washington State Legislature; App. 4, Excerpt from 1991 Session Laws of the State of Washington.

Review of the legislative history shows that Chapter 226/Senate Bill 5256-S was first introduced on January 25, 1991, three weeks after FES-1 was adopted. App. 2. After amendments were made by both the House and the Senate, it was passed in April 1991, becoming effective in July 1991.

Notably, the Senate report that summarizes the 1991 amendments to FIPA includes the following: “Franchise sales agents working for franchisors or franchise brokers are no longer required to register under the act.” App. 3.

**6. The Moores' completion of Salesperson disclosure forms to ensure compliance with WAC 460-80-125 is not probative of whether they were subfranchisors under FIPA.**

The Brandenburgs filed a supplemental declaration exhibiting salesperson disclosures completed by the Moores. CP 756. The Moores objected to the admission of this evidence which was untimely under CR 56 and CR 59 and asked the court to disregard it. CP 730.

Under the provisions of the area development agreement Nick-N-Willy's assumed the duty to comply with registration requirements. CP 586 at § 4.2. The Moores completed the forms at various dates at the request of Nick-N-Willy's who filed them with the State of Washington as part of Nick-N-Willy's application to register its franchise offer. CP 740, 744.

Because the disclosure form for Patti Moore was filed in December, 2007, sixteen months after the Brandenburgs bought their franchise, it has no bearing on her function in 2006. CP 762.

It is reasonable to assume that Nick-N-Willy's filed the forms as a precaution to ensure compliance with WAC 460-80-125 which requires a franchisor or subfranchisor to submit a disclosure form for each salesman, a term that is not **defined** in WAC 460-80 or **used** in FIPA.

Contrary to the Brandenburgs' assertion, the use of the term "salesperson" is not probative as to whether the Moores are subfranchisors

or have a power of sale under FIPA. As discussed, the plain meaning rule no longer rests “on theories of language and meaning, now discredited, which held that words have inherent or fixed meanings.” *Dep’t of Ecology*, 146 Wn.2d at 11. Filing these forms does not constitute an admission that the Moores were selling franchises; this can only be determined by interpretation of the area developer agreement and its comparison with the wording of FIPA.

Notably, WAC 460-80-125 distinguishes between a subfranchisor and the franchisor’s or subfranchisor’s salespersons as did the legislature. WAC 460-80-125(1)(c); *cf.* WAC 460-80-125 (5); *see* § V.C.5, *supra*.

**E. Duplicative registration would serve no purpose because the absence of registration made no material difference to the Brandenburgs.**

**1. Nick-N-Willy’s Offering Circular contained the same information as Mr. Moore’s Offering Circular would do.**

Dual registration would serve no purpose because Nick-N-Willy’s Offering Circular contained all the information about Mr. Moore that plaintiffs would have received had he made a separate filing, the only potential exception being that Mr. Moore did not file financial statements. RCW 19.100.040; WAC 460-80-125; WAC 460-80-315; App. 1, Table of Contents in Uniform Franchise Offering Circular.

Mr. Moore was disclosed as an area developer for Washington

State within Nick-N-Willy's Offering Circular which contains a summary of his business experience and employment; this is exactly the same information as the Circular provides about Nick-N-Willy's officers. CP 204; *cf.* CP 191-94. Similarly, the Offering Circular discloses any bankruptcies and relevant prior litigation in which its officers **and** its area developers have been involved. *Id.*, CP 206-08; *cf.* CP 435. Mr. Moore has no such history. *Id.* The Offering Circular was filed with the DFI and provided to the Brandenburgs four months before the date of their franchise agreement. CP 41, 125.

**2. Mr. Moore's financial statements were immaterial for at least eight reasons.**

The Brandenburgs argue that Mr. Moore's financial statements were relevant because they consented to Nick-N-Willy's delegating some of its post-sales contractual duties to its area developer. This claim lacks merit for several reasons.

**a. The legislature did not include a person who provides post-sales services within the definition of a subfranchisor.**

Even if this were true, this does not support an argument that the legislature intended an area developer to register an offer where the legislature did not include a person who provides services within the definition of a subfranchisor. RCW 19.100.010(9)-(10). The argument has no general relevance and could only apply to a fact pattern that is not

contemplated by FIPA.

- b. **The Offering Circular disclosed that Mr. Moore had no financial history to produce.**

On the facts of this case, Mr. Moore's financial statements would have contained little if any information of interest as he had only recently become an area developer, as the Offering Circular disclosed to the Brandenburgs. CP 41, 204.

- c. **Nick-N-Willy's area developers who can resign on 90 days notice assumed no contractual duties toward the franchisee, while Nick-N-Willy's remained contractually obligated to the franchisees.**

The financial statements of Nick-N-Willy's area developers are immaterial because their area developers assumed no enforceable contractual obligations toward the franchisees and may terminate their position as area developer on 90 days' notice. CP 605. The Brandenburgs entered into no direct agreement with Mr. Moore. CP 58. Although Mr. Moore provided limited post sales services to the Brandenburgs the contractual duty to provide the services remained with Nick-N-Willy's. CP 137-38 at § 9.2; CP 593 at § 9.7.

In the absence of agreement that a person entitled to the benefit of the contract will look solely to the person delegated for compensation if the work is not properly done, a contractor remains liable for his contractual performance. *Bd. of Regents v. Frederick & Nelson*, 90 Wn.2d

82, 84-85, 579 P.2d 346 (1978); Restatement (Second) of Contracts, § 318. While the Brandenburgs consented to Nick-N-Willy's delegation of certain obligations to an unidentified area developer they did not agree to seek recourse from the developer, let alone agree that this was their sole method of recourse. CP 137-38. This right was specifically excluded in § 9.2 of the franchise agreement where the Brandenburgs acknowledged that they are not third party beneficiaries of Nick-N-Willy's agreements with its area developers. *Id.* It is self-evident that the Brandenburgs did not agree to Nick-N-Willy's area developers assuming the sole liability for discharging the delegated functions when they agreed they had no right of recourse against them. *Id.*

Likewise, the area developer agreement provides that a franchisee was not a third party beneficiary of that agreement just as area developers were not third party beneficiaries of the franchise agreement. CP 593. The Brandenburgs were aware of this: they received a copy of the area developer agreement in the Offering Circular months before they bought their franchise together with the Receipt which they signed instructing them in bold letters to read its contents; thus they can be presumed to be familiar with its terms. CP 41, 184-430.

Unlike Nick-N-Willy's, its area developers are subject to change and may terminate their agreement; there is no assurance that a known

area developer will remain in that position, and there is no contractual obligation upon him to do so. CP 605. Thus, provision of his financial statements would be irrelevant and potentially misleading.

**d. Nick-N-Willy's retain the right to perform the delegated functions.**

As well as being contractually obligated to re-assume the delegated functions Nick-N-Willy's retain the right in the area developer agreement to "provide Site Services and/or Support Services to Stores located within and outside the Development Area" under the area development agreement. CP 585.

**e. Because the delegated services ensure the franchisee's contract compliance, providing them would cause Nick-N-Willy's minimal difficulty and would serve its own interest.**

The delegated functions at issue consist primarily of providing information about Nick-N-Willy's requirements and specifications, and performing certain supervisory tasks that are performed according to Nick-N-Willy's detailed direction. CP 591-93. Thus, it would cause Nick-N-Willy's little difficulty to provide these service if an area developer failed to do so and in its interests to obtain contract compliance. Further, Nick-N-Willy's receives higher royalties from a successful franchise. CP 131.

- f. The area developer's financial statements are also irrelevant, where the delegated services would cause minimal expense.**

The Brandenburgs failed to show that the “delegated tasks” would require significant resources where these consist primarily of supervision and providing information about Nick-N-Willy’s requirements.

- g. Nick-N-Willy's, not its area developers, controlled and supplied the intellectual property, recipes, advertising, and manner of operation that are crucial to the franchise's success.**

It is self-evidently the financial statements of Nick-N-Willy’s as franchisor, not those of Mr. Moore, that were material to the potential success of the Brandenburgs’ franchise. Nick-N-Willy’s, not Mr. Moore, controlled and supplied the nationwide marketing of the Nick-N-Willy’s concept, its intellectual property, its recipes, and its manner of operation; it was the financial health of Nick-N-Willy’s, not that of its area developers, that was crucial to the security of the Brandenburgs’ franchise operation. *E.g.*, CP 129-143.

In sum, the Brandenburgs’ argument regarding post-sales support is specific to Nick-N-Willy’s contracts. They fail to show why the financial statements of a person facilitating a sale are relevant. The legislature simply did not require registration by a person who provides post-sales support. Registration by Nick-N-Willy’s area developers would serve no reasonable purpose and is not required by the plain wording of

RCW 19.100. The Brandenburgs' interpretation would result in increased bureaucracy and public costs and unnecessary duplication, to no benefit. Thus, while Nick-N-Willy's financial statements are material, those of its area developers are not.

**F. The absence of dual registration was open and obvious to the Brandenburgs and their attorney; therefore, it does not constitute a material omission under RCW 19.100.170.**

This Court should consider only issues that are raised in the assignments of error and are supported by argument and legal citation. *Vern Sims Ford, Inc. v. Hagel*, 42 Wn. App. 675, 683, 713 P.2d 736, review denied, 105 Wn.2d 1016 (1986) (citing *Bender v. Seattle*, 99 Wn.2d 582, 599, 664 P.2d 492 (1983)); RAP 12.1(a).

Without offering **any** supporting argument, the Brandenburgs state baldly that the absence of dual registration was a breach of the disclosure requirements of RCW 19.100.170. The Brandenburgs also failed to raise this argument in their assignments of error and related issues and failed to make this argument to the superior court. CP 524 *et seq.*; CP 700 *et seq.* They therefore may not make it now. *Id.*; RAP 2.5, 9.12, 12.1(a); *Vern Sims Ford, Inc.*, 42 Wn. App. at 683; *Van Dinter*, 157 Wn.2d at 333-34. The Court should therefore disregard this allegation.

Should the Court consider this issue, the lack of registration by Mr. Moore did not constitute a material non-disclosure under RCW 19.100.170

for several reasons. First, registration was not required under FIPA and the only additional information that might have been provided on registration (Mr. Moore's financial statements) was not a material omission. *See* § V.B.-D., *supra*. Thus the grounds under 170.100.170(1)-(2) are not met. Second, the alleged omission was not misleading, as required by 19.100.170(2), because the absence of registration was obvious to the Brandenburgs and their attorney from the outset but the Brandenburgs proceeded regardless. CP 41, 449, 482. Fourth, the Brandenburgs failed to produce any evidence of an intention to defraud or to mislead as required by 19.100.170(3)-(4) or of a violation of an order of the Director as required by 19.100.170(5). (Moreover, the omission by the Moores was not "wilfull" as required under 170.100.170(1) where Nick-N-Willy's assumed responsibility for registration. CP 586.)

**G. In the absence of a genuine issue of fact that the Brandenburgs suffered damage, the Moores (who cannot grant rescission) were entitled to dismissal.**

Absent a contractual relationship between the Brandenburgs and the Moores, the Moores have no power to grant rescission. Even if Mr. Moore was required to register, the Moores were entitled to dismissal at summary judgment because there is no evidence that the Brandenburgs were damaged by Mr. Moore's lack of registration. "RCW 19.100.190(2) states that the franchisee may sue a person who sells a franchise in

violation of FIPA “for damages caused thereby.” *Morris*, 107 Wn.2d at 319. The franchisee must show that a registration violation actually caused him to suffer damages, not merely that a violation occurred. *Id.* Absent damage, the Brandenburgs can obtain no relief for the alleged violation from the Moores, who had no power to rescind the franchise.

**H. The Brandenburgs produced no evidence that the Moores knew before September 6, 2006 of a plan to stop offering the Outlet model in future; in fact, their evidence supported the Moores’ lack of knowledge.**

The Brandenburgs complain that Nick-N-Willy’s has ceased to offer the Outlet model to future franchisees and make the speculative allegation that Nick-N-Willy’s was formulating this plan in August, 2006. CP 46, ¶ 23. They allege that, if so, Nick-N-Willy’s failure to disclose this was a material non-disclosure under RCW 19.100.170(2).

The Moores had no control over the franchise models that Nick-N-Willy’s offered or over any changes that Nick-N-Willy’s may make to its business operation. CP 57-58, 579.

Mr. Moore did not know of the plan until March 2007, seven months after the Brandenburgs executed their franchise agreement and six months after the effective date of the Agreement. CP 125, 179, 437, CP 556. Ms. Moore submitted similar testimony. CP 552. They learned of the proposed future change at about the same time as the Brandenburgs. CP 46.

Therefore, the superior court properly dismissed this claim against the Moores where **all** the evidence before the court supported the Moores' denial of knowledge. "The function of summary judgment is to permit the court to pierce the formal allegations of fact in pleadings when it appears that there are no genuine issues of fact." *Dwinell's Cent. Neon v. Cosmo. Chinook Hotel*, 21 Wn. App. 929, 933, 587 P.2d 191 (1978). If the plaintiff, as the nonmoving party, can only offer a "scintilla" of evidence, evidence that is "merely colorable," or evidence that "is not significantly probative," the plaintiff will not defeat the motion. *Seiber v. Poulsbo Marine Ctr., Inc.*, 136 Wn. App. 731, 736, 150 P.3d 633 (2007). Because the only evidence offered by the Brandenburgs **supported** the Moores, there was not even a "scintilla" of evidence offered against them. Therefore, the superior court correctly dismissed this claim. For this reason alone, this Court should affirm dismissal of the Brandenburgs' claim that the Moores failed to disclose a material fact in breach of RCW 19.100.170(2).

**I. The Brandenburgs are unable to prove as a matter of law that there was a material non-disclosure, where the parties agreed that Nick-N-Willy's could change its methods of operation in future.**

The Brandenburgs offered no authority for their contention that a potential **future** plan, if it existed, was a material fact that should have been disclosed. In *Morris v. International Yogurt Co.*, 107 Wn.2d at 324, this Court concluded that because the franchisee's right to the one-of-a-

kind yogurt formula was a key element in the franchise agreement the franchisor's failure to disclose that it was currently selling its unique yogurt to non-franchisees was a material non-disclosure. Thus, *Morris* concerned the franchisor's failure to disclose an **existing** fact. *Id.*

The Brandenburgs have offered no authority for their contention that disclosure of a potential future plan is a material **fact** that should be disclosed. Where no authorities are cited, this court may assume that counsel, after diligent search, has found none. *DeHeer v. Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

Moreover, Nick-N-Willy's **disclosed** to the Brandenburgs in the Offering Circular and Franchise Agreement that were provided to them in May 2006 that it might change its products and methods of operation because the franchise agreement contained terms to that effect. CP 41, 258-73 at §§ 1.1, 3.1, 9.2, 12.1(d); *Cf.* CP 129-39. Thus, not only did Nick-N-Willy's disclose that it might change its operating methods at any time, but the Brandenburgs also expressly agreed to this by signing the franchise agreement. *Id.*

The Brandenburgs concede that Nick-N-Willy's was contractually entitled to change its products and methods of operation and they have not alleged in their complaint that Nick-N-Willy's breached the franchise agreement. App. Br. at 9, CP 7 *et seq.*

The courts have upheld the franchisor's right to introduce system-wide changes without the franchisee's consent. *Craig D. Corp.*, 122 Wn.2d at 587. Even under legislation such as the Wisconsin Fair Dealership Law which, unlike FIPA, provides franchisees with express protection from significant changes in franchise agreements, "courts generally give considerable deference to franchisors' efforts to restructure, retrench, or wind down their franchise systems." *Id.* at 586-87 (citing *Thompson v. ARCO*, 663 F. Supp. 206, 209-210 (W.D. Wash. 1986) and *Remus v. Amoco Oil Co.*, 794 F.2d 1238, 1240-41 (7th Cir.), *cert. dismissed*, 479 U.S. 925 (1986)).

The franchise agreement reserved to Nick-N-Willy's, among other things, the right to change, in any manner, its techniques in the establishment, operation and promotion of Stores and related methods of doing business. CP 129-139 at §§ 1.1, 2.1, 8.2, 11.1(d). The agreement also gave Nick-N-Willy's the right to revise and update its standards and specifications in any manner. *Id.* "We [Nick-N-Willy's] have the right to change the types of authorized products periodically. There are no limits on our right to do so." *Id.*

**J. The Brandenburgs had no reasonable right to rely, because they acknowledge that Nick-N-Willy's was contractually entitled to change its method of operation in the future.**

Where it is undisputed that the Brandenburgs contractually agreed

that Nick-N-Willy's could change its methods of operation at its discretion no reasonable person would conclude that the alleged non-disclosure was material or that their reliance on it was reasonable. Therefore, the defendants were entitled to summary judgment as a matter of law.

Washington courts look to Securities Act cases interpreting its non-disclosure provisions in FIPA cases as the provisions are similar. *Morris*, 107 Wn.2d at 323, 330; *see also* App. Br. at 10-11; RCW 21.20.010(2) *cf.* RCW 19.100.170(2). In interpreting RCW 21.20.010, Washington's appellate courts have ruled that a plaintiff must establish that his reliance was reasonable. *Stewart v. Estate of Steiner*, 122 Wn. App. 258, 266, 93 P.3d 919 (2004) (citing *Clausing v. DeHart*, 83 Wn.2d 70, 73, 515 P.2d 982 (1973)). Reasonable reliance can properly be determined on summary judgment. *Stewart*, 122 Wn. App. at 275 and citations therein.

In *Morris*, 107 Wn.2d at 330, the court ruled that there is a rebuttable presumption of actual reliance on a material non-disclosure. Whether or not there was actual reliance, the Brandenburgs cannot establish **reasonable reliance** where the agreement permitted Nick-N-Willy's to make changes.

In *Morris*, the court did not face a situation where, as here, the plaintiffs signed a nonreliance clause. *Stewart*, 122 Wn. App. at 273.

The Offering Circular emphasized that franchisees should obtain legal and other professional advice about the provisions of the franchise agreement before committing themselves. CP 184. The franchise agreement contained at least two similar provisions and the Brandenburgs signed their acknowledgement of this advice. CP 166, 179.

Notably, the Brandenburgs obtained legal advice before they voluntarily signed the agreement. CP 482.

Nick-N-Willy's franchise agreement set out in block letters a full page warning that the undertaking "involves substantial risks," that no statement or conduct outside of the agreement was binding on NNW, urging the Brandenburgs to conduct their own independent investigation, to employ their own lawyers, accountants and business advisors, and to speak with other franchisees. CP 166-67. The Brandenburgs signed and acknowledged their acceptance of these terms (*id.*), and signed an addendum containing similar terms. CP 179.

"[F]ranchise protection does not guarantee a franchisee a risk-free endeavor. A franchise relationship is a business rather than a fiduciary relationship." *Craig D. Corp.*, 122 Wn.2d at 587. The franchise agreement also contained a provision that the relationship was at arms' length, not fiduciary. CP 156.

In *Stewart*, 122 Wn. App. at 275, a plaintiff was unable to establish

reasonable reliance on defendants' misrepresentations and material omissions, *id.* at 262-63, where he signed such a disclaimer, *id.* at 266-68, and where the preponderance of the factors for deciding whether such a party was bound by a disclaimer favored the defendants. *Id.* at 275.

The factors are “(1) the sophistication and expertise of the plaintiff in financial and securities matters, (2) the existence of longstanding business or personal relationships, (3) access to the relevant information, (4) the existence of a fiduciary relationship, (5) concealment of the fraud, (6) the opportunity to detect the fraud, (7) whether the plaintiff initiated the stock transaction or sought to expedite the transaction, and (8) the generality or specificity of the misrepresentations.” *Id.*

These same factors favor defendants here. Applying these factors, whether or not the Brandenburgs were experienced franchisees, they sought independent legal advice before signing the agreement (CP 482); the Brandenburgs initiated the transaction (CP 8); there were no longstanding or fiduciary relationships (*id.*; *Craig D. Corp.*, 122 Wn.2d at 587; CP 156); and they knew that the methods of operation could be changed by Nick-N-Willy's at any time – provisions they agreed to. CP 41; CP 258-73. *Cf.* CP 129-139. Finally, their inability to discover the alleged omission or its concealment are not dispositive. *Stewart*, 122 Wn. App. at 275. These factors may properly be determined on summary

judgment. *Id.* Thus, applying *Stewart*, the Brandenburgs should be held to their disclaimer and any presumption of reliance would be rebutted because they are unable to establish reasonable reliance. *Id.*

**K. The Brandenburgs failed to raise an issue of fact as to the alleged damage where Nick-N-Willy's has always promoted baked products and is contractually entitled to determine and vary its marketing methods.**

In support of their argument that the alleged non-disclosure was material, the Brandenburgs allege that Nick-N-Willy's has eliminated the Outlet model, that Outlets are no longer receiving meaningful marketing, that Nick-N-Willy's has put franchisees operating an Outlet model under pressure to add restaurant facilities, and that it is actively promoting cooked pizzas. CP 46.

As set out above, the franchise agreement permits Nick-N-Willy's to do all these things (as the Brandenburgs concede) and the Brandenburgs did not bring a breach of contract claim. App. Br. at 9.

Moreover, the Brandenburgs failed to raise a material issue of fact that they had suffered the alleged damage. Nick-N-Willy's introduced evidence demonstrating that these allegations were untrue and the Brandenburgs failed to meet their burden to support their claims. CP 61, 553, 576; *cf.* CP 445 *et seq.* Existing Outlets have not been eliminated; no-one has required the plaintiffs to offer baked items or required them to close. CP 61, 553, 576. Nick-N-Willy's continues to actively promote the

Take-N-Bake **products** which are available at all Stores, and therefore Take-N-Bake only Outlets continue to receive meaningful marketing. *Id.* The Brandenburgs concede that Take-N-Bake products remain available and that Outlets remain open. CP 446, 526-7.

Other than offering a conclusory assertion that the Take-N-Bake only Outlets are no longer receiving meaningful marketing, the Brandenburgs did not dispute Mr. Weil's evidence, and therefore this becomes a verity on summary judgment. CP 446. Conclusory statements of fact and statements of opinion do not raise an issue of fact on summary judgment. *Grimwood v. University of Puget Sound*, 110 Wn.2d 355, 359-360, 753 P.2d 517 (1988).

Mr. Brandenburg's own declaration shows that, in 2006, Nick-N-Willy's was offering and promoting baked items. CP 446, 455 ("the seating capacity is 26 standard for a ... Take-N-Bake Restaurant and that includes 10 or 12 at the Pizza Bar where people can sit and eat"); *see also* CP 185, 576.

The Brandenburgs cannot reasonably object because Nick-N-Willy's is continuing to promote baked products and it was reasonably foreseeable that Nick-N-Willy's would do so. Because baked pizzas have always been promoted, the risk was always present that customers could be disappointed when they were unavailable at Outlets. Should they

choose, the Brandenburgs may switch to a Restaurant model. CP 125-182.

The Brandenburgs also speculated that other Outlets may have closed and that the remaining locations are personally operated by Nick-N-Willy's. Such speculation does not raise an issue of material fact on summary judgment. CR 56(e); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

Because they failed to raise a genuine issue of material fact that they suffered damage by reason of the alleged non-disclosure under RCW 19.170(2), this provides an additional ground why this Court should affirm summary judgment dismissal as to the Moores.

The Brandenburgs' claim was speculative. In response to a motion for summary judgment, a plaintiff cannot rely on the allegations in their pleadings but must raise an issue of material fact. This the Brandenburgs failed to do. They also failed to ask for a continuance under CR 56(f) to obtain further discovery if they believed this was necessary.

## VI. CONCLUSION

This Court should deny direct review because none of the grounds for direct review under RAP 4.2 are present here.

Should the Court accept review, this Court should affirm the superior court's dismissal of the Brandenburgs' claims. FIPA requires a franchise offer to be registered; it contains no requirement for duplicative

filings. In addition, FIPA clearly distinguishes between “sell” and “offer to sell” and a person who has a mere right to solicit offers is not included within the definition of a subfranchisor. Mr. Moore was not a subfranchisor because interpreting the area development agreement as a whole it gave him no authority to grant, sell or negotiate a franchise. As to Patti Moore, she was not a party to an area development agreement at the date of plaintiffs’ purchase. Finally, the court should affirm its ruling as to the Moores because the plaintiffs cannot show damage caused by the alleged breach.

The Brandenburgs also failed to show there that was a material non-disclosure in violation of RCW 19.100.170(2) or that any reliance by them was reasonable. They also failed to raise a genuine issue of fact as to the existence of the alleged plan, that the Moores knew of the alleged plan or that the change in operating methods had caused them damage.

The Court therefore should affirm the superior court’s dismissal of this case.

RESPECTFULLY SUBMITTED this 14 day of July, 2009.

LEE SMART, P.S., INC.

By: Rosemary Moore  
Joel E. Wright, WSBA No. 8625  
Rosemary J. Moore, WSBA No. 28650  
Of Attorneys for Respondents

CERTIFICATE OF SERVICE

I, the undersigned, certify under penalty of perjury and the laws of the State of Washington that on July 14, 2009, I caused service of *Brief of Respondents Michael Moore and Patti Moore* via ABC Legal Messengers, Inc., to:

Clerk  
Supreme Court  
415 12th Ave SW  
PO Box 40929  
Olympia, WA 98504-0929

Mr. Howard R. Morrill  
Gordon Thomas Honeywell Malanca Peterson & Daheim, LLP  
600 University Street, Ste. 2100  
Seattle, WA 98101

Mr. Matthew T. Boyle  
Mitchell, Lang & Smith  
1001 Fourth Avenue, Suite 3714  
Seattle, WA 98154

CLERK

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Dated this 14<sup>th</sup> day of July, 2009 at Seattle, Washington.

  
\_\_\_\_\_  
Jennifer A. Riley, Legal Assistant

## APPENDICES

- Appendix 1 Uniform Franchise Offering Circular.
- Appendix 2 Excerpt from Edition No. 6 FINAL, Volume 1 – Senate and Topical Index, Legislative Digest and History of Bills of the Senate and House of Representatives, 52<sup>nd</sup> Legislature 1991-1992.
- Appendix 3 Excerpt from the 1991 Final Legislative Report, Fifty-Second Washington State Legislature.
- Appendix 4 Excerpt from 1991 Session Laws of the State of Washington.
- Appendix 5 Washington State Department of Financial Institutions Interpretive Policy FIS-01 adopted January 1, 1991 at <http://www.dfi.wa.gov/sd/franchiseinterpretive01all.htm>.

## **Appendix 1**

# THE UNIFORM FRANCHISE OFFERING CIRCULAR

## GUIDELINES

### GENERAL INSTRUCTIONS

90. Introduction: The Uniform Franchise Offering Circular ("UFOC") Guidelines consist of the Requirements, the Instructions and the Sample Answers. The UFOC Guidelines were prepared and adopted by the North American Securities Administrators Association ("NASAA") and its predecessor, the Midwest Securities Commissioners Association. The members of NASAA cannot create statutes since that is the constitutional province of state legislatures, but NASAA intends for the UFOC Guidelines to facilitate compliance with disclosure requirements under state franchise investment laws. Where possible, NASAA has developed uniform disclosure requirements, but differences in state laws bearing on the franchise relationship may necessitate changes. In addition, state administrators will continue to review the application for deficient disclosure and additional disclosure necessitated by special problems or risks in the proposed offering.

100. Follow these General Instructions and the Requirement and Instruction for each Item in franchise registration applications and disclosures in the Uniform Franchise Offering Circular.

110. Original Registration Application - Documents to File:

- (a) Uniform Franchise Registration Application Page (also known as "Facing Page");
- (b) Supplemental Information page(s);
- (c) Certification page;
- (d) Uniform Consent to Service of Process;
- (e) Sales Agent Disclosure Form;
- (f) 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;
- (g) Uniform Franchise Offering Circular;
- (h) Application Fee;
- (i) Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the offering circular; and
- (j) Advertising or promotional materials.

Examples of forms (a) through (f) are printed at the end of these Guidelines.

120. Renewal Application: When state law requires renewal, mark "renewal" on the application page. Submit all documents required for an initial application with additions to the previously filed documents underlined. Changes must be clearly marked so that the change is noticed easily. File a renewal application before the prior registration has expired. If the prior registration has expired, mark "Registration of an Offer or Sale of Franchises" on the facing page and pay the fee charged for initial registrations. Redlining and bracketing changes from the last filing will speed a re-registration. Do not mark the amendment boxes on the application page on the first renewal filing even if documents are revised.

150. "Disclose" means to state all material facts in an accurate and unambiguous manner. Disclose clearly, concisely and in a narrative form that is understandable by a person unfamiliar with the franchise business. For clear and concise disclosure avoid legal antiques<sup>1</sup> and repetitive phrases.<sup>2</sup> When possible,

use active, not passive voice.<sup>3</sup> Limit the length and complexity of disclosure through careful organization of information in the disclosure. Avoid technical language and unnecessary detail. Make the format and chronological order consistent within each Item.

160. Since prospective franchisees must have sufficient disclosure to understand economic commitments and to develop a business plan, Items 5, 6, 7, and 8 must disclose the minimum and maximum franchisee cost. The franchisor should provide reasonably available information to allow franchisees to forecast future charges listed in these Items and to be paid to persons who are independent of the franchisor. Future payments to the franchisor should be specific as is required by individual Items.

170. The disclosure for each UFOC Item should be separately titled and in the required order. Do not repeat the UFOC question in the offering circular. 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.

180. For each Item in the UFOC, type the Requirement's Item title and number. Sub-items may be designated by descriptive headings, but do not use sub-item letters and numbers.

190. 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 offering circular.

200. Use 8 1/2 by 11 inch paper for the entire application.

210. When the applicant is a master franchisor seeking to sell subfranchises, references in these requirements and instructions to "franchisee" include the subfranchisor unless the language context requires a different meaning.

220. The offer of 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 single unit and multi-unit franchises if the offering circular is not confusing.

230. When the applicant is a subfranchisor, disclose to the extent applicable the same information concerning the subfranchisor that is required about the franchisor.

240. In offerings by a subfranchisor, "franchisor" means both the franchisor and subfranchisor.

250. When state requirements conflict with these Guidelines, the state requirements control. The State Administrator may modify or waive these Guidelines or may require additional documentation or information.

260. Grossly deficient applications may be rejected summarily by the administrator as incomplete for filing. It is not the function of an administrator to prepare, in effect, an applicant's application. The additional examiner time reviewing the grossly deficient product delays the processing of diligently prepared and pursued applications.

265. These Guidelines are effective six months after the Federal Trade Commission and each NASAA member whose jurisdiction requires presale registration of a franchise adopts them. In any event, these Guidelines will be effective no earlier than January 1, 1994 and no later than January 1, 1995. After the

effective date of these Guidelines, all initial franchise applications, renewals and re-registrations must comply with these Guidelines.

270. The Guidelines that continue after these instructions use the following format:

- (a) The title of the Item follows the Item number. It is capitalized and centered on the page.
- (b) The "Item" is a restatement of the Uniform Franchise Offering Circular ("UFOC") Item Requirement. It is capitalized and follows the title of the Item.
- (c) The "Instruction" appears beneath the Item. It explains portions of the Item Requirements.
- (d) The "Sample Answer" at the end of each Item provides sample disclosures. Double horizontal lines divide the Sample Answer from the Instructions.

## REQUIREMENTS FOR PREPARATION OF A UNIFORM FRANCHISE OFFERING CIRCULAR

COVER PAGE: The state cover page of the offering circular must state:

1. The title in boldface type: **FRANCHISE OFFERING CIRCULAR**
2. The franchisor's name, type of business organization, principal business address and telephone number.
3. A sample of the primary business trademark, logotype, trade name, or commercial label or symbol under which the franchisee will conduct its business. (Place in upper left-hand corner of the cover page.)
4. A brief description of the franchised business.
5. The total amounts in Items 5 and 7 of the offering circular: Franchisee's Initial Franchise Fee or Other Payment and Franchisee's Initial Investment.
6. The following statements:

Information comparing franchisors is available. Call the state administrators listed in Exhibit \_\_\_\_ or your public library for sources of information.

Registration of this franchise by a state does not mean that the state recommends it or has verified the information in this offering circular. If you learn that anything in the offering circular is untrue, contact the Federal Trade Commission and (State or Provincial authority).

7. Effective Date: (Leave blank until notified of effectiveness by state regulatory authority.)

Cover Page Instructions:

- i. Present information in the required order. Except for risk factors or when instructed by the examiner, do not capitalize or underline.
- ii. The estimated cash investment should agree with the Item 7 total. This total should represent the franchisee's entire initial investment minus only exclusions allowed by Item 7. Do not state what the total includes.
- iii. Limit the cover page disclosure to one page unless risk factors require additional space. Disclosure on the cover page should be brief. Limit the description of the business to the product or service offered by the franchisor. Unless required by a state regulator, do not disclose financing arrangements or the franchisee's right to use the trademark. Exclude non-required information unless necessary as a risk factor or required by a state regulator.
- iv. If applicable, disclose the following risk factors using the following language on the cover:

1. THE FRANCHISE AGREEMENT PERMITS THE FRANCHISEE (TO SUE) (TO ARBITRATE WITH) \_\_\_\_\_ ONLY IN \_\_\_\_\_. OUT OF STATE (ARBITRATION) (LITIGATION) MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE (TO SUE) (TO ARBITRATE WITH) \_\_\_\_\_ IN \_\_\_\_\_ THAN IN YOUR HOME STATE.
2. THE FRANCHISE AGREEMENT STATES THAT LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

- v. In addition to the above language, disclose other risk factors required by a state regulator.
- vi. Use capital letters for risk factor disclosure.
- vii. In multistate offerings in which the franchisor uses a single offering circular, refer to an exhibit to the offering circular for a list of State or Provincial authority.

Sample Cover Page:  
(Logo)

### Franchise Offering Circular

Belmont Mufflers, Inc.  
A Minnesota Corporation  
First Street  
Jackson, Minnesota 55000  
(612) 266-3430

The franchisee will repair and install motor vehicle exhaust systems. The initial franchise fee is \$10,000. The estimated initial investment required ranges from \$132,700 to \$160,200. This sum does not include rent for the business location.

Risk Factors:

THE FRANCHISE AGREEMENT REQUIRES THAT ALL DISAGREEMENTS BE SETTLED BY ARBITRATION IN MINNESOTA. OUT OF STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN MINNESOTA THAN IN YOUR HOME STATE.

Information about comparisons of franchisors is available. Call the state administrators listed in Exhibit \_\_\_ or your public library for sources of information.

Registration of this franchise with the state does not mean that the state recommends it or has verified the information in this offering circular. If you learn that anything in this offering circular is untrue, contact the Federal Trade Commission and (S tate or Provincial authority).

Effective Date:

TABLE OF CONTENTS: INCLUDE A TABLE OF CONTENTS BASED ON THE REQUIREMENTS OF THIS OFFERING CIRCULAR.

TABLE OF CONTENTS INSTRUCTION:

- i. Refer to UFOC Items and state the page where each UFOC Item disclosure begins. List exhibits by letter. Use the following format:

**TABLE OF CONTENTS**

<u>ITEM</u>	<u>PAGE</u>
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**SAMPLE TABLE OF CONTENTS:**

TABLE OF CONTENTS

ITEM	PAGE
1 The Franchisor, its Predecessors and Affiliates .....	
2 Business Experience.....	
3 Litigation .....	
4 Bankruptcy .....	
5 Initial Franchise Fee .....	
6 Other Fees .....	
7 Initial Investment.....	
8 Restrictions on Sources of Products and Services.....	
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22 Contracts .....

23 Receipt.....

Exhibits

A. Franchise Agreement.....

B. Equipment Lease .....

C. Lease for Premises .....

D. Loan Agreement .....

## Item 1

### THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES

#### Item 1 Instructions:

- i. Use the word "we," initials or one or two words to refer to the franchisor. Use different initials or a different one or two words to refer to other persons contracting with the franchisee under the franchise agreement. Except in the 23 Item titles, use these initials or the word(s) to describe these persons or entities throughout the offering circular.
- ii. Define the franchisee as "you" and use this description throughout the offering circular. If the franchisee could be a corporation, partnership or other entity, disclose whether "you" includes the franchisee's owners.
- iii. "Predecessor" in Item 1 means a person from whom the franchisor acquired directly or indirectly the major portion of the franchisor's assets.
- iv. The disclosure regarding predecessors need only cover the 10 year period immediately before the close of the franchisor's most recent fiscal year.
- v. Affiliate in Item 1 means a person (other than a natural person) controlled by, controlling or under common control with the franchisor, which is offering franchises in any line of business or is providing products or services to the franchisees of the franchisor.

#### DISCLOSE IN SUMMARY FORM:

- A. THE NAME OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES.
- B. THE NAME UNDER WHICH THE FRANCHISOR DOES OR INTENDS TO DO BUSINESS.

#### Item 1B Instruction:

If the franchisor does business under a name different from the name disclosed in Item 1A, state that other name. If not, state that the franchisor does not do business under another name.

- C. THE PRINCIPAL BUSINESS ADDRESS OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES, AND THE FRANCHISOR'S AGENT FOR SERVICE OF PROCESS.

#### Item 1C Instructions:

- i. Principal business address means "home office" in the United States, not in the state for which the offering circular was prepared. If appropriate, also disclose the location of an international "home office." The business address can not be a post office box.
- ii. In a multi-state offering in which the agent for service of process is required, the franchisor may use an exhibit or the acknowledgement of receipt to disclose this agent.

#### D. THE BUSINESS FORM OF THE FRANCHISOR

##### Item 1D Instruction:

- i. Disclose the state of incorporation or business organization and the type of business organization.

#### E. THE FRANCHISOR'S BUSINESS AND THE FRANCHISES TO BE OFFERED IN THIS STATE.

##### Item 1E Instructions:

Disclose the following:

- i. That the franchisor sells or grants franchises;
- ii. Whether the franchisor operates businesses of the type being franchised;
- iii. The franchisor's other business activities;
- iv. The business to be conducted by the franchisees;
- v. The general market for the product or service to be offered by the franchisee. (For example, is the market developed or developing? Will the goods be sold primarily to a certain group? Are sales seasonal?)
- vi. In general terms any regulations specific to the industry in which the franchise business operates. It is not necessary to include laws or regulations that apply to businesses generally.
- vii. A general description of the competition.

#### F. THE PRIOR BUSINESS EXPERIENCE OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES INCLUDING:

(1) THE LENGTH OF TIME THE FRANCHISOR HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.

(2) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.

(3) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED FRANCHISES FOR THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.

(4) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES FOR THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.

(5) WHETHER THE FRANCHISOR HAS OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:

(A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;

(B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF BUSINESS; AND

(B) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED EACH OTHER FRANCHISE.

(6) WHETHER EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:

(A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;

(B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF BUSINESS; AND

(B) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED EACH OTHER FRANCHISE.

Item 1F Instruction:

Limit disclosure about predecessors to the time before the franchisor acquired the predecessor's assets. Thus, under the 10 year limitation, if a franchisor acquired the assets of a predecessor 8 years ago, the disclosure about the predecessor should cover only the 2 year period before the acquisition.

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Sample Answer

To simplify the language in this offering circular "Belmont" means Belmont Mufflers Inc., the franchisor. "You" means the person who buys the franchise. Belmont is a Minnesota corporation that was incorporated on September 3, 1963. Belmont does business as Belmont Muffler Shops. Our principal business address is 111 First Street, Jackson, Minnesota 55555.

Belmont's agent for service of process is disclosed in Exhibit \_\_\_\_\_.

Belmont currently operates 12 Belmont Muffler Shops and sells pipe bending machines and mufflers to various muffler shops.

Belmont franchises the right to sell and install mufflers for the public. You must honor our guarantee to replace mufflers or exhaust pipes that wear out if the vehicle ownership has not changed. Belmont's franchisees often operate their muffler shop franchise with their service stations or tire center. Your competitors include department store service departments, service stations and other national chains of muffler shops. Exhibit is attached to this offering circular and contains a summary of the special regulations for muffler installation in your state.

During the past 5 years Belmont has operated 7 muffler shops that are similar to the franchised shops being offered. All these shops are located in urban areas, have approximately xxxxx square feet of floor space and are located on busy streets. An additional 3 muffler shops were opened in 1990. From 1968 to 1973, Belmont offered franchises for "Repair-All Transmission Shops." "Repair-All" franchisees repaired

and replaced motor vehicle transmissions under a marketing plan similar to the franchise in this offering circular. Belmont sold 40 of these franchises primarily in the states of Minnesota, Michigan, Wisconsin and Illinois. In 1973, Belmont sold this transmission repair company to CTF Inc.

## Item 2

### BUSINESS EXPERIENCE

LIST BY NAME AND POSITION THE DIRECTORS, TRUSTEES AND/OR GENERAL PARTNERS, THE PRINCIPAL OFFICERS AND OTHER EXECUTIVES OR SUBFRANCHISORS WHO WILL HAVE MANAGEMENT RESPONSIBILITY RELATING TO THE FRANCHISES OFFERED BY THIS OFFERING CIRCULAR. LIST ALL FRANCHISE BROKERS. STATE EACH PERSON'S PRINCIPAL OCCUPATIONS AND EMPLOYERS DURING THE PAST FIVE YEARS.

#### Item 2 Instructions:

- i. Principal officers include the chief executive and chief operating officer, the president, financial, franchise marketing, training and franchise operations officers.
- ii. First disclose the position and the name of the person holding it. Underline this information; then skip one line.
- iii. Disclose the beginning date and departure date for each job held in the five year period whether or not this date is within the past five years. Disclose the location of the job.
- iv. Do not disclose home addresses, home telephones, social security numbers or birth dates in this Item.
- v. Disclose the required information concerning the franchise broker's directors, principal officers and executives with management responsibility to market or service the franchises.
- vi. In a multi-state offering in which the franchisor uses a single offering circular and franchise brokers and executives with direct management responsibility to the franchisees differs from state to state, use an exhibit to refer to these personnel.

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#### Sample Answer

President: Jane J. Doe

From June, 1978, until April, 1986, Ms. Doe was Vice-President of Atlas Inc., a Houston, Texas based manufacturer of automobile wheels. In April, 1986, she joined Belmont as a Director and Vice President. She was promoted to president in June, 1987.

### Item 3

#### LITIGATION

DISCLOSE WHETHER THE FRANCHISOR, ITS PREDECESSOR, A PERSON IDENTIFIED IN ITEM 2 OR AN AFFILIATE OFFERING FRANCHISES UNDER THE FRANCHISOR'S PRINCIPAL TRADEMARK:

- A. HAS AN ADMINISTRATIVE, CRIMINAL OR MATERIAL CIVIL ACTION PENDING AGAINST THAT PERSON ALLEGING A VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IN ADDITION, INCLUDE ACTIONS OTHER THAN ORDINARY ROUTINE LITIGATION INCIDENTAL TO THE BUSINESS WHICH ARE SIGNIFICANT IN THE CONTEXT OF THE NUMBER OF FRANCHISEES AND THE SIZE, NATURE OR FINANCIAL CONDITION OF THE FRANCHISE SYSTEM OR ITS BUSINESS OPERATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM, NATURE, AND CURRENT STATUS OF THE PENDING ACTION. FRANCHISOR MAY INCLUDE A SUMMARY OPINION OF COUNSEL CONCERNING THE ACTION IF A CONSENT TO USE OF THE SUMMARY OPINION IS INCLUDED AS PART OF THIS OFFERING CIRCULAR.
- B. HAS DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR BEEN CONVICTED OF A FELONY OR PLEADED NOLO CONTENDERE TO A FELONY CHARGE; OR BEEN HELD LIABLE IN A CIVIL ACTION BY FINAL JUDGMENT OR BEEN THE SUBJECT OF A MATERIAL ACTION INVOLVING VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM AND DATE OF CONVICTION OR DATE JUDGMENT WAS ENTERED, PENALTY OR DAMAGES ASSESSED AND/OR TERMS OF SETTLEMENTS.
- C. IS SUBJECT TO A CURRENTLY EFFECTIVE INJUNCTIVE OR RESTRICTIVE ORDER OR DECREE RELATING TO THE FRANCHISE OR UNDER A FEDERAL, STATE OR CANADIAN FRANCHISE, SECURITIES, ANTITRUST, TRADE REGULATION OR TRADE PRACTICE LAW RESULTING FROM A CONCLUDED OR PENDING ACTION OR PROCEEDING BROUGHT BY A PUBLIC AGENCY. IF SO, DISCLOSE THE NAME OF THE PERSON, THE PUBLIC AGENCY AND COURT, A SUMMARY OF THE ALLEGATIONS OR FACTS FOUND BY THE AGENCY OR COURT AND THE DATE, NATURE, TERMS AND CONDITIONS OF THE ORDER OR DECREE.

### Item 3 Definitions:

- i. For purposes of these instructions to Item 3, "franchisor" includes the franchisor, its predecessors, persons identified in Item 2 and affiliates offering franchises under the franchisor's principal trademarks.
- ii. Action: Action includes complaints, cross claims, counterclaims, and third party complaints in a judicial proceeding, and their equivalents in an administrative action or arbitration proceeding. The franchisor may disclose its counterclaims. Omit actions that were dismissed by final judgment without liability of or entry of an adverse order against the franchisor.
- iii. Included in the definition of material is an action or an aggregate of actions if a reasonable prospective franchisee would consider it important in making a decision about the franchised business.
- iv. In this Item, settlement of an action does not diminish its materiality if the franchisor agrees to pay material consideration or agrees to be bound by obligations which are materially adverse to its interests.
- v. "Ordinary routine litigation" means actions which ordinarily result from the business and which do not depart from the normal kinds of actions in the business.
- vi. "Held liable" includes a finding by final judgment in a judicial, binding arbitration or administrative proceeding that the franchisor, as a result of claims or counterclaims must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.
- vii. "Currently Effective": An injunctive or restrictive order or decree is "currently effective" unless it has been vacated or rescinded by a court or by the issuing public agency. An order that has expired by its own terms is not "currently effective." If the named party(s) have fully complied with an order (for example, through registration of its franchise offer), the order is not "currently effective." A party has not fully complied with an order to act or to refrain from an act (for example to comply with the franchise law or to refrain from violating the franchise law) until the order expires by its own terms.

### Item 3 Instructions:

#### Civil litigation, or Injunctive or Restrictive Order:

- viii. Use sample answer 3-1 for a negative response to Item 3 if the franchisor has never been named in litigation or if the only litigation naming the franchisor is outside the scope of Item 3.
- ix. Disclose in the same order as the instructions below appear.
- x. Title each action and state its case number or citation in parentheses. Underline the title of the action.

- xi. For each action state the action's initial filing date and the opposing party's name and relationship with the franchisor. Relationships include competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees.
- xii. Summarize the legal and factual nature of each claim in the action.
- xiii. Summarize the relief sought or obtained. Summarize conclusions of law or fact.
- xiv. State that other than these (list number of actions) no litigation is required to be disclosed in this offering circular.

Criminal convictions or Pleas:

- xv. Disclose in the same order as the following instructions appear.
- xvi. Title each action and state its citation in parentheses. Underline the title of the action.
- xvii. Name the person convicted or who pleaded.
- xviii. Next, state the crime or violation and the date of conviction
- xix. Next, disclose the sentence or penalty imposed.
- xx. Lastly, state that other than these (list the number of actions) actions, no litigation is required to be disclosed in this offering circular.

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Sample Answer 3-1

No litigation is required to be disclosed in this offering circular.

Sample Answer 3-2

Doe v. Belmont Muffler Service, Inc. (cite) On March 1, 1985, our franchisee, Donald Doe, sought to enjoin us from terminating him for nonpayment of royalty fees. Doe alleged \_\_\_\_\_. On April 3, 1986, Doe withdrew the case when we repurchased his franchise for \$90,000 and agreed not to enforce non-compete clauses against him.

Indiana v. Belmont Muffler Service, Inc. (cite) On April 1, 1985, the Attorney General of Indiana sought to enjoin us from offering unregistered franchises and from using false income representations. The Attorney General alleged that the earnings claims were false because . . . . The court found that we had

offered franchises, that the offers were not registered and that we had made the alleged false representations in our earnings claims. The court enjoined us from repeating those acts.

Other than these 2 actions, no litigation is required to be disclosed in this offering circular.

#### Item 4

#### BANKRUPTCY

STATE WHETHER THE FRANCHISOR, ITS AFFILIATE, ITS PREDECESSOR, OFFICERS OR GENERAL PARTNER DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR (A) FILED AS DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE; (B) OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE; OR (C) WAS A PRINCIPAL OFFICER OF A COMPANY OR A GENERAL PARTNER IN A PARTNERSHIP THAT EITHER FILED AS A DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE OR THAT OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE DURING OR WITHIN 1 YEAR AFTER THE OFFICER OR GENERAL PARTNER OF THE FRANCHISOR HELD THIS POSITION IN THE COMPANY OR PARTNERSHIP. IF SO, DISCLOSE THE NAME OF THE PERSON OR COMPANY THAT WAS THE DEBTOR UNDER THE BANKRUPTCY CODE, THE DATE OF THE ACTION AND THE MATERIAL FACTS.

#### Item 4 Instructions:

- i. First, name the party that filed (or had filed against it) the petition in bankruptcy and the party's relationship to the franchisor. If the debtor in a bankruptcy proceeding was or is affiliated with the franchisor, state the relationship. If the debt or in a bankruptcy proceeding is unaffiliated with the franchisor, state the name, address and principal business of the bankrupt company.
- ii. Disclose that the entity filed bankruptcy or reorganization under the bankruptcy law and the date of the original filing.
- iii. Identify the bankruptcy court, and the case name and number. Put this information in parentheses.
- iv. State the date on which the debtor obtained a discharge in bankruptcy (including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the U.S. Bankruptcy Code).

- v. Disclose other material facts.
  - vi. Cases, actions and other proceedings under the laws of foreign nations relating to bankruptcy proceedings should be included in answers, where responses are required, as if those cases, actions and proceedings took place under the U.S. Bankruptcy Code .
  - vii. If information is disclosed in this Item, at the end of the disclosure add sample answer 4-1 with the qualification "other than these actions."
  - viii. Use Sample Answer 4-1 if no person listed in Items 1 or 2 has been involved as a debtor in bankruptcy proceedings or any person listed in Items 1 or 2 has been involved as a debtor in bankruptcy proceedings but the bankruptcy proceedings (under the U.S. Bankruptcy Code or its predecessor, the National Bankruptcy Act of 1898) were discharged more than 10 years ago. "Person" includes natural persons and legal entities listed in Items 1 and 2. Person does not include anyone acting solely as the franchisor's agent for service of process.
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#### Sample Answer 4-1

No person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

#### Sample Answer 4-2

On March 2, 1984, Belmont filed a petition to reorganize under Chapter 11 of the U.S. Bankruptcy Code. We were allowed to continue to operate under bankruptcy court supervision. On October 2, 1985, the bankruptcy court approved our plan of reorganization and discharged the proceedings. (US Bankruptcy Court for the District of \_\_\_\_\_ Case B 84-301).

Belmont's present president, Roger Rowe, was president of Acme Muffler Service, Inc., a Houston, Texas based manufacturer of exhaust systems, from July 1, 1978, through June 14, 1983. On June 6, 1983, an involuntary petition under the U.S. Bankruptcy Code was filed against Acme by its creditors. On July 14, 1983, the court entered an order of relief. Acme sold its assets and was dissolved.

Other than these 2 actions, no person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

#### Item 5

INITIAL FRANCHISE FEE

DISCLOSE THE INITIAL FRANCHISE FEE AND STATE THE CONDITIONS WHEN THIS FEE IS REFUNDABLE.

Item 5 Instructions:

- i. "Initial fee" includes all fees and payments for services or goods received from the franchisor before the franchisee's business opens. "Initial fee" includes all fees and payments whether payable in lump sum or installments.
- ii. If the initial fee is not uniform, disclose the formula or the range of initial fees paid in the fiscal year before the application date and the factors that determined the amount.
- iii. Disclose installment payment terms in this Item or in Item 10.

Sample Answer 5-1

All franchisees pay a \$10,000 lump sum franchise fee when they sign the franchise agreement. Belmont will refund the entire amount if we do not approve your application within 45 days. Belmont will refund \$9,000 of this fee if you do not satisfactorily complete your 2-week training. There are no refunds under other circumstances.

Sample Answer 5-2

You must pay a franchise license fee of \$\_\_\_\_\_ per thousand licensed drivers who reside within your exclusive area when the franchise agreement is signed. The number of licensed drivers is determined by the latest abstract of the state agency which issues driver's licenses. The minimum fee is \$20,000. When you send your application, you must pay a non-refundable \$500 application fee. You must pay an additional \$10,000 when you receive your equipment. The balance of your fee is payable in 12 equal monthly installments of \$\_\_\_\_\_. The first installment payment is due 1 year after your shop opens. Belmont charges 10% annual interest on the unpaid balance. Interest compounds daily and accrues from the date that you receive your equipment. All buyers pay this uniform fee and receive the same financing terms on the fee. If your application is not accepted, Belmont retains the \$500 for investigative costs, but you are not liable for the \$19,500 remainder. Belmont does not give refunds under other circumstances.

Item 6

OTHER FEES

DISCLOSE OTHER RECURRING OR ISOLATED FEES OR PAYMENTS THAT THE FRANCHISEE MUST PAY TO THE FRANCHISER OR ITS AFFILIATES OR THAT THE FRANCHISER OR ITS AFFILIATES IMPOSE OR COLLECT IN WHOLE OR IN PART ON BEHALF OF A THIRD PARTY. INCLUDE THE FORMULA USED TO COMPUTE THESE OTHER FEES AND PAYMENTS. IF ANY FEE IS REFUNDABLE, STATE THE CONDITIONS WHEN EACH FEE OR PAYMENT IS REFUNDABLE.

Item 6 Instructions:

- i. First disclose fees in tabular form. Use footnotes or a "remarks" column to elaborate on the information in the table or to disclose caveats. If elaborations are lengthy, use footnotes instead of a remarks column.

- ii. Disclose the amount of each fee. A dollar amount or a percentage of gross sales is acceptable if the term gross sales is defined. If dollar amounts may increase, disclose the formula which determines the increase or the maximum amount of the increase.
- iii. Disclose the due date for recurring payments.
- iv. If all fees are payable to only the franchiser, disclose this in a footnote.
- v. If all fees are imposed and collected by the franchiser, disclose this in a footnote.
- vi. If all fees are non-refundable, state this in a footnote.
- vii. Disclose the voting power of franchiser owned outlets on any fees imposed by cooperatives. If franchiser outlets have controlling voting power, disclose a range for the fee. Disclose this information in a footnote or a "remarks" column.
- viii. The franchiser need not repeat information contained in Items 8 & 9, but the table should direct the franchisees to those Items.
- ix. Examples of fees are royalty, lease negotiation, construction, remodeling, additional training, advertising, group advertising, additional assistance, audit, accounting/inventory, and transfer and renewal fee.

Sample Answer 6-1

Name of fee	Amount	Due Date	Remarks
Royalty <sup>1</sup>	4% of total gross sales	Payable monthly on the 10th day of the next month	Gross sales in-cludes all revenue from the franchise location. Gross sales does not include sales tax or use tax.
Advertising <sup>1</sup>	2% of total gross sales	Same as Royalty fee	
Cooperative Advertising <sup>1</sup>	Maximum - 2% of total	Established by franchisees	Franchisees may form an

	gross sales		advertising cooperative and establish local advertising fees. Company owned stores have no vote in these cooperatives.
Additional Training <sup>1</sup>	\$1,000 per person	2 weeks prior to beginning of training	Belmont trains 2 persons free - See Item 11
Additional Assistance <sup>1</sup>	\$500 per day	30 days after billing	Belmont provides opening assistance free-See Item 11 Payable when you sell your franchise. No charge if franchise transferred to a corporation which you control
Transfer <sup>1</sup>	\$1,000	Prior to consummation of transfer	

<sup>1</sup> All fees are imposed by and are payable to Belmont. All fees are non-refundable.

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Name of fee	Amount	Due Date	Remarks
Audit <sup>1</sup>	Cost of audit plus 10% interest on underpayment <sup>2</sup>	30 days after billing	Payable only if audit shows an understatement of at least 2% of gross sales for

any month.  
30 days  
before  
renewal  
Renewal Fee<sup>1</sup> \$1,000

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<sup>1</sup> All fees are imposed by and are payable to Belmont. All fees are non-refundable.

<sup>2</sup> Interest begins from the date of the underpayment.

#### Item 7

#### INITIAL INVESTMENT

DISCLOSE THE FOLLOWING EXPENDITURES STATING TO WHOM THE PAYMENTS ARE MADE, WHEN PAYMENTS ARE DUE, WHETHER EACH PAYMENT IS REFUNDABLE, THE CONDITIONS WHEN EACH PAYMENT IS REFUNDABLE, AND, IF PART OF THE FRANCHISEE'S INITIAL INVESTMENT IN THE FRANCHISE MAY BE FINANCED, AN ESTIMATE OF THE LOAN REPAYMENTS, INCLUDING INTEREST:

- A. REAL PROPERTY, WHETHER PURCHASED OR LEASED. IF NEITHER ESTIMABLE NOR DESCRIBABLE BY A LOW-HIGH RANGE, DESCRIBE REQUIREMENTS, SUCH AS PROPERTY TYPE, LOCATION AND BUILDING SIZE.
- B. EQUIPMENT, FIXTURES, OTHER FIXED ASSETS, CONSTRUCTION, REMODELING, LEASEHOLD IMPROVEMENTS AND DECORATING COSTS, WHETHER PURCHASED OR LEASED.
- C. INVENTORY REQUIRED TO BEGIN OPERATION.
- D. SECURITY DEPOSITS, UTILITY DEPOSITS, BUSINESS LICENSES, OTHER PREPAID EXPENSES.
- E. ADDITIONAL FUNDS REQUIRED BY THE FRANCHISEE BEFORE OPERATIONS BEGIN AND DURING THE INITIAL PHASE OF THE FRANCHISE.
- F. OTHER PAYMENTS THAT THE FRANCHISEE MUST MAKE TO BEGIN OPERATIONS.

Item 7 Instructions:

- i. Begin disclosure by listing expenditures in tabular form. List preopening expenses first. Use footnotes to comment on expected expenditures.
- ii. Disclose payments required by the franchise agreement and all costs necessary to begin operation of the franchise and operate the franchise during the initial phase of the business. A reasonable time for the initial phase of the business is at least 3 months or a reasonable period for the industry. Include an entry titled "additional funds" and disclose the length of the initial phase in the entry.
- iii. If a specific expenditure amount is not ascertainable, use a low-high range based on the franchisor's current experience. If real property costs can not be estimated in a low-high range, disclose the approximate size of the property and building involved. Describe the probable location of the building (for example, strip shopping center, mall, downtown, rural or highway).
- iv. The franchisor may include additional expenditure tables to show expenditure variations caused by differences in site location, premise size, etc. Describe in general terms the factors, basis and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.
- v. If the franchisor or an affiliate finances part of the initial investment, state the expenditures that it will finance. State the required down payment, annual percentage rate of interest, rate factors, and the estimated loan repayments. Make the discussion brief, and refer to Item 10.
- vi. Total the initial investment. This total should be the same as the total investment on the offering circular cover.

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SAMPLE ANSWER 7

YOUR ESTIMATED INITIAL INVESTMENT

	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
INITIAL FRANCHISE FEE	\$20,000 (Note 1)	Lump Sum	At Signing of Franchise Agreement	Belmont, Inc.
TRAVEL AND LIVING EXPENSES WHILE TRAINING	\$ 2,500 to \$ 5,000	As Incurred	During Training	Airlines, Hotels & Restaurants
REAL ESTATE AND IMPROVEMENTS	(Note 2)	(Note 2)	(Note 2)	(Note 2)
EQUIPMENT	\$40,000 (Note 3)	Lump Sum	Prior to Opening	Belmont or vendors
SIGNS	\$ 2,200	Lump Sum	Prior to Opening	Abbey Sign Company
MISCELLANEOUS OPENING COSTS	\$ 8,000 (Note 4)	As Incurred	As Incurred	Suppliers, Utilities, etc.
OPENING Inventory	\$ 8,000 (Note 5)	Lump Sum	Prior to Opening	Belmont or vendors
ADVERTISING	\$ 500	Monthly		Belmont

Fee - 3 months

ADDITIONAL Funds - 3 months	\$50,000 to \$ 75,000(Note 6)	As Incurred	As Incurred	Employees, Suppliers Utilities
TOTAL	\$ 132,700 to \$160,200 (Note 7)	(Does not include real estate costs)		

Notes:

- (1) See Item 5 for the conditions when this fee is partly refundable. Belmont does not finance any fee.
- (2) If you do not own adequate shop space, you must lease the land and building for the Belmont Muffler Shop. Typical locations are light industrial and commercial areas. The typical Belmont Muffler Shop has 5,000 - 8,000 square feet. Former three or four bay gasoline service stations have been converted with relative ease into Belmont Muffler Shops. Rent is estimated to be between \$12,000 - 20,000 per year depending on factors such as size, condition and location of the leased premises.
- (3) This payment is fully refundable before equipment installation. After installation, Belmont deducts \$3,000 installation costs from your refund.
- (4) Includes security deposits, utility costs, incorporation fee.
- (5) This payment is fully refundable before Belmont delivers your inventory. After delivery Belmont deducts a 10% restocking fee from your refund.
- (6) This estimates your initial start up expenses. These expenses include payroll costs. These figures are estimates and Belmont cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how much you follow Belmont's methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our product; the prevailing wage rate; competition; and the sales level reached during the initial period.
- (7) Belmont relied on its 30 years of experience in the muffler business to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.
- (8) Belmont does not offer direct or indirect financing to franchisees for any items.

#### Item 8

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

DISCLOSE FRANCHISEE OBLIGATIONS TO PURCHASE OR LEASE FROM THE FRANCHISOR ITS DESIGNEE OR FROM SUPPLIERS APPROVED BY THE FRANCHISOR OR UNDER THE FRANCHISOR'S SPECIFICATIONS. FOR EACH OBLIGATION DISCLOSE:

- A. THE GOODS, SERVICES, SUPPLIES, FIXTURES, EQUIPMENT, INVENTORY, COMPUTER HARDWARE AND SOFTWARE OR REAL ESTATE RELATING TO ESTABLISHING OR OPERATING THE FRANCHISED BUSINESS.

- B. THE MANNER IN WHICH THE FRANCHISOR ISSUES AND MODIFIES SPECIFICATIONS OR GRANTS AND REVOKES APPROVAL TO SUPPLIERS.
- C. WHETHER, AND FOR WHAT CATEGORIES OF GOODS AND SERVICES, THE FRANCHISOR OR ITS AFFILIATES ARE APPROVED SUPPLIERS OR THE ONLY APPROVED SUPPLIERS.
- D. WHETHER, AND IF SO, THE PRECISE BASIS BY WHICH THE FRANCHISOR OR ITS AFFILIATES WILL OR MAY DERIVE REVENUE OR OTHER MATERIAL CONSIDERATION AS A RESULT OF REQUIRED PURCHASES OR LEASES.
- E. THE ESTIMATED PROPORTION OF THESE REQUIRED PURCHASES AND LEASES TO ALL PURCHASES AND LEASES BY THE FRANCHISEE OF GOODS AND SERVICES IN ESTABLISHING AND OPERATING THE FRANCHISED BUSINESS.
- F. THE EXISTENCE OF PURCHASING OR DISTRIBUTION COOPERATIVES.

Item 8 Instructions:

- i. An obligation includes those imposed by written agreement or by the franchisor's practice. The franchisor may include the reason for the requirement.
- ii. Do not include goods or services provided as part of the franchise and without a separate charge (for example, a fee for initial training when the cost is included in the franchise fee). These fees should be described in Item 5. Do not include fees disclosed in response to Item 6.
- iii. For "precise basis," disclose the franchisor's total revenues and the franchisor's revenues from all required purchases and leases of products and services. Also, disclose the percentage of the franchisor's total revenues represented by the franchisor's revenues from required purchases or leases. If the franchisor's affiliates also sell or lease products or services to franchisees, disclose affiliate revenues from those sales or leases. These amounts should be taken from the franchisor's statement of operations (or profit and loss statement) from the most recent annual audited financial statement attached to the offering circular. If the franchisor's annual audited financial statement is not required to be attached to the offering circular or if the franchisor's affiliate sells or leases required products or services to franchisees, disclose the sources of information used in computing revenues.
- iv. State how the franchisor formulates and modifies specifications and standards imposed on franchisees.
- v. Disclose whether specifications and standards are issued to franchisees, subfranchisors, or approved suppliers.
- vi. Describe how suppliers are evaluated, approved or disapproved. Disclose whether the franchisor's criteria for supplier approval are available to franchisees. State the fees and procedure to secure approval and how approvals are revoked. State the time period when the franchisee will receive notification of approval or disapproval.

- vii. If the designated supplier will make payments to the franchisor because of transactions with franchisees, disclose the basis for the payment. Specify a percentage or a flat amount. Purchases of similar goods or services by the franchisor at a lower price than that available to franchisees is a payment.
- viii. Disclose whether the franchisor negotiates purchase arrangements with suppliers (including price terms) for the benefit of franchisees.
- ix. Disclose whether the franchisor provides material benefits (for example renewal or granting additional franchises) to a franchisee based on a franchisee's use of designated or approved sources.
- x. Use sample answer 8-1 if the response to Item 8 is negative.

#### Sample Answer 8-1

Belmont has no required specifications, designated suppliers, or approved suppliers for goods, services or real estate relating to your franchise business. Belmont will not derive revenue from your purchases or leases.

#### Sample Answer 8-2

You must purchase your pipe bending machine, hoist, cutting torch and supplies under specifications in the operations manual. These specifications include standards for delivery, performance, design and appearance. You may purchase this equipment from Belmont. In the year ending December 31, 1992, Belmont's revenues from the sale of this equipment to franchisees was \$500,000, or 5% of Belmont's total revenues of \$10,000,000. The cost of equipment purchased in accordance with specifications represents 10% of your total purchases in connection with establishment of your store.

Belmont's affiliate, Muffler Supply Co., is an approved supplier of mufflers to franchisees. In the year ending December 31, 1992, the affiliate's revenues from the sale of mufflers to franchisees was \$2,000,000. The purchase of mufflers from approved sources will represent 15 to 20% of your overall purchases in operating the store. Belmont has approved other suppliers of mufflers and exhaust pipe. If you would like to purchase these items from another supplier, you may request our "Supplier Approval Criteria and Request Form." Based on the information and samples you supply to us and your payment of a \$500 fee, we will test the items supplied and review the proposed supplier's financial records, business reputation, delivery performance, credit rating and other information. Our review typically is completed in 30 days.

One of the approved suppliers of mufflers and exhaust pipes, Scottie's Pipes, Inc., pays Belmont a rebate of 1% of all franchisee purchases, which is deposited in the Belmont Advertising Fund. Another approved supplier, Michael's Clean-Air, Inc., pays Belmont 2% of all franchisee purchases of catalytic converters. This amount is used in Belmont's training center for classes in catalytic converter repair and replacement.

#### Item 9

FRANCHISEE'S OBLIGATIONS  
DISCLOSE THE PRINCIPAL OBLIGATIONS OF THE FRANCHISEE UNDER THE FRANCHISE  
AND OTHER AGREEMENTS AFTER THE SIGNING OF THESE AGREEMENTS.

Item 9 Instructions:

- i. Disclose obligations in tabular form. Refer to the section of the agreement that contains the obligation and any Item of the Offering Circular that further describes the obligation.
- ii. The table should contain a response to each category listed below. If the response to any category is that no obligation is imposed, the table should state that. Do not change the names of the categories. Fit all obligations within the listed categories. If other material obligations fall outside the scope of all of the prescribed categories, add additional categories as needed. The categories of franchisee obligations are:
  - a. Site selection and acquisition/lease
  - b. Pre-opening purchases/leases
  - c. Site development and other pre-opening requirements
  - d. Initial and ongoing training
  - e. Opening
  - f. Fees
  - g. Compliance with standards and policies/Operating Manual
  - h. Trademarks and proprietary information
  - i. Restrictions on products/services offered
  - j. Warranty and customer service requirements
  - k. Territorial development and sales quotas
  - l. Ongoing product/service purchase
  - m. Maintenance, appearance and remodeling requirements
  - n. Insurance
  - o. Advertising
  - p. Indemnification
  - q. Owner's participation/management/staffing
  - r. Records and reports
  - s. Inspections and audits
  - t. Transfer
  - u. Renewal
  - v. Post-termination obligations
  - w. Non-competition covenants
  - x. Dispute resolution

y. Other (describe)

iii. Before the table, state the following:

**THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.**

Sample Answer 9

**THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.**

<u>Obligation</u>	<u>Section in Agreement</u>	<u>Item in Offering Circular</u>
a. Site selection and acquisition/lease	Section 2A of Franchise Agreement	Items 6 and 11
b. Pre-opening purchases/ leases	Section 3D of Franchise Agreement	Item 8
c. Site development and other pre-opening requirements	Sections 3A and 3B of Franchise Agreement	Items 6, 7 and 11
d. Initial and ongoing training	Section 5 of Franchise Agreement	Item 11
e. Opening	Section 4 of Franchise Agreement	Item 11
f. Fees	Section 6 of Franchise Agreement	Items 5 and 6
g. Compliance with standards and policies/ Operating Manual	Section 8A of Franchise Agreement	Item 11
h. Trademarks and proprietary information	Sections 7 and 11 of Franchise Agreement	Items 13 and 14
i. Restrictions	Section 12	Item 16

on products/ services offered	of Franchise Agreement	
j. Warranty and customer service requirements	Section 8B of Franchise Agreement	Item 11
k. Territorial development and sales quotas	None	
l. Ongoing product/service purchases	Section 9 of Franchise Agreement	Item 8
m. Maintenance, appearance and remodeling requirements	Sections 8C and 10 of Franchise Agreement	Item 11
n. Insurance	Section 13A of Franchise Agreement	Items 6 and 8
o. Advertising	Section 15 of Franchise Agreement	Items 6 and 11
p. Indemnification	Section 13B of Franchise Agreement	Item 6
q. Owner's participation/ management/ staffing	Sections 4, 5 and 14 of Franchise Agreement	Items 11 and 15
r. Records/ reports	Section 17A of Franchise Agreement	Item 6
s. Inspections/ audits	Section 17B of Franchise Agreement	Items 6 and 11
t. Transfer	Section 18 of Franchise Agreement	Item 17
u. Renewal	Section 20 of Franchise Agreement	Item 17
v. Post-termination obligations	Section 22 of Franchise Agreement	Item 17
w. Non-competition covenants	Sections 11, 18 and 22C of Franchise Agreement	Item 17

Item 10

FINANCING

DISCLOSE THE TERMS AND CONDITIONS OF EACH FINANCING ARRANGEMENT THAT THE FRANCHISER, ITS AGENT OR AFFILIATES OFFERS DIRECTLY OR INDIRECTLY TO THE FRANCHISEE, INCLUDING:

Item 10 Instructions:

- i. "Financing" includes leases and installment contracts.
- ii. Payments due within 90 days on open account financing need not be disclosed under this Item.
- iii. A written arrangement between a franchiser or its affiliate and a lender for the lender to offer financing to the franchisee or an arrangement in which a franchiser or its affiliate receives a benefit from a lender for franchisee financing is an "indirect offer of financing" and must be disclosed under this Item. The franchiser's guarantee of a note, lease or obligation of the franchisee is an "indirect offer of financing" and must be disclosed under this Item.
- iv. If financing of the initial fee is disclosed in the Item 7 disclosure, a cross reference to Item 7 is sufficient if all the disclosure which Item 10 requires is provided in Item 7.
- v. If an affiliate offers financing, identify the affiliate and its relationship to the franchiser.
- vi. The franchiser may summarize the terms of each financing arrangement in tabular form, using footnotes to entries in the chart to provide additional information required by these instructions that does not fit in the chart.
- vii. If a financing arrangement is for the establishment of the franchised business, disclose what the financing covers, including:
  - a) Initial franchise fee;
  - b) Site acquisition;
  - c) Construction or remodeling;
  - d) Equipment or fixtures; and
  - e) Opening inventory or supplies.
- viii. If the franchiser generally offers financing for the operation of the franchised business, disclose what the financing arrangement covers, including:

- a) Inventory or supplies;
- b) Replacement equipment or fixtures; and
- c) Other continuing expenses.

ix. Disclose the terms of each financing arrangement, including:

- a) The identity of the lender(s) providing the financing and its relationship to the franchiser (for example, affiliate);
- b) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed;
- c) The annual percentage rate of interest ("APR") charged, computed as provided by Sections 106-107 of the Consumer Protection Credit Act, 15 U.S.C. §§ 106-107. If the APR may differ depending on when the financing is issued, disclose the APR on a specified recent date;
- d) The number of payments or the period of repayment;
- e) Nature of security interest required by the lender;
- f) Whether a person other than the franchisee (for example spouse, shareholder of the franchisee) must personally guarantee the debt;
- g) Whether the debt can be prepaid and the nature of any prepayment penalty;
- h) The franchisee's potential liabilities upon default, including any accelerated obligation to pay the entire amount due, court costs and attorney's fees for collection, and termination of the franchise, or other cross default clauses whether directly, as a result of non-payment, or indirectly, as a result of loss of necessary facilities; and
- i) Other material financing terms.

x. Include specimen copies of the financing documents as an exhibit to Item 22. Cite the section and name of the document containing the financing terms. Put this information in parentheses at the end of the description of the term.

xi. Use Sample Answer 10-1 if the franchiser does not offer financing.

#### A. A WAIVER OF DEFENSES OR SIMILAR PROVISIONS IN A DOCUMENT.

##### Item 10A Instructions:

- i. Disclose the terms of waivers of legal rights by the franchisee under the terms of the financing arrangement (for example confession of judgment).
- ii. Describe provisions of the loan agreement that bar the franchisee from asserting a defense against the lender, the lender's assignee or the franchiser.

- iii. If the loan agreement does not contain the provisions in (i) or (ii), disclose that fact.
- iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.

B. THE FRANCHISER'S PRACTICE OR ITS INTENT TO SELL, ASSIGN, OR DISCOUNT TO A THIRD PARTY ALL OR PART OF THE FINANCING ARRANGEMENT.

Item 10B Instructions:

- i. Practice includes past or present practice and future intent to sell or assign franchisee financing arrangements.
- ii. Disclose the assignment terms including whether the franchiser will remain primarily obligated to provide the financed goods or services.
- iii. If the franchiser may sell or assign its rights under the financing agreement, disclose that the franchisee may lose all its defenses against the lender as a result of the sale or assignment.
- iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.
- v. If no disclosure is required by Instruction 10B, disclose that fact.

C. PAYMENTS TO THE FRANCHISER OR AN AFFILIATE(S) FOR THE PLACEMENT OF FINANCING WITH THE LENDER.

Item 10C Instructions:

- i. Describe the payments.
- ii. If no disclosure is required by Instruction 10C(i) for a financing arrangement, disclose that fact.
- iii. Identify the source of the payment and the relationship of the source to the franchiser or its affiliates.
- iv. Disclose the amount or the method of determining the payment.
- v. Cite the section and name of the document containing these arrangements. Put this information in parentheses at the end of the description of the term.

Sample Answer 10-1

Belmont does not offer direct or indirect financing. Belmont does not guarantee your note, lease or obligation.

Sample Answer 10-2

SUMMARY OF FINANCING OFFERED

ITEM FINANCED (SOURCE)	AMOUNT FINANCED	DOWN PAYMENT	TERM (MONTHS)	APR %	MONTHLY PAYMENT	PREPAYMENT ALTY	SECURITY REQUIRED	LIABILITY UPON DEFAULT	LOSS OF LEGAL RIGHT ON DEFAULT
INITIAL FEE (NOTE 1) (BELMONT)	\$10,000		10	18	\$	NON E	PERSONAL GUARANTEE	LOSS OF FRANCHISE-UNPAID LOAN	WAIVE NOTICE-CONFESSES JUDGMENT
LAND/CONSTRUCT	NO								
LEASED SPACE (NOTE 2) (BELMONT)	\$2,000 (SECUR. DEP.)	7-10	<u>N</u> / <u>L</u> / <u>A</u>	\$	NO NE	PERS ONAL GUA RAN TEE	LOSS OF FRANCHISE-BACK RENT +BR>2 MOS.-FRANCHISE RIGHTS-ATTY'S FEES	NONE	
EQUIPMENT LEASE (NOTE 3) (USA CREDIT CORP.)	\$5,000	NO NE	5	15	\$	NON E	EQUIPMENT-PERSONAL GUARANTEE	COST OF REMOVAL	LOSE ALL DEFENSES
EQUIP PURCH (NOTE 4)	\$3,750	\$1,250 (25	2-7	15	\$	\$500	EQUIPMENT-PERSONAL GUARANTEE	LOSS OF FRAN	NONE

(BELMONT) (%)

CHISE-  
GUAR  
ANTEE

OPENING NO  
INVENT. NE

OTHER NO  
FINANCIN NE  
G

NOTE 1 - If you meet Belmont's credit standards, Belmont will finance the \$10,000 initial franchisee fee over a 10-year period at an APR of 18%, using the standard form note in Exhibit A. The only security Belmont requires is a personal guarantee of the note by you and your spouse or by all the shareholders of your corporation. (Loan Agreement Section \_\_\_\_ ) The note can be prepaid without penalty at any time during its 10-year term. (Loan Agreement Section \_\_\_\_ ) If you do not pay on time, Belmont can call the loan and demand immediate payment of the full outstanding balance and obtain court costs and attorney's fees if a collection action is necessary. (Loan Agreement Section \_\_\_\_ ) Belmont also has the right to terminate your franchise if you do not make your payments on time more than three times during the note term. (Loan Agreement Section \_\_\_\_ ) You waive your rights to notice of a collection action and to assert any defenses to collection against Belmont. (Loan Agreement Section \_\_\_\_ ) Belmont discounts these notes to a third party who may be immune under the law to any defenses to payment you may have against Belmont. (Loan Agreement Section \_\_\_\_ )

NOTE 2 - In most cases Belmont will sublease the franchised premises to you but will guarantee your lease with a third party if you have acceptable credit and that is the only way to obtain an exceptional location. (Lease Section \_\_\_\_ ) The precise terms of Belmont's standard lease in Exhibit B will vary depending on the size and location of the premises, but the chart reflects a typical range of payments for Belmont's standard 6-day franchise outlet, including payment of one month's rent as a security deposit. (Lease Section \_\_\_\_ ) The only other security Belmont requires is a personal guarantee of the lease by you and your spouse or by all the shareholders of your corporation. (Lease Section \_\_\_\_ ) The lease can be prepaid without penalty at any time during its term. (Lease Section \_\_\_\_ ) If you do not make a rent payment on time, Belmont has the right to collect the unpaid rent plus an additional two months rent, as liquidated damages. (Lease Section \_\_\_\_ ) Belmont can also obtain court costs and attorney's fees if a collection action is necessary. (Lease Section \_\_\_\_ ) If you are late with your rent more than three times during the lease term, Belmont has the right to terminate the lease, take over the premises, and terminate your franchise. If Belmont guarantees your lease, Belmont will require you to sign the guarantee agreement in Exhibit F (Lease Section \_\_\_\_ ). This gives Belmont the same legal rights as the sublease but requires you to give Belmont the right to approve your lease and pay the rent for you if you fail to pay on time. (Lease Section \_\_\_\_ )

NOTE 3 - If you want to lease the pipe bending machine and other equipment you need, Belmont has arranged an equipment lease (see Exhibit C) from USA Credit Corporation of Las Vegas, Nevada. If you choose this option, you will pay \$100 a month for 60 months (5 years) at an APR of 15% based on a cash price of \$5,000, with no money down. (Equipment Lease Section \_\_\_\_ ) At the end of the lease term, you may purchase the equipment with a one-time payment of \$2,500. (Equipment Lease Section \_\_\_\_ ) USA Credit requires a personal guarantee from you and your spouse or from all the shareholders of your corporation and retains a security interest in the equipment. (Equipment Lease Section \_\_\_\_ ) The equipment lease can be prepaid at any time, but the interest you might otherwise save will be reduced by application of the Rule of 78's for computing finance charges. (Equipment Lease Section \_\_\_\_ ) If you do not make a payment on time, USA Credit can demand payment of all past due payments, remove the

equipment, and charge you \$1,000 as liquidated damages. (Equipment Lease Section \_\_\_\_ ) USA Credit can also recover its costs of collection, including court costs and attorney's fees. (Equipment Lease Section \_\_\_\_ ) While Belmont does not know USA Credit's policies , USA Credit may discount the lease to a third party who may be immune under the law to claims or defenses you may have against USA Credit, the equipment manufacturer or Belmont. Belmont receives a referral fee of \$500 from USA Credit for every franchisee who leases equipment from it.

NOTE 4 - If you prefer, Belmont will sell you the pipe bending machine and other necessary equipment on time (Equipment Purchase Agreement Section \_\_\_\_ ). Belmont requires a 25% down payment of \$1,250. (Equipment Purchase Agreement Section \_\_\_\_ ) Belmont will finance the remainder over a 2-7 year period at your option at an APR of 15%. (Equipment Purchase Agreement Section \_\_\_\_ ) Payments range from \$228.11 a month over 7 years to \$821.58 a month over 2 years. (Equipment Purchase Agreement Section \_\_\_\_ ) Belmont's standard equipment financing note in Exhibit D must be personally guaranteed by you and your spouse or by all the shareholders of your corporation, and Belmont will retain a security interest in the equipment. (Equipment Purchase Agreement Section \_\_\_\_ ) You may purchase the equipment at any time during the lease period by paying the remainder of the principal plus a \$500 prepayment penalty. (Equipment Purchase Agreement Section \_\_\_\_ ) If you do not make a payment on time, Belmont can demand all overdue payments, repossess the equipment, and terminate your franchise. Belmont can also recover its costs of collection, including court costs and attorney's fees. (Equipment Purchase Agreement Section \_\_\_\_ )

Except as disclosed in Note 1, Belmont does not offer financing that requires you to waive notice, confess judgment or waive a defense against Belmont or the lender, although you may lose your defenses against Belmont and others in a collection action on a note that is sold or discounted, as disclosed in Notes 2 and 3.

Except as disclosed in Note 3, Belmont does not arrange financing from other sources.

Except as disclosed in Notes 1 and 3, commercial paper from franchisees has not been and is not sold or assigned to anyone, and Belmont has no plans to do so.

Except as disclosed in Note 3, Belmont does not receive direct or indirect payments for placing financing.

Except as disclosed in Note 2, Belmont does not guarantee your obligations to third parties.

#### Item 11

### FRANCHISER'S OBLIGATIONS

DISCLOSE THE FOLLOWING:

A. THE OBLIGATIONS THAT THE FRANCHISER WILL PERFORM BEFORE THE FRANCHISE BUSINESS OPENS. CITE BY SECTION THE PROVISIONS OF THE AGREEMENT REQUIRING PERFORMANCE.

#### Item 11A Instructions:

i. Begin the disclosure by stating: "Except as listed below, (the franchiser) need not provide any assistance to you."

- ii. Pre-opening obligations include assistance to:
  - a) Locate a site for the franchised business and negotiate the purchase or lease of this site. State whether the franchiser generally owns the premises and leases it to the franchisee;
  - b) Conform the premises to local ordinances and building codes and obtain the required permits (i.e. health, sanitation, building, driveway, utility and sign permits);
  - c) Construct, remodel or decorate the premises for the franchised business;
  - d) Purchase or lease equipment, signs, fixtures, opening inventory and supplies. Disclose whether the franchiser provides these items directly or merely the names of approved suppliers. Disclose whether the franchiser provides written specifications for these items. Disclose whether the franchiser delivers or installs these items. {The franchiser may cross reference Item 8 for details}; and
  - e) Hire and train employees.
- iv. After describing the obligation, cite the section number of the agreement imposing the obligation. Put the citation in parentheses. Use this format throughout this Item.

**B. THE OBLIGATIONS TO BE MET BY THE FRANCHISER DURING THE OPERATION OF THE FRANCHISE BUSINESS.**

Item 11B Instructions:

- i. Include assistance in:
  - a) Products or services to be offered by the franchisee to its customers;
  - b) Hiring and training of employees;
  - c) Improvements and developments in the franchised business;
  - d) Pricing;
  - e) Administrative, bookkeeping, accounting and inventory control procedures; and
  - f) Operating problems encountered by the franchisee.
- ii. For the Franchiser's advertising program for the product or service offered by the franchisee:
  - a) Disclose the media in which the advertising may be disseminated (for example, print, radio, or television).
  - b) Disclose whether the coverage of the media is local, regional, or national in scope.
  - c) Disclose the source of the advertising. (for example, in-house advertising department, a national or regional advertising agency).
  - d) Disclose the conditions when the franchiser permits franchisees to use their own advertising material.
  - e) If there is an advertising council composed of franchisees that advises the franchiser on advertising policies, disclose:
    - (1) How members of the council are selected.

- (2) Whether the council serves in an advisory capacity only or has operational or decision-making power.
  - (3) Whether the franchiser has the power to form, change, or dissolve the advertising council.
- f) If the franchisee must participate in a local or regional advertising cooperative, disclose:
- (1) How the area or membership of the cooperative is defined.
  - (2) How the franchisee's contribution to the cooperative is calculated (may reference Item 6).
  - (3) Who is responsible for administration of the cooperative (for example, franchiser, franchisees, advertising agency).
  - (4) Whether cooperatives must operate from written governing documents and whether the documents are available for review by the franchisee.
  - (5) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.
  - (6) Whether the franchiser has the power to require cooperatives to be formed, changed, dissolved or merged.
- g) If applicable, for each advertising fund not described in above subpart (f), disclose:
- (1) Who contributes to each fund (for example, franchisees, franchiser, franchiser-owned units, outside vendors or suppliers);
  - (2) Whether the franchiser-owned units must contribute to the fund and, if so, whether it is on the same basis as franchisees.
  - (3) How much the franchisee must contribute to the advertising fund(s) (may reference Item 6) and whether other franchisees are required to contribute at a different rate (it is not necessary to disclose the specific rates).
  - (4) Who administers the fund(s). Whether the fund is audited and when, and whether financial statements of the fund are available for review by the franchisee.
  - (5) Use of the fund(s) in the most recently concluded fiscal year, the percentages spent on production, media placement, administrative expenses, and other (with a description of what constitutes "other"). Totals should equal 100%.
  - (6) Whether the franchiser or an affiliate receives payment for providing goods or services to an advertising fund.
- h) State whether the franchiser must spend any amount on advertising in the area or territory where the franchisee is located.
- i) If all advertising fees are not spent in the fiscal year in which they accrue, explain how the franchiser uses the remaining amounts. Indicate whether franchisees will receive a periodic accounting of how advertising fees are spent.
- j) Disclose the percentage of advertising funds, if any, used for advertising that is principally a solicitation for the sale of franchises.
- k) Cross reference Items 6, 8 and 9.

- iv. If the franchiser requires that franchisees buy or use electronic cash register or computer systems, provide a general description of the systems in non-technical language:
  - (a) Identify each hardware component and software program by brand, type and principal functions.
    - 1) If the hardware component or software program is the proprietary property of the franchiser, an affiliate or a third party, state whether the franchiser, an affiliate or a third party has the contractual right or obligation to provide ongoing maintenance, repairs, upgrades or updates. Disclose the current annual cost of any optional or required maintenance and support contracts, upgrades and updates.
    - 2) If the hardware component or software program is the proprietary property of a third party, and no compatible equivalent component or program has been approved by the franchiser for use with the system to perform the same functions, identify the third party by name, business address and telephone number, and state the length of time the component or program has been in continuous use by the franchiser and its franchisees.
    - 3) If the hardware component or software program is not proprietary, identify compatible equivalent components or programs that perform the same functions and indicate whether they have been approved by the franchiser.
  - b) State whether the franchisee has any contractual obligation to upgrade or update any hardware component or software program during the term of the franchise, and if so, whether there are any contractual limitations on the frequency and cost of the obligation.]
  - c) For each electronic cash register system or software program, describe how it will be used in the franchisee's business, and the types of business information or data that will be collected and generated. State whether the franchiser will have independent access to the information and data, and if so, whether there are any contractual limitations on the franchiser's right to access the information and data.
- v. After describing the obligation, cite the section number of the agreement imposing the obligation. Put the citation in parentheses.
- vi. Disclose if the franchiser is not obligated to provide or to assist the franchisee to obtain the above items or services.
- vii. Do not repeat, but do cross reference disclosure made in Item 6.
- viii. Disclose the table of contents of the operating manual(s) provided to the franchisee as of the franchiser's last fiscal year end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. Alternatively, this disclosure may be omitted if the prospective franchisee views the manual before purchase of the franchise.

C. THE METHODS USED BY THE FRANCHISER TO SELECT THE LOCATION OF THE FRANCHISEE'S BUSINESS.

Item 11C Instructions:

- i. Disclose whether the franchiser selects the site or approves an area within which the franchisee selects a site. Disclose how and whether the franchiser must approve a franchisee selected site.
- ii. Disclose the factors which the franchiser considers in selecting or approving sites (for example general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings and lease terms).
- iii. Disclose the time limit for the franchiser to locate or to approve or disapprove the site. Disclose the consequences if the franchiser and franchisee cannot agree on a site.
- iv. Disclosures made in response to Item 11A need not be repeated or cross-referenced in the response to Item 11C.

D. THE TYPICAL LENGTH OF TIME BETWEEN THE SIGNING OF THE FRANCHISE AGREEMENT OR THE FIRST PAYMENT OF CONSIDERATION FOR THE FRANCHISE AND THE OPENING OF THE FRANCHISEE'S BUSINESS.

Item 11 D Instructions:

- ii. Disclosure may be a range of times if the range is specific.
- iii. Describe the factors which may affect the time period such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures and signs.

E. THE TRAINING PROGRAM OF THE FRANCHISER AS OF THE FRANCHISER'S LAST FISCAL YEAR END OR A MORE RECENT DATE INCLUDING:

- (1) THE LOCATION, DURATION AND GENERAL OUTLINE OF THE TRAINING PROGRAM;
- (2) HOW OFTEN THE TRAINING PROGRAM WILL BE CONDUCTED;
- (3) THE EXPERIENCE THAT THE INSTRUCTORS HAVE WITH THE FRANCHISER;
- (4) CHARGES TO BE MADE TO THE FRANCHISEE AND WHO MUST PAY TRAVEL AND LIVING EXPENSES OF THE ENROLLEES IN THE TRAINING PROGRAM;
- (5) IF THE TRAINING PROGRAM IS NOT MANDATORY, THE PERCENTAGE OF NEW FRANCHISEES THAT ENROLLED IN THE TRAINING PROGRAM DURING THE PRECEDING 12 MONTHS; AND
- (6) WHETHER ANY ADDITIONAL TRAINING PROGRAMS AND/OR REFRESHER COURSES ARE REQUIRED.

Item 11 F Instructions:

- i. Use a table to state the subjects taught and the number of hours of classroom and "on the job training" devoted to each subject in the franchiser's training program. Use footnotes to explain.
- ii. For each subject disclose the training location and how often training classes are held.
- iii. Describe the location or facility where the training is held (for example, company, home, office, company owned store.)
- iv. State how long after the signing of the agreement or before the opening date of the business the franchisee must complete the required training.
- v. Describe the nature of instructional material. Disclose the minimum experience of the instructors. Disclose only experience that is relevant to the subject taught and the franchiser's operations.
- vi. State who may and who is required to attend the training. State whether the franchisee or other persons must complete the program to the franchiser's satisfaction.
- vii. Charges for training or training materials should be disclosed in Item 5 if the obligation to pay arises before the franchise location opens.
- viii. Disclose who pays the travel and living expenses of the persons receiving the training.

---

Sample Answer 11

Except as disclosed below, Belmont need not provide any assistance to you.

Before you open your business, Belmont will:

- 1) Designate your exclusive territory (Franchise Agreement - paragraph 2).
- 2) Assist you in selecting a business site. Your site must be at least square feet in area, have parking spaces, and an average of cars per hour driving by. We must approve or disapprove your site within 20 days after we receive notice of the location.

- 3) Within 30 days of your signing the Franchise Agreement, assist you to find and negotiate the lease or purchase of a location for your muffler shop (Franchise Agreement - paragraph\_\_\_\_\_). Your store location will be purchased or leased by you from independent third parties.
- 4) Within 60 days of your signing the Franchise Agreement, provide written specifications for store construction or remodeling and for all required and replacement equipment, inventory and supplies (Franchise Agreement - paragraph ). See Item 8 of this offering circular.
- 5) Within 60 days of your signing the Franchise Agreement, provide blueprints for your store construction or remodeling and obtain health, sanitation, building, utility and sign permits for your premises. You pay for the construction or remodeling. (Franchise Agreement - paragraph ).
- 6) Within 60 days of your signing the Franchise Agreement, train you and one other person as follows:

SUBJECT | TIME BEGUN | INSTRUCTIONAL | HOURS OF | HOURS OF | INSTRUCTOR

|| MATERIAL | CLASSROOM |ON THE JOB|

||| TRAINING | TRAINING |

Belmont does not charge for this training or service, but you must pay the travel and living expenses for you and your employees. All training occurs at Belmont's Jackson, Minnesota headquarters. During the operation of the franchised business, Belmont will:

- 1) Develop new products and methods and provide you with information about developments. (Franchise Agreement - paragraph .)
- 2) 2) Loan you a copy of our operations manual which contains mandatory and suggested specifications, standards and procedures. This manual is confidential and remains our property. Belmont will modify this manual, but the modification will not alter your status and rights under the Franchise Agreement. (Franchise Agreement - paragraph .) The table of contents is as follows:

Each week for the first 90 days after you open your shop, Belmont will telephone to discuss your operational problems.

Belmont will hold annual conferences to discuss sales techniques, personnel training, bookkeeping, accounting, inventory control, performance standards, advertising programs and merchandising procedures. There is no conference fee, but you must pay all your travel and living expenses. These elective conferences are held at our Jackson, Minnesota headquarters or at a location chosen by a majority vote of all franchisees.

Belmont provides advertising materials and services to you through a national advertising fund (the "National Fund"). Materials provided by the National Fund to all franchisees include video and audio

tapes, mats, posters, banners and miscellaneous point-of-sale items. You will receive one sample of each at no charge. If you want additional copies you must pay duplication costs.

You may develop advertising materials for your own use, at your own cost. Belmont must approve the advertising materials in advance and in writing.

Belmont occasionally provides for placement of advertising on behalf of the entire Belmont system, including franchisees. However, most placement is done on a local basis, typically by local advertising agencies hired by individual franchisees or advertising cooperatives. Belmont reserves the right to use advertising fees from the Belmont system to place advertising in national media (including broadcast, print or other media) in the future. In the past Belmont has used an outside advertising agency to create and place advertising. Neither Belmont nor its affiliate receives payment from the National Fund. Advertising funds are used to promote the product sold by the franchisee and are not used to sell additional franchises.

The National Fund is a nonprofit corporation which collects advertising fees from all franchisees. Each franchiser owned store of Belmont contributes to the National Fund on the same basis as franchisees. All payments to the National Fund must be spent on advertising, promotion and marketing of goods and services provided by Belmont Muffler Shops. You must contribute the amounts described in Item 6, under the heading "Advertising Fees and Expenses."

The National Fund is administered by Belmont's accounting and marketing personnel under the direction of the Advertising Council. An annual audited financial statement of the National Fund is available to any franchisee upon request. During the last fiscal year of the National Fund (ending on December 31, 1990), the National Fund spent 39% of its income on the production of advertisements and other promotional materials, 36% for media placement, 18% for general and administrative expenses, and 7% for other expenses (the purchase of glassware given to customers of Belmont shops as part of a promotional campaign).

The Advertising Council acts as the board of directors of the National Fund. The Advertising Council has 8 members: the President, Treasurer, Vice President-Marketing, and Vice President-Operations of Belmont; and 4 franchisee representatives who are elected by the governing board of the Belmont Franchisee Association.

Once your shop opens, you must participate in the local advertising cooperative established in the Area of Dominant Influence (ADI) where your store is located. The amount of your contribution to the local advertising cooperative is described in Item 6 under the heading "Advertising Fees and Expenses."

Each local advertising cooperative must adopt written governing documents. A copy of the governing documents of the cooperative (if one has been established) for your ADI is available upon request. Each cooperative may determine its own voting procedures; however, each company-owned Belmont Shop will be entitled to one vote in any local advertising cooperative. The members and their elected officers are responsible for administration of the cooperative. Advertising cooperatives must prepare quarterly and annual financial statements. The annual financial statement must be prepared by an independent CPA and be made available to all franchisees in that advertising cooperative.

You select your business site within your exclusive area subject to our approval. Belmont assists in site selection by telling you the number of new car registrations, population density, traffic patterns and proximity of the proposed site to other Belmont Muffler Shops.

Franchisees typically open their shops 4 to 7 months after they sign a franchise agreement. The factors that affect this time are the ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, and delayed installation of equipment fixtures and signs.

### Item 12

#### TERRITORY

DESCRIBE ANY EXCLUSIVE TERRITORY GRANTED THE FRANCHISEE. CONCERNING THE FRANCHISEE'S LOCATION (WITH OR WITHOUT EXCLUSIVE TERRITORY), DISCLOSE WHETHER:

- A. THE FRANCHISOR HAS ESTABLISHED OR MAY ESTABLISH ANOTHER FRANCHISEE WHO MAY ALSO USE THE FRANCHISOR'S TRADEMARK.
- B. THE FRANCHISOR HAS ESTABLISHED OR MAY ESTABLISH A COMPANY-OWNED OUTLET OR OTHER CHANNELS OF DISTRIBUTION USING THE FRANCHISOR'S TRADEMARK.

#### Item 12 Instructions:

- i. As used in Item 12, trademark includes names, trademarks, logos and other commercial symbols.
- ii. If appropriate, describe the minimum area granted to the franchisee. The franchisor may use an area encompassed within a specific radius, a distance sufficient to encompass a specified population or another specific designation.
- iii. State whether the franchise is granted for a specific location or a location to be approved by the franchisor.
- iv. If appropriate, state the conditions under which the franchisor will approve the relocation of the franchised business or the establishment of additional franchised outlets.
- v. Describe restrictions on the franchisor regarding operating company owned stores or on granting franchised outlets for a similar or competitive business within the defined area.
- vi. Describe restrictions on franchisees from soliciting or accepting orders outside of their defined territories.
- vii. Describe restrictions on the franchisor from soliciting or accepting orders inside the franchisee's defined territory. State compensation that the franchisor must pay for soliciting or accepting orders inside the franchisee's defined territories.
- viii. Describe franchisee options, rights of first refusal or similar rights to acquire additional franchises within the territory or contiguous territories.
- ix. If the franchisor does not grant territorial rights, use

Sample Answer 12-1.

C. THE FRANCHISOR OR ITS AFFILIATE HAS ESTABLISHED OR MAY ESTABLISH OTHER FRANCHISES OR COMPANY-OWNED OUTLETS OR ANOTHER CHANNEL OF DISTRIBUTION SELLING OR LEASING SIMILAR PRODUCTS OR SERVICES UNDER A DIFFERENT TRADEMARK.

Item 12C Instructions

- i. "Similar products and services" includes competing, interchangeable or substitute products but not products or services which are not part of the same product or service market.
- ii. If the franchisor or an affiliate operates, franchises or has present plans to operate or franchise a business under a different trademark and that business sells goods or services similar to those to be offered by the franchisee, describe:
  - a) The similar goods and services;
  - b) The trade names and trademarks;
  - c) Whether outlets will be franchisor owned or operated;
  - d) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory;
  - e) A timetable for the plan;
  - f) How the franchisor will resolve conflicts between the franchisor and the franchisees and between the franchisees of each system regarding territory, customers or franchisor support; and
  - g) If appropriate, disclose the principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address disclosed in Item 1, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

D. CONTINUATION OF THE FRANCHISEE'S TERRITORIAL EXCLUSIVITY DEPENDS ON ACHIEVEMENT OF A CERTAIN SALES VOLUME, MARKET PENETRATION OR OTHER CONTINGENCY AND UNDER WHAT CIRCUMSTANCES THE FRANCHISEE'S TERRITORY MAY BE ALTERED.

Item 12D Instructions:

- i. Disclose conditions for the franchisee's keeping its territorial rights (for example, sales quotas or the opening of additional business outlets). Specify the quotas or conditions and the franchisor's rights if the franchisee fails to meet the requirements.
- ii. Disclose other circumstances that permit the franchisor to modify the franchisee's territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise within the area.) Disclose the effect on the franchisee's rights.

Sample Answer 12-1

You will not receive an exclusive territory. Belmont may establish other franchised or company owned outlets that may compete with your location.

Sample Answer 12-2

You will receive an exclusive territory with a minimum population of 50,000 people. You will operate from one location and must receive Belmont's permission before relocating. Belmont will not operate stores or grant franchises for a similar or competitive business within your area. Except when advertising cooperatively with appropriate franchisees, neither Belmont nor you can advertise or solicit orders within another franchisee's territory. You and Belmont can accept orders from outside your territory without special payment.

You do not receive the right to acquire additional franchises within your area.

There is no minimum sales quota. You maintain rights to your area even though the population increases.

Item 13

TRADEMARKS

DISCLOSE THE PRINCIPAL TRADEMARKS TO BE LICENSED TO THE FRANCHISEE INCLUDING:

Item 13 Instructions:

- i. As used in Item 13, "Principal trademarks" means the primary trademarks, service marks, names, logos and symbols to be used by the franchisee to identify the franchised business. It does not include every trademark owned by the franchisor.
- ii. The franchisor may limit Item 13 disclosure to information that is relevant to the state where the franchised business will be located. The franchisor may include all states to eliminate the need for multiple disclosure in Item 13 but must amend its offering circular to reflect any material change in the list.

A. WHETHER THE PRINCIPAL TRADEMARKS ARE REGISTERED WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE. FOR EACH REGISTRATION STATE THE REGISTRATION DATE AND NUMBER AND WHETHER THE REGISTRATION IS ON THE PRINCIPAL OR SUPPLEMENTAL REGISTER.

Item 13A Instructions:

- i. Identify each principal trademark which the franchisee may use. The franchisor may reproduce these trademarks in this Item.
- ii. State the date and identification number of each trademark registration or registration application listed. State whether the franchisor has filed all required affidavits. State whether any registration has been renewed.
- iii. State whether the principal trademarks are registered on the principal or supplemental register of the U.S. Patent and Trademark Office, and if not, whether an "intent to use" application or an application based on actual use has been filed with the U.S. Patent and Trademark Office. If the principal trademark to be used by the franchisee is not registered on the Principal Register of the U.S. Patent and Trademark Office, state:

By not having a Principal Register federal registration for (name or description of symbol), (Name of Franchisor) does not have certain presumptive legal rights granted by a registration.

**B. DISCLOSE CURRENTLY EFFECTIVE MATERIAL DETERMINATIONS OF THE PATENT AND TRADEMARK OFFICE, TRADEMARK TRIAL AND APPEAL BOARD, THE TRADEMARK ADMINISTRATOR OF THIS STATE OR ANY COURT; PENDING INFRINGEMENT, OPPOSITION OR CANCELLATION; AND PENDING MATERIAL LITIGATION INVOLVING THE PRINCIPAL TRADEMARKS.**

Item 13B Instructions:

- i. Litigation or an action is material if it could significantly affect the ownership or use of a trademark listed under Item 13. Describe how the determination affects the ownership, use or licensing. Describe any decided infringement, cancellation or opposition proceedings. Include infringement, opposition or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor.
- ii. For pending material federal or state litigation regarding the franchisor's use or ownership rights in a trademark disclose:
  - a) The forum and case number;
  - b) The nature of claims made opposing the franchisor's use or by the franchisor opposing another person's use; and
  - c) Any effective court or administrative agency ruling concerning the matter.
- iii. Do not repeat disclosure made in response to Item 13A.
- iv. The franchisor need not disclose historical challenges to registrations of trademarks listed in Item 13 that were resolved in the franchisor's favor.

- v. The franchisor may include an attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

C. DISCLOSE AGREEMENTS CURRENTLY IN EFFECT WHICH SIGNIFICANTLY LIMIT THE RIGHTS OF THE FRANCHISOR TO USE OR LICENSE THE USE OF TRADEMARKS LISTED IN ITEM 13 IN A MANNER MATERIAL TO THE FRANCHISE.

Item 13C Instructions:

For each agreement disclose:

- i. The manner and extent of the limitation or grant;
- ii. The agreement's duration;
- iii. The parties to the agreement;
- iv. The circumstances under which the agreement may be cancelled or modified; and
- v. All other material terms.

D. WHETHER THE FRANCHISOR MUST PROTECT THE FRANCHISEE'S RIGHT TO USE THE PRINCIPAL TRADEMARKS LISTED IN ITEM 13, AND MUST PROTECT THE FRANCHISEE AGAINST CLAIMS OF INFRINGEMENT OR UNFAIR COMPETITION ARISING OUT OF THE FRANCHISEE'S USE OF THEM.

Item 13D Instructions:

- i. Disclose the franchisee's obligation to notify the franchisor of the use of or claims of rights to a trademark identical to or confusingly similar to a trademark licensed to the franchisee.
- ii. State whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims. Identify who has the right to control administrative proceedings or litigation.
- iii. State whether the franchise agreement requires the franchisor to participate in the franchisee's defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.

- iv. Disclose the franchisee's rights under the franchise if the franchisor requires the franchisee to modify or discontinue the use of a trademark as a result of a proceeding or settlement.
- E. WHETHER THE FRANCHISOR ACTUALLY KNOWS OF EITHER SUPERIOR PRIOR RIGHTS OR INFRINGING USES THAT COULD MATERIALLY AFFECT THE FRANCHISEE'S USE OF THE PRINCIPAL TRADEMARKS IN THIS STATE OR THE STATE IN WHICH THE FRANCHISED BUSINESS IS TO BE LOCATED.

Item 13E Instructions:

For each use of a principal trademark that the franchisor believes constitutes an infringement that could materially affect the franchisee's use of a trademark, state:

- i. The location(s) where the infringement is occurring;
- ii. To the extent known, the length of time of the infringement; and
- iii. Action taken by the franchisor.
- iv.

If the franchisor knows of a use of a trademark by another in a geographic area relevant to the franchisee which is or is likely to be based on a claim of superior prior rights to the franchisor's, state the nature of the use by the other person and the place or area where it is occurring.

Sample Answer 13

Belmont grants you the right to operate a shop under the name Belmont Muffler Shop. You may also use our other current or future trademarks to operate your shop. By trademark Belmont means trade names, trademarks, service marks and logos used to identify your shop. Belmont registered the below trademark on the United State Patent and Trademark Office principal register: \_\_\_\_\_

You must follow our rules when you use these marks. You can not use a name or mark as part of a corporate name or with modifying words, designs or symbols except for those which Belmont licenses to you. You may not use Belmont's registered name in connection with the sale of an unauthorized product or service or in a manner not authorized in writing by Belmont.

On June 4, 1973, the United States Patent and Trademark Office rejected Belmont's application to register the mark "Super Mufflers" because the mark was found to be confusingly similar to a registered mark. Belmont's inability to register this mark on a federal level permits others to establish rights to use the mark. This use will not be in areas where our franchisees are operating, or advertising under the mark, or in the natural zone of expansion for Belmont's shops. In addition, these users must act in good faith and without actual knowledge of Belmont's prior use of the mark. However, if others establish rights to use Belmont's mark, Belmont may not be able to expand into these areas using the mark.

No agreements limit Belmont's right to use or license the use of Belmont's trademarks.

You must notify Belmont immediately when you learn about an infringement of or challenge to your use of our trademark. Belmont will take the action we think appropriate. While Belmont is not required to defend you against a claim against your use of our trademark, Belmont will

reimburse you for your liability and reasonable costs in connection with defending Belmont's trademark. To receive reimbursement you must have notified Belmont immediately when you learned about the infringement or challenge.

You must modify or discontinue the use of a trademark if Belmont modifies or discontinues it. If this happens, Belmont will reimburse you for your tangible costs of compliance (for example, changing signs). You must not directly or indirectly contest our right to our trademarks, trade secrets or business techniques that are part of our business.

Belmont does not know of any infringing uses that could materially affect your use of Belmont's trademark.

or

John E. Jones, 4231 Main Street, Reno, Nevada is currently doing business as Belmont Muffler Shoppe at 4231 Main Street, Reno, Nevada. We believe that this is an infringing use of our federally registered trademark "Belmont Muffler Shop," and we have filed an action to enjoin Mr. Jones and to recover damages. If the court holds that Mr. Jones' use is not infringing, Belmont may not be able to use Belmont's trademark in Mr. Jones' immediate area. (Belmont Muffler Shop v. Belmont Muffler Shoppe-cite)

#### Item 14

#### PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

IF THE FRANCHISOR OWNS RIGHTS IN PATENTS OR COPYRIGHTS THAT ARE MATERIAL TO THE FRANCHISE, DESCRIBE THESE PATENTS AND COPYRIGHTS AND THEIR RELATIONSHIP TO THE FRANCHISE. INCLUDE THEIR DURATION AND WHETHER THE FRANCHISOR CAN AND INTENDS TO RENEW THE COPYRIGHTS. TO THE EXTENT RELEVANT, DISCLOSE THE INFORMATION REQUIRED BY ITEM 13 CONCERNING THESE PATENTS AND COPYRIGHTS. IF THE FRANCHISOR CLAIMS PROPRIETARY RIGHTS IN CONFIDENTIAL INFORMATION OR TRADE SECRETS, DISCLOSE THEIR GENERAL SUBJECT MATTER AND THE TERMS AND CONDITIONS FOR USE BY THE FRANCHISEE.

#### Item 14 Instructions:

- i. State the patent number, issue date and title for each patent. State the serial number, filing date and title of each patent application. Describe the type of patent or patent application (for example mechanical, process, or design). State the registration number and date of each copyright.
- ii. Describe the relationship of the patent, patent application or copyright to the franchised business.
- iii. Describe any current determination of the Patent and Trademark Office, Copyright Office (Library of Congress) or court regarding the patent or copyright. Include the forum, case number and effect on the franchised business.
- iv. State the forum, case number, claims asserted, issues involved and effective determinations for any proceedings pending in the Patent and Trademark Office or the Court of Appeals for the Federal Circuit.

- v. If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion about patent or copyright issues discussed in this Item.
- vi. If an agreement limits the use of the patent, patent application or copyright, state the parties to and duration of the agreement, the extent to which the franchisee may be affected by the agreement, and other material terms of the agreement.
- vii. Disclose the franchisor's obligation to protect the patent, patent application or copyright. State:
  - a) Whether franchisee must notify the franchisor of claims or infringements or if the action is discretionary.
  - b) Whether the franchisor must take affirmative action when notified of infringement or if the action is discretionary.
  - c) Who has the right to control litigation.
  - d) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application or copyright licensed to the franchisee.
  - e) Requirements that the franchisee modify or discontinue use of the subject matter covered by the patent or copyright.
  - f) Franchisee's rights if the franchisor requires the franchisee to modify or discontinue the use of the subject matter covered by the patent or copyright.
- viii. If the franchisor actually knows of an infringement that could materially affect the franchisee, state:
  - a) The nature of the infringement.
  - b) The location(s) where the infringement is occurring.
  - c) The length of time of the infringement.
  - d) Action taken or anticipated by the franchisor.
- ix. State whether the franchisor intends to renew the copyright when the registration expires.
- x. Discuss in general terms other proprietary information communicated to the franchisee (for example, whether there is a formula or recipe considered to be a trade secret.)
- xi. Use Sample Answer 14-1 if no patents or copyrights are material to the franchise.

Sample Answer 14-1

No patents or copyrights are material to the franchise.

Sample Answer 14-2

You do not receive the right to use an item covered by a patent or copyright, but you can use the proprietary information in Belmont's Operations Manual. The Operations Manual is described in Item 11. Although Belmont has not filed an application for a copyright registration for the Operations Manual, it claims a copyright and the information is proprietary. Item 11 describes limitations on the use of this manual by you and your employees. You must also promptly tell us when you learn about unauthorized use of this proprietary information. Belmont is not obligated to take any action but will respond to this information as we think appropriate. Belmont will indemnify you for losses brought by a third party concerning your use of this information.

#### Sample Answer 14-3

U.S. Patent 3999442 was issued on December 14, 1980. It describes a process for exhaust system installation. The process describes the steps in making a straight length of exhaust pipe, bending this pipe, coating the inside and outside of this pipe with our Pipe Protector and installing the exhaust pipe on a motor vehicle. You will use equipment utilizing this process.

On December 15, 1970, Belmont obtained a copyright registration for its Operations Manual under Registration A41139. Amendments to the manual were registered on January 7, 1983 (Reg. A521,371) and June 6, 1974 (Reg. A 541,333). Belmont intends to renew these copyrights. Item 11 of this Offering Circular describes the Operations Manual and the manner in which you are permitted to use it.

Belmont's right to use or license these patents and copyrighted items is not materially limited by any agreement or known infringing use.

You must tell us immediately if you learn about an infringement or challenge to our use of these patents or copyrights. Belmont will take the action that Belmont thinks appropriate. You must also agree not to contest Belmont's interest in these or our other trade secrets.

If Belmont decides to add, modify or discontinue the use of an item or process covered by a patent or copyright, you must also do so. Belmont's sole obligation is to reimburse you for the tangible cost of complying with this obligation.

Although Belmont is not obligated to defend your use of these items or processes, Belmont will reimburse you for damages and reasonable costs incurred in litigation about them.

#### Item 15

##### OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

DISCLOSE THE FRANCHISEE'S OBLIGATION TO PARTICIPATE PERSONALLY IN THE  
DIRECT OPERATION OF THE FRANCHISE BUSINESS AND WHETHER THE FRANCHISOR  
RECOMMENDS PARTICIPATION.

#### Item 15 Instructions:

- i. Include obligations arising from written agreement (including personal guaranty, confidentiality agreement or noncompetition agreement) or from the franchisor's practice.
- ii. If personal "on premises" supervision is not required:
  - a) If the franchisee is an individual, state whether the franchisor recommends "on-premises" supervision by the franchisee;
  - b) State limitations on whom the franchisee can hire as an on-premises supervisor;
  - c) Whether this "on-premises" supervisor must successfully complete the franchisor's training program; and
  - d) If the franchisee is a business entity, state the amount of equity interest that the "on premises" supervisor must have in the franchise.
- iii. Disclose the restrictions which the franchisee must place on its manager (for example, maintain trade secrets, non-competition).
- iv. The franchisor may reference Items 14 and 17 in its answer.

#### Sample Answer 15-1

If you are an individual, you must directly supervise the franchised business on its premises. If you are a corporation the direct, on-site supervision must be done by a person who owns at least 1/3 of the corporate equity.

#### Sample Answer 15-2

Belmont does not require that you personally supervise the franchised business. The business must be directly supervised "on-premises" by a manager who has successfully completed Belmont's training program. The on-premises manager can not have an interest or business relationship with any of Belmont's business competitors. The manager need not have an ownership interest in a corporate or partnership franchisee. The manager must sign a written agreement to maintain confidentiality of the trade secrets desc ribed in Item 14 and to conform with the covenants not to compete described in Item 17.

Each individual who owns a 5% or greater interest in the franchisee entity must sign an agreement (Exhibit \_\_\_\_ ) assuming and agreeing to discharge all obligations of the "Franchisee" under the Franchise Agreement.

### Item 16

#### RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

DISCLOSE RESTRICTIONS OR CONDITIONS IMPOSED BY THE FRANCHISOR ON THE  
GOODS OR SERVICES THAT THE FRANCHISEE MAY SELL OR THAT LIMIT THE  
CUSTOMERS TO WHOM THE FRANCHISEE MAY SELL GOODS OR SERVICES.

#### Item 16 Instructions:

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- i. Describe the franchisee's obligation to sell only goods and services approved by the franchisor.
- ii. Disclose any franchisee obligation to sell all goods and services authorized by the franchisor. Disclose whether the franchisor has the right to change the types of authorized goods and services and whether there are limits on the franchisor's right to make changes.
- iii. If the franchisee is restricted regarding customers, disclose the restrictions.
- iv. The applicant may cross reference disclosures made in Items 8, 9, and 12.
- v. Use Sample Answer 16-1 for a negative response.

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Sample Answer 16-1

Belmont does not restrict the type of goods or services that you may offer.

Sample Answer 16-2

Belmont requires you to offer and sell only those goods and services that Belmont has approved (see Item 9).

You must offer all goods and services that Belmont designates as required for all franchisees. These required services are muffler inspection, repair and replacement. Parts, supplies, and equipment used in your Belmont Muffler business must be approved by Belmont (see Item 8).

Belmont has the right to add additional authorized services that the franchisee is required to offer. There are no limits on Belmont's right to do so except that the investment required of a franchisee (for equipment, supplies and initial inventory) will not exceed \$5,000 per year.

Belmont also designates some services as optional for qualified franchisees. Current optional services are brake inspection, repair and replacement, tire rotation, wheel balancing, and alignment and rust-proofing. To offer optional goods or services, you must be in substantial compliance with all material obligations under your Franchise Agreement. In addition, Belmont may require you to comply with other requirements (such as training, marketing, insurance) before Belmont will allow you to offer certain optional services.

As long as you meet your annual agreed sales quotas (see Item 12), Belmont will not restrict you from soliciting any customers, no matter who they are or where they are located. If you do not meet your annual sales quota, Belmont may deny you the right to receive any further fleet business referrals from Belmont and may either keep the fleet business referrals for itself or give them to another franchisee. Failure to meet your annual sales quota is a default under your Franchise Agreement and grounds for termination of your franchise (see Item 17).

Item 17

RENEWAL, TERMINATION, TRANSFER  
AND DISPUTE RESOLUTION

SUMMARIZE THE PROVISIONS OF THE FRANCHISE AND OTHER AGREEMENTS DEALING  
WITH TERMINATION, RENEWAL, TRANSFER, DISPUTE RESOLUTION AND OTHER  
IMPORTANT ASPECTS OF THE FRANCHISE RELATIONSHIP.

Item 17 Instructions:

- i. Begin Item 17 disclosure with the following statement:  

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.
- ii. Respond in tabular form. Refer to the section of the agreement which covers each subject.
- iii. Use a separate table for any other significant franchise-related agreements. If a provision in any other agreement affects the provisions of the franchise or franchise-related agreements disclosed in this Item (for example, the term of the franchise will be equal to the term of the lease), disclose that provision in the applicable category in the table.
- iv. The table should contain a "summary" column to summarize briefly the disclosed provision. The summary is intended to provide a concise overview of the provision in no more than a few words or a sentence. Do not specify in detail all matters covered by a provision.
- v. The table should respond to each category listed below. Do not change the names of the categories. List all contractual provisions relevant to each category in the table. If the response to any category is that the agreement does not contain the relevant provision, the table should so state. If the agreement is silent concerning a category but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, a footnote should describe this policy and state whether the policy is subject to change. The categories are:
  - a. Length of the term of the franchise
  - b. Renewal or extension of the term
  - c. Requirements for franchisee to renew or extend
  - d. Termination by franchisee
  - e. Termination by franchisor without cause
  - f. Termination by franchisor with "cause"
  - g. "Cause" defined - curable defaults
  - h. "Cause" defined - defaults which cannot be cured
  - i. Franchisee's obligations on termination/non-renewal
  - j. Assignment of contract by franchisor
  - k. "Transfer" by franchisee – defined
  - l. Franchisor approval of transfer by franchisee
  - m. Conditions for franchisor approval of transfer

- n. Franchisor's right of first refusal to acquire franchisee's business
- o. Franchisor's option to purchase franchisee's business
- p. Death or disability of franchisee
- q. Non-competition covenants during the term of the franchise
- r. Non-competition covenants after the franchise is terminated or expires
- s. Modification of the agreement
- t. Integration/merger clause
- u. Dispute resolution by arbitration or mediation
- v. Choice of forum
- w. Choice of law

---

Sample Answer 17

This table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

Provision	Section in Franchise Agreement	Summary
a. Term of the franchise	Section 1, (also Section 1 of Lease, Exhibit F)	Term is equal to lease term - 10 years
b. Renewal or extension of the term	Section 20	If you are in good standing you can add additional term equal to renewal term of lease (10 years max.)
c. Requirements for you to renew or extend	Section 20	Sign new agreement, pay fee, remodel and sign release
d. Termination by you	None	
e. Termination by Belmont without cause	None	
f. Termination by Belmont with cause	Section 21	Belmont can terminate only if franchisee defaults

g. "Cause" defined - defaults which can be cured	Section 21B	You have 30 days to cure: non-payment of fees, sanitation problems, non-submission of reports and any other default not listed in Sec. 21A
h. "Cause" defined - defaults which cannot be cured	Section 22	Non-curable defaults: conviction of felony, repeated defaults even if cured, abandonment, trademark misuse and unapproved transfers Obligations include complete
i. Your obligations on termination/nonrenewal	Section 22	deidentification and payment of amounts due (also see r, below)
j. Assignment of contract by Belmont	Section 18	No restriction on Belmont's right to assign
k. "Transfer" by you - definition	Section 19A	Includes transfer of contract or assets or ownership change
l. Belmont's approval of transfer by franchisee	Section 19B	Belmont has the right to approve all transfers but will not unreasonably withhold approval
m. Conditions for Belmont approval of transfer	Section 19C	New franchisee qualifies, transfer fee paid, purchase agreement approved, training arranged, release signed by you and current agreement signed by new franchisee (also see r, below)
n. Belmont's right to first refusal to acquire your business	Section 19F	Belmont can match any offer for the franchisee's business
o. Belmont's option to purchase your business	None, but see policy described in Note 1	

p. Your death or disability	Section 19D	Franchise must be assigned by estate to approved buyer in 6 months
q. Non-competition covenants during the term of the franchise	Section 11	No involvement in competing business anywhere in U.S.
r. Non-competition covenants after the franchise is terminated or expires	Sections 19C and 22C	No competing business for 2 years within 20 miles of another Belmont franchise (including after assignment )
s. Modification of the agreement	Section 8A	No modifications generally but Operating Manual subject to change Only the terms of the franchise agreement are binding (subject to state law). Any other promises may not be enforceable
t. Integration/merger clause	Section 29	
u. Dispute resolution by arbitration or mediation	Section 24 Except for certain claims, all disputes must be arbitrated in _____,	
v. Choice of forum	Section 27	Litigation must be in _____
w. Choice of law	_____ law applies	
Section 28		

Note 1 - Franchisor is not obligated by the Agreement to do so, but, if the franchise is terminated, franchisor's policy is to buy back inventory at fair market value. This policy is subject to change at any time.

These states have statutes which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise: ARKANSAS [Stat. Section 70-807], CALIFORNIA [Bus. & Prof. Code Sections 20000-20043], CONNECTICUT [Gen. Stat. Section 42-133e et seq.], DELAWARE [Code, tit.], HAWAII [Rev. Stat. Section 482E-1], ILLINOIS [Rev. Stat. Chapter 121 1/2 par 1719-1720], INDIANA [Stat. Section 23-2-2.7], IOWA [Code Sections 523H.1-523H.17 ], MICHIGAN [Stat. Section 19.854(27)], MINNESOTA [Stat. Section 80C.14],

MISSISSIPPI [Code Section 75-24-51], MISSOURI [Stat. Section 407.400], NEBRASKA [Rev. Stat. Section 87-401], NEW JERSEY [Stat. Section 56:10-1], SOUTH DAKOTA [Codified Laws Section 37-5A-51], VIRGINIA [Code 13.1-557-574-13.1-564], WASHINGTON [Code Section 19.100.180], WISCONSIN [Stat. Section 135.03]. These and other states may have court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

### Item 18

#### PUBLIC FIGURES

DISCLOSE THE FOLLOWING:

- A. COMPENSATION OR OTHER BENEFIT GIVEN OR PROMISED TO A PUBLIC FIGURE ARISING FROM:
  - (1) THE USE OF THE PUBLIC FIGURE IN THE FRANCHISE NAME OR SYMBOL OR
  - (2) THE ENDORSEMENT OR RECOMMENDATION OF THE FRANCHISE TO PROSPECTIVE FRANCHISEES.
  
- B. THE EXTENT TO WHICH THE PUBLIC FIGURE IS INVOLVED IN THE ACTUAL MANAGEMENT OR CONTROL OF THE FRANCHISOR.
  
- C. THE TOTAL INVESTMENT OF THE PUBLIC FIGURE IN THE FRANCHISOR.

#### Item 18 Instructions:

- i. A "public figure" is a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.
  
- ii. Disclose the compensation paid or promised for the endorsement or use of the name of the public figure.
  
- iii. Describe the public figure's position and duties in the franchisor's business structure.
  
- iv. State the amount of the public figure's investment. Describe the extent of the amount contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).
  
- v. Use sample answer 18-1 for a negative response.

Sample Answer 18-1

Belmont does not use any public figure to promote its franchise.

Sample Answer 18-2

Belmont has paid Ralph Doister \$50,000 for the use of his name in promoting the sale of our franchise. The right expires December 31, 1992. Belmont has produced newspaper ads, a brochure and a video which feature Mr. Doister. Mr. Doister does not manage or own an interest in Belmont.

ITEM 19

EARNINGS CLAIMS

- A. AN EARNINGS CLAIM MADE IN CONNECTION WITH AN OFFER OF A FRANCHISE MUST BE INCLUDED IN FULL IN THE OFFERING CIRCULAR AND MUST HAVE A REASONABLE BASIS AT THE TIME IT IS MADE. IF NO EARNINGS CLAIM IS MADE, ITEM 19 OF THE OFFERING CIRCULAR MUST CONTAIN THE NEGATIVE DISCLOSURE PRESCRIBED IN THE INSTRUCTION.

Item 19 Instructions:

- i. Definition: "Earnings claim" means information given to a prospective franchisee by, on behalf of or at the direction of the franchisor or its agent, from which a specific level or range of actual or potential sales, costs, income or profit from franchised or non-franchised units may be easily ascertained.

A chart, table or mathematical calculation presented to demonstrate possible results based upon a combination of variables (such as multiples of price and quantity to reflect gross sales) is an earnings claim subject to this item.

An earnings claim limited solely to the actual operating results of a specific unit being offered for sale need not comply with this item if it is given only to potential purchasers of that unit and is accompanied by the name and last known address of each owner of the unit during the prior three years.

- ii. Supplemental earnings claim: If a franchisor has made an earnings claim in accordance with this Item 19, the franchisor may deliver to a prospective franchisee a supplemental earnings claim directed to a particular location or circumstance, apart from the offering circular. The supplemental earnings claim must be in writing, explain the departure from the earnings claim in the offering circular, be prepared in accordance with this item 19, and be left with the prospective franchisee.

- iii. Scope of requirement: An earnings claim is not required in connection with the offer of franchises; if made, however, its presentation must conform with this Item 19. If an earnings claim is not made, then negative disclosure 19 (below) must be used.
- iv. Claims regarding future performance: A statement or prediction of future performance that is prepared as a forecast or projection in accordance with the statement on standards for accountants' services on prospective financial information (or its successor) issued by the American Institute of Certified Public Accountants, Inc., is presumed to have a reasonable basis.
- v. Burden of proof: The burden is upon the franchisor to show that it had a reasonable basis for its earnings claim.

[NEGATIVE DISCLOSURE 19]

REPRESENTATIONS REGARDING EARNINGS CAPABILITY

Belmont does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of [a Belmont muffler shop]. Actual results vary from unit to unit and Belmont cannot estimate the results of any particular franchise.

B. AN EARNINGS CLAIM SHALL INCLUDE A DESCRIPTION OF ITS FACTUAL BASIS AND THE MATERIAL ASSUMPTIONS UNDERLYING ITS PREPARATION AND PRESENTATION.

Item 19B Instructions:

- i. **FACTUAL BASIS:** The factual basis of an earnings claim includes significant matters upon which a franchisee's future results are expected to depend. This includes for example, economic or market conditions which are basic to a franchisee's operation and encompass matters affecting, among other things, franchisee's sales, the cost of goods or services sold and operating expenses.

In the absence of an adequate operating experience of its own, a franchisor may base an earnings claim upon the results of operations of a substantially similar business of a person affiliated with the franchisor or franchisees of that person; provided that disclosure is made of any material differences in the economic or market conditions known to, or reasonably ascertainable by, the franchisor.

- ii. **Basic Disclosures:** The earnings claim must state:
  - (a) Material assumptions, other than matters of common knowledge, underlying the claim (see Definition iii under Item 3 for the definition of "material");
  - (b) A concise summary of the basis for the claim including a statement of whether the claim is based upon actual experience of franchised units and, if so, the percentage of franchised outlets in operation for the period covered by the earnings claim that have actually attained or surpassed the stated results;

- (c) A conspicuous admonition that a new franchisee's individual financial results are likely to differ from the result stated in the earnings claim; and
- (d) A statement that substantiation of the data used in preparing the earnings claim will be made available to the prospective franchisee on reasonable request.

Item 20

LIST OF OUTLETS

DISCLOSE THE FOLLOWING:

- A. THE NUMBER OF FRANCHISES OF A TYPE SUBSTANTIALLY SIMILAR TO THOSE OFFERED AND THE NUMBER OF FRANCHISOR OWNED OR OPERATED OUTLETS AS OF THE CLOSE OF EACH OF THE FRANCHISOR'S LAST 3 FISCAL YEARS. SEGREGATE FRANCHISES THAT ARE OPERATIONAL FROM FRANCHISES NOT YET OPERATIONAL. SEGREGATE DISCLOSURE BY STATE. TOTAL EACH CATEGORY.
- B. THE NAMES OF ALL FRANCHISEES AND THE ADDRESSES AND TELEPHONE NUMBERS OF ALL OF THEIR OUTLETS. THE FRANCHISOR MAY LIMIT ITS DISCLOSURE TO ALL FRANCHISEE OUTLETS IN THE STATE, BUT IF THESE FRANCHISEE OUTLETS TOTAL FEWER THAN 100, DISCLOSE FRANCHISEE OUTLETS FROM ALL CONTIGUOUS STATES AND THEN THE NEXT CLOSEST STATE(S) UNTIL AT LEAST 100 FRANCHISEE OUTLETS ARE LISTED.
- C. THE ESTIMATED NUMBER OF FRANCHISES TO BE SOLD DURING THE 1 YEAR PERIOD AFTER THE CLOSE OF THE FRANCHISOR'S MOST RECENT FISCAL YEAR.
- D. THE NUMBER OF FRANCHISEE OUTLETS IN THE FOLLOWING CATEGORIES THAT, FOR THE 3-YEAR PERIOD IMMEDIATELY BEFORE THE CLOSE OF FRANCHISOR'S MOST RECENT FISCAL YEAR HAVE:
  - (1) TRANSFERRED CONTROLLING OWNERSHIP;
  - (2) BEEN CANCELLED OR TERMINATED BY THE FRANCHISOR;
  - (3) NOT BEEN RENEWED BY THE FRANCHISOR;
  - (4) BEEN REACQUIRED BY THE FRANCHISOR; OR
  - (5) BEEN REASONABLY KNOWN BY THE FRANCHISOR TO HAVE OTHERWISE CEASED TO DO BUSINESS IN THE SYSTEM.
- E. THE NAME AND LAST KNOWN HOME ADDRESS AND TELEPHONE NUMBER OF EVERY FRANCHISEE WHO HAS HAD AN OUTLET TERMINATED, CANCELLED, NOT RENEWED, OR OTHERWISE VOLUNTARILY OR INVOLUNTARILY CEASED TO DO BUSINESS UNDER THE FRANCHISE AGREEMENT DURING THE MOST RECENT LY COMPLETED FISCAL YEAR OR WHO HAS NOT COMMUNICATED WITH THE FRANCHISOR WITHIN 10 WEEKS OF THE APPLICATION DATE.

Item 20 Instructions:

- i. Do not include a transfer when beneficial ownership of the franchise does not change.
- ii. List an outlet that is reacquired by the franchisor in that column whether or not it also fits another category.
- iii. Other than the franchisee names, addresses, and telephone numbers, disclose Item 20 information in tabular form. Use footnotes or a "remarks" column to elaborate on information in the table or to disclose caveats. Disclose the number of franchised and franchisor owned outlets sold, opened and closed. Disclose the total number of franchised and franchisor owned outlets open at the end of each year. Disclose information for each of the last 3 fiscal years.
- iv. If an outlet has been operated by more than one franchisee, disclose each transfer in the transfer column.
- v. Disclose information about franchisor owned outlets that are substantially similar to the franchised outlets. In this Item "franchisor owned" outlets include outlets owned by the franchisor and by its affiliates. Use a separate table with a format similar to the format for franchised outlets. The same table may be used if the franchisor owned outlets are separated from franchised outlets.
- vi. For franchisees operating within the system disclose franchisee business addresses and telephone numbers. List outlets owned by the persons listed in Item 2 and their immediate families or by business entities owned by them as franchisor owned outlets. These outlets can be identified in the table by an asterisk.
- vii. Separate information by state. List all states for which franchisor has information responsive to this Item.
- viii. When the requirement states "most recent fiscal year," the franchisor may use a more recent date if it discloses that date and uses that date for all disclosures in this Item.
- ix. When the requirement states "most recent fiscal year," the state may require a more recent date.

Sample Answer 20

FRANCHISED  
STORE STATUS SUMMARY  
FOR YEARS 1992/1991/1990

<u>State</u>	<u>Transfers</u>	<u>CANCELLED OR TERMINATED</u>	<u>NOT RENEWEDED</u>	<u>REACQUIRED BY FRANCHISOR</u>	<u>LEFT THE SYSTEM OTHER</u>	<u>TOTAL FROM LEFT COLUMNS (2)</u>	<u>FRANCHISES OPERATING AT YEAR END</u>
Alaska							2/0/0
Arizona	2/1/0					2/1/0	8/6/2
Arkansas							6/4/2
California					1/1/0	1/1/0	4/0/0

Colorado							3/3/3
Connecticut							5/3/1
Delaware		1/0/0				1/0/0	6/4/0
Florida							2/0/0
Georgia							2/0/0
Idaho							2/0/0
Totals	2/1/0	1/0/0	0/0/0	0/0/0	1/1/0	4/2/0	40/20/8

- 1) Note: All numbers are as of December 31 for each year.
- 2) The numbers in the "Total" column may exceed the number of stores affected because several events may have affected the same store. For example, the same store may have had multiple owners.

STATUS OF COMPANY OWNED STORES  
FOR YEARS 1992/1991/1990

<u>STATE</u>	<u>STORES CLOSED DURING YEAR</u>	<u>STORES OPENED DURING YEAR</u>	<u>TOTAL STORES OPERATING AT YEAR END</u>
Alaska			
Arizona			
Arkansas			
California			
Colorado			
Connecticut			
Delaware			
Florida			
Georgia			
Idaho			
	0/0/0	0/0/0	0/0/0

Note: Belmont no longer operates company owned stores.

PROJECTED OPENINGS  
AS OF DECEMBER 31, 1992

<u>FRANCHISE AGREEMENTS SIGNED BUT STORE NOT OPEN (1)</u>	<u>PROJECTED FRANCHISED NEW STORES IN THE NEXT FISCAL YEAR</u>	<u>PROJECTED COMPANY OWNED OPENINGS IN NEXT FISCAL YEAR</u>
1	1	

Alaska			
Arizona			
Arkansas			
California			
Colorado			
Connecticut		2	
Delaware			
Florida			
Georgia			
Idaho	1		0
Totals	<u>2</u>	<u>3</u>	<u>0</u>

Note (1) As of December 31, 1992

Item 21

FINANCIAL STATEMENTS

PREPARE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THESE FINANCIAL STATEMENTS MUST BE AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. UNAUDITED STATEMENTS MAY BE USED FOR INTERIM PERIODS. INCLUDE THE FOLLOWING FINANCIAL STATEMENTS.

- A. THE FRANCHISER'S BALANCE SHEETS FOR THE LAST TWO FISCAL YEAR ENDS BEFORE THE APPLICATION DATE. IN ADDITION INCLUDE STATEMENTS OF OPERATIONS, OF STOCKHOLDERS EQUITY AND OF CASH FLOWS FOR EACH OF THE FRANCHISER'S LAST THREE FISCAL YEARS. IF THE MOST RECENT BALANCE SHEET AND STATEMENT OF OPERATIONS ARE AS OF A DATE MORE THAN 90 DAYS BEFORE THE APPLICATION DATE, THEN ALSO SUBMIT AN UNAUDITED BALANCE SHEET AND STATEMENT OF OPERATIONS AS OF A DATE WITHIN 90 DAYS OF THE APPLICATION DATE.
- B. AFFILIATED COMPANY STATEMENTS. INSTEAD OF THE DISCLOSURE REQUIRED BY ITEM 21A, THE FRANCHISER MAY INCLUDE FINANCIAL STATEMENTS OF ITS AFFILIATED COMPANY IF THE AFFILIATED COMPANY'S FINANCIAL STATEMENTS SATISFY ITEM 21A AND THE AFFILIATED COMPANY ABSOLUTELY AND UNCONDITIONALLY GUARANTEES TO ASSUME THE DUTIES AND OBLIGATIONS OF THE FRANCHISER UNDER THE FRANCHISE AGREEMENT.
- C. CONSOLIDATED AND SEPARATE STATEMENTS:
  - (1) WHEN A FRANCHISER OWNS A DIRECT OR BENEFICIAL, CONTROLLING FINANCIAL INTEREST IN ANOTHER CORPORATION, ITS FINANCIAL STATEMENTS SHOULD REFLECT THE FINANCIAL CONDITION OF THE FRANCHISER AND ITS SUBSIDIARIES.

- (2) IF THE APPLICANT IS A SUBFRANCHISER INCLUDE SEPARATE FINANCIAL STATEMENTS FOR THE FRANCHISER AND SUBFRANCHISER RELATED ENTITY.
- (3) PREPARE CONSOLIDATED AND SEPARATE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

Item 21 Instructions:

- i. States may require financial statements additional to those listed in this Item.
- ii. A company controlling 80% or more of a franchiser may be required to include its financial statements.
- iii. Present required financials in a format of columns which compare at least 2 fiscal years.
- iv. In Item 21A, the required financial statements for a franchiser with a calendar fiscal year end and a July 15, 1989 application filing date are:
  - a) Unaudited balance sheet as of either April 30, May 31 or June 30, 1989 with an unaudited income statement for the period from January 1, 1989 to the date of the balance sheet;
  - b) Balance sheets, statements of operations, of stockholders equity and of cash flow. The balance sheets should be audited and as of December 31, 1987 and 1988. The remaining statements should be audited and should be for periods ending December 31, 1986, 1987 and 1988; and
  - c) If the franchiser has never had an audit, it need not supply the financial statement required by (b) if it supplies either an audit as of its last fiscal year end or the statements required by (a) in an audited form.
- v. In the Item 21B response, the affiliate's guarantee need cover only the franchiser's obligations to the franchisee. The guarantee need not extend to third parties. A sample guarantee is on page in Exhibit \_\_\_\_\_.
- vi. In the Item 21B response the filing state may permit a surety bond instead of the parent company's guarantee.
- vii. Disclose the existence of a guarantee.

Item 22

CONTRACTS

ATTACH A COPY OF ALL AGREEMENTS PROPOSED FOR USE OR IN USE IN THIS STATE REGARDING THE OFFERING OF A FRANCHISE, INCLUDING, THE FRANCHISE AGREEMENT, LEASES, OPTIONS AND PURCHASE AGREEMENTS.

Item 22 Instructions:

- i. Copies of agreements attached to the offering circular under Item 22 are part of the offering circular. Each offering circular delivered to a prospective franchisee must include copies of all agreements to be offered.
- ii. The franchisor may cross reference Item 10 for financing agreements.

Item 23

RECEIPT

THE LAST PAGE OF THE OFFERING CIRCULAR IS A DETACHABLE DOCUMENT ACKNOWLEDGING RECEIPT OF THE OFFERING CIRCULAR BY THE PROSPECTIVE FRANCHISEE. IT MUST CONTAIN THE FOLLOWING STATEMENT IN BOLDFACE TYPE:

THIS OFFERING CIRCULAR SUMMARIZES CERTAIN PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF \_\_\_\_\_ OFFERS YOU A FRANCHISE, \_\_\_\_\_ MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

- (1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR
- (2) TEN BUSINESS DAYS BEFORE THE SIGNING OF A BINDING AGREEMENT; OR
- (3) TEN BUSINESS DAYS BEFORE A PAYMENT TO \_\_\_\_\_.

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN A FRANCHISE AGREEMENT.

IF \_\_\_\_\_ DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND (STATE AGENCY). (ANY ADDITIONAL STATE DISCLOSURE TIME OR REQUIRED STATUTORY LANGUAGE.)

Item 23 Instructions:

1. Place the name of the franchisor in the blank.
2. Make two copies of the Receipt: one for retention by the franchisee and one by the franchisor.
3. Disclose the name, principal business address and telephone number of the subfranchisor or franchise broker offering the franchise in this state.
4. List the title of all attached exhibits.
5. Effective Date: (Leave blank until notified of effectiveness by state regulatory authority.)
6. The name and address of the franchisor's registered agent authorized to receive service of process if not disclosed in Item 1.

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Sample Answer 23

RECEIPT

THIS OFFERING CIRCULAR SUMMARIZES PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF BELMONT OFFERS YOU A FRANCHISE, BELMONT MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

- (1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR
- (2) TEN BUSINESS DAYS BEFORE SIGNING OF A BINDING AGREEMENT; OR
- (3) TEN BUSINESS DAYS BEFORE ANY PAYMENT TO BELMONT.

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN ANY FRANCHISE AGREEMENT.

IF BELMONT DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND (STATE AGENCY).

Belmont authorizes Legal Process Corp at 448 West Washington Avenue, City, State to receive service of process for Belmont. I have received a Uniform Franchise Offering Circular dated \_\_\_\_\_. This offering circular included the following Exhibits:

- A. License Agreement
- B. Equipment Lease
- C. Lease for Premises
- D. Loan Agreement

\_\_\_\_\_  
Date

\_\_\_\_\_  
Franchisee

UNIFORM FRANCHISE REGISTRATION APPLICATION

(Insert file number of previous filings of Applicant)

FEE: \_\_\_\_\_

(Enclosed when  
application  
is initially  
filed)

APPLICATION FOR (Check only one):

\_\_\_\_\_ REGISTRATION OF AN OFFER AND SALE OF FRANCHISES

\_\_\_\_\_ REGISTRATION RENEWAL STATEMENT OR ANNUAL REPORT

AMENDMENT NUMBER \_\_\_\_ TO APPLICATION

\_\_\_\_\_ POST-EFFECTIVE FILED UNDER SECTION \_\_\_\_\_

\_\_\_\_\_ PRE-EFFECTIVE DATED \_\_\_\_\_

1. Name of Franchisor. (If applicant is subfranchisor, the name of the subfranchisor.)

Name under which the Franchisor is doing or intends to do business.

2. Franchisor's principal business address.

Name and address of Franchisor's agent in the State of (Name of State) authorized to receive process.

3. Name, address and telephone number of subfranchisors, if any, for this state.

4. Name, address and telephone number of person to whom communications regarding this application should be directed.



COUNTY OF \_\_\_\_\_)

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ the above-

named \_\_\_\_\_ and \_\_\_\_\_ to me

known to be the person(s) who executed the foregoing application (as \_\_\_\_\_ and \_\_\_\_\_ respectively, of the above-named applicant) and (each), being first duly sworn, stated upon

oath that said application, and all exhibits submitted herewith, are true and correct.

\_\_\_\_\_  
\_\_\_\_\_  
(Notary)

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me

\_\_\_\_\_ the undersigned officer, personally

(Name of Notary)

appeared \_\_\_\_\_ and \_\_\_\_\_, known personally to me to be the

\_\_\_\_\_ President and \_\_\_\_\_ Secretary, respectively, of the above-named

corporation, and that they, as such officers, being authorized to do so, executed the foregoing instrument for the

purposes therein contained, by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

\_\_\_\_\_

(Notary Public)

(NOTARIAL SEAL) My commission expires: \_\_\_\_\_

\_\_\_\_\_

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,  
\_\_\_\_\_, the

undersigned officer, personally appeared \_\_\_\_\_ to me personally known and known to

me to be the same person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the

execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

\_\_\_\_\_

(Notary Public)

(NOTARIAL SEAL) My commission expires: \_\_\_\_\_

\_\_\_\_\_, (a corporation organized under the laws of the State of \_\_\_\_\_) (a partnership) (an individual) \_\_\_\_\_, irrevocably appoints the \_\_\_\_\_ (regulatory authority) and the successors in office, its attorney in the State of \_\_\_\_\_ for service of notice, process or pleading in an action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of \_\_\_\_\_, and consents that an action or proceeding against it may be commenced in a court of competent jurisdiction and proper venue within \_\_\_\_\_ by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of \_\_\_\_\_ and had lawfully been served with process in \_\_\_\_\_. It is requested that a copy of any notice, process or pleading served this consent be mailed to:

-----  
(Name and address)

\_\_\_\_\_

Dated: \_\_\_\_\_, 19\_\_.

-----  
By \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

By \_\_\_\_\_

Title \_\_\_\_\_

SALES AGENT DISCLOSURE FORM

1. List the persons who will offer or sell franchises in this state. For each person state:

A. Name;

B. Business address and telephone number;

C. Home address and telephone number;

D. Present employer;

E. Present title;

F. Social Security Number;

G. Birthday; and

H. Employment during the past five years. For each employment, state the name of the employer, position held, and beginning and ending dates.

2. State whether any person identified in 1. above:

A. Has any administrative, civil or criminal action pending alleging a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or any comparable allegations?

YES \_\_\_\_\_ NO \_\_\_\_\_

B. Had during the ten-year period immediately before the offering circular date:

(1) been convicted of a felony or pleaded no lo contendere to a felony charge or been held liable in a civil action by final judgment if the felony or civil action involved a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable violations of law?

YES \_\_\_\_\_

NO \_\_\_\_\_

(2) entered into or been named in a consent judgment, decree, order or assurance under federal or state franchise, securities, anti-trust, monopoly, trade practice or trade regulation law?

YES \_\_\_\_\_ NO \_\_\_\_\_

(3) been subject to an order or national securities association or national securities exchange as defined in the Securities and Exchange Act of 1934 suspending or expelling the person from membership in the association or exchange?

YES \_\_\_\_\_ NO \_\_\_\_\_

C. For each above question answered "YES" state:

- (1) the name of the person or entity involved;
- (2) the court, agency, association or exchange involved;
- (3) a summary of the allegations;
- (4) if applicable, the date of the conviction, judgment, decree, order or assurance; and
- (5) the penalty imposed, damages assessed, terms and conditions of the judgment, decree, or order or assurance.

For value received \_\_\_\_\_ located at  
\_\_\_\_\_, absolutely and unconditionally

(Address)

guarantees the performance by \_\_\_\_\_,  
located at \_\_\_\_\_ of all of the

(Address)

obligations of \_\_\_\_\_ under its  
franchise registration in the State of \_\_\_\_\_

(Name of state or province)

dated \_\_\_\_\_ and of its Franchise

(Effective date of renewal)

Agreement. This guarantee continues until all obligations of \_\_\_\_\_ under the  
franchise registration and franchise agreement are satisfied.

is not discharged from liability if a claim by the franchisee against \_\_\_\_\_ remains outstanding. Notice of  
acceptance is waived. Notice of default on the part of \_\_\_\_\_ is not waived. This  
guarantee is binding on \_\_\_\_\_ and on its successors and assignees.

\_\_\_\_\_ executes this guarantee at

(Parent)

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

19\_\_.

(Parent)

By:

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

## **Appendix 2**

JUL 20 1992



EDITION NO. 6 FINAL  
VOLUME 1 - Senate and Topical Index  
Legislative Digest and  
History of Bills  
of the  
Senate and  
House of Representatives

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FIFTY-SECOND LEGISLATURE

1991 Regular Session:	January 14, 1991	to	April 28, 1991
1st Special Session:	June 10, 1991	to	June 30, 1991
1992 Regular Session:	January 13, 1992	to	March 12, 1992

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DIGEST & HISTORY ON LEGISLATIVE BILLS, MEMORIALS, AND RESOLUTIONS;  
RCW - BILL TABLE; and TOPICAL INDEX

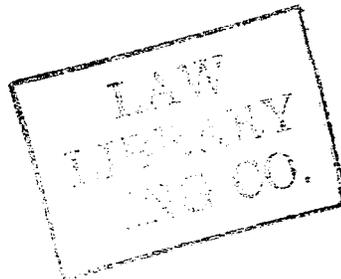
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\*\* Compiled to and Inclusive of April 30, 1992 \*\*

GORDON A. GOLOB  
Secretary of the Senate

ALAN THOMPSON  
Chief Clerk, House of Representatives

With the Cooperation of the Statute Law Committee  
& the Legislative Service Center



Makes an appropriation of one million one hundred thousand dollars to carry out the purposes of the act.

-- 1991 REGULAR SESSION --  
Mar 5 ED - Majority; 1st substitute bill be substituted, do pass.  
And refer to Ways & Means.  
Referred to Ways & Means.

-- 1991 1ST SPECIAL SESSION --  
Jun 10 By resolution, reintroduced and retained in present status.

-- 1992 REGULAR SESSION --  
Jan 13 By resolution, reintroduced and retained in present status.

SB 5255 by Senators L. Smith, McMullen, Murray, Moore, Conner, Sutherland and Pelz

Authorizing unemployment compensation benefits for an individual who leaves work voluntarily to relocate with his or her spouse.

Provides that an individual shall not be considered to have left work voluntarily without good cause if the individual leaves work voluntarily to relocate with his or her spouse.

-- 1991 REGULAR SESSION --  
Jan 25 First reading, referred to Commerce & Labor.

-- 1991 1ST SPECIAL SESSION --  
Jun 10 By resolution, reintroduced and retained in present status.

-- 1992 REGULAR SESSION --  
Jan 13 By resolution, reintroduced and retained in present status.

SB 5256 by Senators Nelson, A. Smith and Newhouse

Providing franchise investment protection.

(SUBSTITUTED FOR - SEE 1ST SUB)

Designates the situations when an offer to sell a franchise shall be deemed to have been made in this state.

Revises provisions of chapter 19.100 RCW which establish registration requirements.

Makes it unlawful to sell a franchise that is registered without first delivering to the offeree a copy of the offering circular required by RCW 19.100.040.

Does not preclude negotiation of the terms and conditions of a franchise at the initiative of the franchisee.

Provides that an action for rescission for failure to register may not be commenced more than one year after the transaction has occurred.

-- 1991 REGULAR SESSION --  
Jan 25 First reading, referred to Law & Justice.  
Feb 5 LAW - Majority; 1st substitute bill be substituted, do pass.  
Passed to Rules committee for second reading.  
Made eligible to be placed on second reading.  
Feb 11 Placed on second reading by Rules committee.  
Feb 22 1st substitute bill substituted.  
  
-- 1991 1ST SPECIAL SESSION --  
Jun 10 By resolution, reintroduced and retained in present status.

SB 5256-S by Senate Committee on Law & Justice (originally sponsored by Senators Nelson, A. Smith and Newhouse)

Providing franchise investment protection.

(DIGEST AS ENACTED)

Designates the situations when an offer to sell a franchise shall be deemed to have been made in this state.

Revises provisions of chapter 19.100 RCW which establish registration requirements.

Makes it unlawful to sell a franchise that is registered without first delivering to the offeree a copy of the offering circular required by RCW 19.100.040.

Does not preclude negotiation of the terms and conditions of a franchise at the initiative of the franchisee.

VETO MESSAGE ON SB 5256-S  
May 16, 1991

To the Honorable, the Senate of the State of Washington Ladies and Gentlemen:

I am returning herewith, without my approval, section 15, Engrossed Substitute Senate Bill No. 5256 entitled:

"AN ACT Relating to franchise investment protection."

Washington State's Franchise Investment Protection Act is an important consumer protection statute.

Through protection of franchisees, has fostered a healthy business environment for reputable franchisors.

Section 15 of this act would reduce the statute of limitations to only one year for an action by a franchisee for rescission based on failure of a franchisor to register.

Further, the statute of limitations would be reduced to three years for all other actions under RCW 19.100.190.

Currently, the statute of limitations may vary between two and three years depending on judicial interpretation.

While I agree that providing greater certainty of limitation of actions is desirable, the original Washington State Bar Association Franchise Act Recommendation Committee's recommendation provided for a

reasonable statute of limitations of two years for failure to register and four years for other actions. This initial recommendation was modified by the Legislature.

A veto of section 15 is necessary to assure continued consumer protection. Some problems with franchise agreements may not arise during the first year.

Experience has shown that franchisors who fail to register often have the weakest franchises to sell and do not provide the disclosures required by the Franchise Investment Protection Act, thus exposing the purchaser to unnecessary risk.

Also, the one year statute of limitations could provide an incentive to unscrupulous franchisors to sell unregistered franchises hoping the year will pass before discovery of a problem and the franchisee's claim, however valid, will be barred from legal action.

With the exception of section 15, Engrossed Substitute Senate Bill No. 5256 is approved.

Respectfully submitted,  
Booth Gardner  
Governor

-- 1991 REGULAR SESSION --  
Feb 5 LAW - Majority; 1st substitute bill be substituted, do pass.  
Passed to Rules committee for second reading.  
Made eligible to be placed on second reading.  
Feb 11 Placed on second reading by Rules committee.  
Feb 22 1st substitute bill substituted.

AMENDED.  
Held on second reading.  
Mar 4 Rules suspended. Placed on Third Reading.  
Third reading, passed; yeas, 41; nays 8, absent, 0.

- IN THE HOUSE -  
Mar 5 First reading, referred to Commerce & Labor.

Mar 26 CL - Majority; do pass with amendment(s).  
Minority; without recommendation. Referred to Revenue.

Mar 29 REV - Majority; do pass with amendment(s) along with amendment(s) by Commerce & Labor.

Apr 6 Passed to Rules committee for second reading.  
Apr 8 Made eligible to be placed on second reading.

Apr 12 Placed on second reading by Rules committee.  
Apr 16 Committee amendment adopted with no other amendments.

Rules suspended. Placed on Third Reading.  
Third reading, passed; yeas, 95; nays 0, absent, 3.

Apr 17 Committee amendment adopted with no other amendments.  
Rules suspended. Placed on Third Reading.  
Third reading, passed; yeas, 95; nays 0, absent, 3.

Apr 26 REV - Majority; do pass with amendment(s) along with amendment(s) by Commerce & Labor.

Apr 8 Passed to Rules committee for second reading.  
Apr 12 Made eligible to be placed on second reading.

Apr 16 Placed on second reading by Rules committee.  
Apr 17 Committee amendment adopted with no other amendments.

Rules suspended. Placed on Third Reading.  
Third reading, passed; yeas, 95; nays 0, absent, 3.

Apr 26 REV - Majority; do pass with amendment(s) along with amendment(s) by Commerce & Labor.

Apr 8 Passed to Rules committee for second reading.  
Apr 12 Made eligible to be placed on second reading.

Apr 16 Placed on second reading by Rules committee.  
Apr 17 Committee amendment adopted with no other amendments.

Rules suspended. Placed on Third Reading.  
Third reading, passed; yeas, 95; nays 0, absent, 3.

- IN THE SENATE -  
Apr 22 Senate concurred in House amendments. Passed final passage; yeas, 39; nays 7, absent, 3.  
Apr 24 President signed.

- IN THE HOUSE -  
Speaker signed.

- OTHER THAN LEGISLATIVE ACTION -  
Apr 25 Delivered to Governor.  
May 16 Governor partially vetoed. Chapter 226, 1991 Laws PV

SB 5257 by Senator Conner

Allowing military service retirement credit for every five years of service.

Authorizes the member to receive one year's credit for each five years served.  
Limits the credit to a maximum of five years.

-- 1991 REGULAR SESSION --  
Jan 25 First reading, referred to Ways & Means.

-- 1991 1ST SPECIAL SESSION --  
Jun 10 By resolution, reintroduced and retained in present status.

-- 1992 REGULAR SESSION --  
Jan 13 By resolution, reintroduced and retained in present status.

SB 5258 by Senators Talmadge, A. Smith and Skratck

Providing a referendum procedure for port district resolutions.

Provides that resolutions of port districts shall not go into effect before thirty days from the time of passage and shall be subject to referendum.

Excepts certain resolutions from referendum.

-- 1991 REGULAR SESSION --  
Jan 25 First reading, referred to Governmental Operations.

-- 1991 1ST SPECIAL SESSION --  
Jun 10 By resolution, reintroduced and retained in present status.

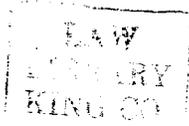
-- 1992 REGULAR SESSION --  
Jan 13 By resolution, reintroduced and retained in present status.

SB 5259 by Senators L. Smith, Hayner, Snyder, Owen, Matson and Oke

Regulating cigarette sales.

Declares an intent to protect our system of business competition by stopping the selling of cigarettes below cost in the wholesale and retail trade.

## **Appendix 3**



KF 15 .W37 1991  
Washington.  
Legislative report.

## 1991 Final Legislative Report

This issue of the 1991 Final Legislative Report provides a pictorial view of many of the ways water is seen and utilized throughout the state. On the front cover a scene of Puget Sound; on the back cover an aerial view of Washington's coastline.

Photos courtesy of the Washington State Senate, Dick Baldwin and Karen Flemer, photographers.

The final edition of the 1991 Legislative Report is available from:

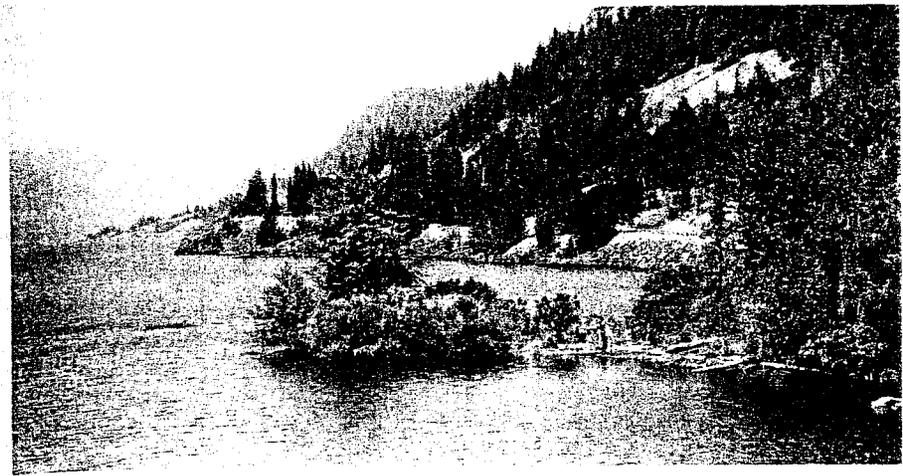
**The Legislative Bill Room**  
Legislative Building  
Olympia, Washington 98504

In accordance with RCW 42.17.300, it is available at a fee based on actual reproduction costs. The price is \$10.00 per copy.

For more detailed information regarding the 1991 legislation, contact:

**The House Office of Program Research**  
205 John L. O'Brien Building  
Olympia, Washington 98504  
(206) 786-7100

**Senate Committee Services**  
101 John A. Chierberg Building  
Olympia, Washington 98504  
(206) 786-7400



## Fifty-Second Washington State Legislature

1990 Second Special Session  
1991 Regular and  
First Special Sessions

Water. One of the most extensive and important natural resources in the state of Washington, water is an invaluable asset that benefits the state's citizens in a variety of ways. Washington's shorelines, rivers and lakes provide a panorama of incredible beauty that attracts tourists from all corners of the earth. The state's varied waterways provide habitat for fish, plant and wildlife as well as many recreational opportunities for the sports enthusiast. This precious commodity is also used as a major source of energy for the northwest, as an arterial for shipping and commerce in the Pacific Rim trading arena, and plays a major role in the huge agriculture and aquaculture industries in the state.

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Photos: above, the Columbia River near Beacon Rock, at right, Palouse Falls.

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Public entities are directed to use retained savings or revenues on ongoing maintenance and operations of energy systems, other ongoing or deferred maintenance, and other infrastructure improvements at the facility where the energy efficiency project is located.

The WSEO is to develop guidelines for administering the act and may impose fees on public agencies for reviewing lifecycle cost analysis reports on specific projects.

The WSEO is required to extensively report on activities authorized in this legislation, on an annual basis, until the year 2006. Annual reports from the Office of the Superintendent of Public Instruction are required pertaining to the effects of the act on school districts throughout the state.

**Votes on Final Passage:**

Senate 40 8  
House 97 0

**Effective:** July 28, 1991

**ESSB 5256**

**PARTIAL VETO**

C 226 L 91

Providing franchise investment protection.

By Senate Committee on Law & Justice (originally sponsored by Senators Nelson, A. Smith and Newhouse).

Senate Committee on Law & Justice  
House Committee on Commerce & Labor  
House Committee on Revenue

**Background:** Franchising is a contractual method for marketing and distributing the goods or services of a company (the franchisor) through a dedicated or restricted network of distributors (franchisees). Under the terms of a franchise contract, a franchisor grants the right and license to a franchisee to market a product or service using the trademark and/or business system developed by the franchisor. The most commonly recognized criteria in the United States for determining whether a business arrangement is a franchise is the Federal Trade Commission 1978 regulatory rule.

The Washington Franchise Investment Protection Act of 1972 regulates franchises in Washington through disclosure requirements, the delineation of rights and prohibited acts, and mandatory registration of offerings, brokers, and agents. The Washington State Bar Association has suggested that the public would be better served if the Washington act conformed more closely to the regulations of the Federal Trade Commission and uniform acts proposed by the North American Securities

Administrators Association and the National Conference of Commissioners on Uniform State Laws.

**Summary:** The Franchise Investment Protection Act is amended. The definition of "franchise" is narrowed. Franchise sales agents working for franchisors or franchise brokers are no longer required to register under the act. Washington franchisors are allowed to offer franchises for sale in other states without registering in this state, unless the offer violates the franchise law of the other state. The disclosure statements specified by the act are eliminated and replaced with a requirement to follow regulations based on the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association.

Franchisors who give notice to the Department of Licensing that they have a net worth of at least \$5,000,000, at least 25 franchisees, and require an initial investment by franchisees of more than \$100,000 are exempt from the registration requirements if they pay a filing fee to the department. The fee for filing a notice of claim of exemption is \$100 for the original filing and \$100 for each annual renewal.

The fee for filing an application for registration on the sale of franchise is \$600.

The maximum number of franchises which a small franchisor may grant and be exempt from registration requirements, if there is no advertisement for franchisees, is reduced from nine to three. The buyer from such a small franchisor must now have the advice of a certified public accountant or attorney.

Franchises involving renting or leasing motor vehicles are now subject to the act.

The maximum franchise fee which a franchisor may charge and be exempt from the registration requirements of the act is reduced from \$1,500 to \$500.

The length of time required between the delivery of a franchise offering circular and the sale of the franchise is expanded from 48 hours to 10 days.

Negotiations of the terms and conditions of a franchise are specifically allowed when initiated by the franchisee.

There is a statute of limitations of one year on actions for failure to register and three years for other actions under the act.

The Director of the Department of Licensing may deny, suspend, or revoke a franchise broker's registration or any exemptions from registration in the case of certain violations or wrongdoing.

**Votes on Final Passage:**

Senate 41 8  
House 95 0 (House amended)  
Senate 39 7 (Senate concurred)

**Effective:** July 28, 1991

**Partial Veto Summary:** The section which creates a statute of limitations of one year on actions for failure to register and three years for other actions is deleted. (See VETO MESSAGE)

**SSB 5260**

C 100 L 91

Regulating certain nonmunicipal water systems.

By Senate Committee on Energy & Utilities (originally sponsored by Senators Thorsness, Madsen and Barr; by request of Utilities & Transportation Commission).

Senate Committee on Energy & Utilities  
House Committee on Energy & Utilities

**Background:** The jurisdiction of the Utilities and Transportation Commission over water companies is limited to those serving 100 or more customers, or having average annual customer revenues of \$300 or more, that otherwise meet the statutory criteria for regulation. In making a jurisdictional decision, the UTC must include all portions of water companies having common ownership, regardless of location or corporate designation. For all jurisdictional systems the commission sets rates, determines operating requirements, enforces standards on quality and quantity, and acts on customer complaints regarding rates and service. The Legislature in 1989 also required the commission to exercise audit and accounting supervision or to initiate a formal complaint against any water system for hire if the commission received an administrative order from the Department of Health or the city or county where the system was located that found the system to be in violation of drinking water system standards adopted by the Board of Health or the Department of Health. The latter provision has not been utilized by either the Department of Health or a local government to invoke commission jurisdiction, and it is unclear to the commission what actions it is to take under the language added in 1989. Its general jurisdictional criteria for water systems have also created problems in determining whether to assert or maintain jurisdiction over water systems whose number of customers and annual revenues may fluctuate.

**Summary:** Water companies that are subject to Utilities and Transportation Commission regulation cannot be removed from regulation unless the commission approves. Regulated companies whose customer number falls below 100, or whose average annual customer revenues fall below \$300, may petition the commission for removal from regulation. The commission may retain jurisdiction over such companies where it finds that the public interest requires it.

In measuring a system's customers or revenues to determine UTC jurisdiction, the commission must include all systems under common control, even if they are not under common ownership. The term "control" is to be defined by the commission and does not include management by a satellite agency as defined in statute if the satellite agency is not an owner of the water company.

The commission's jurisdiction over standard water systems referred to it by the Department of Health or a city or county is limited to nonmunicipal systems, and only for auditing purposes. The commission is to provide the results of the audit to the requesting party. The number of such companies referred to the commission in any calendar year is not to exceed 20 percent of the total number of companies subject to commission regulation. Companies referred to the commission for such an audit are required to pay a fee in the same amount as the commission requires on an annual basis from its regulated utilities.

The number of customers required to file a complaint against a regulated water company with regard to rates or charges is changed from 25 to either 25 customers or at least 25 percent of the company's customers.

**Votes on Final Passage:**

Senate 45 0  
House 97 0 (House amended)  
Senate 46 0 (Senate concurred)

**Effective:** July 28, 1991

**SSB 5261**

C 170 L 91

Requiring new schools to have automatic fire equipment.

By Senate Committee on Education (originally sponsored by Senators Bailey, Vognild, McMullen, Newhouse, Madsen, Oke, Rinehart and Conner).

Senate Committee on Education  
House Committee on Education  
House Committee on Capital Facilities & Financing

**Background:** During the past decade, fires have caused over \$10 million worth of damage to public school facilities in the state. Currently, the State Building Code requires that schools have sprinkler systems only in enclosed spaces below stairways and in basements larger than 1500 square feet. In addition, four counties, King, Kitsap, Thurston and Clark, require sprinklers in all buildings larger than a specified size of 10,000 to 12,000 square feet.

## **Appendix 4**

1991  
SESSION LAWS  
OF THE  
STATE OF WASHINGTON

REGULAR SESSION  
FIFTY-SECOND LEGISLATURE  
Convened January 14, 1991. Adjourned April 28, 1991.

1st SPECIAL SESSION  
FIFTY-SECOND LEGISLATURE  
Convened June 10, 1991. Adjourned June 30, 1991.



Published at Olympia by the Statute Law Committee pursuant to Chapter 6, Laws of 1969.

DENNIS W. COOPER  
Code Reviser

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register to participants. The secretary shall verify their qualifications prior to including

colleges, institutions of higher education, and other organizations to coordinate technical assistance

for community use while participating in the program. The secretary shall ensure that the program assures accountability in the

minimum requirements for adequate funding and implement an overall monitoring system for the project;

to notify applicants and entrants to the program.

The legislative committees and others shall review projects including the identification of rural health care needs and the successful completion of rural health care projects. The secretary shall evaluate the project.

1991.

June 6, 1991.

Effective May 16, 1991.

SR 225

SB 5231]

PERSONS—CONTINUING EDUCATION

REQUIREMENTS

Effective: 7/28/91

Continuing education; and amending RCW 18.85.165

State of Washington:

Sections 205 s 1 are each amended to read

Persons shall furnish proof as the director may require. Persons who have successfully completed a total of thirty hours in real estate courses approved by the director. Up to fifteen clock hours of instruction in two years may be carried forward for

use. To count towards this requirement, the instruction must be completed within thirty-six months before the proof date is required to fulfill any part of the

This section shall apply to renewal

Sec. 2. RCW 18.85.140 and 1989 c 161 s 2 are each amended to read as follows:

Before receiving his or her license every real estate broker, every real estate associate broker, and every real estate salesperson must pay a license fee as prescribed by the director by rule. Every license issued under the provisions of this chapter expires on the applicant's second birthday following issuance of the license. Licenses issued to partnerships expire on a date prescribed by the director by rule. Licenses issued to corporations expire on a date prescribed by the director by rule, except that if the corporation registration or certificate of authority filed with the secretary of state expires, the real estate broker's license issued to the corporation shall expire on that date. Licenses must be renewed every two years on or before the date established under this section and a biennial renewal license fee as prescribed by the director by rule must be paid.

If the application for a renewal license is not received by the director on or before the renewal date, a penalty fee as prescribed by the director by rule shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

The license of any person whose license renewal fee is not received within one year from the date of expiration shall be canceled. This person may obtain a new license by satisfying the procedures and ~~((qualifications for initial licensing, including the successful completion of any applicable examinations))~~ requirements as prescribed by the director by rule.

The director shall issue to each active licensee a license and a pocket identification card in such form and size as he or she shall prescribe.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

## CHAPTER 226

[Engrossed Substitute Senate Bill 5256]

### FRANCHISE INVESTMENT PROTECTION

Effective Date: 7/28/91

AN ACT Relating to franchise investment protection; amending RCW 19.100.010, 19.100.020, 19.100.030, 19.100.040, 19.100.070, 19.100.080, 19.100.100, 19.100.140, 19.100.160, 19.100.170, 19.100.180, 19.100.220, and 19.100.240; and adding new sections to chapter 19.100 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.100.010 and 1979 c 158 s 83 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

from the date of the injunction relied on, and (b) the director may not enter an order under this subsection on the basis of an injunction unless that injunction was based on facts that currently constitute a ground for an order under this section;

(3) The franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(4) The offering has worked or tended to work or would tend to work a fraud on purchasers;

(5) The franchisor has failed to pay the required filing fee for a claim of exemption but the director may enter only a denial order under this subsection and shall vacate such order when the deficiency has been corrected;

(6) The franchisor has made a claim of exemption which is incomplete in a material respect or contains any statement which in the light of the circumstances under which it was made is false or misleading with respect to any material fact.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 16, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 16, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 15, Engrossed Substitute Senate Bill No. 5256 entitled:

"AN ACT Relating to franchise investment protection."

Washington State's Franchise Investment Protection Act is an important consumer protection statute that, through protection of franchisees, has fostered a healthy business environment for reputable franchisors. Section 15 of this act would reduce the statute of limitations to only one year for an action by a franchisee for rescission based on a failure of a franchisor to register. Further, the statute of limitations would be reduced to three years for all other actions under RCW 19.100.190. Currently, the statute of limitations may vary between two and six years depending on judicial interpretation.

While I agree that providing greater certainty in the limitation of actions is desirable, the original Washington State Bar Association Franchise Act Revision Committee's recommendation provided for a more reasonable statute of limitation of two years for failure to register and four years for other actions. This initial recommendation was modified by the Legislature.

A veto of section 15 is necessary to assure continued consumer protection. Some problems with franchise agreements may not arise during the first year. Experience has shown that franchisors who fail to register often have the weakest franchises to sell and do not provide the disclosures required by the Franchise Investment Protection Act, thus exposing the purchaser to unnecessary risk. Also, the one year statute of limitations could provide an incentive to unscrupulous franchisors to sell unregistered franchises hoping the year will pass before discovery of a problem and the franchisee's claim, however valid, will be barred from legal action.

With the exception of section 15, Engrossed Substitute Senate Bill No. 5256 is approved."

## **Appendix 5**



## Franchise Act Interpretive Statements

FIS-01 - Subfranchisor Registration Requirements

FIS-02 - Restrictions of Transfers of Franchises

FIS-03 - Termination of a Franchise

FIS-04 - Arbitration Site

FIS-05 - Trade Shows & Advertising

FIS-06 - Franchise Advertising on the Internet

### Franchise Act Interpretive Statement FIS-01

RE: Subfranchisor Registration Requirements

#### Questions Presented:

##### 1. What is a subfranchise?

RCW 19.100.010(9) defines "subfranchisor" to mean a person to whom an area franchise is granted.

RCW 19.100.010(8) in turn defines "area franchise" to mean "any contract or agreement between a franchisor or subfranchisor whereby the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name or on behalf of the franchisor."

"Sale" or "sell" includes every contract of sale, contract to sell, or disposition of a franchise, as set forth in RCW 19.100.010(14). "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer by buy a franchise or an interest in a franchise. RCW 19.100.010(15).

An area franchise involves the contractual right of the subfranchisor to direct and conduct the sale or arrangement for sale of franchises within a specified area. This relationship is distinguished from a franchise broker or selling agent who is merely an agent of the franchisor and has no separate contract right to direct and conduct the negotiation or sale of a franchise.

##### 2. When must a subfranchisor register?

RCW 19.100.020 makes it unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under the Franchise Investment Protection Act or is exempted from registration. If a subfranchisor offers or sells or is a substantial factor in arranging the offer and sale of a franchise, the offering by the subfranchisor must be registered or exempted therefrom. A subfranchisor, in making such an offer, may avail itself of the exemptions of RCW 19.100.030(4), but then only to the extent that the offers and sales by the franchisor and subfranchisor taken together meet the requirements set forth in the exemption.

##### 3. When must both the franchisor and the subfranchisor file a registration statement?

A subfranchisor that intends to offer or sell in the state must in all cases make application for registration as required by RCW 19.100.040. If the franchisor also intends to offer franchises in the state, it too must comply with RCW 19.100.040. The Securities Administrator requires the franchisor and its subfranchisors to file separate registration statements and pay separate filing fees for their offerings.

##### 4. Must a subfranchisor file audited financial statements?

RCW 19.100.040(7) sets forth the requirement for financial statements of the franchisor. Subsection (7) of RCW 19.100.040 allows the Securities Administrator to determine the form and content of financial statements, the circumstances under which consolidated statements can be filed and sets the circumstances in which audited financial statements are required. As previously stated, RCW 19.100.040(24) requires the same financial information concerning the subfranchisor. Therefore, a subfranchisor must file its financial statement along with those of the franchisor. See also WAC 460-80-125(5).

The financial statements of the subfranchisor must be audited. The administrator has promulgated WAC 460-80-140 with regard to financial statements. This rule states that all financial statements shall be audited by a certified public accountant (with certain exceptions). Waiver of audited financial statements is allowed in extraordinary situations as set forth in (b) of WAC 460-80-140. A subfranchisor may request waiver of audited financial statements pursuant to this subsection. In certain instances the need for audited financial statements of the subfranchisor may be waived if the financial soundness of the subfranchisor is guaranteed by the franchisor.

Adopted: January 1, 1991

Replaces Statements of Policy 82-13 and 86-66

Jack L. Beyers, Securities Administrator

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