

## FRANCHISE DISCLOSURE DOCUMENT



WINZER FRANCHISE COMPANY, INC.  
a Texas corporation  
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[www.winzer.com](http://www.winzer.com)

As a WINZER® franchisee, you already have a business supplying automotive, chemical and/or industrial products similar to our products. Based on your current customer base, you will sell some or all of the following Approved Winzer Products: quality packaged fasteners, nuts, bolts, clamps, adhesives, sealers, electrical components, cutting tools, fluid power fittings, chemicals, welding and shop supplies, janitorial supplies and other related products and services.

The total investment necessary to begin operation of a WINZER franchised business ranges from \$5,950 to \$16,153. This includes \$3,500 that must be paid to franchisor or its affiliates.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "[A Consumer's Guide to Buying a Franchise](#)," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: November 18, 2021

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibits A and B.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction; Item 7 lists the initial investment to open, and Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit E includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Winzer business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Winzer franchisee?</b>	Item 20 or Exhibits A and B list current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business Model Can Change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restriction.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit A.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This Franchise*

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by arbitration and/or litigation only in Texas. Out-of-state arbitration or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to arbitrate or litigate with the franchisor in Texas than in your own state.
2. **Sales Performance Required.** You must maintain minimum sales performance levels. Your inability to maintain these levels may result in loss of any territorial rights you are granted, termination of your franchise, and loss of your investment.

Certain states may require other risks to be highlighted. Check the “State Specific Addenda” (if any) to see whether your state requires other risks to be highlighted.

## MICHIGAN NOTICE

**The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you:**

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assents to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in the Michigan Franchise Investment Law. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) The term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
  - (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.
  - (ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
  - (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - (iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.
- (h) A provision that requires the franchisee to sell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).
- (i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

**The fact that there is a notice of this offer on file with the Attorney General does not constitute approval, recommendation, or endorsement by the Attorney General.**

Any questions regarding this notice should be directed to the Michigan Department of Attorney General, Consumer Protection Division, 525 W. Ottawa Street, G. Mennien Williams Building, 1<sup>st</sup> Floor, Lansing, MI 48933; (517) 373-7177.

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## Item 1

### THE FRANCHISOR, AND ANY PARENT, PREDECESSORS AND AFFILIATES

To simplify language in this disclosure document, Winzer Franchise Company, Inc., the franchisor, is referred to as “we,” “us” or “our.” “You” means the person who is considering buying the franchise. If you are a legal entity, certain provisions apply to your officers, directors, shareholders, members or partners. These provisions are noted.

#### Franchisor

The franchisor is Winzer Franchise Company, Inc., a Texas corporation. We were incorporated on March 16, 2012. We do business under our corporate name and “Winzer.” We do not do business, or intend to do business, under any other name although we may, in some areas, operate an acquired business under a name that incorporates “Winzer” into the name of the acquired company (see below under Our Experience). We have not conducted business or offered franchises in any other line of business. We currently operate businesses that are similar to the franchised business. Our principal address and telephone number are 4060 E. Plano Parkway, Plano, Texas 75074-1800, and (214) 341-2122. Exhibit G lists our agents for service of process.

#### Our Parents, Predecessor and Affiliate

Winzer Corporation (“WC”) is our immediate parent, and our predecessor and affiliate. WC is a Texas corporation, which started as International Metric Supply in 1977 and changed its name to Winzer Corporation in 1980. WC’s principal business address and telephone number are the same as ours. We are a wholly-owned subsidiary of WC. WC has been in the fastener and maintenance supply business since 1977, and granted franchises for WINZER® businesses from 1991 to 2012. Those franchises were assigned to us on October 29, 2012. WC currently operates businesses that are similar to the franchised business. WC has not offered franchises in any other line of business.

From 2010 to 2013, WC offered franchises for Strategic Alliance, a business that allowed its franchisees to retain their existing business names and locations, and sell fasteners, chemicals and maintenance supplies directly or on WC’s behalf, primarily to industrial plants. WC granted 1 Strategic Alliance franchise, which is no longer operating.

In May 2011, WC acquired a retail fastener distributor with multiple branch locations that currently operate as company-owned units under the FastServ Supply trade name. WC or an affiliate may offer 1 or more of these units for resale.

Our other parents are: SV-Winzer Corporation (“SV Winzer”), a Delaware corporation; GradeEight Holdings, LLC (fka SV-Winzer Holdings, LLC) (“GradeEight”), a Delaware limited liability company; and SV-WD, LLC (fka SV-Winzer Investments, LLC) (“SV WD”), a Delaware limited liability company. Since September 29, 2017, WC has been a controlled subsidiary of SV Winzer, SV Winzer has been a controlled subsidiary of GradeEight, and GradeEight has been a controlled subsidiary of SV WD. SV Winzer, GradeEight and SV WD do not operate businesses that are similar to the franchised business, have not offered franchises in any line of business, and do not provide products or services to our franchisees. GradeEight is the formal employer of the officers and executives identified in Item 2 of this disclosure



document. The principal business address and telephone number of SV Winzer and GradeEight are 4060 E. Plano Parkway, Plano, Texas 75074-1800, and (214) 341-2122. SV WD's principal business address and telephone number are 222 South Ninth Street, Suite 130, Minneapolis, Minnesota 55402, and (612) 436-4280.

### Our Business

We offer franchises for WINZER businesses that sell quality packaged fasteners, nuts, bolts, clamps, adhesives, sealers, electrical components, cutting tools, fluid power fittings, chemicals, welding and shop supplies, janitorial supplies and other related products and services.

### Our Experience

We have been in the fastener, chemical, industrial, automotive and maintenance supply business since 2012. We have not offered franchises in any other lines of business. Currently, we own and operate businesses of the type being franchised. We operate these businesses under the same terms and conditions as a franchised business. We may operate these and future-acquired businesses through a subsidiary or an affiliate corporation, or we may offer these businesses for resale as a franchise unit (see the heading Our Parent, Predecessors and Affiliates above for more information). Our parent also has been awarded a contract by the General Services Administration ("GSA") that authorizes sales of products by us and our franchisees to certain government agencies and other government entities ("GSA Contract").

### The Franchise

WINZER businesses sell quality packaged fasteners, nuts, bolts, clamps, adhesives, sealers, electrical components, cutting tools, fluid power fittings, chemicals, welding and shop supplies, janitorial supplies and other related parts and services. You will use our business system ("System") and our proprietary trademarks and service marks ("Marks"). You will sell, directly or on our behalf, primarily to retailers and end users. You must sign our standard franchise agreement and related agreements. You may participate under the GSA Contract if you sign the appropriate related agreement and agree to abide by our GSA/DLA/Federal Government Business Policy.

Our prospective franchisees are already in the business of supplying similar products and services to customers in the automotive, chemical and/or industrial market and already have a customer base. The automotive market includes value-added, direct sales to customers who are automotive dealerships, body shops, repair shops and service centers, as well as truck, fleet and other wheeled transportation dealerships and maintenance shops. The chemical market includes value-added direct sales to customers who are users of bulk, liquid and aerosol chemicals for maintenance, production and repair operations. The industrial market includes value-added direct sales to customers who are road and structural repair and maintenance shops, plant manufacturing and production operations, water treatment, construction, mining, farming, refining, building, facilities and equipment. Based on your current customer base, when you sign a franchise agreement, we will designate the type or types of Licensed Market(s) (automotive, chemical and/or industrial) in which you may acquire Protected Customers.

If we grant you a franchise and you are a legal entity (a partnership, corporation, limited liability company or other legal entity), you must designate an operating principal who is

acceptable to us, and who will be individually bound to your obligations under the franchise agreement.

### Competition

Your main customers will be industrial or commercial maintenance shops, such as hotels, hospitals, school districts and other commercial or industrial facilities, car dealers, independent car repair shops, collision repair shops, and other industrial customers who buy our products for their own use. You will compete with national, regional and local fastener distributors, parts stores, hardware stores, mail-order houses, and other competitive fastener vendors in your territory.

You may not be involved with any of our competitors while you operate a WINZER franchise. If you ever signed a non-competition or non-disclosure agreement with a competitor, you must consult with an attorney in your home state experienced in these matters to help you determine if the agreement is enforceable with regard to your franchise before we will grant a franchise to you. You must represent to us that you are not subject to any valid or effective agreement of that type by signing a non-disclosure agreement.

### Laws and Regulations

You must comply with laws on the identity and traceability of fasteners, including the federal Fastener Quality Act of 1990, and related federal regulations. This Act is designed to prevent the sale of mismarked, misrepresented and counterfeit fasteners, requires that fasteners conform to their stated specifications, and provides a system for reporting violations. You also must comply with federal and state environmental laws that apply to chemicals and solvents, including laws regarding Material Safety Data Statements (“MSDS”). Local laws may not let you store certain chemicals in your home or garage. If you intend to operate from your home, there may be other laws or restrictions that you must comply with. Your neighborhood may have a homeowners association, or you may be subject to covenants, conditions and restrictions that do not let you operate a business out of your home. If you elect to participate under the GSA Contract, you must comply with all of the additional regulations that govern the GSA Contract, as outlined in our GSA/DLA/Federal Government Business Policy. We are not aware of any other laws or regulations that apply specifically to the operation of the franchised business.

## **Item 2**

### **BUSINESS EXPERIENCE**

#### President, Chief Executive Officer and Director: Jon Kerr

Mr. Kerr has been our President and Chief Executive Officer since October 2019, and our Director since May 2020. From September 2018 to October 2019, he was a self-employed consultant in Redding, Connecticut. From August 2014 to October 2018, he was the Division President for SiteOne Landscape Supply, LLC in Redding, Connecticut.

#### Executive Vice President: Paul A. Seibert

Mr. Seibert has been our Executive Vice President since September 2017. He was our Vice President of Corporate Development from March 2012 to September 2017. He has been

Executive Vice President of our parent, WC, since September 2017, and was Vice President of Franchise Development of our parent, WC, from December 2010 to September 2017.

Chief Financial Officer and Secretary: John M. Bacon

Mr. Bacon has been our Chief Financial Officer since August 2016, and our Secretary since September 2017. He was our Director of Finance and Accounting from August 2016 to September 2017. He has been Chief Financial Officer and Secretary of our parent, WC, since September 2017. From August 2005 to July 2016, he was Director of Finance and Accounting for Tuesday Morning Corporation, in Dallas, Texas.

Vice President and Director: Jeffrey A. Mudge

Mr. Mudge has been our Vice President and Director since September 2017. He has been Vice President and Director of our parent, WC, since September 2017. Since May 2002, Mr. Mudge has been Managing Partner of ShoreView Industries, LLC, in Minneapolis, Minnesota.

Vice President and Director: Adam P. Reeves

Mr. Reeves has been our Vice President and Director since September 2017. He has been Vice President and Director of our parent, WC, since September 2017. Since September 2011, Mr. Reeves has been Principal of ShoreView Industries, LLC, in Minneapolis, Minnesota.

Vice President of Continuous Improvement: Jennifer Madden

Ms. Madden has been our Vice President of Continuous since January 2021. She was the owner of Jen Madden Coaching, in Madison, Wisconsin, from January 2020 to December 2020. From January 2018 to December 2019, she was the BI Manager for the State of Wisconsin. From July 2003 to December 2017, she was the Continuous Improvement/Acquisition Liaison for Allied Building Products, in East Rutherford, New Jersey.

Vice President of Marketing and Director of Marketing: Jason Looft

Mr. Looft has been our Vice President of Product Development since December 2016, and our Director of Marketing since January 2012.

Chief Information Officer: Jackson Rahner

Mr. Rahner has been our Chief Information Officer since July 2018. From January 2015 to June 2018, he was Chief Information Officer of Plano Synergy Company, in Plano, Illinois.

Vice President of Supply Chain: Danny Anderson

Mr. Anderson has been our Vice President of Supply Chain since March 2020. From July 2019 to March 2020, he was the Chief Operations Officer for Tucker Powersports, in Fort Worth, Texas. From December 2013 to June 2019, he was the Vice President of Supply Chain for Safway Services, LLC Group, in Dallas, Texas.

Corporate Development Manager: Rick Beter

Mr. Beter has been a Corporate Development Manager with us since March 2012. He has been Corporate Development Manager of our parent, WC, since July 2008.

Corporate Development Manager: Lou Lessen

Mr. Lessen has been a Corporate Development Manager with us since June 2015.

Director of Franchise Services: Kellee Rogillio

Ms. Rogillio has been our Director of Franchise Services since March 2020. From April 2012 to February 2020, she worked in our Accounting Department, where she became our Accounting Manager.

**Item 3**

**LITIGATION**

No litigation is required to be disclosed in this Item.

**Item 4**

**BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item.

**Item 5**

**INITIAL FEES**

You must pay us an initial fee of \$3,500 when you sign the franchise agreement, unless you enter into a franchise agreement in connection with the sale to us of your pre-existing business or its assets, in which case we will waive the initial franchise fee. The initial fee is uniform and non-refundable. We do not offer financing.

In our fiscal year ended July 31, 2021, no franchises were granted for less than the standard franchise fee.

## Item 6

### OTHER FEES

<b>Type of Fee <sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Service Fee	9% - 14% on sales of Approved Winzer Products; 7% on sales of Franchisee Products <sup>2</sup>	At the time of Periodic Gross Profits payment <sup>6</sup>	14% on Annual Gross Sales, reduced to 12% if Annual Gross Sales are \$250,001 to \$350,000; reduced to 10% if Annual Gross Sales are \$350,001 to \$450,000; and reduced to 9% if Personal Annual Gross Sales exceed \$450,000. <sup>3, 4, 5</sup> The Service Fee is paid out of your Periodic Gross Profits. <sup>6</sup>
Repurchase of Assigned Receivables or Repurchase Accounts	Gross Amount of Account	As incurred	You must repurchase from us your account receivables from sales of Franchisee Products on our request. See Sections 7.8 and 7.9 of the franchise agreement for details.
Other Deductions from Periodic Gross Profits	Prices of Approved Winzer Products; credit card fees, transit, freight, shipping and handling fees; taxes; amounts of uncollected assigned receivables; bad check amounts; bad check charges; amounts uncollected after 120 days; amounts uncollected after 60 days if customer has history of delinquent payment; amounts of erroneous, false or fraudulent orders; amounts deemed uncollectible; software fees <sup>7</sup>	As incurred	
Inventory	Franchisee cost	As incurred	Prices will be made available when you place your order.
Periodic Meetings	Currently \$0; possibly \$50 - \$500 per meeting <sup>8</sup>	As incurred	You may choose to attend periodic meetings that we provide, and we may charge reasonable fees for those meetings to cover our costs.
Additional Assistance	Currently \$0; possibly \$100 - \$750 per occurrence	As incurred	We do not currently charge for this, but we may charge a reasonable daily fee and seek reimbursement from you for reasonable travel expenses.
Permitted Representative Sales Materials	Currently \$500 per Permitted Representative	As incurred	We will provide you with certain sales materials for each of your Permitted Representatives.

<b>Type of Fee <sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Permitted Representative Administrative Fee	Currently \$0; possibly \$25 per occurrence	As incurred	We may charge a reasonable fee for products, services or training provided to you for your Permitted Representatives. Currently, we only intend to charge a fee if you ask us to manually enter a customer order for a Permitted Representative or otherwise ask us to provide services to a Permitted Representative that are available through use of the proprietary software of our parent, WC.
Indemnity	Actual cost	On demand	You must reimburse us if we incur costs or expenses, including uncollected receivables, claims, damages, judgments, attorneys' fees or losses as a result of the operation of the franchised business or any act by you or your Permitted Representatives in connection with the operation of the franchised business.
Attorneys' Fees and Costs	Actual cost	As incurred	You must reimburse us for attorneys' fees or costs we incur because of your failure, or the failure of any of your Permitted Representatives, to comply with the franchise agreement or any enforceable non-compete agreement with a prior employer, if we are the prevailing party in the dispute.
Default	35% - 45% of Gross Sales amount <sup>9</sup>	As incurred	If you violate or fail to comply with the franchise agreement, and your action damages another franchisee, we may specify payment to the damaged franchisee as part of your obligation to cure your default.

Notes:

1. All fees are earned when due, are uniformly imposed and are non-refundable.
2. You pay us a Service Fee calculated based on the invoiced amounts of all Retail Sales of Approved Winzer Products (Annual Gross Sales) and Franchisee Products. The Service Fee is calculated on the Annual Gross Sales amount according to the table found in Section 6.2 of the franchise agreement. We supply you with all Approved Winzer Products listed in the proprietary software of our parent, WC. Franchisee Products include all products, other than Approved Winzer Products, that you sell. You may qualify for a reduced Service Fee percentage based on Annual Gross Sales (defined in Note 3 below) or Personal Annual Gross Sales (defined in Note 4 below).
3. "Annual Gross Sales" means the total invoiced amount of all Retail Sales of Approved Winzer Products through the franchised business during the preceding 24 - 26 Billing Periods (defined in Note 6 below), less total credits given during such Billing Periods for any such Approved Winzer Products. During the 1<sup>st</sup> year of your franchise, your Annual Gross Sales will be estimated based on an

annualization of year-to-date sales and credits. Any sales made but not invoiced in any applicable Billing Period will not be included in any calculation for that Billing Period. Annual Gross Sales includes sales by your Permitted Representatives, but only Personal Annual Gross Sales will be considered in calculating a reduction of the Service Fee percentage below 10%. Personal Annual Gross Sales do not include sales by your Permitted Representatives.

4. “Personal Annual Gross Sales” means Annual Gross Sales minus sales by your Permitted Representatives during the preceding 24 –26 Billing Periods.

5. For the 1<sup>st</sup> 90 days, you may pay us a Service Fee percentage that is based on the annual gross sales reported by any pre-existing business. After 90 days, you pay a Service Fee percentage to us based on actual Retail Sales as explained in Note 2.

6. There are 2 - 3 Billing Periods each month. Periodic Gross Profits mean the total invoiced amount of your Retail Sales of Approved Winzer Products and Franchisee Products invoiced and shipped during a Billing Period. After each Billing Period, we calculate your Periodic Gross Profits for that Billing Period, deduct the applicable fees, charges or offsets, and send you payment and a statement detailing these amounts.

7. The cost of Approved Winzer Products generally ranges from 25-60% of the Gross Sales amount. Credit Card fees resulting from your customers paying for orders by credit card will be charged to you. It is recommended that you pass these fees along to your customers. Transit, freight, shipping and handling fees may be charged to you as explained in detail in the Confidential Operations Manual. The amounts for uncollected assigned receivables, bad checks, bad check charges, amounts uncollected after 60 days if the customer has a history of delinquent payment, amounts of erroneous, false or fraudulent orders, and amounts deemed uncollectible vary by franchisee, but is generally limited to the franchisee’s previous 120 days’ total Gross Sales. The software license fee is currently \$65 per month, per user. Winzer absorbs this fee for each Franchise and Permitted Representative, but reserves the right to charge you this fee if your sales or your Permitted Representative’s sales, independently, fail to generate average monthly sales of \$2,000 during any 3-month period.

8. You may choose to attend periodic meetings that we provide. We do not currently charge for meeting attendance, but we may elect to charge reasonable fees for meetings to cover our costs.

9. Our current policy is to limit default damages to the Net Gross Profit amount on any sale made to another franchisee’s Protected Customer, which generally is 35%-45% of the Gross Sales amount.

You are not required to participate in a local or regional advertising cooperative or in a local, regional or national purchasing cooperative.

**Item 7**

**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Type of Expenditure <sup>1</sup></b>	<b>Amount</b>	<b>Method Of Payment</b>	<b>When Due</b>	<b>To Whom Payment Is To Be Made</b>
Initial Fee	\$3,500	Lump sum	On signing franchise agreement	Us
Auto Liability, General Liability, including Premises Operations Coverage, and Workers' Compensation Insurance <sup>2</sup>	\$450 - \$1,375	As arranged	As arranged	Suppliers
Vehicle Expenses <sup>3</sup>	\$1,050 - \$2,400	As arranged	As arranged	Suppliers
Promotional Products <sup>4</sup>	\$0 - \$500	As incurred	As incurred	Suppliers and Us
Office Equipment and Supplies <sup>5</sup>	\$450 - \$700	As incurred	As incurred	Suppliers
Computer Equipment <sup>6</sup>	\$0 - \$2,178	As incurred	As incurred	Suppliers
Initial Training <sup>7</sup>	\$0 - \$500	As incurred	As incurred	Suppliers
Legal and/or Accounting Fees	\$500 - \$2,500	As arranged	As arranged	Suppliers
Additional funds, for 1 <sup>st</sup> 3 months <sup>8</sup>	\$0 - \$2,500	As incurred	As incurred	Suppliers
<b>Total <sup>9, 10</sup></b>	<b>\$5,950 – \$16,153</b>			

Notes:

(1) Refunds and Financing. These fees are non-refundable. We do not offer direct or indirect financing for any of these items. You should not expend funds or make any other commitment in connection with the franchise, and should not resign from existing employment or take any similar action until you have received our final written acceptance of your application and approval of the franchise.

(2) Insurance. This estimate is for 3 months of comprehensive general liability insurance (including premises operations liability coverage), auto liability insurance, and workers' compensation insurance, if it is required by local law. You must maintain comprehensive general liability insurance with at least a \$1,000,000 per occurrence limit, aggregate limits of \$2,000,000 for each aggregate, and a deductible of not more than \$2,500, and auto liability insurance coverage with a \$300,000 combined single limit. Your cost for auto liability insurance will vary depending on factors such as condition of vehicles, your and your personnel's driving records, and other factors. The insurance company providing the coverage must be rated no less than A-X by A.M. Best. You must maintain workers' compensation, employee's liability and employment insurance, and any other insurance that may be required by law. Currently, we maintain comprehensive liability insurance and product liability insurance for Approved Winzer Products, and for Franchisee Products billed through us, at our cost. We list you as an additional insured under the insurance policies. We will give you a minimum of 30 days' notice if we will no longer provide you with these insurance coverages. If we stop providing you with these insurance coverages, you must pay for the coverages. You must pay any deductibles and any amounts not covered by insurance. If available, you must arrange to be named as an additional insured under appropriate insurance maintained by the vendors of Franchisee Products. We encourage you to consider whether to obtain additional insurance of your choice. We do not represent that the insurance we maintain or require will be sufficient



for your needs. We may increase or modify any insurance coverage requirements, but will give you a minimum of 30 days' notice to comply with any increased or modified requirements

(3) Vehicle. You may be able to lease or finance the vehicle needed for the franchised business. The low estimate assumes you use your existing vehicle. The high estimate assumes 3 months of lease payments on a new vehicle. Both estimates assume 3 months of gasoline and maintenance at \$350 per month.

(4) Promotional Products. We sell a full line of high-quality promotional items, including product and marketing brochures for sales calls, and advertising specialty items such as stickers, notepads and pens. Some of these promotional items are included, at no additional cost, in the start-up kit described in note 5 below, as explained in more detail in the Confidential Operations Manual. Caps, accessories, golf shirts and other clothing imprinted with the WINZER logo are available from us, Bob Lilly Promotions and Lands' End Corporate Sales. You are not required to purchase any of these promotional products.

(5) Office Equipment and Supplies. You do not need (and we do not recommend that you obtain) a commercial office. Therefore, these estimates do not include any costs for a commercial office. You may operate the franchised business from your home, if local zoning permits, or from any existing business premises. Before you begin operating the franchised business, we give you a start-up kit, at no additional cost, that contains customized brochures, business forms, and certain promotional products described in note 4 above. You may want a small desk or file cabinet in which to keep records of the franchised business. You may use any type of cell phone to communicate with Winzer and customers. You will use the Internet to connect to our software and transmit orders to us on your order entry device (iPad or PC). High speed Internet may cost \$50 or more per month.

(6) Computer Equipment. The low range assumes that you already own the recommended model of iPad or PC. The high range reflects the cost to you if you choose to purchase new iPad or PC from a retailer or other supplier. The recommended equipment is described in Item 11.

(7) Initial Training. You and any Permitted Representatives must attend our initial training in Plano, Texas. We will pay your reasonable travel, lodging and food expenses related to your attendance at the initial training, but you must pay any other incidental expenses related to attending the initial training, and you must pay all travel, lodging, food and other expenses for any of your Permitted Representatives who attend the initial training.

(8) Additional Funds. You may need working capital to support on-going expenses, such as payroll, transportation and communications expenses, during the 3-month initial period of the franchised business. New businesses often generate negative cash flows. The manner in which you choose to operate the franchised business will greatly affect the working capital that you may need. The low estimate assumes that you operate from your home with an existing vehicle, do not hire personnel during the initial period and do not incur any significant unexpected expenses. The high estimate assumes that you may incur some significant unexpected expenses. This is only an estimate, however, and there is no assurance that additional working capital will not be necessary during the initial period of the franchised business.

(9) Estimated Amounts. These are estimates. Your actual costs will vary depending on factors such as experience, management skills, location and the time of year. You should not expect to achieve the low estimate expenditure in every category. Your expenses could exceed the high estimates in 1 or more categories. If so, your total investment could exceed the estimate. There may be other non-listed factors that may affect your initial investment.

(10) Experience. We relied on our 8 years of experience and WC's over 40 years of experience in the fastener and maintenance supply business to compile these estimates. We recommend

you get professional advice from an accountant, financial planner, or attorney when reviewing these estimates.

## Item 8

### RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

#### Approved Winzer Products

You will usually sell only Approved Winzer Products. Approved Winzer Products are all products and inventory we ship to your customers, and are listed on the proprietary software of our parent, WC. We periodically update the Approved Winzer Products list, and generally issue any updated list to our franchisees in writing or through updated software.

We typically hold periodic “focus group” meetings involving our personnel and representatives of our franchisees, which may include meetings to identify possible new Approved Winzer Products and their priority of importance. After those meetings, we research the suggested products and their vendors, add new products to our Approved Winzer Products list, and provide the updated list of products to our franchisees. We do not charge you for this.

You may request in writing our approval of additional products. We do not issue specific criteria for approving products. We will grant or revoke approvals of products based on inspections and testing. We do not charge you for this. We may grant approvals of new products or revoke past approvals of products on reasonable written notice to you. We typically will provide you with written notification of the approval or disapproval of a product you have proposed within 60 days after receipt of your request, or within 30 days after completing any inspections or testing, whichever is later. We will not unreasonably withhold approval. We reserve the right to impose reasonable limits on the number of approved products at any time, and to designate sole suppliers for certain approved products.

None of our officers owns any interests in any third-party suppliers of approved products.

We or our affiliate are the only suppliers for the Approved Winzer Products. When you order Approved Winzer Products from us or our affiliate for delivery to your customers, we will derive revenue. In our fiscal year ended July 31, 2021, WC’s revenue from sales of Approved Winzer Products to customers was \$87,348,614, or 90.47% of its total revenue of \$96,549,442 reported in GradeEight’s audited financial statements in Exhibit E.

We estimate that up to 2% of your initial investment and up to 2% of your continuing cost of doing business will be spent on purchases of personal inventory or promotional goods. These are estimates. Your results may vary from these estimates. You are not required to purchase any personal inventory or promotional goods. If you do, WC will derive income from your purchases. In our fiscal year ended July 31, 2021, WC’s revenue from sales of personal inventory or promotional goods to franchisees was \$610,082, or 0.70% its total revenue of \$96,549,442 reported in GradeEight’s audited financial statements in Exhibit E.

We do not negotiate purchase arrangements with our suppliers for the benefit of franchisees. We do not provide material benefits (such as renewals or granting additional franchises) to a franchisee based on a franchisee’s purchases from us or any supplier. We are not associated with any purchasing or distribution cooperatives. In our fiscal year ended July 31, 2021, we did not derive revenue or other material consideration from other suppliers based on sales to franchisees.

We or our affiliate sell products to your customers on terms in effect when you place the order at the price you choose, but we may reject any order if the terms of sale do not meet our billing and collection practices.

We estimate that the following purchases and leases of services and products from suppliers other than us will represent the following percentages of your total purchases and leases of services and products to establish and operate the franchised business:

<u>Purchases and/or leases:</u>	<u>% of Total to Establish</u>	<u>% of Total to Operate</u>
From us or our affiliate	0% to 5%	0% to 5%
Under our specifications	0% to 5%	0% to 5%
From approved suppliers	0%	0%

### Sale of Franchisee Products

You may sell products other than Approved Winzer Products (“Franchisee Products”) on a limited basis, but you may not sell products other than Approved Winzer Products unless you request our approval, follow our procedures and pay a Service Fee on the sales. When available, you must arrange to be named as an additional insured under insurance policies maintained by the vendors of Franchisee Products. We may purchase your receivables arising from sales of Franchisee Products for the net amount of the account. Under certain conditions, we may require you to repurchase the receivable for the gross amount. We will derive income from your sale of Franchisee Products.

### Services

WC is the only approved supplier of the sales reporting, inventory control, billing, collection, shipping and quality assurance services. We will not approve any other supplier for these services. WC will derive revenue from the service fees for these services. In our fiscal year ended July 31, 2021, WC’s revenue from service fees was \$75,005, or 0.84% of its total revenue of \$96,549,442 reported in GradeEight’s audited financial statements in Exhibit E.

### Computer Requirements

You must use the proprietary software of our parent, WC (“Software”). To use the Software, you must sign WC’s software license agreement (Attachment 3 to the franchise agreement). WC is the only supplier of the Software, and does not charge you for the Software.

If we adopt substantial changes in any software requirements for the franchised business, the costs to you for software may increase. We anticipate these costs to range from 0% to 5% of your ongoing costs of doing business. These amounts are estimates.

### Insurance

Currently, we will cover the cost of comprehensive liability insurance and product liability insurance for Approved Winzer Products, and for Franchisee Products billed through us. We list you as an additional insured under the insurance policies.

You must purchase a general liability insurance policy with premises operations coverage. You must add us and WC as additional insureds under that policy. When available, you must arrange to be named as an additional insured under insurance policies maintained by vendors of Franchisee Products.

You must pay any deductibles and any liability not covered by insurance. You also must purchase your own auto liability, worker’s compensation, unemployment and other legally required insurance.

You may be required to pay \$300-\$1,000 annually for general liability insurance, and \$600-\$1,500 annually for automobile liability insurance.

Order and Invoice Forms

You must use our order forms and invoice forms. We are the only approved supplier of the order forms and invoice forms. We do not charge for these forms.

GSA Contract

If you wish to participate under the GSA Contract, you must agree to abide by our GSA/DLA/Federal Government Business Policy. You may not sell Approved Winzer Products, or products that are the same as or similar to Approved Winzer Products, to Federal Government accounts except through Winzer’s GSA Contract and System.

Except as described in this Item, you are not required to purchase or lease any goods, services, supplies, furniture, fixtures, equipment, inventory, computer hardware or real estate relating to the establishment or operation of the franchised business from us or from other suppliers.

**Item 9**

**FRANCHISEE’S OBLIGATIONS**

**This table lists your principal obligations under the franchise agreement and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.**

<b>Obligation</b>	<b>Section In Franchise Agreement or Other Agreement</b>	<b>Disclosure Document Item</b>
(a) Site selection and acquisition/lease	Not applicable	11
(b) Pre-opening purchases/leases	Not applicable	7 & 11
(c) Site development and other pre-opening requirements	Not applicable	11
(d) Initial and ongoing training	3.5 & 4.1 - 4.3	7 & 11
(e) Opening	3.1	7 & 11
(f) Fees	5.9, 6.1, 6.2, 7.3, 13.6, 13.7, 15.5 & Att. 3 ¶8(i)	5, 6 & 7
(g) Compliance with standards and policies/Operations Manual	3.7	8 & 11
(h) Trademarks and proprietary information	8 & 10	13 & 14
(i) Restrictions on products/services offered	1.3	16
(j) Warranty and customer service requirements	4.4 & 9	11
(k) Territorial development and sales quotas	3.1 & 3.3	12
(l) Ongoing product/service purchases	3.1, 3.2, 3.3 & 3.4	8
(m) Maintenance, appearance and remodeling requirements	Not applicable	Not applicable
(n) Insurance	3.2(a), 5.3, 5.4 & 5.5	7 & 11
(o) Advertising	3.1, 3.10, 4.13 & 8.3	11

Obligation	Section In Franchise Agreement or Other Agreement	Disclosure Document Item
(p) Indemnification	3.2(b), 5.7, 16.1(j) & Att. 4 ¶9	11, 13 & 14
(q) Owner's participation/management/staffing	3.1 & 3.9	1 & 15
(r) Records and reports	4.5 and 5.2	21
(s) Inspections and audits	5.4	17
(t) Transfer	12	17
(u) Renewal	2.2	17
(v) Post-termination obligations	13.7	17
(w) Non-competition covenants	10.3	17
(x) Dispute Resolution	14	17
(y) Waiver of Jury Trial	14.9	17

### Item 10

### FINANCING

We do not offer direct or indirect financing. We do not guarantee your note, lease or obligation.

### Item 11

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

**Except as listed below, we are not required to provide you with any assistance.**

Before you open the franchised business, we (or our designee) will:

1. Prepare a list of your Protected Customers (Section 1.2 and Attachment 1 to the franchise agreement).
2. Provide initial training for you and your Permitted Representatives to educate you about the System (Section 4.1 of the franchise agreement). The initial training is described below.
3. Provide you with a copy of the proprietary software of our parent, WC ("Software"), and help install it on your order entry device (iPad or PC) (Section 4.9 of the franchise agreement). We further describe the Software below.
4. Lend you a copy of the Confidential Operations Manual (see Exhibit F for table of contents), and answer any questions you may have about it (Section 4.10 of the franchise agreement).
5. Designate the type of Licensed Market in which you may acquire Protected Customers (Section 1.1 and Attachment 1 to the franchise agreement).
6. Provide you with start-up materials, such as catalogs, brochures, promotional items, business cards, etc. (Section 4.13 of the franchise agreement).

During the operation of the franchised business, we (or our designee) will:

1. Use reasonable efforts to meet or exceed industry quality standards and fill rates, and to sell quality products (Section 4.4 of the franchise agreement).
2. Use reasonable efforts to provide you with mandatory specifications, standards, operating procedures and rules that we make relating to your other obligations under the franchise agreement and operation of the franchised business, as well as non-mandatory recommendations, guidelines and information (Sections 3.7 and 4.11 of the franchise agreement).
3. Provide you with a periodically updated list of Approved Winzer Products list in the Software (Section 4.11 of the franchise agreement).
4. Maintain comprehensive general liability insurance and product liability insurance, including product liability coverage on Approved Winzer Products and on Franchisee Products billed through Winzer, in amounts, and with deductibles, expiration dates, coverages and other terms as we decide, for our own and your protection. The insurance policies may list any number of beneficiaries or additional insureds. On your written request, we will provide you with copies of the policies. We may stop or change this program at any time on a minimum of 30 days' written notice to you (Section 5.5 of the franchise agreement).
5. Sell Approved Winzer Products at the prices and terms in effect when you place the order. The prices and terms will be updated and available on your order entry device (iPad or PC) and in the online PDF catalog when you place an order. You may set the price for sales of Approved Winzer Products to end users, but each order must be in the format we require. We may reject any order that is not documented in the format we require (Section 6.3 of the franchise agreement).
6. Send you a Periodic Gross Profits Statement 2-3 times a month for the Billing Period that will show your Periodic Gross Profits (Sections 6.4 and 6.5 of the franchise agreement). Currently, we transmit this statement electronically. For receivables we collect from your Protected Customers, you must indemnify us on this obligation, which may be secured in part by a security interest in certain collateral. We may collect from you under this security interest and we may file a Uniform Commercial Code Financing Statement ("UCC-1") to perfect our security interest.
7. Collect and report sales and use taxes for sales of Approved Winzer Products, not including sales and use taxes returned or credited. You must obtain any documentation we request (Section 6.7 of the franchise agreement).
8. Provide you with certain maintenance for the Software, as described below in this Item 11 (Section 1 of software license agreement, Attachment 3 to the franchise agreement).
9. Consult with groups of franchisees before making any major changes in our product line (Section 4.6 of the franchise agreement).
10. Provide you with timely, accurate and useful sales reports for the franchised business (Section 4.5 of the franchise agreement). Currently, we transmit these reports electronically.

11. Make available computer software that is useful to you in conducting the franchised business (Section 4.7 of the franchise agreement).

12. Provide you with updated product information materials on a regular basis (Section 4.8 of the franchise agreement).

13. Send you periodic updates for the Confidential Operations Manual to reflect new information, specifications or procedures (Section 4.10 of the franchise agreement).

14. Purchase your account receivables from sales of Franchisee Products for the net amount of the sale, unless we have reason to believe that the terms of sale are not commercially reasonable. For any account receivable that we purchase from you, we will use our resources to collect the debt, subject to our right to require you to repurchase the debt (Section 7 of the franchise agreement).

15. Assist you in developing a plan to sell your franchise if you notify us in writing that you wish to retire (Section 12.3 of the franchise agreement).

### Advertising and Promotion

We do not have an advertising council, and you need not participate in local or regional advertising cooperatives with other franchisees. There is no requirement that you or we spend a minimum amount on advertising. There is no advertising fund.

Except as follows, we do not place any restrictions on your advertising. You must submit to us all proposed advertising, promotional materials and other printed materials using the Marks. You must obtain our prior written approval before using any Marks in advertising or other promotional activities (Section 8.3 of the franchise agreement). You may not send advertising directly to another franchisee's Protected Customer. You may not establish or maintain a separate web site for the franchised business on the Internet or any comparable electronic network of computers and you may not otherwise offer or sell Approved Winzer Products on the Internet (Section 3.10 of the franchise agreement), but you may use our website to allow your designated customers to place orders using the Internet.

### Computer Hardware and Software

You must use the following computer hardware and software:

Hardware: In the operation of the franchised business, you must use an order entry device (iPad or PC) with adequate memory, speed and storage to run the proprietary software of our parent, WC ("Software") (described below). We highly recommend that you (and any Permitted Representatives) use an iPad, so that you are able to enter orders while you are at a customer's location. Your order entry device must have a high-speed broadband connection and battery charging equipment. We will assist you in determining the appropriate hardware and operating systems needed to support the Software. (Section 3.4 of the franchise agreement; Paragraph 4(c) of the software license agreement, Attachment 3 to the franchise agreement). Currently, we recommend an iPad Air Gen 4, iPad Pro 12.9 inch Gen 4, or iPad Pro 11inch Gen 2, with Apple Care. The order entry device is not proprietary to us. You may use any type of iPad or PC that will run the Software and any other required software and transmit orders. We estimate that the cost will range from \$1,442 to \$2,178, depending on the type of iPad or PC you purchase.

You must pay for all maintenance of your order entry device at your own expense. As of the date of this disclosure document, we do not require you to sign any hardware maintenance or support contracts with us or any 3<sup>rd</sup> party suppliers. We and WC do not guarantee, warranty, maintain or support any computer hardware in any manner. You should determine for yourself whether or not any 3<sup>rd</sup> party supplier from whom you purchase any component of your order entry device is obligated to provide ongoing maintenance, repairs, upgrades or updates to any component of your order entry device, and determine the additional cost for the services.

Software: You must use the Software (Section 3.4 of the franchise agreement). WC currently charges no fee for use of the Software, but reserves the right, on 30 days' prior written notice to you, to charge a reasonable fee for use of the Software, or to reasonably increase any fee it is then charging for use of the Software. To obtain the Software, you must sign WC's software license agreement (Attachment 3 to the franchise agreement). WC owns the Software and all data entered into the Software on all computer servers, on leased software or by any service providers. WC may provide certain maintenance for the Software as we or WC consider appropriate (including the correction of program errors and the distribution of any new releases of or modifications to the Software). There is no additional cost to you for this maintenance (Section 1 of the software license agreement). You must accept and use upgrades and changes to the Software as they become available, and you must upgrade your order entry device at your own expense (or discontinue using components of the computer) if WC releases updates or upgrades to the Software that your existing computer will not run (Section 3.4 of the franchise agreement). There is no contractual limitation on the frequency or cost of the upgrades or changes. We or WC will instruct you on how to obtain upgrades or changes, and the cost of periodic upgrades or changes. You will use the Software in sales reporting, customer order taking, and related activities. We and WC, from time to time and at any time, may access the order entry device and all data and related information in the Software, through the Internet or other means. There is no limitation on our or WC's right to access this information.

To the extent that any software we require you to use contains modules that support any personnel-related functions, such as employee timekeeping, employee scheduling and payroll processing, your use of those modules is non-mandatory. You may use those modules or alternate software to handle personnel-related functions, or you may handle personnel-related functions in any other manner that you choose.

#### Internet and Intranet

Currently, we maintain [www.winzer.com](http://www.winzer.com) as a corporate web site on the Internet, and we use other websites, digital media, services and means to advertise and promote the franchise system, and Winzer products and services. Your designated customers may use our website to place orders using the Internet.

#### Confidential Operations Manual

We will lend you a copy of our Confidential Operations Manual which contains both mandatory specifications, standards and procedures and non-mandatory guidelines and recommendations. The Confidential Operations Manual is confidential and remains our property. We may modify the Confidential Operations Manual in our discretion to reflect changes in our system, but the modifications will not alter your status and rights under the franchise agreement.



The table of contents for the Confidential Operations Manual is included in this disclosure document as Exhibit F. The Confidential Operations Manual contains 58 pages.

Training

You will receive the following initial training before you open the franchised business:

**INITIAL TRAINING**

Subject	Hours of Training		Location
	Classroom	On-The-Job	
Order Entry	4 to 6	Optional	At your location remotely, or in Plano, TX
Purchasing	½	Optional	At your location remotely, or in Plano, TX
Marketing	2 to 4	Optional	At your location remotely, or in Plano, TX
Periodic Gross Profits/Credit	1 to 2	Optional	At your location remotely, or in Plano, TX
GSA/Government Sales	1	Optional	At your location remotely, or in Plano, TX
Customer Service	1	Optional	At your location remotely, or in Plano, TX
Franchise Program	1 to 2	--	At your location remotely, or in Plano, TX
<b>Totals</b>	10½ to 16½		

Our instructors as of the date of this disclosure document included: Rick Beter (13 years of experience with us and our predecessor, and 28 years of experience with the subject matter); Chris Perry (22 years of experience with us and our predecessor, and 34 years of experience with the subject matter); Pam VanPelt (13 years of experience with us and our predecessor, and 13 years of experience with the subject matter); Stacy Spencer (10 years of experience with us and our predecessor, and 29 years of experience with the subject matter); Tina Serpico (18 years of experience with us and our predecessor, and 18 years of experience with the subject matter); Jessica Vice (9 years of experience with us and our predecessor, and 11 years of experience with the subject matter); Jason Looft (10 years of experience with us and our predecessor, and 24 years of experience with the subject matter); Jeff Stewart (19 years of experience with us and our predecessor, and 19 years of experience with the subject matter); and Lou Lessen (6 years of experience with us and our predecessor, and 33 years of experience with the subject matter); Kellee Rogillio (19 years of experience with us and our predecessor, and 19 years of experience with the subject matter); Amanda Patrick (2 years of experience with us and our predecessor, and 2 years of experience with the subject matter); Jeff Bruneau (2 years of experience with us and our predecessor, and 20 years of experience with the subject matter); Leisha Tippens (22 years of

experience with us and our predecessor, and 22 years of experience with the subject matter); Kiesha Davis (8 years of experience with us and our predecessor, and 37 years of experience with the subject matter); Kevin Hortman (4 years of experience with us and our predecessor, and 20 years of experience with the subject matter); Kathy Douglas (5 years of experience with us and our predecessor, and 20 years of experience with the subject matter); Clara Taylor (4 months of experience with us and our predecessor, and 8 years of experience with the subject matter); Colby Jordan (9 years of experience with us and our predecessor, and 15 years of experience with the subject matter); and David Cunningham (22 years of experience with us and our predecessor, and 22 years of experience with the subject matter).

The materials used in the initial training include our Confidential Operations Manual, an iPad and/or PC, our catalogs, our reports and credit policy guidelines, user guides, and other handouts.

We currently conduct the initial training at your location remotely, or at our headquarters and warehouse in Plano, Texas. The hours devoted to each subject may vary based on how quickly trainees grasp the material, their prior experience with the subject, and scheduling.

We generally provide the initial training promptly after you sign your franchise agreement, and we schedule the initial training as often as needed. You and your Permitted Representatives must attend and successfully complete the initial training to our satisfaction. The franchise agreement defines “Permitted Representatives” to be persons, other than you, involved in sales or customer contacts for the franchised business, whether as employees or as independent contractors. No other persons associated with you may or must complete the initial training. You must successfully complete the initial training promptly after signing the franchise agreement (generally within 4 weeks), and must begin operating the franchised business promptly after successfully completing the initial training (generally within 4 weeks). You may begin operating the franchised business immediately after successfully completing the initial training. The initial training includes 1½ to 2 days of classroom training on operational matters, product information, marketing techniques, basic computer operations, and other topics we select. We pay your reasonable travel, lodging and food expenses related to attending the initial training, but you must pay any other incidental expenses of attending the initial training, and the travel, lodging and food costs for your Permitted Representatives to attend the training (see Item 7). If you request, we will provide you a training program of 1 to 3 days’ duration at your location within the 1<sup>st</sup> 3 months after you begin operations, at our cost. If you request further additional assistance from us, we currently do not charge for the assistance, but we have the right to charge you a daily fee and seek reimbursement from you for our expenses.

We may periodically provide additional training meetings, and you may choose whether or not to attend these meetings at your expense. We do not currently charge for these meetings, but we have the right to charge reasonable fees for the meetings.

### Site Selection

We do not select or approve your site, nor are we obligated to assist you in selecting a site. Most franchisees operate from their home. Your license to use the Marks does not become effective, and you may not open and operate the franchised business until we notify you that you have paid the franchise fee, you and we have executed the franchise agreement and you have satisfied all of the pre-opening conditions in the franchise agreement.

## Typical Length Of Time Between Signing Agreement And Opening The Franchised Business

The typical length of time between the signing of the franchise agreement or the 1<sup>st</sup> payment of any consideration for the franchised business and the opening the franchised business ranges from immediately to about 1 week. Factors affecting this length of time usually include whether you hire personnel, or whether you operate as a sole proprietorship or form a business entity.

### **Item 12**

#### **TERRITORY**

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, from our affiliates, or from other channels of distribution or competitive brands that we control. You may not offer or sell products through the Internet, catalog sales, telemarketing or other alternate channels of distribution. However, you may offer, solicit, advertise and sell products anywhere, so long as you offer, solicit, advertise and sell only in accordance with our standards and specifications, including any restrictions on type of advertising that you may conduct; and you do not offer, solicit, advertise or sell by any means to other franchisees' Protected Customers (defined below).

#### Licensed Market

The Licensed Market is not geographical in nature, but is client-centered. The Licensed Market includes any person who is a consumer but not a Wholesaler of Approved Winzer Products or Franchisee Products in the Automotive, Chemical or Industrial Markets. The Automotive Market includes value-added, direct sales to customers who are automotive dealerships, body shops, repair shops and service centers, as well as truck, fleet and other wheeled transportation dealerships and maintenance shops. The Chemical Market includes value-added direct sales to customers who are users of bulk, liquid and aerosol chemicals for maintenance, production and repair operations. The Industrial Market includes value-added direct sales to customers who are road and structural repair and maintenance shops, plant manufacturing and production operations, water treatment, construction, mining, farming, refining, building, facilities and equipment. When you sign a franchise agreement, we will designate the type or types of Licensed Market(s) (Automotive, Chemical and/or Industrial) in which you may acquire Protected Customers.

#### Protected Customers

A Protected Customer is: 1) a pre-existing customer of yours listed on Attachment 1 to the franchise agreement, who is not a Protected Customer of another WINZER franchisee; 2) a new customer obtained by you after the franchise agreement is executed, if the customer is not then a pre-existing customer of us or a Protected Customer of another WINZER franchisee; or 3) any other customer that we, in our sole discretion, may designate.

We will not grant another franchisee the right to sell Approved Winzer Products to your Protected Customers within your designated type of Licensed Market, and we will not sell Authorized Winzer Products to your Protected Customers within your designated type of Licensed Market, except as described below:

A Protected Customer is protected only to the extent the customer and/or its purchases fall within your designated type or types of Licensed Market(s).

A Protected Customer with multiple locations (including a National Account) will be considered a Protected Customer only as to its delivery location, and will not be considered a Protected Customer as to its other locations. The customers who are eligible to purchase under our GSA Program are considered National Accounts, and we may sell directly to those customers.

If any Protected Customer is a National Account and we have reason to believe that the customer may be at risk of ceasing to do business with you or with us, or if you do not agree to honor pricing, service or other terms that we negotiated with the National Account, we may sell Approved Winzer Products to the National Account, or assign the National Account to another franchisee, and the customer will no longer be designated as your Protected Customer.

If you do not make at least 1 sale of Approved Winzer Products to a Protected Customer within any 6-month period, we, in our sole discretion, may designate that customer as no longer your Protected Customer, and may directly sell to that customer or designate that customer as a Protected Customer of another franchisee. However, this will not cause the loss of Protected Customer designation for a seasonal customer (e.g., a snowmobile repair shop), if you have advised us in advance, and we, in our sole discretion, have agreed in advance that the customer qualifies as a seasonal customer, and if you have made at least 1 sale of Approved Winzer Products to the customer within the last 9 months.

#### Performance Requirements

If you are a legal entity, you must designate an individual who is acceptable to us as an operating principal of the franchised business. You (or any operating principal) must keep regular business hours and must devote a substantial amount of personal attention and continuous best efforts to developing, managing and operating the franchised business. In order to remain a WINZER franchisee, you (or any operating principal) must meet and maintain a minimum level of sales of Approved Winzer Products that we call the Required Monthly Average, beginning the 1<sup>st</sup> full month after you sign the franchise agreement. The Required Monthly Average is a contractually-required minimum amount of sales based on the Rolling Monthly Average, as stated on Attachment 1 to the franchise agreement. Your Rolling Monthly Average is based on your Personal Annual Gross Sales amount, which in turn is based on Annual Gross Sales. These required averages are negotiated between you and us at the time you sign the franchise agreement. A sale is considered to be made to a customer when you place an order for Approved Winzer Products to be shipped to a designated purchasing location of that customer.

#### Other Rights

You may relocate the franchised business only with our consent, which we may grant or deny in our sole discretion. You do not have any options, rights of first refusal or other rights to acquire additional franchises under the franchise agreement.

#### Our Rights

We may operate businesses that sell Approved Winzer Products under the same terms and conditions as a franchise. If we identify an existing fastener, chemical, industrial, automotive



or maintenance supply business in which the principal owner does not wish to become a franchisee, we may acquire and operate the business. We may resell these businesses as franchises. Any acquisition of this kind will not affect your rights to your Protected Customers.

We may sell products that are similar to or the same as the Approved Winzer Products directly to National Accounts; or to any Wholesaler or end-user that is not a Protected Customer; or that does not fall within the Licensed Market; or under the GSA Contract. We may distribute products other than Approved Winzer Products under the same or different trademarks through alternate channels of distribution, including the Internet, to consumers, including your Protected Customers. We are not required to compensate you if we do so. We may license the use of alternative proprietary marks or methods.

### Item 13

#### TRADEMARKS

Our parent, WC, has registered the following Marks on the Principal Register of the U.S. Patent and Trademark Office (“USPTO”):

<u>MARK</u>	<u>REGISTRATION NUMBER</u>	<u>REGISTRATION DATE</u>
	1,387,833	March 25, 1986
SERVICE THAT WORKS	1,583,871	February 20, 1990
	2,156,329	May 12, 1998
	2,375,298	August 8, 2000
STARALLOYS	2,991,158	September 6, 2005
SHOP PRO	5,128,865	January 24, 2017
	5,129,129	January 24, 2017
	6,400,543	June 29, 2021

WC has filed all required affidavits and renewals for the Marks and intends to file all other required affidavits and renewals for the Marks. WC has granted us a license to use and

sublicense the use of the Marks. The term of the license is for 10 years with automatic 10-year renewals; however, the license agreement may be terminated for cause if we breach any of our duties or obligations under the license agreement and fail to cure the breach within the permitted cure period. According to the terms of the license agreement, if the license is terminated due to our default, you will continue to be able to use the Marks under the terms of your franchise agreement.

There are no currently effective material determinations of the USPTO, any Trademark Trial and Appeal Board, any state trademark administrator or any court, nor are there any pending interference, infringement, opposition or cancellation proceedings or material litigation, involving any of the trademarks in any manner that is material to the franchised business. There are no decided infringement, cancellation or opposition proceedings in which we unsuccessfully fought to prevent registration of another trademark to protect the trademark.

There are no currently effective agreements that significantly limit our right to use or license the use of the Marks in any manner that is material to the franchised business.

We license the Marks to you to identify the franchised business. You must follow our requirements when you use the Marks. You may not use the Marks or any confusingly similar word or mark as part of the name of a legal entity, a web site address, e-mail address, domain name, or in any search engine, or with any prefix, suffix or other modifying word, term, design or symbol.

We will control any administrative proceedings or litigation involving the trademarks. You must notify us immediately of any claim or infringement against the Marks and you must cooperate with us, without compensation, in any legal proceedings involving the Marks. We are not required to take any action when notified of these uses or claims. We have the sole right to determine whether to begin or defend any litigation involving the Marks and will, at our expense, control and conduct any litigation involving the Marks. We have no obligation to protect your right to use the Marks other than if you are named as a defendant in any action solely because the plaintiff alleges that you do not have the right to use the Marks, if you immediately notify us, we will defend the action and indemnify you for all damages in connection with the action.

If we decide to modify or discontinue the use of any Mark, you must comply with our directions at your expense. You will have no rights of compensation because of any modification or discontinuation of any Mark.

We are not aware of any superior prior rights in the Marks or infringing uses of the Marks that could materially affect your use, either in this state or the state where the franchised business is located.

## **Item 14**

### **PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

#### Patents

We have no patents or pending patent applications that are material to the franchise.

### Copyrights

We and WC have not registered any copyrights with the United States Copyright Office (Library of Congress), but various marketing, sales, training, management and computer software materials that we or WC have created are protected under the U.S. Copyright Act, whether or not we or WC have obtained registrations. You may use these copyrighted materials during the term of the franchise, in a manner consistent with our ownership rights, for the sole purpose of promoting the franchised business.

There are no currently effective determinations of the U.S. Copyright Office (Library of Congress) or any court, nor are there any pending infringement, opposition or cancellation proceedings or material litigation, involving the copyrighted materials relevant to your use.

There are no agreements currently in effect which significantly limit our right to use or license the use of our copyrighted materials in any manner material to the franchise. All of the disclosures in Item 13 as to claims and infringements apply to copyrights as well, provided, however, that you must modify or discontinue use of any subject matter covered by a copyright if directed by us.

We do not know of any superior rights in or any infringing uses of our copyrighted materials which could materially affect your use of the copyrighted materials.

### Proprietary Information

We have a proprietary, copyrighted Confidential Operations Manual. All documents provided to you, including the Confidential Operations Manual, are for your exclusive use during the term of the franchise, and may not be reproduced, loaned or shown to any person outside our system. You must notify us promptly if you learn about any unauthorized use of any proprietary information in the Confidential Operations Manual. We are not obligated to take any action, but may respond as we consider appropriate.

You must have each employee or independent contractor sign a Permitted Representative Confidentiality Agreement before you grant him or her access to our Confidential Operations Manual or any other proprietary and confidential information, in which he or she agrees to the confidentiality of the System, agrees not to use any information about the System for his or her own benefit without an appropriate license, and agrees not to compete in certain respects with the franchised business and other franchisees' businesses (see Exhibit H in this disclosure document).

## **Item 15**

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

You must personally operate or supervise the franchised business. If you are a legal entity, you must designate an operating principal who is acceptable to us to personally operate or supervise the franchised business. The operating principal, if any, may but is not required to have an equity interest in the franchised business. You (or any operating principal) must attend and successfully complete initial training to our satisfaction, unless you are a former WINZER sales representative. While you (or any operating principal) operate the franchised business, you may not own, operate or be involved in any business that is in competition with us, including any

business that sells products which are similar to products that are offered or could be offered by us.

Each person other than yourself involved in sales or customer contact in the franchised business, whether as an employee or as an independent contractor, must be a Permitted Representative, and must sign the Permitted Representative Confidentiality Agreement (Exhibit H in this disclosure document). You may not hire or engage a Permitted Representative if his or her involvement in the franchised business, in our reasonable judgment, would be a violation of any court order, settlement agreement, non-competition covenant or similar document. If a Permitted Representative was previously subject to a nondisclosure or non-competition agreement, we may require the Permitted Representative to sign a Permitted Representative Indemnity Agreement (see Exhibit I in this disclosure document). If the Permitted Representative refuses, we will not permit you to engage that person. You must notify each Permitted Representative on hiring or engagement that we have a franchise program. You must require and cause each Permitted Representative to comply with each term of the franchise agreement that explicitly relates to Permitted Representatives, and with each other term of the franchise agreement, and each operating procedure we establish in writing in the Confidential Operations Manual or otherwise, relating to sales, order placement, reporting, trademark use, non-disclosure and other activities involving the Permitted Representative's participation. Any violation by a Permitted Representative will be considered a violation by you.

#### **Item 16**

#### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You may sell Approved Winzer Products that are manufactured or distributed by us. Currently, you have access to our list of Approved Winzer Products through the Software (the proprietary software of our parent, WC), on your order entry device (iPad or PC) and on our website.

If you wish to sell any product that is not on the Approved Winzer Products list (known as Franchisee Products), you must request our approval, follow our procedures, and pay a Service Fee to us on the sales of Franchisee Products. You may not sell any product that is an Approved Winzer Product as a Franchisee Product.

We may change the Approved Winzer Products that you sell but we will consult with groups of franchisees before making any major changes in our Approved Winzer Product line. There are no other limits on our right to make changes in the authorized products you may sell.

You may sell to any customer, located anywhere, who is not a Protected Customer of another WINZER franchisee but if you wish to sell under the GSA Contract, you must follow our GSA/DLA/Federal Government Business Policy. Your customers are consumers, not Wholesalers, of Approved Winzer Products and Franchisee Products. You may not sell to a Wholesaler unless you follow the procedures that are designed to prevent a Wholesaler from reselling Approved Winzer Products to a Protected Customer of another WINZER franchisee. You may not enter into an agreement or other arrangement to offer and sell products that are similar to Approved Winzer Products for any other company or entity while you are operating the franchised business.



**Item 17**

**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION  
THE FRANCHISE RELATIONSHIP**

**This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.**

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
(a) Length of the franchise term	2.1	5 years.
(b) Renewal or extension of the term	2.2	If you are in good standing, you may renew for an additional 5 years. You must renew on the then-current form of the franchise agreement.
(c) Requirements for you to renew or extend	2.2	Substantially comply with franchise agreement; notify us of intent to renew at least 90 days before the expiration date of franchise agreement; pay all money owed to us, our affiliates, suppliers; sign our then-current form of franchise agreement; execute a general release.  If you seek to renew your franchise at the expiration of the initial term or any renewal term, you may be asked to sign a new franchise agreement that contains terms and conditions materially different from those in your previous franchise agreement.
(d) Termination by you	13.1	You may exercise your early voluntary termination rights only during the 1 <sup>st</sup> 6 months of your franchise. If you are a renewing franchisee or you entered into a franchise agreement in connection with the sale to us of your pre-existing business, you do not have any right to terminate before the end of the term (subject to state law).
(e) Termination by us without cause	Not applicable	We cannot terminate your franchise unless you default.

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
(f) Termination by us with cause	13.3 and 13.4	We may terminate your franchise if you: are insolvent or make an assignment for the benefit of creditors or if a proceeding is instituted against you in bankruptcy law; are convicted or plead guilty to a felony or a crime involving moral turpitude or any other crime that we believe may have an adverse impact on us, the System, the Marks, or the franchised business; submit false order forms; endorse a check made out to us; you or your heirs attempt to assign the franchise without our consent or your heirs fail to assign within 90 days after your death; misrepresent sales volumes; disclose any confidential information; misuse the System or the Marks; are involved in any act that impairs the goodwill associated with us, the System, the Marks or the franchised business; abandon the franchised business; violate any material term of the franchise agreement; fail to maintain Required Monthly Averages; fail to make a payment to us; refuse to let us audit your records (including the records of your Permitted Representatives); become involved in any act which is a detriment to the System; fail to pay 3 <sup>rd</sup> parties; fail to devote personal attention and continuous best efforts to the franchised business; fail to generate positive Periodic Gross Profits resulting in negative remuneration 3 or more times in any rolling 6-month period; are repeatedly in default.
(g) "Cause" defined – curable defaults	13.4	Subject to local law, you have 10 days to cure if you fail to make a payment to us, and you have 30 days to cure if you: violate a material term of the franchise agreement; fail to maintain your Required Monthly Average; refuse to let us audit your records (including the records of your Permitted Representatives); become involved in any act which is a detriment to the System; fail to pay 3 <sup>rd</sup> parties; fail to devote personal attention and continuous best efforts to the franchised business; are repeatedly in default.
(h) "Cause" defined – non-curable defaults	13.3	We may terminate your franchise on written notice if you: are insolvent or make an assignment for the benefit of creditors, or if a proceeding is instituted against you in bankruptcy law; are convicted or plead guilty to a felony or a crime involving moral turpitude or any other crime that we believe may have an adverse impact on us, the System, the Marks or the franchised business; submit false order forms; endorse a check made out to us; attempt to assign the franchise without our consent or your heirs fail to transfer after your death; misrepresent sales volumes; disclose any confidential information; misuse the System or the Marks; are involved in conduct that materially impairs the goodwill associated with us, the System, the Marks or the franchised business; or abandon the franchised business.
(i) Your obligations on termination/non-renewal	13.7	Pay all amounts owed to us; stop using the Marks and the System; return Confidential Operations Manual and all materials belonging to us, honor all obligations that by their nature survive termination, expiration or non-renewal of the License.

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
(j) Assignment of agreement by us	12.5	No restriction on our right to sell our assets or stock, go public, merge, acquire or be acquired.
(k) "Transfer" by you – definition	12.1	Includes transfer of any interest in the franchise agreement, the franchise, any capital or common stock in the franchisee, or all or substantially all of the assets of the franchised business.
(l) Our approval of transfer by franchisee	12.1 and 12.2	You must obtain our prior written consent for all transfers, but we will not unreasonably withhold our consent.
(m) Conditions for our approval of transfer	12.2	You must not be in default of the franchise agreement; execute a general release; transferee must exhibit ability to operate the franchised business; transferee must have adequate credit rating; transferee must have adequate financial resources; transferee cannot compete with us; transferee must sign then-current form of franchise agreement and complete our initial training; you and transferee must sign all documentation we require, and we must be satisfied with the transfer documentation.
(n) Our right of 1st refusal to acquire your business	Not applicable	Not applicable
(o) Our option to purchase your business	Not applicable	Not applicable
(p) Your death or disability	12.6	You must name a person (your "designee") who will be responsible for actively directing your affairs regarding the franchised business in the event of your death, disability or other verifiable health condition that significantly impairs your ability to operate the franchised business. Your heirs may keep or transfer business under the terms of Section 12 within 90 days from the date of your death or disability if they are not in default of the franchise agreement, sign general releases, exhibit the ability to operate the franchised business, have an adequate credit rating, have adequate financial resources, don't compete with us, complete required training, and enter into adequate assignment agreement and related documents. We must be satisfied with transfer documentation. If you fail to name a designee and your heirs fail to continue operating the franchised business or complete a transfer within 90 days from the date of your death or disability, we may terminate the franchise.
(q) Non-competition and non-disclosure covenants during the term of the franchise	10.1 - 10.3	You may not offer or sell products that are similar to Approved Winzer Products through another company during the term of the License. You may not disclose any of our confidential information during or after the term of the License. Your Permitted Representatives must sign confidentiality agreements, subject to state law (see Exhibit H in this disclosure document).
(r) Non-disclosure covenants after the franchise is terminated or expires	10.3	You may not use, or allow the use of, or communicate to others our confidential information for 1 year after termination, expiration or non-renewal of the License (subject to state law).
(s) Modification of the agreement	15.4	No modification is effective unless made in writing and signed by both you and us.

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
(t) Integration/merger clause	15.4	Only the terms of the franchise agreement, including its attachments, are binding (subject to state law). Any representations or promises outside of this disclosure document and the franchise agreement may not be enforceable.
(u) Dispute resolution by arbitration or mediation	14	All disputes must be arbitrated in Dallas County, Texas, other than any dispute involving the Marks, or your breach of confidentiality, or if we exercise our right to terminate due to your default under Section 13.3 of the franchise agreement, or if you fail to comply with post-term obligations, or if the dispute involves an asset purchase agreement entered into when you acquired your License in connection with a sale to us of some or all of your existing business. (subject to state law).
(v) Choice of forum	14.10	All disputes must be resolved in Dallas County, Texas, but actions to enforce decision of arbitrator may be brought in any court of competent jurisdiction. See state specific addenda.
(w) Choice of law	15.3	Texas law applies, except to the extent that (1) the Lanham Act or the Federal Arbitration Act governs, or (2) the Uniform Commercial Code of the state of your principal place of business controls the creation and enforcement of liens, or (3) any local law applies (see state specific addenda).

### **Item 18**

#### **PUBLIC FIGURES**

We do not use any public figure to promote our franchise.

### **Item 19**

#### **FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets if there is a reasonable basis for the information, and if the information is included in this disclosure document. Financial performance information that differs from any included in this Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet that you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting Paul Seibert, 4060 E. Plano Parkway, Plano, Texas 75074-1800 at 214-341-2122, the Federal Trade Commission and any appropriate state regulatory agencies.

**Item 20**

**OUTLETS AND FRANCHISEE INFORMATION**

**TABLE NO. 1**

**Systemwide Outlet Summary for Fiscal Years Ended July 31, 2019, 2020 and 2021**

<b>Outlet Type</b>	<b>Year</b>	<b>Outlets At Start Of Year</b>	<b>Outlets At End Of Year</b>	<b>Net Change</b>
Franchised	2019	284	287	3
	2020	287	285	-2
	2021	286	301	15
Company-Owned	2019	11	11	0
	2020	11	11	0
	2021	11	11	0
<b>Total Outlets</b>	<b>2019</b>	<b>295</b>	<b>298</b>	<b>3</b>
	<b>2020</b>	<b>298</b>	<b>296</b>	<b>-2</b>
	<b>2021</b>	<b>297</b>	<b>312</b>	<b>15</b>

**TABLE NO. 2**

**Transfers of Outlets From Franchisees to New Owners (Other than Franchisor or an Affiliate) For Fiscal Years Ended July 31, 2019, 2020 and 2021**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
California	2019	1
	2020	1
	2021	0
Georgia	2019	0
	2020	1
	2021	0
Michigan	2019	0
	2020	1
	2021	0
Minnesota	2019	1
	2020	0
	2021	0
<b>Total</b>	<b>2019</b>	<b>2</b>
	<b>2020</b>	<b>3</b>
	<b>2021</b>	<b>0</b>

**TABLE NO. 3**

**Status of Franchised Outlets  
For Fiscal Years Ended July 31, 2019, 2020 and 2021**

<b>State</b>	<b>Year</b>	<b>Outlets At Start Of Year</b>	<b>Outlets Opened</b>	<b>Terminations</b>	<b>Non- Renewals</b>	<b>Reacquired By Franchisor</b>	<b>Ceased Operations for Other Reasons</b>	<b>Outlets At End Of Year</b>
AL	2019	4						4
	2020	4						4
	2021	4						4
AR	2019	1						1
	2020	2						2
	2021	2						2
AZ	2019	4						4
	2020	4						4
	2021	4	4					8
CA */**/* **	2019	48	3				3	48
	2020	48	3				6	45
	2021	45	4				5	44
CO **	2019	3					1	2
	2020	2	1					3
	2021	3	2					5
CT	2019	3						3
	2020	3	1					4
	2021	4						4
FL	2019	20	1					21
	2020	21					1	20
	2021	21	5				1	25
GA ***	2019	17		2				15
	2020	15					1	14
	2021	14	1				1	14
HI	2019	1						1
	2020	1						1
	2021	1						1

IA	2019	1						1
	2020	1						1
	2021	1				1		0
ID	2019	1						1
	2020	1						1
	2021	1						1
IL	2019	11	1					12
	2020	12						12
	2021	13	1				2	12
IN	2019	5						5
	2020	5	1	1				5
	2021	5		1				4
KS	2019	2						2
	2020	2						2
	2021	1	1					2
KY	2019	2						2
	2020	2						2
	2021	2						2
LA	2019	2						2
	2020	2						2
	2021	2						2
MA	2019	6						6
	2020	6	1					7
	2021	7						7
MD	2019	3						3
	2020	3				1		2
	2021	2	1					3
ME	2019	1						1
	2020	1						1
	2021	1						1
MI ***	2019	7				1		6
	2020	6	1			1		6
	2021	5						5
MN *	2019	6	1				1	6
	2020	6						6
	2021	6		1				5

MO	2019	5	1					6
	2020	6					1	5
	2021	4	1					5
MS ***	2019	3	1				2	2
	2020	2						2
	2021	2						2
NC	2019	14						14
	2020	14	1					15
	2021	15	1				1	15
ND	2019	1						1
	2020	1					1	0
	2021	0						0
NE	2019	2						2
	2020	2						2
	2021	2						2
NH	2019	2						2
	2020	2						2
	2021	2						2
NJ	2019	7	1					8
	2020	8	1					9
	2021	7					2	5
NM	2019	1						1
	2020	1						1
	2021	1						1
NV **	2019	5					1	4
	2020	4						4
	2021	4						4
NY ***	2019	14	2				2	14
	2020	14	1	1				14
	2021	15	1				1	15
OH **	2019	10					1	9
	2020	9						9
	2021	9	1					10
OK	2019	6	1					7
	2020	7					2	5
	2021	6	2					8



OR	2019	2	1					3
	2020	3					1	2
	2021	2						2
PA	2019	14						14
	2020	14						14
	2021	14	2				1	15
SC	2019	3						3
	2020	3	1					4
	2021	4	1				1	4
TN	2019	3						3
	2020	3	1					4
	2021	4	1					5
TX **	2019	30	6	1			2	33
	2020	33	2				1	34
	2021	36	9	2	1		3	39
UT	2019	2						2
	2020	2						2
	2021	2	2					4
VA	2019	6						6
	2020	6						6
	2021	6						6
VT	2019	1						1
	2020	1						1
	2021	1						1
WA **	2019	4					1	3
	2020	3						3
	2021	3						3
WI	2019	1						1
	2020	1	1					2
	2021	2					1	1
PR	2019	1						1
	2020	1						1
	2021	1						1
<b>Total</b>	<b>2019</b>	<b>285</b>	<b>19</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>15</b>	<b>286</b>
	<b>2020</b>	<b>287</b>	<b>16</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>16</b>	<b>285</b>
	<b>2021</b>	<b>286</b>	<b>40</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>20</b>	<b>301</b>

\* In 2019, 2 franchisees sold their accounts to new franchisees and ceased operations of their Winzer Businesses. The franchisees who purchased the accounts are listed in the "Outlets Opened" column, and the selling franchisees are listed in the "Ceased Operations For Other Reasons" column.

\*\* In 2019, 14 franchises sold their accounts to existing franchisees, ceased operations of their Winzer Businesses for other reasons, and are listed in the "Ceased Operations For Other Reasons" column.

\*\*\* In 2020, 3 franchisees sold their accounts to new franchisees and ceased operations of their Winzer Businesses. The franchisees who purchased the accounts are listed in the "Outlets Opened" column, and the selling franchisees are listed in the "Ceased Operations For Other Reasons" column.

Note: 2021 Details for Terminations, Non-Renewals, Reacquired by Franchisor, and Ceased Operations for Other Reasons can be found in Exhibit B.

**Status of Company-Owned Outlets  
For Fiscal Years Ended July 31, 2019, 2020 and 2021**

State	Year	Outlets At Start Of Year	Outlets Opened	Outlets Re-Acquired From Franchisees	Outlets Closed	Outlets Sold To Franchisees	Outlets At End Of Year
NM	2019	1	0	0	0	0	1
	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
NV	2019	2	0	0	0	0	2
	2020	2	0	0	0	0	2
	2021	2	0	0	0	0	2
TX*	2019	8	0	0	0	0	8
	2020	8	0	0	0	0	8
	2021	8	0	0	0	0	8
<b>Total</b>	<b>2019</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11</b>
	<b>2020</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11</b>
	<b>2021</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11</b>

We have been in the fastener, chemical, industrial, automotive and maintenance supply business since March 2012. Our parent, WC, has been in the fastener and maintenance supply business since 1977, and granted franchises from 1991 to February 2012. We occasionally acquire existing businesses whose principal does not wish to operate a franchise. We operate the businesses under the same general terms and conditions as a franchised business, and may operate the businesses under trade names that generally incorporate the WINZER trade name into the business name. We may offer these businesses for resale as franchised businesses in the future.

WC owns all of the outlets in Table 4 above. The 1 outlet in New Mexico and the 8 outlets in Texas have all been re-branded under the FastServ Supply trade name. The 2 outlets in Nevada generally operate under the WINZER trade name, but sometimes operate under the A-1 Chemical trade name.

**TABLE NO. 5**

**Projected Openings as of July 31, 2021**

State	Franchise Agreements Signed But Outlet Not Opened as of July 31, 2021	Projected New Franchised Outlets in Fiscal Year Ended July 31, 2022	Projected New Company-Owned Outlets in Fiscal Year Ended July 31, 2022
All States	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>

All numbers in the Tables 1-5 above are as of July 31, 2019, 2020 and 2021, our fiscal year ends.

Exhibit A is a list of the names of the franchisee names (if applicable), outlet business addresses and telephone numbers of our franchisees, and a list of company-owned outlets, as of July 31, 2021.

Exhibit B is a list of the names, cities and states, and current business telephone numbers (or if unknown, last known home telephone numbers) of our franchisees whose franchises, in our fiscal year ended July 31, 2021, were transferred (0), terminated (4), not renewed (1), or reacquired by us (0), or who ceased operations for other reasons (20). No franchisees failed to communicate with us within 10 weeks of the issuance date of this disclosure document.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

There are no trademark-specific franchisee organizations associated with the franchise system.

No current or former franchisees have signed confidentiality clauses with our predecessor or us during the last 3 fiscal years which would restrict them from speaking openly with you about their experience with our predecessor or us.

**Item 21**

**FINANCIAL STATEMENTS**

Exhibit D includes a copy of GradeEight's guarantee of our performance under the franchise agreement.

Exhibit E includes GradeEight's consolidated audited financial statements for the fiscal years ended July 31, 2019, 2020 and 2021, and consolidated unaudited financial statement for the period from August 1, 2021 to August 31, 2021.

## **Item 22**

### **CONTRACTS**

Exhibit C includes our franchise agreement, with state riders and these attachments:

- 1 Licensed Market, Protected Customers, Operating Principal, Required Monthly Averages, Initial Franchise Fee, and Designee
- 2 Cancellation Agreement
- 3 Software License Agreement
- 4 Addendum for Transactions with Government Entities

Exhibit H includes the form of Permitted Representative Confidentiality Agreement.

Exhibit I includes the form of Permitted Representative Indemnity Agreement.

Exhibit J includes the form of Confidentiality Agreement for prospective franchisees involved in an asset purchase transaction.

Exhibit K includes a sample General Release.

## **Item 23**

### **RECEIPTS**

Exhibit M includes detachable Receipts acknowledging your receipt of this disclosure document.

## CALIFORNIA ADDENDUM TO DISCLOSURE DOCUMENT

1. Item 3 is modified to add the following paragraph:

No person named in Item 2 is subject to any currently effective order of any national securities association or national securities exchange as defined in the Securities and Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling that person from membership in such association or exchange.

2. Item 17 is amended to add:

The California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.

The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).

The franchise agreement contains a covenant not to compete that extends beyond the term of the agreement. This provision might not be enforceable under California law.

You must sign a general release if you renew or transfer your franchise. California Corporations Code §31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000 through 31516). Business and Professions Code §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).

The franchise agreement requires binding arbitration. The arbitration will occur Dallas County, Texas with the costs being borne by the prevailing party.

The franchise agreement requires litigation to be conducted in Dallas County, Texas. This provision might not be enforceable for any cause of action arising under California law.

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

The franchise agreement requires application of the laws of the State of Texas. This provision might not be enforceable under California law.

3. The California Franchise Investment Law requires that a copy of all proposed agreements relating to the sale of the franchise be delivered together with the disclosure document.
4. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
5. Registration of this disclosure document does not constitute approval, recommendation, or endorsement by the California Department of Financial Protection and Innovation.
6. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION at [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

## HAWAII ADDENDUM TO DISCLOSURE DOCUMENT

- (1) Item 1 is amended to add the following:

The name and address of our agent in this state authorized to receive service of process is: the Commissioner of Securities of the Department of Commerce and Consumer Affairs, 335 Merchant Street, Honolulu, Hawaii 96813.

- (2) Item 17, Summary column for (i) is amended to add the following:

Under Hawaii law, on termination or refusal to renew the franchise, you are entitled to be compensated for the fair market value, at the time of the termination or expiration of the franchise, of your inventory, supplies, equipment and furnishings purchased from us or a supplier we designated; except that personalized materials that have no value to us need not be compensated for. If we refuse to renew the franchise for the purpose of converting your business to one we own and operate, we, in addition to the remedies described above, will compensate you for the loss of goodwill. We may deduct from the compensation reasonable costs incurred in removing, transporting and disposing of your inventory, supplies, equipment and furnishings under this requirement, and may offset from the compensation any moneys you owe us.

- (3) Item 20 is amended to add the following:

Registrations are effective for these franchises in the states of California, Florida, Hawaii, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Nebraska, New York, Rhode Island, Texas, Utah, Virginia, Washington, and Wisconsin.

Proposed registrations or filings for these franchises are or will be shortly on file in no other state.

No states have refused, by order or otherwise, to register these franchises.

No states have revoked or suspended the right to offer these franchises.

There are no states in which a proposed registration of these franchises has been withdrawn.

**HAWAII DISCLAIMER**

**THESE FRANCHISES WILL BE OR HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.**

**THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

**THIS DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.**

Registered agent in Hawaii authorized to receive service of process:

Commissioner of Securities  
Department of Commerce and Consumer Affairs  
Business Registration Division  
335 Merchant Street  
Honolulu, HI 96813



## ILLINOIS ADDENDUM TO DISCLOSURE DOCUMENT

(1) Item 17 of this disclosure document is modified to include the following paragraph at the end of the chart:

### State Law

The conditions under which you can be terminated and your rights on non-renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.

Illinois law will govern any franchise agreement if the franchisee is domiciled in Illinois or the franchise is located in Illinois where the offer is made or accepted in Illinois.

If any provisions of the franchise agreement are inconsistent with applicable Illinois state law, then Illinois law applies. Any condition, stipulation or provision purporting to bind any person acquiring any Franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act is void.

Any provision in the franchise agreement that designates jurisdiction or venue in a forum outside of Illinois is void as to any cause of action that otherwise is enforceable in Illinois, provided that the franchise agreement may provide for arbitration in a forum outside of Illinois.

## MARYLAND ADDENDUM TO DISCLOSURE DOCUMENT

(1) Item 17 of this disclosure document is modified to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought in 3 years after the grant of the franchise.

(2) Item 17 of this disclosure document, under the Summary column of part (f) , is modified to state that provisions allowing termination on bankruptcy may not be enforceable under the federal bankruptcy law (11 U.S.C. Section 101 et seq.).

(3) Item 17 of this disclosure document, under the Summary column of part (m), is modified to state that the general release required as a condition of transfer will not apply to any claim arising under the Maryland Franchise Registration and Disclosure Law.

(4) Item 17 of this disclosure document, under the Summary column of part (v), is modified to state that you may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

## MINNESOTA ADDENDUM TO DISCLOSURE DOCUMENT

(1) Item 17 of this disclosure document is modified to include the following language after “general release” in the Summary column of parts (c), (m) and (p):

(for claims except those arising under the Minnesota Franchise Act)

(2) Item 17 of this disclosure document is modified to include the following paragraphs:

With respect to franchises governed by Minnesota law, we will comply with Minn. Stats. Sec 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the franchise agreement.

Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in this disclosure document or the franchise agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

## NEW YORK ADDENDUM TO DISCLOSURE DOCUMENT

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21 ST FLOOR, NEW YORK, NEW YORK 10005. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than 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.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party 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; or is subject to any currently effective order of any

national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of Item 4:

Neither 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 U.S. Bankruptcy Code during or within 1 year after that officer or general partner of the franchisor held this position in the company or partnership.

4. The following is added to the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

5. The following is added to the end of the “Summary” sections of Item 17(c), titled **“Requirements for franchisee to renew or extend,”** and Item 17(m), entitled **“Conditions for franchisor approval of transfer”**:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

6. The following language replaces the “Summary” section of Item 17(d), titled **“Termination by franchisee”**:

You may terminate the agreement on any grounds available by law.

7. The following is added to the end of the “Summary” section of Item 17(j), titled **“Assignment of contract by franchisor”**:

However, no assignment will be made except to an assignee who in the good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

8. The following is added to the end of the “Summary” sections of Item 17(v), titled “**Choice of forum**”, and Item 17(w), titled “**Choice of law**”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

## NORTH DAKOTA ADDENDUM TO DISCLOSURE DOCUMENT

1. The Summary column of Item 17(c) of this Disclosure Document is modified to read as follows:

You may renew your license, subject to Winzer approving the location of your business during the renewal period, if you: give advance written notice of intent to renew; sign then-current form of operating agreement; have complied with modernization and replacement provisions; have been in good standing for at least 6 months; have right to maintain possession; pay renewal fee; and sign (together with each Principal Owner) general release, except as to claims arising under the North Dakota Franchise Investment Law.

2. The Summary column of Item 17(r) of this Disclosure Document is modified by adding the following sentence:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota.

3. The Summary column of Item 17(u) of this Disclosure Document is amended by adding the following sentences:

Under North Dakota law, if applicable, the site of arbitration must be agreeable to all parties and may not be remote from your place of business.

4. The Summary column of Item 17(v) of this Disclosure Document is amended to read as follows:

North Dakota law, if applicable, prohibits us from requiring you to consent to the jurisdiction of courts outside North Dakota, including courts in Texas.

5. The Summary column of Item 17(w) of this Disclosure Document is modified to read as follows:

If North Dakota law applies, the law of North Dakota.

6. If North Dakota law applies, we are prohibited from requiring you to waive trial by jury for any claims arising under North Dakota law.

## **RHODE ISLAND ADDENDUM TO THE DISCLOSURE DOCUMENT**

Item 17, Summary columns for (u), (v) and (w) are amended to add the following:

Any provision in the franchise agreement restricting jurisdiction or venue to a forum outside Rhode Island or requiring the application of the laws of a state other than Rhode Island is void as to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.



## WASHINGTON ADDENDUM TO DISCLOSURE DOCUMENT

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchise, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

**EXHIBIT A**  
**FRANCHISEES**  
**(AS OF JULY 31, 2021)**

NAME	ADDRESS				CELLPHONE
Bryan Rainwater	1912 Hwy 278 E	Cullman	AL	35055	(256) 339-4629
Mike Everett	529 County Rd. 928	Delta	AL	36258	(256) 239-9043
Jim Runyans	P.O. Box 1934	Pell City	AL	35125	(205) 420-1527
Hollis Sellow	12853 Woodhaven Dairy Rd	Silverhill	AL	36576	(251) 752-2175
Keith Schmidt	PO Box 3193	Batesville	AR	72503	(501) 940-9959
Mike Brenner	P.O. Box 964	Mabelvale	AR	72103	(501) 960-9608
Cal Evatt	1450 E. Germann Rd. #2183	Chandler	AZ	85286	(480-390-9681)
Dan Gutzwiller	4460 E Navajo Drive	Cottonwood	AZ	86326	(928) 853-5990
Clyde Funk	10508 S Tin Ln	Mohave Valley	AZ	86440	(928-577-1234
Ron Halmekangas	35021 N 12th St	Phoenix	AZ	85086	(480)-352-9119
Shelley Lahr	14869 N Skokie Ct	Phoenix	AZ	85022	(602) 909-9500
Chuck Simon (CA Territory)	1333 Sabatina St.	Prescott	AZ	86301	(310) 489-5308
Brent Kapustik	7586 E Fire Fly Way	Prescott Valley	AZ	86315	(480) 495-8422
Fred Auer	35404 N. 87th Place	Scottsdale	AZ	85266	(480) 686-6500
Joe Barnard	3231 N El Camino Rincondado	Tucson	AZ	85749	(520) 907-4778
Dave Duffy	10253 Nevada Ave	Chatsworth	CA	91311	(818) 216-5450
Oscar Buttner	4835 Sapphire Road	Chino Hills	CA	91709	(714) 322-4885
Ken Peterson	725 Mission Avenue	Chula Vista	CA	91910	(619) 838-6232
Wayne Whitley	15730 E Nelson Ave	City of Industry	CA	91744	(928) 642-3486
Michael Ross	1884 Winrow Rd	El Cajon	CA	92021	(619) 647-7992
Thomas Mulhall	722 Bounty Dr Apt 2213	Foster City	CA	94404	(415) 519-6023
Tony Maiorana	1412 Countrywood Ave #86	Hacienda Heights	CA	91745	(626) 893-9363
Morrie Lew	4575 W. 120th St.	Hawthorne	CA	90250	(310) 613-7997
Barry Glosser	18681 Spyglass Rd	Hidden Valley Lake	CA	95467	(707) 478-8974
Shawn Farrow	7511 Ohio Place	La Mesa	CA	91942	(619) 200-0427
Corinne Baker	5575 Lake Park Way Ste 100-13	La Mesa	CA	91942	(619) 670-7600
Ron Espinosa	926 Avenida Mojerca Unit N	Laguna Woods	CA	92637	(949) 874-6059
Tom DeLeone	25356 Mosswood Way	Lake Forest	CA	92630	(949) 614-3750
Jack Skie	13122 Wellington Hill	Lakeside	CA	92040	(619) 368-6809
Ethan Slapinski	209 Chesley Crt	Lincoln	CA	95648	(916) 862-1387
Kirk Minor	28 Falcon Ave	Long Beach	CA	90802	(562) 833-0380
Jim Jones	13428 Maxella Ave #352	Marina Del Rey	CA	90292	(310) 717-7436
Jaime Sanchez	27757 Aspel Rd Unit 1118	Menifee	CA	92585	(951) 529-0842
Smokey Dawson	PO Box 177	Mira Loma	CA	91752	(714) 350-9840
Brian Maltby	40055 Temecky Way	Murrieta	CA	92562	(760) 736-0010
Curt Hill	24433 Wayman St.	Newhall	CA	91321	(818) 399-7105
Mac Shamieh	18910 Mayall St	Northridge	CA	91324	(818) 636-3179

Tim Hyland	64 Crissy Place	Novato	CA	94949	(707) 318-9833
Marty Risen	3316 Par Drive	Oceanside	CA	92056	(619) 855-7575
Sean Holabird	5647 Beauregard Way	Orangevale	CA	95662	(916) 295-7714
Kevin Herrera	917 Inverness Dr.	Paso Robles	CA	93446	(805) 704-6829
Dave Gieseke	16 Cortsen Court	Pleasant Hill	CA	94523	(510) 418-6291
John Witherspoon	702 Calle Casita	San Clemente	CA	92673	(949) 246-8207
Eric Kay	6086 Crawford	San Diego	CA	92120	(619) 770-7899
Bob Giddy	555 Saturn Blvd Ste B#1293	San Diego	CA	92154	(206) 697-2310
Bob Jackson	6310 Mayo Drive	San Jose	CA	95123	(408) 482-5563
Larry Arnold	1316 Echo Valley Drive	San Jose	CA	95120	(408) 997-0538
Ramiro Rocha	649 Ventura Drive	Soledad	CA	93960	(408) 667-3768
Ed Rawlings	770 Kilkare Road	Sunol	CA	94586	(510) 681-8554
Steve Bassett	PO Box 892571	Temecula	CA	92589	(760) 521-8722
Mark Knutson	31805 Temecula Parkway, Box 130	Temecula	CA	92592	(714) 696-2049
Brian Shaw	32326 Cercle Latour	Temecula	CA	92591	(951) 313-4389
Alec Aguilera	17252 Hawthorne Blvd. #119	Torrance	CA	90504	(909) 278-3262
Bret Fiege	690 Fawn Glen Drive	Tracy	CA	95376	(415) 385-9804
Jeff Finkelstein	1320 Glenavon Avenue	Venice	CA	90291	(818) 472-8222
Jared Verhoeven	437 Coronado St.	Ventura	CA	93001	(805) 746-3753
Mike Kalicki	35659 Aster Dr	Wildomar	CA	92595	(760) 250-9119
Dirk Bosley	2951 E. Wwy 50 Box 9	Canon City	CO	81212	(719) 280-3553
Steve Henry	206 Frontier St	Grand Junction	CO	81503	(970)701-1325
Scott Brown	PO Box 3508	Grand Junction	CO	81502	(916) 803-0432
Paul Callanan	302 East Cleveland	Lafayette	CO	80026	(720) 890-4304
Jeff Hruby	1456 E 135th Ave	Thornton	CO	80241	(303) 668-8431
Bernie O'Donnell	205 Castle Road	Bristol	CT	06010	(860) 250-8974
Frank Guerrero	205 Countryside Dr.	Rocky Hill	CT	06067	(860) 808-6244
Charlie Trombley	113 Florida Rd	Somers	CT	06071	(860) 830-3703
Joel Jacob	54 Wedgewood Rd Unit D	Stratford	CT	06614	(203) 257-0058
Candace Miranda	3850 NE 86th LN	Anthony	FL	32617	(419) 345-8284
Larry Preston	7414 SE 114th LN	Belleview	FL	34420	(352) 895-0472
Terry Madden	2107 St. Andrews Dr	Cantonment	FL	32533	(850) 324-9466
Terri Adams	340 Lake Kathryn	Casselberry	FL	32707	(407) 620-5301
Jennifer Wynn	3951 Pepper Place	Cocoa	FL	32926	(321) 917-1937
Frank Perez	4023 Northwest 87th Ave	Cooper City	FL	33024	(954) 483-5183
Robert Delgado	10550 W State Rd 84 Lot 185	Davie	FL	33324	(305) 495-0048
Steve Stars	2464 Ivy Ford Lane	Jacksonville	FL	32223	(904) 607-0726
Dave Woodruff	3786 Eagle Isle Circle	Kissimmee	FL	34746	(803) 422-5352
Michele Thompson	2641 Reagan Trail	Lake Mary	FL	32746	(321) 231-5665
Tracy Eldridge	16040 Ridgewood Ave	Montverde	FL	34756	(954) 702-1433
Eddie Eldridge	P.O. Box 560033	Montverde	FL	34756	(407) 467-8301
Rose Corso	461 Granada Street	New Smyrna Beach	FL	32169	(386) 566-4393
Chris Graham	120 Ventosa Place	Nokomis	FL	34275	(941) 724-4685

Michael James	3727 East Esther	Orlando	FL	32812	(407) 340-1565
Aaron Safford	6526 Sugarbush Drive	Orlando	FL	32819	(407) 222-1059
Arlene Nappi	8023 Mockernut Ln.	Port Richey	FL	34668	(727) 514-4362
Jonathan Iser	775 Fruit Cove	Saint Johns	FL	32259	(386) 983-1391
Karen Rappaport	4400 Baycedar Ln	Sarasota	FL	34241	(941) 232-3331
Andy Spetalnick	304 Polaris Drive	Satellite Beach	FL	32937	(770) 842-6853
Vince Blank	12536 Wildebeest Way	Spring	FL	34610	(813) 924-5598
Larry Andrews	13326 Moran Drive	Tampa	FL	33618	(813) 215-3027
Dustin Nichols	2106 Mesic Hammock Way	Venice	FL	34292	(941) 223-5335
Jerry LaPointe	175 Lake Meryl Dr	West Palm Beach	FL	33411	(954) 292-0491
Giedre Ganatauskaite	1423 Capri Lane Apt 3901	Weston	FL	33326	(954) 918-8555
Teddy O'Kelley	1735 Hwy 98 East	Danielsville	GA	30633	(706) 318-0371
Lee Davenport	1477 Pate Rd	Juliette	GA	31046	(478) 972-5277
Chris Whittle	315 Bell Rd	LaFayette	GA	30728	(423) 693-5014
Teresa (Clay) Adkins	210 Old Pond Road	LaGrange	GA	30241	(706) 302-1321
John Counts	5269 Luthersville Rd	Luthersville	GA	30251	(678) 972-9767
Aundi Prather	63 South Bethany Rd.	McDonough	GA	30252	(678) 449-9003
Michael Brennan	599 Toccoa River Frst	Mineral Bluff	GA	30559	(706) 455-0411
Troy Cantrell	6392 Yellow Creek Rd	Murrayville	GA	30564	(770) 287-5439
Kerry Henson	95 Kelley Lane Terrace	Newnan	GA	30265	(678) 618-2366
Herb Kimball	14 Reece Street	Rossville	GA	30741	(423) 364-8276
Kenneth Belk	43 Fiddlers Ct	Savannah	GA	31419	(912) 658-3687
Bill Morrow	88 Cedar Drive	Watkinsville	GA	30677	(706) 540-1103
Dennis Farmer	706 Scruggs St	Waycross	GA	31501	(912) 617-0200
Gary Hendershot	87-1080 Huamoa St	Waianae	HI	96792	(808) 630-4719
Dan Christensen	2200 E. Oakridge St.	Boise	ID	83716	(208) 761-5799
Nick Mastro	886 Pine Hill Dr	Antioch	IL	60002	(224) 715-3542
Kelle Mulligan	713 N Dixon Ave	Dixon	IL	61021	(815) 378-5821
Mike Jarman	17279 Warford Road	Grafton	IL	62037	(618) 304-0610
Mark Demian	2408 E 2350th Rd	Marsellies	IL	61341	(815) 258-1572
Dale VanDerVliet	11627 East Gregg Blvd.	Momence	IL	60954	(815) 353-3136
Sean Mulligan	201 Nancy Street	Mount Morris	IL	61054	(815) 289-0421
Melissa Nelson	7748 W. Winona St	Norridge	IL	60706	(847) 207-0156
Brian MonteMayer	4425 Adele Lane	Oak Forest	IL	60452	(708) 774-2759
Mike Low	412 E Kyle	Ogden	IL	61859	(217) 369-0382
Tony Rubens	333 Busse Hwy, POBox 42	Park Ridge	IL	60068	(312) 218-6606
Mark Poynor	115 W. Main Street, Suite 200	W Dundee	IL	60118	(847) 494-6290
Bill Leonard	108 E. Burlington Ave.	Westmont	IL	60559	(630) 247-7173
Mark Hupfer	2489 Turning Tree Drive	Nashville	IN	47448-7821	(317) 502-6214
Chuck Reed	2410 Valley Road	Shelbyville	IN	46176	(317) 446-9130
Brad Middleton	3465 E Goldenrod Ave.	Terre Haute	IN	47805	(812) 236-2890
Jerome Rinehart	2611 S. Sievers Rd.	Vincennes	IN	47591	(812) 881-0985

Charles Cox	4254 N Eagle Lake Ct	Bel Aire	KS	67220	(316) 570-4223
Craig Simon (MO Territory)	15831 Kenneth Rd.	Stanley	KS	66224	(816) 679-4956
Marvin Chrisman	400 S. Grove St	Yates Center	KS	66783	(316)833-6656
Bobby Stevens	5473 Paris Pike	Georgetown	KY	40324	(732) 778-0669
Chris Sauer	7807 Watering Place	Louisville	KY	40291	(502) 817-4914
Ed Price	PO Box 126	Ama	LA	70031	(504) 415-8412
Tim Matthews	30070 Oak Shadow Dr	Denham Springs	LA	70785	(225) 921-1348
Tim Gould	740 Maple Road	Longmeadow	MA	01106	(413) 427-3109
Mike Corbett	PO Box 853	Marlborough	MA	01752	(508) 361-8269
Maryanne Thurrott	150 Mystic St	Medford	MA	02155	(781) 690-6652
Ken Powtak	828 Walnut Street	Newton	MA	02459	(617) 784-8806
Eddie Beatrice	50 Mount Vernon St., Unit 34	North Reading	MA	01864	(781) 439-2299
Steve Gendron	879 Front Street	So. Weymouth	MA	02190	(617) 901-1482
Richard Harris	270 South Street	W Bridgewater	MA	02379	(508) 561-0142
Steven Ellis (NH Territory)	65 Whitney Ave	Westwood	MA	02090	(781) 589-5999
Donna Hughes	29799 Apple Drive	Cordova	MD	21625	(443) 786-2291
Kevin DiMisa	6171 Osprey Ridge Dr	Mt. Airy	MD	21771	(240) 441-7487
Bob Chapman	2607 Clarion Court #102	Odenton	MD	21113	(301) 351-5149
Don Monk	39 Walker Hill Road	Temple	ME	04984	(207) 491-1828
Phil Spiess	7244 Kettle Lake Drive	Alto	MI	49302	(616) 446-9070
Todd Coy	4129 Crandall Rd.	Howell	MI	48855	(517) 861-0399
Monica Bethuy	9783 Marine City Hwy	Ira Township	MI	48023	(586) 256-4190
Bob Lutz	1761 Parish Rd	Kawkawlin	MI	48631	(989) 460-7720
Rick Dobberstein	3729 East Territorial Road	Pleasant Lake	MI	49272	(517) 740-4035
Jim Etterman	1350 Hillview Forest Road N	East Gull Lake	MN	56401	(320) 267-6679
Barry Kline	2430 Lamplighter Lane	Golden Valley	MN	55422	(612) 720-5907
Dominic Minor	3125 Longfellow Ave Apt #2	Minneapolis	MN	55407	(763) 742-4200
Ken Christen	740 N. 27th Avenue	St. Cloud	MN	56303	(320) 266-1330
Jerry Larson	11411 Ferman Avenue SW	Waverly	MN	55390	(612) 701-9398
Tim Smith	4347 NW County Rd 17402	Adrian	MO	64720	(816) 382-8864
Kevin Tomc	10920 N Wabash	Kansas City	MO	64155	(816) 665-9875
Steven Heaton	1142 North Geyer Rd	Kirkwood	MO	63122	(314) 494-5335
Lloyd Pierson	P.O. Box 538	Lamar	MO	64759	(417) 437-2714
Mike Watson	366 West Petross	Pearl	MS	39208	(601) 672-2771
Elizabeth Webb	105 Hawthorne Ridge	Ridgeland	MS	39157	(601) 506-2709
Reda Hearn	4309 Woodglen Lane	Charlotte	NC	28226	(704) 839-5519
Vince Nelson	157 Bay Dr	Chocowinity	NC	27817	(252) 347-2680
Darren Neely	4403 Parker Ct	Farmville	NC	27828	(252) 413-9467
Rick Plumley	509 Holland Hill Drive	Goldsboro	NC	27530	(919) 705-4058
Donat Roux	301 Brantwood Drive	Goldsboro	NC	27534	(919) 344-3457
Larry Fields	5303 Ventura Drive	Greensboro	NC	27406	(336) 337-0777
Rick Matthews	2303 Clacie Lane	Liberty	NC	27298	(336) 953-7840

Michael LeFlore	532 Foxfield Lane	Matthews	NC	28105	(704) 408-6411
Meg Denton	1508 Cedar Pointe Dr	Mebane	NC	27302	(336) 263-8337
Ernest (Algie) Jones	1918 Algie Road	Nashville	NC	27856	(252) 885-0686
John Trundle	9501 Bells Valley Dr	Raleigh	NC	27617	(919) 796-9553
Carl Scott Wood	P.O. Box 91	Red Oak	NC	27868	(252) 567-5450
Kirk Hager	107 Brookmead Drive	Statesville	NC	28625	(704) 657-7819
Lee Haywood	7203 Mackintosh Place	Summerfield	NC	27358	(336) 339-3286
Randall Spiva	4871 Friendship-Ledford Rd	Winston-Salem	NC	27107	(336) 978-6006
Mark Foglesong	9300 Benziger Drive	Lincoln	NE	68526	(402) 430-4013
Tim Shriver	11715 Jackson Road	Omaha	NE	68154	(402) 630-0603
Randy Perkins	66 Calvert Circle	Manchester	NH	03103	(603) 345-0656
Buck (Christian) Hendry	203 Spring Hill Rd	Frenchtown	NJ	08825	(908) 391-4361
Joe Vandergrift	116 West Linden Ave	Lindewold	NJ	008021	(609) 502-8738
Rod Glockner	538 Waterside Blvd	Monroe Township	NJ	08831	(201) 314-8334
Mary Mongiardini	8 Intercoastal Way	Point Pleasant	NJ	08742	(732) 245-9710
Ron Griebell	20 First Street	South River	NJ	08882	(908) 731-1941
Mark Mares	1628 22nd Ave SE	Rio Rancho	NM	87124	(505) 450-8489
JoAnn Graves	1139 Light Sky Ave	Henderson	NV	89074	(702) 372-3991
Craig Morrill	3690 Greenfield Lakes St	Las Vegas	NV	89122	(702) 480-7670
Russ Ramsey	7310 Smoke Ranch Rd. Unit #U	Las Vegas	NV	89128	(702) 232-0717
Annette Scaldeferri	126 Chatara Way	Las Vegas	NV	89148	(702) 845-3515
Lee Benmayor (CA Territory)	452 E Silverado Ranch Blvd #126	Las Vegas	NV	89183	(714) 612-9003
Timothy Rogers	P O Box 23	Alton	NY	14413	(585) 739-0542
Joseph Lufkin	19 Kinney Road	Argyle	NY	12809	(518) 361-9981
Mark Surman	94 West Ave	Arkport	NY	14807	(585) 770-0841
Frank Morrissey	9261 4th Ave Apt 2R	Brooklyn	NY	11209	(347) 863-6426
Jim Pulver	14 Holiday Harbour	Canandaigua	NY	14424	(585) 455-8052
Mike Dantone	1018 Commack Rd	Dix Hills	NY	11746	(631) 877-2293
Bruce Hysten	106 Woodberry Lane	Fayetteville	NY	13066	(315) 523-0168
David Folina	6 Jonah Circle	Florida	NY	10921	(845) 674-2341
Mike Cannon	4592 Winding Woods Lane	Hamburg	NY	14075	(716) 998-1175
Dave Ringel	98 Perrine Pike	Hillsborough	NY	08844	(908) 334-7701
Rich Ramoska	75 Smith Street	Lake Grove	NY	11755	(631) 379-3753
John Houck	428 Union Valley Rd	Mahopac	NY	10541	(914) 573-6690
Manny Rodriguez	142 Smith Street	Peekskill	NY	10566	(914) 433-1551
Chris DiMaggio	c/o Jane McGowan 28 Quebec Drive	South Huntington	NY	11746	(631) 421-4545
Josh Cohen	20A Midland Ave	White Plains	NY	10606	(917) 312-1827
Mike Petite	621 Cherry Park Oval	Aurora	OH	44202	(216) 408-7036
Gary Kinniard	2010 Hyatts Road	Delaware	OH	43015	(614) 581-1818
Eric Montgomery	7791 Samberly Road	Dublin	OH	43017	(614) 783-8677
Edward Dye	35310 Clay Bank Road	Logan	OH	43138	(740) 343-3365
Kathy Dennis	2019 Taft Ave	Lorain	OH	44055	(440) 258-1886

David Davies	7437 Essex Dr	Mentor	OH	44060	(216) 780-2215
Greg McFarland	7871 Meyers Road	Middletown	OH	45042	(937) 371-0732
Jack Schwab	5950 Valley Parkway	North Royalton	OH	44133	(440) 823-7970
Doug Beechler	2903 N State Route 72	Sabina	OH	45169	(740) 406-8360
Michael McWhorter	3159 Bear Hollow Road	Uniontown	OH	44685	(330) 573-5457
Larry Chadwell	9292 S 256th E Ave	Broken Arrow	OK	74014	(918) 706-8869
Steven Vonigas	1504 S. Magnolia Ave	Broken Arrow	OK	74012	(918) 693-5250
David Erwin	1411 Paradise Parkway	Claremore	OK	74017	(918) 691-6771
Brock Kauk	207 Clayton Rd	Elk City	OK	73644	(580) 821-4413
Dennis Gelonek	PO Box 146	Fairland	OK	74343	(316) 650-6208
Carl Wiles	P.O. Box 1008	Shady Point	OK	74956	(918) 658-8180
Terry Sims	1907 North Lark	Weatherford	OK	73096	(580) 302-0147
Mark Morrow	1214 Summertown Place	Yukon	OK	73099	(580) 606-2159
Scott Lee	12913 SW Bedford St	Tigard	OR	97224	(503) 519-8746
Ty Hollister	P.O. Box 503	Troutdale	OR	97060	(503) 661-5088
Keith Hohl	443 Hoch Road	Blandon	PA	19510	(610) 780-7975
William Fischer	1913 Conestoga Rd	Chester Springs	PA	19425	(484) 680-8380
Mary Waters	1800 White Oak Circle	Dauphin	PA	17018	(717) 439-7157
Roy Kavcsak	476 Dale Drive	Erie	PA	16511	(814) 403-3178
Brian Buchert	218 E. Buchert Rd	Gilbertsville	PA	19525	(610) 413-6835
Jolene Blong	143 N. Llanwellyn Avenue	Glenolden	PA	19036	(610) 389-9907
Timothy Scott	783 Hecla Rd	Mt Pleasant	PA	15666	(724) 757-2831
David Albanesius	195 Osborne Street	Philadelphia	PA	19128	(215) 480-7752
Steve Maniglia	1007 Homer Avenue	Pittsburgh	PA	15237	(412) 352-1284
Bob Wize	123 Oakwood Rd	Pittsburgh	PA	15237	(412) 996-0956
Chris James	1505 Litchfield Rd	Sayre	PA	18840	(570) 423-5007
Bob Neubert	88 Cowpath Road	Telford	PA	18969	(215) 534-2499
Steven Neubert	1005 River Road	Upper Black Eddy	PA	18972	(610) 428-2155
Steven Brown	723 Joseph Ave	Warminster	PA	18974	(267) 767-7193
Brad Dunbar	1011 Squires Dr	West Chester	PA	19382	(610)283-5386
Emiliano Reyes	Calle Amapola 3D 39 Lomas Verdes	Bayamon	PR	00956	(787) 614-0150
Greg Belle	117 Eisenhower Street	Easley	SC	29642	(864) 787-3977
Jeff Rosenberg (GA Territory)	3040 Walking View Ct	Graniteville	SC	29829	(678) 485-6697
Mark Mahaffey	118 Oak Wind Circle	Greer	SC	29651	(864) 590-0832
Michael Sharpe	1580 Mike Stuck Rd	Little Mountain	SC	29075	(803) 414-4835
Rudy Krevolin	3841 Masters Court	Myrtle Beach	SC	29577	(845) 489-3044
Don Manley (TX Terrotory)	10255 Echo Valley Ct.	Rapid City	SD	57702	(973) 650-2079
Michael Catapano	106 Barcelona Ct	Ashland City	TN	37015	(615) 587-6447
Mark Godfrey	842 Pine Hills Road	Humboldt	TN	38343	(731) 618-2656
Doug Young	10823 Carmichael Rd	Knoxville	TN	37932	(865) 680-1181
Karl Miller	7108 Autumn Forrest Dr	Memphis	TN	38125	(901) 644-9605
Lea Hunter	105 Christi Place	Pleasant View	TN	37146	(615) 943-8303

Michael Robertson	186 County Road 1556	Alba	TX	75410	(817) 521-4455
Frelon Parmer	1107 Thoreau Ln	Allen	TX	75002	(214) 287-7424
Tony Poynor	PO Box 8840	Bacliff	TX	77518	(832) 578-3981
Barry Sheffield	1050 Park Meadow Dr	Beaumont	TX	77706	(409) 781-9086
Jaime Swift	105 Ridges End	Boerne	TX	78006	(575) 639-1081
Darin McNeil	30737 Deerfield Trc	Bulverde	TX	78163	(210) 260-0212
Danny Tidwell	5928 Whisper Lane	Chandler	TX	75758	(903) 330-6874
Mickey Stowell	1028 Cloverdale Ln	Desoto	TX	75115	(714) 330-0881
Dan Murphy	11524 Garibay Court	El Paso	TX	79936	(915) 479-7086
Tommy Jordan	2421 Scottswood	Garland	TX	75041	(469) 766-7380
Mike Lloyd	1819 Dunn St	Grapevine	TX	76051	(817) 691-1113
Kari Roush	415 Corsicana St	Hillsboro	TX	76645	(254) 266-0508
Robert Moore	301 PR 326	Hillsboro	TX	76645	(254) 580-3341
Jim Cattan	15907 N Barkers Landing Rd	Houston	TX	77079	(713) 582-3303
Darrell Johnston	8316 Hiltoncrest	Houston	TX	77064	(281) 703-0250
Aaron Kendrick	445 Shade Tree Circle	Hurst	TX	76054	(817) 988-6329
Joe Phillips	PO Box 999	Lake Dallas	TX	75065	(940) 231-9400
Russell Reeves	15058-A Country Acres	Lindale	TX	75771	(903) 780-9150
Dale Lawson	15186 CR 440	Lindale	TX	75771	(417) 259-4424
Richard Ferrill	109 E 20th St	Littlefield	TX	79339	(806) 786-2713
Clint Austin	1315 Hwy 1187 #112	Mansfield	TX	76063	(817) 319-2358
Don Foutz	PO Box 23	Millersview	TX	76862	(214) 538-5206
Greg Ford	PO	Monahans	TX	79756	(432)202-0974
Mark Konen	1028 San Pedro	New Branfels	TX	78132	(210) 997-6256
Guy Bryan	456 Rio Drive	New Braunfels	TX	78130	(830) 708-3630
Jerry Patterson	501 N Grandview Ave	Odessa	TX	79761	(432) 528-4000
AC Marquez	1327 Broughton Ave	Odessa	TX	79761	(432-352-1486
Richard Spradling	4433 FM 905	Paris	TX	75462	(214) 212-6861
Sandi Bailey	5353 Space Center Blvd Apt 4309	Pasadena	TX	77505	(713)854-6596
Fred Demmon	3230 Regal Oaks	Pearland	TX	77581	(713) 515-2845
Harry Huffman	2118 Twin Creeks Cir	Pilot Point	TX	76258	(940) 453-0767
Terry G. Beasley	201 Pecan Creek	Red Oak	TX	75154	(972) 824-9935
Mark Bray	5643 Southern Oaks	San Antonio	TX	78261	(210) 383-6499
Terry Webb	8601 E FM 3523	Slaton	TX	79364	(806) 777-7427
Mike Lively	965 Country Rd 223	Stephenville	TX	76401	(254) 433-2551
Roy Farris	2114 Fountain Dr	Sugarland	TX	77478	(832) 766-0152
Howard Westbrook	16150 Chris Lane	Tyler	TX	75703	(903) 714-5081
Eddie Matlock	9129 Eddy Water Circle	Tyler	TX	75703	(903) 245-4305
Craig Carlyle	358 East 550 S	Kaysville	UT	84037	(801) 792-5988
Kevin Tingey	1056 E 2850 N	North Ogden	UT	84414	(801) 628-2165
R D Searle	1052 West 570 North	Orem	UT	84097	(801) 319-3637
Don Duke	6679 S. 375 E.	South Weber	UT	84405	(801)791-4489
Ken Rochester	41228 Turtle Dove Circle	Aldie	VA	20105	(410) 336-2238



Gerald Huntoon	11357 Nuckols Rd Ste 109	Glen Allen	VA	23059	(804) 241-1354
Lonnie Baldwin	15067 Endstone Trail	Midlothian	VA	23112	(804) 513-1468
Billy Tucker	PO Box 537	Rustburg	VA	24588	(434) 665-0890
Roger Freeman	105 Longview Dr	Stafford	VA	22556	(703) 296-4836
Van Miles	1209 Tarington Landing	Virginia Beach	VA	23464	(757) 537-0522
Merritt Budd	806 Main St	West Rutland	VT	05777	(802) 345-3089
Kyle Mullins	P.O. Box 373	Lind	WA	99341	(509) 491-2726
Scott Griffis	PO Box 1468	McKenna	WA	98558	(253) 459-5456
Jeff Hise	19421 95th Dr SE	Snohemish	WA	98296	(206) 396-0475
Lynn Simonen	1115 Milwaukee St	Delafield	WI	53018	(414) 687-1809

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

**EXHIBIT A**

**COMPANY-OWNED OUTLETS  
(AS OF JULY 31, 2021)**

<b>Address</b>				<b>Telephone</b>
2321 Westgate Ct Ste B	Las Cruces	NM	88005	575-523-1115
3650 Post Rd	Las Vegas	NV	89120	702-385-7627
4795 Longley Lane	Reno	NV	90670	775-359-7773
2001 Rutland Dr	Austin	TX	78758	512-836-1611
1945 International Blvd	Brownsville	TX	78521	956-544-1957
1214 S Texas Ave	Bryan	TX	77803	979-779-7666
4822 Baldwin Blvd	Corpus Christi	TX	78408	361-888-4228
520 Market St	Laredo	TX	78040	956-722-0049
1117 W Hwy 83	Pharr	TX	78577	956-787-5569
1308 Summit Ave Ste 1	Plano	TX	75074	972-422-2366
200 Brooklyn Ave	San Antonio	TX	78215	210-226-0244

WC owns all of the outlets in the list above. The 9 outlets in New Mexico and Texas have all been re-branded under the FastServ Supply trade name. The 2 Nevada outlets generally operate under the WINZER trade name, but sometimes operate under the A-1 Chemical trade name.

## EXHIBIT B

### FORMER FRANCHISEES

Following is a list containing the names, cities and states, and the current business telephone numbers (or if unknown, the last known home telephone numbers) of WINZER franchisees whose franchises, in our fiscal year ended July 31, 2021, were transferred, terminated, not renewed, or reacquired by us, or who ceased operations for other reasons.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

#### TERMINATED (4)

*Jeremy French Ironton, MN (218)330-4987	*Justin Hooper Evansville, IN (618)925-4281	*Mike Russell Boerne, TX (210)827-0398	**AC Marquez Odessa, TX (432) 352-1486
--	---	--	--

\*These franchisees abandoned the business.

\*\*This franchisee abandoned the business, but recommitted to the business within the same year.

#### NOT RENEWED (1)

Jeff Buster  
Colleyville, TX  
(817) 609-9982

#### REACQUIRED (0)

None

#### CEASED OPERATIONS FOR OTHER REASONS (20)

*Troy Hudson Spartanburg, SC (864)494-4191	*Bruce Modes Wayne, NJ (201) 803-2410	*Tom Harper Bonsall, CA (760)505-1281	*Corey Fishman Algonquin, IL (224)410-1731
*Chuck Lidstrom Metamora, IL (810)919-1898	*Ron McNiel Rockport, TX (210)260-4266	**Scott Brown Grand Junction, CO (916) 482-3613	***Carl Johnson Carlsbad, CA (214) 991-1019

\*\*\*Greg Freyermuth  
Suwanee, GA  
(915) 256-7563

\*\*\*Pat McClelland  
Des Moines, IA  
(515) 564-9234

\*\*\*Peter Litito  
Wendell, NC  
(919)624-2934

\*\*\*Shawn Elliott  
Baldwinsville, NY  
(315)702-3567

\*\*\*Dennis Reinemann  
Waldo, WI  
(920) 627-3341

\*\*\*Scott Wiedmann  
Atco, NJ  
(609)238-2176

\*\*\*Art Aguirre  
El Paso, TX  
(915)204-9365

\*\*\*Ted Meyers  
Temecula, CA  
(760)500-1230

\*\*\*Gabriel Aguilera  
Torrance, CA  
(626) 831-3296

\*\*\*Matt Leverett  
Denton, TX  
(214) 317-2627

\*\*\*\*Terry Powers  
Lakewood Ranch, FL  
(636) 328-6550

\*\*\*\*Lou Auer  
Mount Pleasant, PA  
(724) 708-6200

\* These franchisees retired and sold or transferred their accounts to existing or new franchisees and ceased operations

\*\*This franchisee sold his CA franchise, moved, and opened an outlet in CO

\*\*\* These franchisees voluntarily resigned, died, or failed to start.

\*\*\*\* These franchisees became a Permitted Representative for an existing Winzer franchisee.

**EXHIBIT C**

**FRANCHISE AGREEMENT, STATE RIDERS AND ATTACHMENTS**

**FRANCHISE AGREEMENT**

BETWEEN

WINZER FRANCHISE COMPANY, INC.  
4060 E. Plano Parkway  
Plano, Texas 75074-1800

AND

\_\_\_\_\_  
Name of Franchisee

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip Code

( ) \_\_\_\_\_  
Area Code Telephone

Franchisee No. \_\_\_\_\_

EFFECTIVE DATE OF FRANCHISE AGREEMENT

\_\_\_\_\_, \_\_\_\_\_

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## ATTACHMENTS

1. Licensed Market, Protected Customers, Operating Principal, Required Monthly Averages, Initial Franchise Fee, and Designee
2. Cancellation Agreement
3. Software License Agreement
4. Addendum for Transactions with Government Entities
5. SBA Addendum

# FRANCHISE AGREEMENT

This Franchise Agreement (“Agreement”) is entered into by and between **WINZER FRANCHISE COMPANY, INC.**, a Texas corporation (“Winzer”) and \_\_\_\_\_

\_\_\_\_\_ (“you”) as of the Effective Date.

## RECITALS

All initially capitalized terms not otherwise defined are defined in Article 17 – Definitions.

Winzer® distributes and sells a wide range of products, including Approved Winzer Products, for resale to Customers in the Licensed Market. Winzer has expended time, skill, money and effort to develop a System that may be supplemented, improved upon and/or otherwise modified periodically in Winzer’s sole discretion. Winzer has identified the System by and owns certain Marks for use in connection with the System and the Business.

Accordingly, you and Winzer agree as follows:

## ARTICLE 1 - APPOINTMENT

**1.1 Grant of License.** Winzer grants to you and you accept a non-exclusive license, right, authority and obligation (“License”), subject to the terms and conditions of this Agreement, to establish and operate a single Business in the type of Licensed Market specified on Attachment 1. Winzer grants you the non-exclusive license, right and privilege to use the Marks and the System in connection with the operation of the Business, subject to the terms and conditions of this Agreement, and such terms and conditions as Winzer may periodically establish. You specifically acknowledge that the Licensed Market is not geographical and that Customers are consumers, not Wholesalers. You acknowledge that the System may be supplemented, improved upon and/or otherwise modified periodically in Winzer’s sole discretion. In the interest of preserving the integrity and reputation of the System, Winzer shall have full control and discretion over such developments, and you shall comply with all reasonable requests and requirements of Winzer as a result of such changes to the System. You expressly agree that all rights, title and interest in and to the Marks, the System and Winzer’s goodwill, are owned by Winzer and shall remain solely in Winzer and are being revealed to you solely to enable you to establish and operate the Business.

**1.2 Your Protected Customers.** Your initial Protected Customers are designated on Attachment 1. During the Term, if you are in compliance with this Agreement, Winzer will not grant a License to another Person authorizing the sale of Approved Winzer Products to your Protected Customers in the same type of Licensed Market, nor will Winzer directly sell Approved Winzer Products to your Protected Customers in the same type of Licensed Market, except as otherwise stated in this Agreement or the Manual. A Protected Customer is only deemed a Protected Customer as to your type of Licensed Market, and not to all types of Licensed Markets. Any Protected Customer with multiple locations (including a National Account) will be deemed a Protected Customer only as to its delivery location, and will not be deemed a Protected Customer as to its other locations. If your Protected Customer is a National

Account, and Winzer reasonably believes that the Customer may cease to do business with you or with Winzer, or if you do not honor all of the terms negotiated by Winzer with an National Account (including pricing, service and other terms), Winzer may directly solicit the sale of and sell products to the National Account, or Winzer may assign the National Account to another franchisee, and the National Account will no longer be designated as your Protected Customer.

**1.3 Others' Protected Customers.** Neither you nor any Permitted Representative may solicit the sale of or sell Approved Winzer Products or Franchisee Products to any Protected Customer of any other franchisee or Winzer during the Confidentiality Period. Neither you nor any Permitted Representative may sell to or distribute through a Wholesaler unless you agree to follow procedures that will prevent a Wholesaler from reselling Approved Winzer Products or Franchisee Products to any Protected Customer of any other franchisee or Winzer during the Confidentiality Period. Only Winzer may determine Protected Customer status.

**1.4 Winzer's Reservation of Rights.** In order to adequately respond to changing market conditions, in or outside of the Licensed Market, subject only to the restrictions described in this Article 1, Winzer or its affiliates may use other channels of distribution; license the use of alternative proprietary marks or methods; offer and sell or license others to offer and sell Approved Winzer Products; perform or license others to perform the same services as licensed under this Agreement, in or outside of the Licensed Market; and offer and sell Approved Winzer Products or products that are similar to Approved Winzer Products to any Wholesaler or end user in or outside of the Licensed Market.

## **ARTICLE 2 - TERM OF LICENSE**

**2.1 Term.** The initial term of your License under this Agreement ("Term") is 5 years, starting on the Effective Date.

**2.2 Option to Renew.** If you have fulfilled the following conditions to Winzer's satisfaction, you may renew your License at the end of the Term for an additional 5-year term ("Renewal Term"):

(a) You must substantially comply with this Agreement during the entire Term, including substantially satisfying all financial obligations to Winzer, its subsidiaries and affiliates, and your suppliers.

(b) You must have given written notice of renewal as provided in Subsection 2.3 of this Agreement;

(c) You must sign Winzer's then-current form of franchise agreement being offered to new franchisees, including attachments (with appropriate modifications to reflect that it relates to the renewal of your License, and provided that you will not be required to pay the then-current initial franchise fee or any renewal fee), which agreement and attachments will supersede in all respects this Agreement and any attachments. You agree that any terms of and modifications to this Agreement and any attachments expire when the Term expires, and that Winzer has no obligation to execute any similar terms or modifications for the Renewal Term. Winzer knows of no reason at this time why the renewal agreement would not contain a renewal option similar to this Section 2.2.

(d) You must sign a general release, in a form prescribed by Winzer, of all claims against Winzer, its Representatives, parent, subsidiaries and affiliates, and Representatives of Winzer's parent, subsidiaries and affiliates (except claims for current Periodic Gross Profits).

**2.3 Notice of Renewal to Winzer.** If You desire to renew the License, you must give Winzer written notice not more than 180 days and not less than 90 days prior to the expiration date of this Agreement. Within 30 days after its receipt of such timely given notice, Winzer will give you written notice of and reasons which could cause Winzer not to renew your License, including any deficiencies which require correction and a schedule for correction of the deficiencies by you. During the last 90 days before the expiration of this Agreement, Winzer has the right to withhold any unpaid remuneration equal to open customer accounts receivable balances to ensure that all accounts receivable will be paid on expiration of this Agreement. Any remaining funds will be released to you at renewal or on confirmation by Winzer that all customer accounts receivable balances and all other outstanding amounts you owe have been paid.

### **ARTICLE 3 - YOUR DUTIES AND OBLIGATIONS**

**3.1 Promotion and Management of Business.** You must attend and successfully complete the New Franchisee Training Program to Winzer's satisfaction promptly after the Effective Date, and you must begin operating the Business promptly after attending and successfully completing the New Franchisee Training Program to Winzer's satisfaction. You (or any operating principal) must devote a substantial amount of personal attention and continuous best efforts throughout the Term to developing, managing and operating the Business. You are expected to diligently promote, market and work to increase sales of Approved Winzer Products, to increase your customer base, and to provide quality service and warranty support to your customers. During the Term, you may not own, operate, have any interest in, be employed by or perform any service for any business which offers products that are the same as or similar to products that are or could be offered under this Agreement, without the prior written approval of Winzer. If Winzer offers a product as an Approved Winzer Product, you may not sell the product except through the Business as an Approved Winzer Product or otherwise in compliance with provisions in the Manual. You must personally manage all aspects of the Business and abide by the covenants in Sections 10.1 and 10.2 during the Term. If you are a legal entity, you must designate an Operating Principal on Attachment 1.

**3.2 Franchisee Products.** If Winzer does not offer a product as an Approved Winzer Product (including Special Orders), then you must request permission from Winzer to sell the product as a Franchisee Product or otherwise in compliance with provisions in the Manual. If Winzer offers a product as an Approved Winzer Product, you may not sell the product or any similar product as a Franchisee Product (see Section 3.1). You may sell Franchisee Products only under the following conditions, and such other terms and conditions as Winzer may periodically specify in its Manual or otherwise in writing:

(a) When available, you must arrange to be named as an additional insured under insurance policies maintained by the vendors of Franchisee Products.

(b) In addition to your agreement to indemnify Winzer pursuant to Section 5.7, you further agree to defend, indemnify and hold Winzer harmless from any claims, damages,

judgments and losses, including any attorney's fees, arising out of, in connection with, or as a result of any claims relating to your sales of Franchisee Products.

**3.3 Required Monthly Average.** You must meet and maintain your Required Monthly Average as set forth on Attachment 1, beginning your 1<sup>st</sup> full month and continuing throughout the Term or Winzer may terminate the License. However, if you become ill or incapacitated, on your request, Winzer will suspend your Required Monthly Average for a period of time not to exceed 90 days.

**3.4 Computer; Software; Forms.** You must own or purchase an order entry device (iPad or PC) that complies with the specifications established by Winzer, and you must sign and comply with Winzer Corporation's Software License Agreement (Attachment 3) applicable to the use of its proprietary software ("Winzer Software"). You must use all of the features of the Winzer Software in operating the Business. You must accept and use upgrades of the Winzer Software as they become available, and you must upgrade your order entry device at your own expense (or discontinue using components of the computer) if WC releases updates or upgrades of the Winzer Software that your existing computer will not run. You must use the Order Forms and invoice forms specified by Winzer.

**3.5 New Franchisee Training Program.** Unless you are a Renewing Franchisee, you must attend and successfully complete the New Franchisee Training Program to Winzer's satisfaction, before operating the Business.

**3.6 Ethics and Compliance With Laws.** You and each Permitted Representative must comply with all federal, state and local laws, including all traffic and safety regulations. You must file all federal and state tax returns and timely pay all Federal Withholding Taxes, Federal Insurance Contribution Taxes, and all other federal, state and local income sales and other taxes. You and each Permitted Representative must refrain from engaging in any deceptive or unfair trade practice or any other sales, recruiting, advertising or other practice that is unethical or that may harm Winzer, its franchisees or the goodwill or reputation associated with you, Winzer, Winzer's franchisees generally, the Marks or the System. Unethical practices include, for example, but are not limited to any dishonesty in dealing with a Customer, including theft of goods from Customer locations, submission of false or fraudulent Order Forms to Winzer, or falsely representing to Winzer that Approved Winzer Products or Franchisee Products have been ordered by a customer.

**3.7 Compliance With System and Manual.** You recognize the value of Winzer's knowledge and experience and the value of the System. You acknowledge and agree that you must operate the Business in conformity with the System. You may not offer or sell to Customers any Approved Winzer Products or Franchisee Products outside of the System or the Business except in compliance with provisions in the Manual. You must operate the Business in conformity with the operating procedures established by Winzer in the Manual or otherwise in writing. Winzer will loan you a copy of the Manual for your use during the Term. The Manual will cover certain operational aspects of the Business. Winzer will send you updates to the Manual at Winzer's discretion. Any changes made by Winzer in the Manual relating to operating issues of the Business (but not containing any new material issues) of which you are notified in any update or otherwise in writing will be binding upon you, and your signature will not be required to make such changes effective.

**3.8 Payment Obligations.** You must timely pay all amounts owed to Winzer and other creditors relating to the Business.

**3.9 Permitted Representatives.** Every person, other than you, involved in sales or customer contact in the Business, whether as an employee or as an independent contractor, must become a Permitted Representative and must sign our Permitted Representative Confidentiality Agreement. Winzer may charge you reasonable fees for products, services or training provided to your Permitted Representatives. You may not hire or engage a Permitted Representative if the Permitted Representative's involvement in the Business, in Winzer's reasonable judgment, would be a violation of any court order, settlement agreement, noncompetition covenant or similar document. You must notify each Permitted Representative, upon hiring or engagement, that Winzer has a franchise program. You must require and cause each Permitted Representative to comply with each term of this Agreement that explicitly relates to Permitted Representatives, and with each other term of this Agreement, and each operating procedure established by Winzer in writing in the Manual or otherwise, relating to sales, order placement, reporting, trademark use, non-disclosure and other activities involving the Permitted Representative's participation. In this regard, you acknowledge and agree that any Permitted Representative's acts, omissions or violations will be considered, for purposes of this Agreement, an act, omission or violation by you. Otherwise, Winzer will not exercise any control over a Permitted Representative, each of whom will be entirely under your control and direction.

**3.10 Web Site and Social Media.** You must use Winzer's approved web site. You may not maintain a separate web site for the Business on the Internet. You may not otherwise offer or sell Approved Winzer Products or Franchisee Products on the Internet except through Winzer's approved system. You may not create social media or mobile media accounts for the Business without Winzer's prior written approval.

#### **ARTICLE 4 - WINZER'S DUTIES**

**4.1 New Franchisee Training Program.** Before you begin to operate the Business, Winzer will provide a New Franchisee Training Program. The New Franchisee Training Program will include classroom training in Plano, Texas or at another location that Winzer designates. Winzer will pay your reasonable travel, lodging and meal expenses related to attending the New Franchisee Training Program, but you must pay any other incidental expenses related to attending the New Franchisee Training Program, and you must pay all travel, lodging, food and other expenses for any of your Permitted Representatives who attend the New Franchisee Training Program.

**4.2 Other Training or Assistance.** Unless you are a Renewing Franchisee, at your request, Winzer will provide you a 1-to-3-day training program at your location within the 1<sup>st</sup> 3 months after you start operation of the Business. This training will be at Winzer's cost, but if you request further additional training or assistance, you may be required to pay Winzer a reasonable daily fee and to reimburse Winzer for reasonable travel expenses incurred in connection with providing such training or assistance.

**4.3 Periodic Meetings.** Winzer may periodically hold meetings at Winzer's headquarters or at other locations designated by Winzer, for which Winzer may charge you a fee to cover its



costs. If you, or your Permitted Representatives, choose to attend, you must pay travel, lodging, meal and miscellaneous expenses for your attendees.

**4.4 Quality Assurances.** Winzer will use reasonable efforts to meet or exceed industry standards and fill rates, and to sell quality products.

**4.5 Sales Reports.** Winzer will use reasonable efforts to provide you with timely, accurate and useful reports of sales from your Business.

**4.6 Major Changes to Product Line.** Winzer will use reasonable efforts to consult with groups of franchisees before making a major shift in the Approved Winzer Product line.

**4.7 Useful Software.** Winzer will use reasonable efforts to make available to you software that is useful in conducting your Business.

**4.8 Product Information Materials.** Winzer will use reasonable efforts to provide you with updated product information materials on a routine basis.

**4.9 Order Entry Device.** Before you begin to operate the Business, Winzer will assist you in installing and configuring the Winzer Software on your order entry device (iPad or tablet PC).

**4.10 Manual.** Before you begin to operate the Business, Winzer will lend you a copy of the Manual and will answer your questions about it. Winzer will provide you with updates to the Manual on a periodic basis. The Manual contains both mandatory specifications, standards, operating procedures and rules, and non-mandatory guidelines and recommendations for the development of the Business. The mandatory provisions of the Manual, including the mandatory specifications, standards, operating procedures and rules applicable to the System, and any modifications that Winzer makes to those provisions, are provisions of this Agreement as if fully stated in this Agreement.

**4.11 Approved Products List.** Winzer will provide you with an Approved Products List. Winzer will periodically provide you with updates to the Approved Products List.

**4.12 Web Site and Electronic Communication.** Winzer may maintain a web site or web sites on the Internet or any comparable electronic network or other existing or future form of electronic communication, including, but not limited to social media and mobile media, to advertise and promote the System and the products and services marketed by Winzer and its franchisees. Any representations and warranties of any kind whatsoever, express or implied, regarding Winzer's web site(s) and/or other electronic communication, including representations and warranties as to the operation, functionality, lack of interruption or resources of the web site(s) and/or other electronic communications, are expressly excluded. Without limiting the foregoing, Winzer disclaims any warranties of merchantability and fitness for a particular purpose as to the web site(s) and other electronic communication. As to any malfunctioning of Winzer's web site(s) and other electronic communication, Winzer will not be liable to you for any consequential, incidental, indirect, economic, special, exemplary or punitive damages, such as but not limited to, loss of revenue or anticipated profits or lost business, even if you have advised Winzer that such damages are possible as a result of any breach of warranty or malfunction.

**4.13 Start-Up Materials.** Before you begin to operate the Business, Winzer will provide you with start-up materials, such as catalogs, brochures, promotional items, order pads, etc.

## **ARTICLE 5 - THE PARTIES' RELATIONSHIP**

**5.1 Independent Contractor.** Your Business is separate from Winzer's business. Under this Agreement, you are an independent contractor with entire control and direction of the Business, subject only to the terms of this Agreement and its attachments. This Agreement is not intended to, and does not create a fiduciary or other special relationship between the parties, or make any party a principal, agent, legal representative, parent, affiliate, subsidiary, joint venturer, partner, employer, joint employer, employee or servant of any other party for any purpose. In that regard:

(a) Winzer has no right or duty to operate the Business, and disclaims any liability under this Agreement for any damages arising out of the operation of the Business.

(b) You are solely responsible for recruiting, interviewing, hiring, determining the terms of employment of, compensating, keeping the time of, processing the payroll of, providing work resources to, scheduling, supervising, disciplining and firing your personnel, and your personnel are not Winzer's employees, independent contractors or agents. Winzer has no right or duty to supervise, or to exercise control over, your personnel in the operation of the Business, and disclaim any rights or responsibilities as to your personnel. You are solely responsible for consulting with your own third party human resources ("HR") service provider and/or legal counsel concerning compliance with applicable laws and regulations related to employees and independent contractors, and for complying with those laws and regulations

(c) Except as provided in this Agreement, you are solely responsible for training your personnel. To the extent that Winzer provides you with materials and other resources related to training your management and non-management personnel and maintaining the goodwill of the System and the Marks, and not in order to give Winzer control of the day-to-day operation of the Business, you must use those resources as Winzer directs. To the extent that Winzer provides you with guidelines, recommendations, materials and other resources related to training your management and non-management personnel on other matters, you may use those resources, or may choose to use alternate resources, so long as your personnel are trained to operate the Business in a System-compliant, legal and safe manner.

(d) You are solely responsible for establishing and enforcing your own policies related to personnel practices and labor relations. To the extent that Winzer provides you with guidelines, recommendations and materials related to personnel practices and labor relations, you may use those resources, or may choose to use alternate resources. You are solely responsible for consulting with your own third party HR service provider and/or legal counsel concerning compliance with applicable personnel and labor relations laws and regulations, and for complying with those laws and regulations

**5.2 Notice to Public, Etc.** During the term of the Business, you agree to hold yourself out, to the public, public officials, your suppliers and others, as an independent contractor operating the Business pursuant to rights granted by Winzer, but not jointly with Winzer. You agree to take any reasonable action that Winzer considers necessary to that end, including exhibiting notices of the parties' relationship in a conspicuous manner at the Business, and on websites, letterhead,

forms, business cards, electronic communications, advertisements, and other materials Winzer designates. Winzer reserves the right to specify and change the content and form of these notices.

**5.3 Statements to and Acknowledgements by Your Personnel.** During the term of the Business, you shall hold yourself out to all current prospective employees and independent contractors, as an independent contractor operating the Business pursuant to rights granted by Winzer, but not jointly with Winzer. You shall take any reasonable action that Winzer considers necessary to that end, including (i) stating conspicuously on each employment application that the prospective employee is applying to be your employee and not an employee of Winzer, (ii) printing your entire business name, not Winzer's brand name and/or logo, on your payroll checks and/or payroll-related communications to your personnel, and (iii) requiring your personnel to sign acknowledgements that they are not employees of Winzer, even though they are selling products and services identified by Winzer's brand name and/or logo, are receiving communications that contain Winzer's brand name and/or logo, may have applied for a job with you through Winzer's website(s), or may communicate with or receive non-mandatory feedback, coaching or recommendations from Winzer representatives in emails or other electronic or written communications, or during telephone calls, meetings or inspections. Winzer reserves the right to specify and change the content and form of these statements and acknowledgements.

**5.4 Financial Records and Reports; Inspections or Audits.** You must keep complete and accurate Business Records. You must submit to Winzer any financial or statistical reports, records, statements, tax returns or other information that Winzer deems to be required or desirable, in the forms and at the times and places Winzer states, in the Manual or otherwise in writing. On Winzer's request, you must permit Winzer and its representatives to inspect or audit your Business Records (including those Business Records kept by your Permitted Representatives) during regular business hours. During any inspection or audit, you agree to cooperate fully and to give any assistance reasonably requested. If an examination or audit discloses sales of Franchisee Products that do not comply with Sections 3.1 and 3.2, Winzer may reclassify the sale as a sale of Approved Winzer Products, and you must promptly pay any amounts owed to Winzer, plus interest in accordance with Section 16.2 of this Agreement, calculated daily from the due date until paid. If an examination or audit discloses any unreported product sales or underpayment of any fee for any reason, you must promptly pay a Service Fee on any unreported product sales or pay the deficient amount, plus interest in accordance with Section 16.2 of this Agreement, calculated daily from the due date until paid. If an examination or audit is made necessary by your failure to furnish in a timely manner any financial or statistical reports, records, statements, tax returns or other information that Winzer requests, or an audit or examination discloses more than 5% of the sales of your Business are subject to reclassification from a sale of Franchisee Products to a sale of Approved Winzer Products, you must also reimburse Winzer for the cost of having your Business Records examined or audited, including any reasonable expenses for travel, meals and similar expenses. These rights will be in addition to any other rights or remedies that Winzer has under this Agreement or otherwise.

**5.5 Insurance Procured by Winzer.** Until further notice to you, Winzer will maintain the Required Policies at its cost. Winzer may maintain the Required Policies for you or for Winzer, or for a group of WINZER franchisees as Winzer decides, and the Required Policies may list any number of beneficiaries or additional insureds as Winzer decides. You are responsible for any liability not covered by the insurance (for example, any liability under any deductible or above

any coverage limit). On your written request, Winzer will provide you with copies of the Required Policies. Winzer may stop or change this program on reasonable written notice to you.

**5.6 Insurance Procured by You.** If Winzer notifies you that it will not purchase the Required Policies, Winzer will notify you of the insurance that you must obtain and maintain, and you must obtain that insurance within 30 days of Winzer's written notice to you. As to the insurance, Winzer may specify policy amounts, deductibles, terms, expiration dates and types of risks, for your protection, and for the protection of Winzer, Winzer Corporation and each of their respective officers, directors, employees and agents. Any requirements may differ from Winzer's practices regarding the Required Policies. The insurance company writing such coverage must be rated no less than A-X by A.M. Best. The insurance policy must name Winzer, Winzer Corporation and each of their respective officers, directors, employees and agents as additional insureds for premises operations and products completed operations, and cannot contain any language that modifies the definition of "insured contract" as defined by ISO form CG 00 01. You must maintain comprehensive general liability insurance, including premises operations coverage, with limits not less than \$1,000,000 per occurrence and aggregate limits of \$2,000,000 for each aggregate and with a deductible of not more than \$2,500. Winzer may periodically increase or modify any insurance coverage requirements.

**5.7 Additional Insurance Procured by You.** You are encouraged to consider whether to obtain additional insurance of your choice. Nothing in this Agreement, including Sections 5.5 or 5.6, implies that the insurance required by Winzer will be sufficient for your needs. In addition to the insurance obtained by Winzer pursuant to Section 5.5 or by you pursuant to Section 5.6, you must also obtain the following insurance, and Winzer may periodically increase or modify these insurance coverage requirements:

(a) Automobile liability insurance, including owned, hired and non-owned vehicle coverage, with at least a \$300,000 combined single limit. You must name Winzer as an additional insured on your automobile liability policy.

(b) Worker's compensation, employer's liability and unemployment insurance, and any other insurance that may be required by law.

**5.8 Notice of Adverse Actions, Awards, Claims, Decrees, Demands, Injunctions, Orders, Proceedings, Suits or Writs.** You must notify Winzer of the commencement of any adverse action, suit or proceeding, or the issuance of any adverse award, decree, order, writ, garnishment, levy or injunction by any court, agency or other governmental instrumentality, or any other adverse claim or demand made against you, the Business, or Winzer within 3 days of receiving notice of the action, award, claim, decree, demand, injunction, order, proceeding, suit or writ. You must cooperate with Winzer in every way possible to defend such claim or demand. You must, when requested, make appearances at depositions and other court proceedings to represent or reinforce such defenses. If the defense does not involve issues concerning the operation of your Business or issues concerning the personal liability of you or any of your Permitted Representatives, Winzer will reimburse you for all reasonable out-of-pocket costs incurred in connection with assisting in the defense.

**5.9 Your Indemnification.** You must indemnify, defend and hold Winzer harmless from all claims, actions, damages, judgments, attorneys' fees and other costs, expenses and losses, arising

out of, in connection with, or as a result of your negligence, or any acts or omissions by you and any of your Permitted Representatives in connection with the operation of the Business (including any disputes between you and any Permitted Representative), including claims, damages, judgments, and losses arising from any unauthorized statements or warranties made by you with respect to the products or with respect to Winzer. You acknowledge (i) that Winzer does not have any reserved or general right to exercise control over, and does not exercise any indirect or direct control over, the day-to-day operation of the Business (including operations-related functions such as safety and security, the use of equipment and motor vehicles, and the delivery of products and services to customers, and personnel-related functions such as recruiting, interviewing, hiring, determining terms of employment, compensating, timekeeping, payroll processing, providing work resources, scheduling, supervising, disciplining and firing), (ii) that all liability arising out of the operation of the Business is therefore your responsibility, and (iii) that your indemnification obligation under this Article 5 covers any “joint employer,” “agency,” “ostensible agency” or similar claims by third parties based on the establishment or operation of the Business. You are responsible for any liability not covered by any insurance policy, whether the policy was procured by Winzer or by you. Also, you must indemnify Winzer for any expenses arising out of any claim directly or indirectly related to or in connection with Winzer’s payments to you for uncollected receivables, if the claim does not arise from the negligent or wrongful conduct of Winzer. You acknowledge that Winzer may file a Uniform Commercial Code Financing Statement (“UCC-1”), to secure your indemnification obligation.

**5.10 Winzer’s Indemnification.** Winzer will indemnify, defend and hold you harmless from and against all claims, actions, damages, judgments, attorneys’ fees and other costs, expenses and losses, arising out of actual negligence by Winzer in operating Winzer’s own business.

**ARTICLE 6 - FEES, PRODUCTS AND PERIODIC GROSS PROFITS**

**6.1 Initial Franchise Fee.** As consideration for the License granted herein, you must pay to Winzer an initial franchise fee in the amount stated on Attachment 1 on or before the Effective Date. Your initial franchise fee must be paid in cash, and is fully earned and non-refundable on the Effective Date.

**6.2 Service Fee.** You must pay Winzer a Service Fee as follows:

(a) You must pay Winzer a Service Fee equal to 14% of your Annual Gross Sales, as defined in Section 17.1(1), unless you qualify for the following reduced Service Fee Percentages based on Annual Gross Sales:

<b>Annual Gross Sales</b>	<b>Service Fee Percentage</b>
\$250,001 to \$350,000	12%
\$350,001 to \$450,000	10%

(b) If your Personal Annual Gross Sales, as defined in Section 17.1(35), are over \$450,000, you qualify for and may pay Winzer a Service Fee equal to 9% of your Personal Annual Gross Sales, in lieu of the Service Fee Percentage stated in Section 6.2(a).

(c) You must pay Winzer a Service Fee equal to 7% of the invoiced amount of your Retail Sales of Franchisee Products, as defined in Section 17.1(16).

(d) If you have pre-existing customers, for 90 days after the Effective Date, your Service Fee may be based on the Annual Gross Sales reported by your pre-existing customers. After 90 days, you must pay in accordance with this Section 6.2.

**6.3 Sale of Approved Winzer Products and Franchisee Products.** Winzer will sell Approved Winzer Products to your Customers on terms in effect when you place the order. You may set any price you choose for sales to Customers of any Approved Winzer Products, Franchisee Products and Special Orders, but Winzer may reject any order if the terms of sale do not meet Winzer's billing and collection practices, or otherwise fails to comply with this Agreement or the Manuals. Each order must be documented on an Order Form, and Order Forms must be transmitted to Winzer by computer or as Winzer may periodically specify. Winzer may reject any order that is not documented in the format required by Winzer. Winzer may periodically prescribe the format or procedures for Order Forms in the Manual or otherwise in writing. Each Order Form must sufficiently describe the Approved Winzer Products, Franchisee Products and any Special Orders, and must clearly distinguish the Approved Winzer Products from any Franchisee Products or Special Orders that may be listed on the Order Form. Only Winzer may send invoices to Customers for Approved Winzer Products, Franchisee Products and Special Orders. You will have no claim to or interest in any Winzer Receivables. You may not sell products to Customers under any other circumstances without prior written permission from Winzer.

**6.4 Periodic Gross Profits.** The Periodic Gross Profits from your operation of the Business will be the total invoiced amount of Retail Sales of Approved Winzer Products, Franchisee Products and Special Orders that are invoiced and shipped during the applicable Billing Period, minus (a) an amount equal to Winzer's then-current Franchisee Costs, (b) applicable Service Fee payments, (c) amounts due to Winzer from you for any reason, including but not limited to, promissory notes or indemnification, and (d) Franchisee Taxes. Failure by you to generate positive Periodic Gross Profits from your operation of the Business resulting in negative remuneration for 3 or more Billing Periods during any rolling 6-month period during the term of the License is grounds for default and immediate termination with notice under Section 13.3(k).

**6.5 Periodic Gross Profits Procedures.** During the Term, Winzer will send you a Periodic Gross Profits Statement for the previous Billing Period that will show the Periodic Gross Profits earned by you, less any charges, offsets or deductions.

**6.6 Credit and Collection; Deductions From Periodic Gross Profits.** Winzer's billing and collection practices affecting you and your Customers are fully described in the Manual. Your Customers are bound by the terms of their WINZER accounts. Since Winzer owns the accounts receivable from your Customers, and Winzer generally pays you before your Customer pays Winzer, Winzer reserves the right to exercise its discretion in collection of receivables and in the shipment of future orders to past-due customers. You bear the risk of uncollected and not reasonably collectible invoices. In addition to the deductions described in Section 6.4, Winzer may deduct from your Periodic Gross Profits: (a) reasonable fees for a bad check received from any Customer; and (b) the amount of any credit given by Winzer to any Customer in settlement of any complaint or return. If Winzer collects a gross amount previously deducted from your Periodic Gross Profits, Winzer will credit the amount, less Winzer's collection costs, on your next Periodic Gross Profits Statement.

**6.7 Sales Taxes.** Winzer is responsible for collecting and reporting sales and use taxes applicable to sales of Approved Winzer Products, less sales and use taxes on Approved Winzer Products that are returned or credited. You must obtain documentation that Winzer requests in connection with sales of Approved Winzer Products, Franchisee Products and Special Orders, including “resale certificates” and similar documentation from customers as to Approved Winzer Products that will be resold by customers. You must pay any Franchisee Taxes. If Winzer determines in its discretion that it must pay Franchisee Taxes on your behalf, then the amounts of Franchisee Taxes paid by Winzer will be obligations by you to Winzer, payable on demand.

**ARTICLE 7 - PURCHASES OF SELECTED FRANCHISEE ACCOUNTS RECEIVABLE FOR COLLECTIONS ONLY**

**7.1 Purpose of This Article.** This Article 7 does not apply to your Retail Sales of Approved Winzer Products, or to the accounts receivable arising from such Retail Sales. This Article 7 will govern Winzer’s purchases of your receivables arising from your Retail Sales of Franchisee Products.

**7.2 Winzer’s Discretion in Purchasing.** Winzer may purchase any Franchisee Receivables that Winzer selects, but is not required to purchase any of your Franchisee Receivables. Winzer normally will not purchase any Franchisee Receivable unless Winzer is able to sell or pledge the resulting Assigned Receivable to Winzer’s Lender in exchange for payment or loan advances from Winzer’s Lender.

**7.3 Service Fees on Franchisee Receivables.** Even if Winzer does not purchase a Franchisee Receivable, Winzer may continue to perform certain billing and collection services on all Franchisee Receivables, and Winzer will be entitled to its Service Fee on those Franchisee Receivables.

**7.4 Purchase Price for Assigned Receivables.** For each Assigned Receivable, Winzer will pay you the Net Amount of such Assigned Receivable. Winzer will include the Net Amount of your Assigned Receivable in calculating your Periodic Gross Profits.

**7.5 Routine Purchases.** You are deemed to offer to sell to Winzer all of the Franchisee Receivables you create. Although Winzer has no obligation to purchase any Franchisee Receivables under Section 7.2, all of your Franchisee Receivables will be deemed purchased by Winzer unless Winzer notifies you of any Franchisee Receivables not purchased. Winzer will provide to you a periodic statement of Winzer’s purchases of Franchisee Receivables, which will be considered correct and binding on you as an account stated unless you notify Winzer otherwise within 30 days.

**7.6 Dispositions by Winzer.** Winzer may sell or assign any or all Assigned Receivables to any purchaser, and may pledge or grant a security interest in any or all Assigned Receivables to Winzer’s Lender. You have no interest in any Assigned Receivables.

**7.7 Your Representations.** To induce Winzer to purchase Franchisee Receivables, you are deemed to make certain representations every time you create a Franchisee Receivable that Winzer may purchase. If you are unwilling or unable to make all these representations at any time when a Franchisee Receivable could be purchased by Winzer, you must notify Winzer in writing in advance of Winzer’s purchase of the Franchisee Receivable (and in any event by the

earlier of (i) the end of the Billing Period in which the sale occurred, or (ii) the 3<sup>rd</sup> day after transmitting to Winzer the Order Form related to such Franchisee Receivable) so Winzer may consider the lack of these representations in deciding whether to purchase such Franchisee Receivables. Your representations are as follows:

(a) On each sale to Winzer of a Franchisee Receivable, Winzer will be the sole owner of the resulting Assigned Receivable, free from any lien, claim or encumbrance.

(b) As to each Franchisee Receivable: (i) that the Franchisee Receivable is a valid debt based on an actual sale of goods from your own inventory; (ii) Franchisee Products that created the Franchisee Receivable were sold in the ordinary course of your Business, were ordered by, delivered to, and accepted by the customer; (iii) the customer is unconditionally obligated to pay the full Net Amount stated in the Order Form, plus shipping and handling fees, insurance charges, and taxes applicable to such sale, without offset or reduction; (iv) the Franchisee Receivable is immediately due for payment by the customer; (v) the customer has not paid anything on the Franchisee Receivable; (vi) the Franchisee Receivable will be fully paid by the customer in the normal course (and in any event, within 120 days of its invoice date); and (vii) the Franchisee Product that created the Franchisee Receivable is not an Approved Winzer Product.

**7.8 Repurchases by You.** You must repurchase all Assigned Receivables designated by Winzer if any of the following occurs: (a) Winzer receives payment on any Assigned Receivable by means of a bad check; (b) any Assigned Receivable has not been collected within 120 days after its invoice date; (c) any Assigned Receivable has not been collected 60 days after its invoice date, and Customer has a history of delinquent payments; (d) any Assigned Receivable was based on an erroneous, false or fraudulent order by you, in Winzer's good faith judgment; (e) any Assigned Receivable is uncollectible due to Customer's bankruptcy, insolvency or other circumstances, in Winzer's good faith judgment; (f) 10% or more of the Assigned Receivables due from a customer remain unpaid more than 60 days after the invoice dates; or (g) Winzer determines, or receives notice from you, that an Assigned Receivable does not conform with any of your representations in Section 7.7.

**7.9 Repurchases For Gross Amount.** Winzer will pay the Net Amount of a Franchisee Receivable when purchasing, but if it becomes a Repurchase Account, then you must pay Winzer the Gross Amount of the Repurchase Account. Winzer may deduct this from your Periodic Gross Profits. Winzer will not refund its Service Fee applicable to such account.

**7.10 Winzer Ownership.** You agree that Assigned Receivables are solely Winzer's property, and you have no claim in them. You represent that any lien or claim by any customer of yours against you will not be a lien or claim against Winzer, and will not affect the Assigned Receivables.

**7.11 No Other Liens By You.** You must not grant a security interest in your collateral without Winzer's prior written consent.

**7.12 Winzer's Collection Efforts.** Until you are notified otherwise in writing, Winzer will, on its own behalf, collect all payments on Assigned Receivables as Winzer's property, and Winzer will, on your behalf, collect all payments on Franchisee Receivables. As partial compensation,



Winzer will receive its Service Fee on all such receivables. Winzer need not make any greater collection efforts than those Winzer normally makes.

**7.13 Your Receipts.** You must receive payments on, or grant any credit or adjustment to, Assigned Receivables only in compliance with the Manual.

**7.14 Disputes.** You must immediately report to Winzer all customer disputes or any other matter affecting the value or collectability of any Franchisee Receivables, or Assigned Receivables. All such disputes must be promptly adjusted, at your own cost and expense. Winzer may, in its discretion, settle, adjust or compromise disputes relating to Assigned Receivables. Any settlement paid or credit given by Winzer to resolve such dispute will be charged to you.

## **ARTICLE 8 - PROPRIETARY MARKS**

**8.1 Grant of License.** Winzer grants you a non-exclusive license to use the Marks in operating your Business only in accordance with this Agreement. This License is non-transferable, except in accordance with Section 12.

**8.2 Rights of Winzer.** You must use the Marks in compliance with rules set forth at any time by Winzer. You may not use any Mark in connection with the sale of any unauthorized product or service or in any other manner.

**8.3 Winzer's Approval.** You must obtain Winzer's prior written approval for the use of the Marks and the WINZER name in your advertising, promotional or personal use, whether printed or written, including, but not limited to, give-aways, stationery, forms and business cards.

**8.4 Restrictions.** You must not use any Marks or any variant or confusingly similar word or mark: (a) in connection with the offer of sale of any good or service other than Approved Winzer Products; (b) in any corporate or other legal entity name; (c) with any prefix, suffix, or other modifying word, term, design or symbol; (d) in any content of any Internet web site or any Internet web page; (e) in or as part of any domain name for any Internet web site; (f) in or as part of any Internet or e-mail address; (g) in or as part of any list of names or words included in any search engine associated with any Internet web site; or (h) in any other manner that may incur any obligation or debt on behalf of Winzer.

**8.5 Ownership.** You will have no right, title or interest in or to any of the Marks except the limited right to use the Marks in accordance with the terms of this Agreement. You must not represent that you acquired any ownership in the Marks. All uses of and all goodwill associated with the Marks will be for the benefit of and the property of Winzer. You must not attribute any monetary value to goodwill associated with the Marks. You must not, during or after the Term, dispute or impugn the validity of or Winzer's rights in the Marks, do or permit any act or thing to be done in derogation of any of Winzer's rights in the Marks, or apply for, attempt to obtain or accept any registration in any of the Marks.

**8.6 Defense of Actions.** You must notify Winzer immediately of any claim or infringement against the Marks, Confidential Information or the System, and must without compensation cooperate in all respects with Winzer in any legal proceeding involving the Marks, Confidential Information or the System. Winzer will have the sole and absolute right to determine whether it will commence or defend any litigation involving the Marks, its Confidential Information or the System and, will, at its expense, control and conduct any such litigation. If you are named as a

defendant in any action solely because the plaintiff alleges that you do not have the right to use the Marks, then if you immediately notify Winzer, Winzer will defend such action and will indemnify and hold you harmless of all damages assessed against you in such action. If Winzer prevails in a suit that results in the payment of damages or costs, such amounts will be the exclusive property of Winzer. **Other than specifically stated above, Winzer makes no representation or warranty, express or implied, as to the use, exclusive ownership, validity or enforceability of the Marks.**

**8.7 Changes in Marks.** If Winzer ever decides it is advisable for you or Winzer to modify or stop the use of any Mark, you must promptly comply with Winzer's directions.

#### **ARTICLE 9 - WARRANTY**

**All Approved Winzer Products are subject to warranty and liability limitations of Winzer's written product warranty, which Winzer can modify at any time at its discretion. Winzer has the sole right to resolve all warranty claims, either directly with the customer or through you, and such action will be binding on you.**

#### **ARTICLE 10 - CONFIDENTIAL INFORMATION**

**10.1 Basic Agreement.** You acknowledge that the System involves Winzer revealing to you its Confidential Information for use only in connection with the operation of the Business. You may disclose Confidential Information during the Term only to your Permitted Representatives as needed in the Business. You must not, at any time, disclose or communicate any Confidential Information to any person outside of the WINZER franchise system. You must not, during the Confidentiality Period, use or allow the use of any Confidential Information in any manner not specifically authorized by Winzer for the benefit of yourself or any other person. You agree that use of any Confidential Information contrary to the terms of this Agreement is an act of infringement that will cause irreparable injury to Winzer.

**10.2 Permitted Representatives.** In order to protect the Confidential Information, you must require each Permitted Representative to execute Winzer's Permitted Representative Confidentiality Agreement (Exhibit H), before commencing employment or otherwise engaging in any other activities as a Permitted Representative. You must submit to Winzer a duplicate original of the executed Permitted Representative Confidentiality Agreement before the Permitted Representative commences employment or any other activities.

**10.3 Protection of the System.** You recognize your continuing obligation to use your best efforts to promote the Business during the Term and acknowledge that: certain methods of doing business and other elements comprising the System are proprietary, and have been developed by Winzer at great effort, skill, time and expense; and you will have regular and continuing access to valuable Confidential Information regarding the System. You accordingly agree to the covenants of this Article 10 in order to protect and preserve Confidential Information, the System and the identification of the Business under the Marks. You must not, without Winzer's prior written consent, directly or indirectly, for yourself or through, on behalf of or in conjunction with any person or entity:

(a) Disparage Winzer, its Representatives, the System, the Business or other Winzer franchisees, during or after the Term;

(b) Induce or try to induce any of Winzer's franchisees or suppliers, or any Customers other than your Protected Customers, to leave Winzer or cease doing business with Winzer, during the Confidentiality Period;

(c) Divert or attempt to divert any of your Protected Customers to any other company by direct or indirect inducement or otherwise, during the Term;

(d) Engage in activities other than those approved under the System; or own, operate, maintain, have any interest in, be employed by, engage in or perform any services for any business that offers or sells, or that franchises or licenses others to offer or sell, services or products to your Protected Customers that are the same as or substantially similar to Approved Winzer Products or any other products or services that were or could have been offered by you under this Agreement, during the Term.

**10.4 Remedies.** You agree that your violation of any term of this Article 10 will cause irreparable injury to Winzer for which no adequate remedy at law is available, and entitles Winzer to seek equitable and any other appropriate relief. You further agree that Winzer will be entitled to an accounting and repayment of all profits, compensation or other benefits that you have realized and/or may realize as a result of, arising out of or in connection with any such breach.

**10.5 Reduction of Covenants and Defenses.** You agree that Winzer may, in its sole discretion, reduce the scope of any covenant in this Article 10, effective immediately on written notice from Winzer, and you agree that you will promptly comply with any covenant so modified, which will be fully enforceable notwithstanding any other provision of this Agreement. You further agree that any claim you may have against Winzer, whether or not related to the Business, will not be a defense to the enforcement by Winzer of any provision of this Article 10.

#### **ARTICLE 11 - YOUR ABILITY TO PERFORM UNDER THIS AGREEMENT**

**11.1 Representations as to Existing Agreements.** You represent and agree that you will not use any confidential information or trade secret of any former employer or any other person in performing your obligations under this Agreement, and that you will not hire or engage any Permitted Representative who does not or cannot also make the same representation and agreement. You represent that you are not subject to a currently valid or effective agreement of employment or non-competition, or any other agreement, that in any way impairs your ability to enter into this Agreement or to fully perform your obligations hereunder.

#### **ARTICLE 12 - TRANSFER OF INTEREST**

**12.1 Transfer of Your Interest.** Neither you nor any individual, partnership, corporation or other entity that owns any interest in you must transfer any interest in this Agreement, or in your License or the Business, or in any capital or common stock in the License or Business, or in all or substantially all of the assets of your License or the Business (collectively the "franchise interest"), without Winzer's prior written consent.

**12.2 Conditions for Transfer.** Winzer will not unreasonably withhold its consent to a transfer, if the following conditions are met:

(a) You must not be in default of any term of this Agreement, including any obligation to pay any amount to Winzer or any of its subsidiaries or affiliates;

(b) You must execute a general release, in a form prescribed by Winzer, of all claims against Winzer and its representatives, and Winzer's subsidiaries and affiliates and their representatives (except claims for current Periodic Gross Profits);

(c) Winzer must be satisfied that the transferee (i) has the ability to successfully operate that Business, (ii) has an acceptable credit rating, (iii) has adequate financial resources and capital to operate to Business according to Winzer's requirements, and (iv) will not remain involved, directly or indirectly, in any business that in any way competes with a WINZER franchise;

(d) The transferee must execute on transfer Winzer's then-current form of the franchise agreement being offered to new franchisees, including attachments, which agreement and attachments will supersede this Agreement and any attachments, and the transferee must attend and successfully complete the New Franchisee Training Program to Winzer's satisfaction;

(e) You and the transferee must sign the documents necessary to transfer to the transferee any agreements or other documents that Winzer may reasonably require; and

(f) Winzer must be satisfied with form and content of any transfer documents on any transfer permitted under this Article 12.

**12.3 Retirement Assistance.** If you notify Winzer in writing that you desire to explore retirement options, then Winzer will use reasonable efforts to assist you in developing a plan for selling the Business, which may include:

(a) Assistance with transaction negotiations, and financial redistribution of monies between buyer and seller (provided, however, Winzer is not responsible for any costs of assessing the value of the Business or expenses for your legal counsel);

(b) A contract/repayment term that coincides with the Term;

(c) A revertible clause with the first right of refusal going to you, the seller.

**12.4 Security Interest.** You may not grant or receive a security interest in the Business or this Agreement without Winzer's prior written consent.

**12.5 Transfer by Winzer.** Winzer may assign this Agreement and its rights hereunder to any person in whole or in part from time to time. Without limitation, Winzer may sell its assets or stock, the Marks, or its System to a 3<sup>rd</sup> party; may go public; may engage in a private placement of its securities; may merge, acquire other corporations, or be acquired by another corporation; which could have the effect of Representatives or independent contractors of such former competitor calling on your Protected Customers; may undertake a recapitalization, spinoff, leveraged buyout or other financial restructuring; and, with regard to any or all of the above, you waive any claims related thereto, to the loss of said Marks (or any variation thereof) and/or the loss of association with or identification of Winzer as Winzer hereunder. In any assignment by Winzer, Winzer need not remain in its current business or distribute products. Nothing requires Winzer to continue to offer franchises.

**12.6 Your Death or Disability.** You must name a person (your “Designee”) on Attachment 1 who is responsible for actively directing your business affairs regarding the Business in the event of your death, disability, or other verifiable health condition that significantly impairs your ability to operate the Business. Under such conditions, Winzer will work with your Designee and permit your heirs, legatees, personal representative, conservator or guardian, as applicable, to keep or transfer the Business within 90 days from the date of such event, subject to compliance with Section 12.2. If you fail to name a Designee and/or your heirs, legatees, personal representative, conservator or guardian, as applicable, fail to continue operating or transfer the Business within 90 days from the date of the event, Winzer has the right to terminate the franchise without giving them an opportunity to cure.

**12.7 Your Transfer to a Legal Entity.** If a proposed transfer is to a legal entity controlled by you that is formed for the convenience of ownership, Winzer’s consent to the transfer may, in its sole and absolute right, be conditioned on the following requirements:

- (a) The legal entity’s activities will be confined exclusively to operating the Business.
- (b) You will own a majority stock interest or partnership interest in the transferee legal entity, and will act as its principal operating officer, member, shareholder or partner (as designed on Attachment 1.)
- (c) Copies of the transferee legal entity’s Certificate and Articles of Incorporation, Certificate and Articles of Organization, Certificate and Agreement of Partnership, By-Laws, resolution authorizing entry into this Agreement and any other significant governing documents, promptly will be furnished to Winzer and each stock certificate, evidence of ownership, or certificate of interest will have conspicuously endorsed on its face a statement in a form satisfactory to Winzer that it is held subject to, and that further transfer is subject to, all restrictions on transfers in this Agreement.
- (d) You will maintain a then-current list of all principals and beneficial owners, and periodically furnish the list to Winzer on request.
- (e) You will sign transfer documents as reasonably requested by Winzer.

## **ARTICLE 13 - DEFAULT AND TERMINATION**

**13.1 Early Voluntary Termination By You.** You may make an early voluntary termination of your License only as stated in the Cancellation Agreement (Attachment 2). You may not make an early voluntary termination if you are a Renewing Franchisee, a Transferee, you enter into this Agreement in connection with a sale to Winzer of some or all of your pre-existing business, or if Winzer pays any consideration to you in connection with the granting of your License.

**13.2 Other Termination By You Prohibited.** You acknowledge that termination of your License during the Term, other than as outlined in Section 13.1 or due to an approved transfer under Article 12, will cause Winzer actual damages comprised of losses of revenue and future profits, lost opportunity, costs, adverse effects on Winzer’s strategic plans, additional costs to administer the System, costs of training, and costs to identify and find new or replacement franchisees. You acknowledge that the fact of these actual damages is certain and reserve to Winzer the right to recover such actual damages if you terminate your License except in accordance with the terms of this Agreement.

**13.3 Immediate Termination, with Notice.** Winzer may terminate your License, without giving you an opportunity to cure, effective immediately upon your receipt of written notice, if:

(a) You are insolvent; or you admit your inability to pay your debts as they become due; or you make an assignment for the benefit of your creditors; or a voluntary or involuntary proceeding is instituted against you in bankruptcy or any other insolvency law; or a receiver or other custodian of your Business or its assets is appointed; or execution is levied against your Business or its assets.

(b) You are convicted of or plead guilty to a felony, a crime involving moral turpitude, or any other crime, misdemeanor or offense that Winzer reasonably believes is likely to have an adverse impact on Winzer, the System, the Marks or the Business.

(c) You submit any false or fraudulent Order Forms to Winzer, or otherwise falsely represent to Winzer that Approved Winzer Products or Franchisee Products were ordered by a customer.

(d) You endorse any check made out to Winzer for cash or deposit to any account other than those specifically maintained by Winzer.

(e) You or your Designee, heirs, legatees, personal representative, conservator or guardian, as applicable, try to assign or transfer any franchise interest without Winzer's prior written consent as specified in Section 12.1 and Section 12.2; or your Designee, heirs, legatees, personal representative, conservator or guardian, as applicable, fail to transfer this Agreement and the Business within 90 days after your death or disability as specified in Section 12.6.

(f) You misrepresent actual or expected sales volumes or other material claims regarding your ability to perform under this Agreement, including Section 11.1.

(g) You disclose or divulge the contents of the Manual or other Confidential Information, contrary to the terms of this Agreement.

(h) You misuse or make unauthorized use of the System or the Marks or any other identifying characteristics of the System.

(i) You are involved in any conduct or act, including engaging in any deceptive or unfair trade practice, which, in Winzer's sole opinion, materially impairs the goodwill associated with Winzer, the System, the Marks or the Business.

(j) You abandon the Business, fail to actively pursue the Business, cease to operate the Business, or otherwise forfeit the right to do or transact the Business in the jurisdiction where the Business is located, unless caused by conditions specified in Section 15.7.

(k) You fail to generate positive Periodic Gross Profits from your operation of the Business which results in negative remuneration for 3 or more Billing Periods during any rolling 6-month period during the term of the License.

**13.4 Termination with Notice and Opportunity to Cure.** Except as set forth in Section 13.3, you will have 10 days after receipt of written notice from Winzer in which to remedy your failure to make payment to Winzer when due, and 30 days after receipt of written notice from Winzer in which to remedy any default under this Agreement. If any default so noticed is not

cured within the specified time, your License will terminate without further notice to you. Such defaults include, but are not limited to, if:

(a) You violate or otherwise fail to comply with any material term, representation, warranty, standard, specification, procedure or requirement imposed by this Agreement, as the Agreement may periodically be reasonably supplemented by the Manual, or otherwise fail to satisfy any material obligation relating to the Business.

(b) You fail to maintain your Required Monthly Average, unless Winzer is satisfied that the failure is caused by your temporary disability or an event of Force Majeure.

(c) You fail, refuse or neglect to promptly make any payment to Winzer, its subsidiaries or affiliates, when due under this Agreement, or any other agreement, note or contract.

(d) You fail, refuse or neglect to promptly deliver merchandise and/or invoices for merchandise that you have ordered for customers or invoiced to customers through the System.

(e) You refuse to permit Winzer to inspect or audit your Business Records according to this Agreement, or fail to timely submit financial or statistical reports, records, statements, tax returns or other information that Winzer requests, or repeatedly submit orders for product as Franchisee Products instead of as Approved Winzer Products; or you sell Franchisee Products to a customer in which you own a direct or indirect interest, without Winzer's consent.

(f) You become involved in any act or conduct which serves as a detriment to the System, including, but not limited to: verbal abuse of any Winzer Representatives and use of Winzer's electronic communication systems for the purpose of attacking Winzer or its Representatives; you knowingly solicit, call on, attempt to sell or sell Approved Winzer Products, Franchisee Products or Special Orders to a Protected Customer of Winzer or another franchisee; you sell to Wholesalers, rather than consumers, without following Winzer's procedures; you sell products outside the System and the Business; or you use Confidential Information for the benefit of yourself, or a third party outside the WINZER franchise system, contrary to the terms of this Agreement.

(g) You fail, refuse or neglect to pay any third party, including any government taxing or licensing authority, any amount owing in connection with the Business when due.

(h) You fail to comply with the requirements of personal attention and continuous best efforts in operating the Business in accordance with Section 3.1.

(i) You are repeatedly in default under the Agreement for failure to substantially comply with any of the requirements imposed by this Agreement, whether or not cured after notice.

**13.5 Cure Periods.** If a default cannot be cured in 10 days or 30 days, as applicable, you may avoid termination by immediately initiating action to cure any default and diligently proceeding to cure the default within such longer period of time as Winzer, in its sole discretion, may permit. If applicable law requires that you be given a longer period of time in which to cure any default, the cure period shall be extended to correspond to applicable law.

**13.6 Cure Remedies.** If you violate or otherwise fail to comply with any material term, representation, warranty, standard, specification, procedure or requirement specified under the Agreement, as periodically supplemented by the Manual, and your actions damage another franchisee, in addition to any other remedy available to Winzer, Winzer may specify that the cure of your default will include payment to compensate the franchisee who was damaged by your action, or that Winzer may collect its lost profits on Franchisee Products that should have been ordered as Approved Winzer Products. You further agree that Winzer will be entitled to set off any amounts Winzer owes to you against any loss or damage to Winzer arising from your breach of this Agreement.

**13.7 Your Obligations on Termination, Expiration or Non-renewal.** Immediately on termination, expiration or non-renewal of the License, at any time, regardless of reason, you must:

(a) Pay Winzer all debts and other amounts you owe to Winzer for any reason under this Agreement, any promissory note or other agreement, including any Service Fee for unauthorized sales. Winzer may withhold the Periodic Gross Profits payments payable to you in such amounts as deemed necessary by Winzer, in its sole discretion, to cover any outstanding notes or leases, any accounts Winzer anticipates are uncollectible or any other charge-backs to you. In its sole discretion, Winzer may delay payment of the entire final Periodic Gross Profit payment until you comply with all of the provisions of this Section 13.7.

(b) Stop using the Marks and the System and refrain from doing anything, whether or not specified herein, that would directly or indirectly indicate that you are affiliated with Winzer.

(c) Return to Winzer (via prepaid express courier) the Manual and all other manuals, software, catalogs, brochures, decals, signs and other materials Winzer provided to you.

(d) Abide by and honor all obligations that, by their nature, survive termination, expiration or non-renewal of the License, including, without limitation, those in Article 10.

**13.8 Disclaimer.** Winzer disclaims any right under this Article 13 to terminate this Agreement based on any decision or action by you regarding recruiting, interviewing, hiring, determining the terms of employment of, compensating, keeping the time of, processing the payroll of, providing work resources to, scheduling, supervising, disciplining and firing your personnel.

## **ARTICLE 14 - DISPUTE RESOLUTION**

**14.1 Arbitration.** Except as expressly provided in Section 14.5, all breaches, claims and disputes (collectively referred to as “breaches” or “breach”) between you and Winzer arising from this Agreement, including any allegation of fraud, misrepresentation or violation of any Federal, state or local law or regulation, will be determined exclusively by binding arbitration according to the rules of the American Arbitration Association.

**14.2 Notice of Dispute; Cure Period.** The party alleging breach must provide the other party with notice of the facts of breach in detail, and neither party will have the right to commence any arbitration hearing until such notice is given. The party alleged to have breached this Agreement will have 30 days from the notice to correct the alleged breach. If the breach is not corrected within the 30-day period, then either party will have the right to arbitration.



**14.3 Waiver of Claims by You.** You must give Winzer immediate notice of any alleged breach. If you do not give Winzer written notice of an alleged breach within 1 year from the date that you know of circumstances reasonably indicating that you may have a claim for breach by Winzer, then the alleged breach will be deemed to be waived by you, and you will be barred from commencing any legal or other action against Winzer for that alleged breach.

**14.4 Powers of Arbitrator.** The authority of the Arbitrator will be limited to making a finding, judgment, decision and award relating to the interpretation of or adherence to this Agreement. The Federal Rules of Evidence (the “Rules”) will apply to all arbitration hearings and the introduction of all evidence, testimony, records, affidavits, documents and memoranda and any arbitration hearing must comply in all respects with the Rules and legal precedents interpreting the Rules. Both parties will have the absolute right to cross-examine any person who testifies against them or in favor of the other party. The Arbitrator will have no authority to add to, delete or modify the terms of this Agreement, or to enjoin or stay any termination of this Agreement. All findings, judgments, decisions and awards of the Arbitrator will be limited to the dispute or controversy set forth in the written demand for Arbitration, and the Arbitrator will have no authority to decide any other issues. The Arbitrator will not have the right or authority to award punitive damages to Winzer or to you, or to the officers, directors, shareholders, partners or personal guarantors of either (as applicable). All findings, judgments, decisions, and awards by the Arbitrator will be in writing, will be made within 30 days after the initial arbitration hearing has been completed, and will be final and binding on Winzer, you and the officers, directors, shareholders and personal guarantors of both. The written decision of the Arbitrator will be deemed to be an order, judgment and decree and may be entered as such in any Court of competent jurisdiction by either party in any jurisdiction.

**14.5 Disputes Not Subject to Arbitration.** The following disputes will not be subject to arbitration, even if arising from this Agreement, and Winzer is free to utilize any right or remedy it may have at law or equity:

- (a) Any dispute involving the Marks pursuant to Article 8 of this Agreement.
- (b) Any dispute involving the Confidential Information which arises under or as a result of Article 10 of this Agreement.
- (c) Any dispute involving immediate termination of this Agreement by Winzer pursuant to Section 13.3 of this Agreement.
- (d) Any monetary default by you under this Agreement or any related agreement or your failure to otherwise comply with any obligation that survives termination, expiration or non-renewal of this Agreement.
- (e) Any dispute involving the Asset Purchase Agreement or other relevant transaction documents if you acquired your License in connection with a sale to Winzer of some or all of your pre-existing business or its assets.

**14.6 No Collateral Estoppel.** All arbitration findings and awards will be final and binding on Winzer and you. The arbitrator’s findings and awards may not be used to collaterally estop Winzer, you or any other party from raising any like or similar issue, claim or defense in any

other or subsequent arbitration, litigation, court hearing or other proceeding involving third parties or other franchisees.

**14.7 Limitation of Damages.** In the event of a dispute, each of the parties waives, to the fullest extent permitted by law, any right to or claim for punitive, exemplary, incidental, indirect, special or consequential damages arising out of any cause whatsoever, whether based on contract, tort or strict liability, and agrees that the recovery of either party will be limited to the recovery of any actual damages sustained by it.

**14.8 No Class Action.** No party except Winzer, you or the officers, directors, shareholders and personal guarantors (as applicable) will have the right to join in or become a party to any arbitration proceeding arising under this Agreement, and therefore, the arbitrator will not be authorized to permit class actions (as defined in the Federal Rules of Civil Procedure) or to permit any person or entity that is not a party to this Agreement to be involved in or to participate as an interested party in any arbitration hearings.

**14.9 Waiver of Jury Trial.** Except where prohibited by applicable state law, if any dispute is not subject to arbitration under this Agreement, then the parties agree that the trial of any legal action arising out of this Agreement or the relationship of the parties will be heard and determined by a judge who will sit without a jury. **The parties acknowledge that they have obtained independent legal advice as to the effect of this jury waiver provision, and further acknowledge that they have read and understand the effect of this jury waiver provision.** Either party may file an original or copy of this Agreement with any Court as written evidence of the consent by the parties to the waiver of their right to trial by jury.

**14.10 Venue and Jurisdiction.** All arbitration hearings must take place exclusively in Dallas County, Texas. All court hearings, mediation hearings or other hearings initiated by either party against the other party must have venue exclusively in Dallas County, Texas. Winzer and you, and where applicable the respective officers, directors, shareholders and personal guarantors, agree and submit to personal jurisdiction in Dallas County, Texas, in connection with any arbitration hearings, court hearings, or other hearings, including any lawsuit challenging the arbitration provisions of this Agreement or the decision of the Arbitrator, and waive any right to contest venue and jurisdiction in Dallas County, Texas, and any claim that venue and jurisdiction are invalid. Notwithstanding this Section 14.10, any actions to enforce the decision of the Arbitrator may be brought in any court of competent jurisdiction.

**14.11 Severability.** The parties intend that the provisions of this Article 14 be enforced to the fullest extent permissible under the laws and public policy in each jurisdiction where enforcement is sought. Accordingly, if any part of this Article 14 is adjudicated to be unenforceable, then this Article 14 will be deemed amended to delete that part, such deletion to apply only to the operation of this Article 14 in the particular jurisdiction in which the adjudication is made. Further, to the extent any provision of this Agreement is deemed unenforceable by virtue of its scope, the same will, nevertheless, be enforceable to the fullest extent permissible under the laws and public policies applied in such jurisdiction where enforcement is sought, and the scope in such a case will be determined by Arbitration as provided herein.

**14.12 Equitable Relief.** Winzer may seek to obtain an order of specific performance and/or temporary, preliminary or permanent injunctive relief on notice but without the necessity of a bond from a court or agency of competent jurisdiction against actual or threatened conduct causing loss or damage that can be remedied under usual equity rules, including claims involving the Marks under Article 8, unauthorized use or disclosure of Confidential Information or enforcement of covenants under Article 10. You agree that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, on due hearing, and expressly waive all claims for damages caused by the wrongful issuance of any injunction.

## **ARTICLE 15 - MISCELLANEOUS**

**15.1 Winzer's Enforcement.** Failure by Winzer at any time to enforce any provision of this Agreement, will in no way affect the validity or act as a waiver of this Agreement, or any part, or the right of Winzer thereafter to enforce it. You acknowledge that Winzer operates a large and diverse business and that Winzer is not obligated to enforce each Franchise Agreement in a uniform manner with respect to the other franchisees.

**15.2 Notices.** All notices or communications required by this Agreement will be in writing addressed to the recipient at the address on the cover page of this Agreement or such other address as a party has specified by written notice. A notice will be deemed to have been delivered: (a) if hand-delivered, on delivery against receipt or on refusal to accept the notice; (b) if delivered by overnight courier, the next business day after deposited with such courier, charges prepaid; (c) if by certified or other receipted mail, on receipt or on refusal to accept the notice; (d) if by email, on delivery if sent to the address that the other party has on file from the recipient, with proof of delivery, if sent during the recipient's normal business hours, or if sent after recipient's normal business hours, on the next business day; or (e) if faxed, on delivery during the recipient's normal business hours, or the next business day if sent after recipient's normal business hours. A party is not required to use more than 1 method and may choose any method of giving notice.

**15.3 Governing Law.** This Agreement will be governed by and construed according to the substantive laws of the State of Texas.

**15.4 Entire Agreement.** This Agreement, the documents referred to in this Agreement, and the Attachments to this Agreement, constitute the entire, full and complete agreement between you and Winzer concerning the subject matter of this Agreement, and except as specifically provided otherwise in this Agreement, supersede all prior related representations, understandings or agreements between you and Winzer, except the representations in Winzer's Franchise Disclosure Document provided to you in connection with the execution of this Agreement. No modification to this Agreement will be effective unless made in writing and signed by both you and an officer of Winzer.

**15.5 Cost of Enforcement or Defense.** In any disputes, the prevailing party will be entitled to recover from the other party the amount of all reasonable attorneys' fees and expenses of counsel and other related expenses.

**15.6 Time Periods.** All references to days will be calendar days unless specifically stated otherwise. References to anniversaries will be the calendar anniversary of the date mentioned. You further agree that if you violate any obligation under Article 10, then the specified time

period will be extended by a period of time equal to the period of time beginning when the activities constituting such violation begin and ending when the activities constituting such violation terminate.

**15.7 Force Majeure.** Whenever a period of time is provided in this Agreement to perform any act, except payment of money, neither party will be liable for any delays directly caused by and event of Force Majeure, and the time period will be extended for the performance of the obligation by the amount of time of delay. This clause will not result in an extension of the Term and the non-performing party will use its best efforts to notify the other party and remedy its inability to perform.

**15.8 Place of Performance.** This Agreement has been accepted by Winzer and entered into in Plano, Texas, and is deemed to be performed by the parties in Dallas County, Texas.

## **ARTICLE 16 - YOUR REPRESENTATIONS**

**16.1 Representations.** You acknowledge, represent and warrant to Winzer each of the following:

(a) That no representation has been made by Winzer (or any Representative) and relied on by you as to the future or past income, expenses, sales volume, or potential profitability, earnings or income of the Business, or any other Business other than any financial performance representations provided in Item 19 of Winzer's Franchise Disclosure Document.

(b) That prior to signing this Agreement, you had the unrestricted opportunity to contact all existing and former franchisees of Winzer.

(c) That you had the unrestricted opportunity to investigate both the Business opportunity being offered hereunder, and the provisions of this Agreement, utilizing services of counsel, accountants, or other advisors as you elect.

(d) That no representation was made by Winzer, or any Representative, and relied on by you regarding the anticipated income, earning, or growth of Winzer or the System, and that Winzer has not guaranteed any specific level of order fill rate other than Winzer's agreement to use reasonable efforts to meet or exceed industry standards.

(e) That Winzer has reserved certain rights to own and operate Businesses; to franchise other Businesses; and otherwise to use the System, the Marks, Approved Winzer Products, know-how, techniques and procedures.

(f) That you read and understood Winzer's Franchise Disclosure Document. You acknowledge that you received a copy of Winzer's Franchise Disclosure Document, together with a copy of all proposed agreements relating to the sale of Business at least 14 calendar days before the execution of this Agreement or the payment by you to Winzer of any consideration in connection with the sale of the Business.

(g) That you have received a substantially complete version of this Agreement and all related agreements at least 7 calendar days before signing this Agreement. If the terms of this Agreement are materially different from the terms of our standard franchise agreement, unless those terms arose out of negotiations initiated at your request, we have informed you of the

differences between this Agreement and our standard franchise agreement at least 7 calendar days before you signed this Agreement.

(h) That no representation was made by Winzer (or any employee, agent or salesperson) and relied on by you regarding your ability to procure any required license or governmental approval that may be necessary for you.

(i) That Winzer is relying on the completeness and accuracy of your representations and information set forth in this Agreement and any related agreement or in any applications, financial statements and submissions to Winzer.

(j) That if you were employed by or otherwise associated with any company that offers or sells products that are similar to Approved Winzer Products, that you terminated your relationship with such company before signing this Agreement; that you returned to such company all material and other information that the company designated as being confidential and proprietary to it; that you have no confidential or proprietary materials or information of such company in your possession, custody, or control; that you have not provided nor will you provide to Winzer, or to any of its employees, franchisees or agents, any confidential or proprietary information about the company; that you have or will comply with any lawful covenants in favor of said company for the duration of those covenants; that you have not violated and are not in violation of any lawful covenants in favor of said company; and that you will indemnify, defend, and hold harmless Winzer from all claims, actions, judgments, damages, costs, expenses and losses arising out of, in connection with, or as a result of any of your acts that are in violation of these representations.

(k) That Winzer does not want or need you to use, and that your License will be terminated if you are found to have used, any of your former employer's confidential or proprietary information in connection with your operation of the Business.

(l) That neither you nor any of your owners have been designated as suspected terrorists as set forth on the list of Specially Designated Nationals as promulgated by the Office for Asset Control under the U.S. Department of Treasury.

**16.2 Interest Charged.** Unless otherwise stated in a promissory note or a similar document, amounts owed by you to Winzer will be due on demand by Winzer, which demand may be made for any reason or for no reason, and from the date of demand until paid will bear interest at a rate of 12% per year, or the highest amount permitted by applicable law, whichever is lesser. (In California, the highest lawful rate of interest is 10% per annum).

**16.3 No Warranty of Success.** You acknowledge that Winzer made no express or implied warranty or representation that you will achieve any degree of financial or business success in the operation of the Business; that any measure of success in the operation of the Business depends ultimately on your efforts and abilities and on other factors beyond Winzer's control, including, but not limited to, economic conditions and competition.

## **ARTICLE 17 - DEFINITIONS**

### **17.1 Definitions.**

(1) **“Annual Gross Sales”** means the total invoiced amount of all Retail Sales of Approved Winzer Products through the Business during the preceding 24-26 Billing Periods, less total credits and discounts given during such Billing Periods for any such Approved Winzer Products, and less the gross amount of any invoice to Customers arising from any order previously placed with Winzer, if Winzer deems such invoiced amount uncollected or not reasonably collectible, in Winzer’s good faith judgment, including if: invoice paid by a bad check; invoice remains uncollected 120 days after its date; invoice remains uncollected 60 days after its date and Customer has a history of delinquent payments; invoice was based on an erroneous, false or fraudulent order by you, in Winzer’s good faith judgment; or invoice deemed uncollectible due to Customer’s bankruptcy, insolvency or other circumstances. If Winzer collects a gross amount previously deducted, Winzer will credit the amount, less Winzer’s collection costs, during the next Billing Period. During the 1<sup>st</sup> year of the Term, your Annual Gross Sales will be estimated based on an annualization of year-to-date sales and credits. Any sales made but not invoiced in any applicable Billing Period will not be included in any calculation for that Billing Period. Nothing in this definition implies any consent by Winzer to Retail Sales other than through you and your Permitted Representatives.

(2) **“Approved Product List”** means the list of Approved Winzer Products that can be found in the Winzer Software.

(3) **“Approved Winzer Products”** means quality packaged fasteners, nuts, bolts, clamps, adhesives, sealers, electrical components, cutting tools, fluid power fittings, chemicals, welding and shop supplies, janitorial supplies and other related parts and services periodically designated by Winzer, and listed in the Winzer Software, that are shipped by Winzer (or are shipped by its approved vendor) directly to your Customers and invoiced directly to your Customers by Winzer.

(4) **“Assigned Receivable”** means a Franchisee Receivable purchased by Winzer, effective on the date of Winzer’s purchase.

(5) **“Automotive Market”** means value-added, direct sales to Customers in the automotive dealerships, body shops, repair shops and service centers, as well as truck, fleet and other wheeled transportation dealerships and maintenance shops. automotive, truck and fleet and other wheeled transportation maintenance, repair and operating supplies market, and is one type of Licensed Market (see Section 17.1(23) for more information).

(6) **“Billing Period”** is bi-monthly and ends on either the 15<sup>th</sup> or the last day of each month, or on the preceding Friday, if the 15<sup>th</sup> or last day of a month falls on a weekend.

(7) **“Business”** means a Winzer direct sales business you operate using the Marks and the System for the promotion, sale and support of Approved Winzer Products and Franchisee Products to Customers in the Licensed Market.

(8) **“Business Records”** means books and accounts of all financial and business transactions and activities relating to the Business, whether kept by you or your Permitted Representatives.

(9) **“Chemical Market”** means value-added, direct sales to Customers who are users of bulk, liquid and aerosol chemicals for maintenance, production and repair operations, and is one type of Licensed Market (see Section 17.1(23) for more information).

(10) **“Confidential Information”** does not include your general knowledge of how to sell fasteners, chemicals, and industrial, automotive, and maintenance related supplies, or information you had before its disclosure to you by Winzer, or information that, at the time of disclosure to you by Winzer, had become a part of the public domain, or information that lawfully becomes a part of the public domain (but not through you or your Representatives). Confidential Information does include all other information relating to the operation of a WINZER® business, including your knowledge of the operating procedures of a WINZER business, the relationship between you and Winzer, Winzer’s franchisee cost index or similar price indices applicable to Approved Winzer Products, Winzer’s Periodic Gross Profits method, Winzer’s backlog, shipment and refund (credit) history and practices, the strengths and weaknesses of the WINZER franchise system, Winzer’s corporate plans and Winzer’s product introductions, Winzer’s product acceptance, any customer complaints of which you become aware, records pertaining to customers or billings, modifications of the System, the Manual, Winzer’s copyrighted materials and any other data that Winzer designates as confidential.

(11) **“Confidentiality Period”** means during the Term and an uninterrupted 1-year period after expiration, non-renewal, termination or transfer of the License, regardless of the cause.

(12) **“Customer”** means any person who is a consumer, and who is not a Wholesaler, of Approved Winzer Products and Franchisee Products.

(13) **“Effective Date”** means that date noted on the cover page of this Agreement, on which this Agreement becomes effective, and will be the date on which all of the following have occurred: (i) you have signed this Agreement and all related agreements; (ii) you have attended and successfully completed the New Franchisee Training Program to Winzer’s satisfaction; (iii) you have paid Winzer all amounts due, including your initial franchise fee; (iv) you and Winzer have agreed on your list of Protected Customers; and (v) Winzer has signed this Agreement.

(14) **“Force Majeure”** means an Act of God, earthquake, epidemic, fire, flood, storm, war, riot, civil disturbance, strike, lockout, sabotage, casualty to equipment, government regulation or control or other similar causes beyond the reasonable control of either party to this Agreement.

(15) **“Franchisee Cost”** means an amount equal to Winzer’s then-current Wholesale Price Cost or for an account that is part of the Gross Profit Sharing Program, an amount calculated under the then-current formula for Gross Profit Sharing, as specified in the Manuals.

(16) **“Franchisee Products”** means all goods and inventory, other than Approved Winzer Products or Special Orders, sold by you in connection with the Business (including “bill-only” or other sales as authorized by the Manual); provided, however, that Winzer has the sole discretion to determine whether it will authorize your sale of any particular product, goods or inventory item other than Approved Winzer Products or Special Orders. Any product that is an Approved Winzer Product may not be sold as a Franchisee Product.

(17) **“Franchisee Receivable”** means any account, as defined in the Uniform Commercial Code, arising from your sale of Franchisee Products, and any accounts receivable arising from your sale of Franchisee Products. Such account or accounts receivable will retain its designation as a Franchisee Receivable until it is purchased by Winzer and becomes an Assigned Receivable.

(18) **“Franchisee Taxes”** means (a) any sales, use or similar taxes applicable to the sale of Franchisee Products, (b) any federal, state, county or local income, franchise, property, ad valorem or other taxes applicable to you or your operations, and (c) any penalty or interest for non-payment or untimely payment or reporting, or incorrect or untruthful reporting, of sales, use or similar taxes that would not have been applicable to such sales had you complied with your obligations to obtain the resale certificates or similar documents, or any of Winzer’s documentation requests, or to verify the truthfulness of any customer’s representations in such resale certificates or documents.

(19) **“Gross Amount”** means the total invoiced amount of a Franchisee Receivable, an Assigned Receivable or a Winzer Receivable, as applicable, including all taxes, shipping, handling and insurance.

(20) **“Gross Profit Sharing”** means the method of calculating Franchisee Cost for accounts that are part of the Gross Profit Sharing Program, as specified in the Manuals.

(21) **“Industrial Market”** means value-added direct sales to Customers who are road and structural repair and maintenance shops, plant manufacturing and production operations, water treatment, construction, mining, farming, refining, building, facilities and equipment, and is one type of Licensed Market (see Section 17.1(23) for more information).

(22) **“License”** means the non-exclusive license and right granted to you by Winzer to operate the Business under the terms and conditions of this Agreement.

(23) **“Licensed Market”** means Customers in any of the Automotive Market (see Section 17.1(5) for definition); the Chemical Market (see Section 17.1(9) for definition); and the Industrial Market (see Section 17.1(21) for definition). The Licensed Market is not geographical in nature. Your designated type of Licensed Market is specified on Attachment 1.

(24) **“Manual”** means the Confidential Operations Manual, as it periodically exists, including any updates. In the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by Winzer is controlling.

(25) **“Marks”** means those trade names, service marks, trademarks, logos, emblems, slogans, trade dress and other indicia of origin, including but not limited to the mark SERVICE THAT WORKS, WINZER and logo, and WINZER SERVICE THAT WORKS and logo, and any other Marks that may hereafter be designated by Winzer for use in connection with the System and the Business.

(26) **“National Account”** means a Customer or a potential Customer in the Licensed Market who (i) has multiple purchasing or “ship-to” locations; (ii) requires scientific information, special devices, special services, technical data, engineering data or special procurement procedures or pricing, including a GSA Program customer; or (iii) requires such other terms and conditions as Winzer may periodically specify in its Manual or otherwise in



writing. The determination of whether a Customer is a National Account is in Winzer's sole discretion. You must honor all of the terms of any agreement between Winzer and a National Account in order to sell to a National Account, even if a location of the National Account has previously been designated as your Protected Customer.

(27) **"Net Amount"** of a Franchisee Receivable, an Assigned Receivable or a Winzer Receivable means the total invoiced amount of such receivable, less (i) Winzer's Service Fee, (ii) all taxes, shipping, handling and insurance, and (iii) all discounts, credits, allowances and claims.

(28) **"New Franchisee Training Program"** means the initial training program on operational matters, product knowledge, marketing techniques, basic computer operations, and other topics periodically selected by Winzer to educate you with the System.

(29) **"Operating Principal"** means the individual designated on Attachment 1 who is acceptable to us and who is bound by covenants and responsible for your personal obligations under this Agreement if you are a legal entity.

(30) **"Order Form"** means the electronic order transmission, or other order entry in the format required by Winzer, submitted by you to Winzer.

(31) **"Periodic Gross Profits"** has the meaning it is given in Article 6.

(32) **"Periodic Gross Profits Statement"** means the statement prepared by Winzer and sent to you each Billing Period of Periodic Gross Profits earned by you, less any charges, offsets or deductions.

(33) **"Permitted Representative"** means anyone whom you hire or engage to represent your Business in accordance with the provisions of Section 3.9.

(34) **"Person"**, whether or not capitalized, means a natural person, partnership, association, joint venture, corporation or any other legal entity.

(35) **"Personal Annual Gross Sales"** means Annual Gross Sales less sales by your Permitted Representatives during the preceding 24-26 Billing Periods, and may be used to qualify your Business to pay the lowest Service Fee Percentage as stated in Section 6.2. During the 1<sup>st</sup> Year of the Term, your Personal Annual Gross Sales will be estimated based on an annualization of year-to-date sales and credits.

(36) **"Protected Customer"** means: (a) a pre-existing Customer of yours as of the Execution Date (meaning a Customer to whom you have made at least 1 sale within the last 6 months), if (i) the Customer is not a Protected Customer of another WINZER franchisee, (ii) the Customer is identified on Attachment 1 as your Protected Customer, and (iii) you make on-going sales of Approved Winzer Products to the Customer; (b) a new Customer obtained by you after the Execution Date, if (i) the Customer is not then a pre-existing customer of Winzer or a Protected Customer of another WINZER franchisee, and (ii) you make on-going sales of Approved Winzer Products to the Customer; or (c) such other Customer as Winzer, in its sole discretion, may periodically designate. Shipment of promotional items, shipments without an invoice value (excluding the handling fee), "bill-only" or "invoice-only" sales are not sufficient to qualify a Customer as a Protected Customer. Only Winzer may determine Protected Customer

status, and Winzer may designate Protected Customer status in its sole discretion. Protected Customer status applies only as to the type of Licensed Market designated on Attachment 1.

(37) **“Renewal Term”** has the meaning set forth in Section 2.2.

(38) **“Renewing Franchisee”** means a person who has previously been a WINZER franchisee under a franchise agreement, and who is signing a new franchise agreement at the expiration of the Term of the License granted under the prior franchise agreement.

(39) **“Repeatedly”** means 3 or more times.

(40) **“Representative”** means, as to any person, such person’s officers, directors, shareholders, employees, agents and sales representatives.

(41) **“Required Monthly Average”**, at any time, means the levels of your Rolling Monthly Average as stated on Attachment 1, that you must maintain at such time.

(42) **“Required Policies”** means the comprehensive general liability insurance and product liability insurance policies, including product liability coverage on Approved Winzer Products and on Franchisee Products billed through Winzer, in amounts, and with deductibles, expiration dates, coverages and other terms as Winzer decides, for its and your protection.

(43) **“Repurchase Accounts”** are Assigned Receivables and Winzer Receivables that you are required to repurchase under Section 7.8.

(44) **“Retail Sale”** occurs when Winzer ships or delivers products to a designated purchasing location of a Customer. A Retail Sale does not occur when Winzer ships or delivers a product to you for your own use or for your inventory.

(45) **“Rolling Monthly Average”** means, at any time, 1/3 of your total Personal Annual Gross Sales during the preceding 6 Billing Periods (as to you), or 1/3 of the Annual Gross Sales generated by a Permitted Representative during the preceding 6 Billing Periods (as to any Permitted Representative).

(46) **“Service Fee”** means the fee you pay to Winzer as stated in Section 6.2.

(47) **“Special Order”** means any good, product or inventory that is procured by Winzer by special request on an infrequent basis. Special Orders are included in Approved Winzer Products.

(48) **“System”** means those skills, concepts, copyrighted materials, business and marketing techniques, the Winzer Software, methods and specialized processes with uniform standards, specifications, methods, packaging and policies, including requirements for quality, ethical business practices, software usage and other operating requirements that may be supplemented, improved upon or otherwise periodically modified by Winzer in connection with the Business.

(49) **“Term”** has the meaning set forth in Section 2.1.

(50) **“Transferee”** means a person who is purchasing an existing Business and signing a new franchise agreement at the time of purchase to operate the Business under the terms and conditions of this Agreement.

(51) **“Wholesale Price Cost”** means the price that would be applicable were you to purchase such Approved Winzer Products from Winzer for resale and includes both Winzer’s cost of goods and a reasonable markup.

(52) **“Wholesaler”** means any intermediary in the supply chain who stocks products for future distribution, including but not limited to distributors, retailers, government departments, branches and procurement agencies, and government and GSA contractors, distributors and prime vendors.

(53) **“Winzer Receivables”** means all accounts arising from Retail Sales of Approved Winzer Products and all other accounts receivable that arise from Retail Sales of Approved Winzer Products.

(54) **“Winzer Software”** means the proprietary software licensed to you under Attachment 3 to this Agreement.

(55) **“Winzer’s Lender”** means any lender(s) or creditor(s) to which Winzer may periodically be indebted (whether one or more).

IN WITNESS WHEREOF, you acknowledge this Agreement will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

**WINZER FRANCHISE COMPANY, INC.:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FRANCHISEE:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

## RIDER FOR USE IN ILLINOIS

This Rider is made on \_\_\_\_\_, 20\_\_ by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation, having its principal place of business at 4060 E. Plano Parkway, Plano, Texas 75074-1800 (“Winzer”) and \_\_\_\_\_

\_\_\_\_\_ (“Franchisee”).

- (1) Article 2 is modified to include the following paragraph:

Your rights on non-renewal may be affected by Illinois law, 815 ILCS 705/20.

- (2) Article 13 is modified to include the following paragraph:

The conditions under which this franchise can be terminated and the parties rights on termination may be affected by Illinois law, 815 ILCS 705/19.

- (3) Section 14.10 is modified to include the following paragraph:

Any provision in a franchise agreement which designates jurisdiction or venue in a forum outside of Illinois is void as to any cause of action which otherwise is enforceable in Illinois, but a franchise agreement may provide for arbitration in a forum outside of Illinois.

- (4) Section 15.3 is modified to include the following paragraph:

Illinois law will govern any franchise agreement if the franchisee is domiciled in Illinois or the franchise is located in Illinois where the offer is made or accepted in Illinois.

- (5) Sections 16.1 (a), (d) and (h) are deleted in their entirety.

- (6) Section 16.3 is deleted in its entirety.

- (7) Any condition, stipulation or provision purporting to bind any person acquiring any Franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act is void.

IN WITNESS WHEREOF, you acknowledge this Agreement will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

WINZER FRANCHISE COMPANY, INC.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FRANCHISEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

## RIDER FOR USE IN MARYLAND

This Rider is made on \_\_\_\_\_, 20\_\_ by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation, having its principal place of business at 4060 E. Plano Parkway, Plano, Texas 75074-1800 (“Winzer”) and \_\_\_\_\_

\_\_\_\_\_ (“Franchisee”).

- (1) Sections 2.2(d), **Option to Renew**, and 12.2(b), **Conditions for Transfer**, are amended to include the following:

The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

- (2) Section 14.3, **Waiver of Claims by You**, is modified to include the following language:

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

- (3) Section 14.10, **Venue and Jurisdiction**, is amended to include the following language:

A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

- (4) Article 16, **Your Representations**, is modified to include the following paragraph:

All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

IN WITNESS WHEREOF, you acknowledge this Agreement will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

WINZER FRANCHISE COMPANY, INC.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FRANCHISEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_



**RIDER FOR USE IN MINNESOTA**

This Rider is made on \_\_\_\_\_, 20\_\_ by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation, having its principal place of business at 4060 E. Plano Parkway, Plano, Texas 75074-1800 (“Winzer”) and \_\_\_\_\_

\_\_\_\_\_ (“Franchisee”).

(1) Articles 2 and 13 are modified to include the following paragraph:

With respect to franchises governed by Minnesota law, Winzer will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that a franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of this Agreement.

(2) Sections 2.2(d) and 12.2(b) are modified to include the following language:

, except any claims arising under the Minnesota Franchise Act.

(3) Article 14 is modified to include the following paragraph:

This Article will not in any way abrogate or reduce any of your rights as provided for in Minnesota Statutes 1984, Chapter 80C, including the right to submit matters to the jurisdiction of the courts of Minnesota.

IN WITNESS WHEREOF, you acknowledge this Agreement will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

WINZER FRANCHISE COMPANY, INC.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FRANCHISEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIDER FOR USE IN NEW YORK**

This Rider is made on \_\_\_\_\_, 20\_\_ by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation, having its principal place of business at 4060 E. Plano Parkway, Plano, Texas 75074-1800 (“Winzer”) and \_\_\_\_\_

(“Franchisee”).

(1) Section 5.9 is modified to include the following paragraph:

However, you will not be required to hold harmless or indemnify Winzer for any claim arising out of a breach of this Agreement by Winzer or any other civil wrong of Winzer.

(2) Section 12.2(b) is modified to include the following language:

, but all rights enjoyed by you and any causes of action arising in its favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder will remain in force, it being the intent of this proviso that the non-waiver provisions of the General Business Law Sections 687.4 and 687.5 be satisfied.

(3) Section 15.3 is modified to include the following language:

, but the foregoing choice of law will not be a waiver of any right conferred on you or Winzer by the General Business Law of the State of New York, Article 33.

(4) Section 15.4 is modified to include the following paragraph:

No amendment or modification of any provision of this Agreement, however, will impose any new or different requirement which unreasonably increases your obligations or places an excessive burden on your operations.

IN WITNESS WHEREOF, you acknowledge this Agreement will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

WINZER FRANCHISE COMPANY, INC.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FRANCHISEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIDER FOR USE IN NORTH DAKOTA**

This Rider is made on \_\_\_\_\_, 20\_\_ by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation, having its principal place of business at 4060 E. Plano Parkway, Plano, Texas 75074-1800 (“Winzer”) and \_\_\_\_\_

\_\_\_\_\_ (“Franchisee”).

- (1) Section 2.2 (d) is amended to add the following:

Any release signed as a condition of renewal will not apply to any claims you may have under the North Dakota Franchise Investment Law.

- (2) Article 10 is amended to add the following:

In accordance with North Dakota law, the restrictions of the covenant not to compete might not apply to your activities after the termination or expiration of the franchise agreement.

- (3) Article 13 is amended to add the following:

Any form of liquidated damages will not apply to North Dakota franchisees.

- (4) Sections 14.8 and 14.9 are amended to add the following:

The waiver of a right to seek punitive damages will not apply. The waiver of a right to a jury trial will not apply.

- (5) Section 14.10 is amended to add the following:

All disputes must be mediated and arbitrated either in North Dakota or in a mutually agreed location. All litigation must be in North Dakota or in a mutually-agreed location.

- (6) Section 15.3 is amended to add the following:

North Dakota law will govern this franchise agreement.

IN WITNESS WHEREOF, you acknowledge this Agreement will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

WINZER FRANCHISE COMPANY, INC.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FRANCHISEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIDER FOR USE IN RHODE ISLAND**

This Rider is made on \_\_\_\_\_, 20\_\_ by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation, having its principal place of business at 4060 E. Plano Parkway, Plano, Texas 75074-1800 (“Winzer”) and \_\_\_\_\_

\_\_\_\_\_ (“Franchisee”).

- (1) Section 14.10 is amended to add the following:

The provision in the franchise agreement restricting jurisdiction or venue to a forum outside Rhode Island is void as to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.

- (2) Section 15.3 is amended to add the following:

The provision in the franchise agreement requiring the application of the laws of a state other than Rhode Island is void as to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.

IN WITNESS WHEREOF, you acknowledge this Agreement will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

WINZER FRANCHISE COMPANY, INC.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FRANCHISEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

## RIDER FOR USE IN WASHINGTON

This Rider is made on \_\_\_\_\_, 20\_\_ by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation, having its principal place of business at 4060 E. Plano Parkway, Plano, Texas 75074-1800 (“Winzer”) and \_\_\_\_\_

\_\_\_\_\_ (“Franchisee”).

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the Franchise Agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchise, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the Franchise Agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii)

soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the Franchise Agreement or elsewhere are void and unenforceable in Washington.

The undersigned does hereby acknowledge receipt of this rider.

Dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

WINZER FRANCHISE COMPANY, INC.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FRANCHISEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT 1 TO FRANCHISE AGREEMENT**  
**LICENSED MARKET, PROTECTED CUSTOMERS,**  
**OPERATING PRINCIPAL, REQUIRED MONTHLY AVERAGES,**  
**INITIAL FRANCHISE FEE, AND DESIGNEE**

LICENSED MARKET

Section 1.1: Your Licensed Market designation:

Automotive Market  
Chemical Market  
Industrial Market

PROTECTED CUSTOMERS

Section 1.2: Your initial list of Protected Customers, including the Licensed Market designation, is attached as Attachment 1-A.

OPERATING PRINCIPAL

Section 3.1: If you are a legal entity, your designated Operating Principal who is personally responsible for achieving the Rolling Monthly Average, based on Personal Annual Gross Sales, and for all of your obligations under the Agreement, including covenants, is \_\_\_\_\_  
\_\_\_\_\_.

REQUIRED MONTHLY AVERAGES

Section 3.3: Your Required Monthly Average during the Term of your License is as follows:

1. From the Effective Date of this Agreement until the 1<sup>st</sup> anniversary date of this Agreement, the Rolling Monthly Average will be \$\_\_\_\_\_.
2. After the 1<sup>st</sup> anniversary date of this Agreement until the 2<sup>nd</sup> anniversary date of this Agreement, your Rolling Monthly Average will be at least \$\_\_\_\_\_.
3. After the 2<sup>nd</sup> anniversary date of this Agreement until the 3<sup>rd</sup> anniversary date of this Agreement, your Rolling Monthly Average will be at least \$\_\_\_\_\_.
4. After the 3<sup>rd</sup> anniversary date of this Agreement until the 4<sup>th</sup> anniversary date of this Agreement, your Rolling Monthly Average will be at least \$\_\_\_\_\_.
5. After the 4<sup>th</sup> anniversary date of this Agreement until the 5<sup>th</sup> anniversary date of this Agreement your Rolling Monthly Average will be at least \$\_\_\_\_\_.



**ATTACHMENT 1 TO FRANCHISE AGREEMENT**  
**LICENSED MARKET, PROTECTED CUSTOMERS,**  
**OPERATING PRINCIPAL, REQUIRED MONTHLY AVERAGES,**  
**INITIAL FRANCHISE FEE, AND DESIGNEE**

The 1<sup>st</sup> date of measurement of the Rolling Monthly Average will be the 1<sup>st</sup> date when your sales figures will be available to Winzer for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> calendar months after the Effective Date of this Agreement.

**INITIAL FRANCHISE FEE**

Section 6.1: Your initial franchise fee is \$3,500; provided, however, that if you enter into this Agreement in connection with a sale to Winzer of some or all of your pre-existing business for which Winzer pays consideration, Winzer will waive the \$3,500 franchise fee.

**DESIGNEE**

Section 12.6. Your Designee who will be responsible for actively directing your affairs regarding the Business in the event of your death, disability or other verifiable health condition that significantly impairs your ability to operate the Business is \_\_\_\_\_  
\_\_\_\_\_.

**WINZER FRANCHISE COMPANY, INC.**

**FRANCHISEE**

By: \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT 2 TO FRANCHISE AGREEMENT**  
**CANCELLATION AGREEMENT**

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

All initially capitalized terms contained in this Cancellation Agreement will have the same meanings as they are given in the franchise agreement (“Agreement”).

Unless you are a Renewing Franchisee, a Transferee, you acquired your License in connection with a sale to Winzer of some or all of your pre-existing business or unless Winzer paid any consideration to you in connection with the granting of your License, you may elect to terminate your License for any reason, or for no reason, within 6 months after the Effective Date of the Agreement. If you elect to terminate your License under this Cancellation Agreement, you must give Winzer at least 30 days prior written notice within 5 months after the Effective Date of the Agreement. Thereafter:

(a) You must comply with the non-disclosure and non-diversion provisions of the Agreement (including the Permitted Representative Confidentiality Agreement), and any other provisions of the Agreement which, by their terms, survive such termination.

(b) Winzer will not cancel any promissory note from you; Winzer will not refund any fees and payments you have made to Winzer, including, without limitation, the initial franchise fee, all principal and interest on any promissory note, or any Service Fees; Winzer will not be required to repurchase any inventory.

(c) All sales occurring before the effective date of termination will be treated as if made under the terms of the Agreement, but Winzer will cancel your future obligations to sell under the terms of the Franchise Agreement

(d) Winzer may withhold the Periodic Gross Profits payments payable to you in such amounts as deemed necessary by Winzer, in its sole discretion, to cover any outstanding notes or open leases, and any accounts Winzer anticipates are uncollectible or any other charge-backs to you.

WINZER FRANCHISE COMPANY, INC.

**FRANCHISEE**

By: \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Name

## ATTACHMENT 3 TO FRANCHISE AGREEMENT

### SOFTWARE LICENSE AGREEMENT

**THIS SOFTWARE LICENSE AGREEMENT** (“Agreement”) is entered into by and between WINZER CORPORATION (“Licensor”) and \_\_\_\_\_ (“Licensee”) in connection with the franchise agreement between Winzer Franchise Company, Inc. (“Winzer”) and Licensee (“Franchise Agreement”) as of the Effective Date.

#### **1. Grant of Software License: Maintenance.**

(a) Licensor provides access to Licensee of a nontransferable, nonexclusive, limited and restricted license (“Software License”) to use the software described in Schedule A (“Software”), subject to the terms and conditions herein.

(b) Licensor may provide Licensee with appropriate maintenance for the Software, including collection of verified program errors as provided in Section 6, and distribution of any new releases of or modifications to the Software as such new releases or modifications become available.

#### **2. Term and Fee.**

The term of the Software License continues as long as the License granted under the Franchise Agreement remains in effect, and for any renewals or extensions of the License granted under the Franchise Agreement, unless earlier terminated as provided in Section 5. Licensor currently charges no fee for use of the Software, but reserves the right, on 30 days’ prior written notice to Licensee, to charge a reasonable fee for use of the Software or to reasonably increase any fee it is then charging for use of the Software.

#### **3. Use.**

(a) The Software License permits Licensee to use the Software, and related documentation, at Licensee’s address listed in Section 8(a).

(b) Licensee may use the Software solely in the conduct of its business under the Franchise Agreement.

(c) The Software requires specific operating systems to be functional. In addition, the Software requires appropriate computer hardware with adequate memory and storage to be functional. Although Licensor will assist Licensee in determining the appropriate hardware and operating systems needed to support the Software, Licensee is responsible to obtain and maintain such hardware and operating systems.

#### **4. Proprietary Rights.**

(a) Licensee understands and agrees that the Software and related documentation were developed by and for Licensor at substantial expense to Licensor and embody substantial creative effort, that the Software and documentation are confidential, and that Licensor has and will have proprietary and other rights in the Software and documentation, including, but not

limited to, patent, copyright, trademark, service mark, trade secret and trade name rights (collectively called the “Proprietary Rights”).

(b) Licensee acknowledges that no title or ownership of the Software or any component of the Software is transferred to Licensee by this Agreement and that the Software, and that all components of the Software, all Proprietary Rights associated with the Software, and all data entered into the Software on all computer servers, on leased software or by any service providers, are and will remain the property of Licensor. Licensee agrees not to make any claim or representation of ownership, or act as the owner, of the Software, any component of the Software, any Proprietary Right associated with the Software, or any data entered into the Software.

(c) Licensee must keep the Software (including all related documentation) confidential and must not sell, assign, distribute or disclose the Software or any component of the Software to any other person or entity. Licensee agrees to advise its employees and consultants in writing of the confidential and proprietary nature of the Software and of the restrictions imposed by this Agreement, and to confine access to Licensee’s employees and consultants solely on a need-to-know basis, subject to all restrictions imposed by this Agreement.

(d) Licensee agrees that, unless specifically authorized under this Agreement, it will not use, make or have made any more copies of the Software or any components of the Software that are delivered by Licensor for Licensee’s use.

(e) The provisions of this Section 4 apply to the Software as originally delivered by Licensor or as modified or otherwise enhanced and to any material and information regarding the Software that has been given to Licensee prior to or after the date of this Agreement. The provisions of this Section 4 will survive the expiration or termination of the Software License.

(f) Licensee agrees to assist Licensor in stopping and preventing any possession or use of the Software by any person or entity not authorized by this Agreement to have such possession or use, and will cooperate with Licensee in any litigation that Licensor determines is reasonably necessary to protect the Proprietary Rights.

(g) Licensee agrees that any breach of this Section 4 by Licensee or any 3<sup>rd</sup>. party will cause Licensor substantial damages, and that the amount of such damages is difficult to determine with precision. Licensee also agrees that any remedies at law for such a breach will be inadequate. As a result, Licensee agrees that such a breach will entitle Licensor, in addition to any other remedies it may have, to temporary and permanent injunctive and other relief, without proving actual damages.

(h) Licensee agrees that Winzer or Licensor, from time to time and at any time, may access Licensee’s order entry device and all data and related information in the Software, through the Internet or other means. All data on the Software is the sole property of Winzer or Licensor.

## **5. Termination.**

(a) In the event of a breach by Licensee of its confidentiality, nondisclosure or other obligations under Section 4, Licensor may immediately terminate the Software License without demand or notice. Termination will not result in any liability for Licensor.

(b) Either party may terminate the Software License:

(i) If the other party files for bankruptcy, reorganization or receivership or is adjudicated as bankrupt; or

(ii) On the material failure on the other party to perform its obligations hereunder, by submitting notice to the other party of the material failure, provided the material failure has not been corrected within 30 days of such notice; or

(iii) On the breach of the terms of the Franchise Agreement by Winzer if Licensee is terminating or by Licensee if Licensor is terminating, if the breach is not cured within any applicable cure period, or on expiration or termination of the License granted under the Franchise Agreement for any reason.

(c) On any expiration or termination of the Software License, Licensee must promptly return the Software to Licensor, including all copies of the Software, all materials containing part or all of the Software, and all related data and documentation.

## **6. Warranty.**

Licensor warrants that the Software will perform according to the most current release of the related documentation. Licensee acknowledges, however, that the Software is so complex that it may have inherent defects. Licensee agrees that as its sole remedy for correction of any defects in the Software, provided that Licensee is not otherwise in breach of any provision of this Agreement, Licensor will provide all reasonable services to correct verified programming or documentation errors reported by Licensee that Licensor's diagnosis indicates are caused by a defects in the unaltered Software as delivered by Licensor. For the purposes of this Agreement, a verified programming or documentation error is one that can be recreated by Licensor at its facilities using the unaltered Software with data and input supplied by Licensee.

## **7. Limitation of Liability.**

**Except for the express warranties stated in Section 6, Licensor makes no warranties or representations with respect to the Software, whether express, implied, statutory or otherwise, in fact or in law, including without limitation any implied warranties of merchantability or fitness for a particular purpose. Notwithstanding the form (e.g. contract, negligence or otherwise) in which any legal or equitable action may be brought against Licensor, Licensor will not be liable to Licensee or any 3<sup>rd</sup>. party for damages in excess of any fees actually paid to Licensor under this Agreement for damages arising out of or in connection with the delivery, use or performance of the Software. In no event will Licensor be liable to any party for special, consequential, indirect, punitive or exemplary damages, lost profits or lost savings, even if Licensor has been advised of the possibility of such damages.**

## **8. Miscellaneous.**

(a) Any and all notices given under this Agreement may be delivered personally or given by mail to the appropriate party at the address given below and will be effective when received. Each party may change its address for notices by sending written notice to the other party as provided in this Section 8(a). All notices must be in writing.

If to Licensor: Winzer Corporation  
4060 E. Plano Parkway  
Plano, Texas 75074-1800  
Attention: President

If to Licensee \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) In addition to any fees payable under this Agreement, Licensee must pay all taxes that are applicable to this Agreement or are measured directly by payments made under it and are required to be collected by Licensor or paid by Licensor to federal, state or local tax authorities, including, but not limited to, sales, use, excise and personal property taxes, but excluding taxes based solely on Licensor's net income.

(c) Licensee may not assign or transfer this Agreement.

(d) This Agreement will benefit and be binding on Licensor and Licensee and their respective successors and permitted assigns.

(e) This Agreement constitutes the full and complete understanding and agreement of Licensor and Licensee, and supersedes all prior negotiations, understandings and agreements, as to the subject matter of this Agreement.

(f) No delay or omission or failure to exercise any right or remedy provided for in this Agreement will be deemed to be a waiver of such right or remedy or acquiescence to the event giving rise to such right or remedy, but every such right and remedy may be exercised from time to time and so often as may be deemed expedient by the party exercising such right or remedy.

(g) Licensor and Licensee are independent contractors with respect to one another under this Agreement, and neither one is a principal, agent, legal representative, parent, affiliate, subsidiary, partner, joint venturer, employee, agent or legal representative of the other for any purpose.

(h) This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

(i) In any dispute arising hereunder that is finally adjudicated by a court of competent jurisdiction, the party that prevails will be entitled to recover from the other party its fees and costs, including its reasonable attorneys' fees, as determined by such court.

(j) If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, then (i) such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (ii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by such illegal, invalid or unenforceable provision or by its severance

from this Agreement; and (iii) there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable.

The terms of this Agreement are agreed to by:

**LICENSOR:**

WINZER CORPORATION

By: \_\_\_\_\_  
Vice President

**LICENSEE:**

FRANCHISEE

\_\_\_\_\_  
Name

## **SCHEDULE A TO SOFTWARE LICENSE AGREEMENT**

### **SOFTWARE**

**PEPPERI SOFTWARE** – Licensor’s proprietary Order Entry/Business Management Software necessary to operate Licensee’s business under the Franchise Agreement.



**ILLINOIS RIDER TO SOFTWARE LICENSE AGREEMENT**

This Software License Agreement is amended and revised as follows for use in Illinois:

Section 8(h) is modified to include the following sentence:

This governing law provision is not a waiver of Franchisee's rights under the Illinois Franchise Disclosure Act.

The terms of this Software License Agreement Rider are agreed to by:

**LICENSOR:**

**LICENSEE:**

WINZER CORPORATION

FRANCHISEE

By: \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Name

# ATTACHMENT 4 TO FRANCHISE AGREEMENT

## ADDENDUM FOR TRANSACTIONS WITH GOVERNMENT ENTITIES

**THIS ADDENDUM FOR TRANSACTIONS WITH GOVERNMENT ENTITIES** (“Addendum”) is entered into by and between WINZER FRANCHISE COMPANY, INC., a Texas corporation (“Winzer”) and \_\_\_\_\_ (“you”), individually, as of \_\_\_\_\_, 20\_\_ (“Effective Date”). This Addendum is executed in connection with the franchise agreement between Winzer and you dated \_\_\_\_\_, 20\_\_, including all amendments and supplements (“Franchise Agreement”).

WHEREAS, the General Services Administration (“GSA”) awarded a contract to Winzer Corporation, that authorizes the sale of products by Winzer and its franchisees to certain government agencies and other government entities (“GSA Contract”); and

WHEREAS, the Defense Logistics Department (“DLA”) awarded a contract to Winzer Corporation, that authorizes the sales of certain products by Winzer and its franchisees to certain government agencies and other government entities (“Cage Code”); and

WHEREAS, you wish to be able to periodically enter into transactions with federal, state and local government entities in accordance with the GSA Contract and Cage Code; and Winzer will authorize you to transact business under its GSA Contract and Cage Code if you agree to comply with all policies, rules, regulations and guidelines established by Winzer in accordance with the GSA Contract and Cage Code, and agree to abide by all laws that apply to your actions under the GSA Contract Cage Code.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Franchise Agreement is amended as follows:

1. Notwithstanding anything to the contrary in the Franchise Agreement, in the event of a conflict between the provisions of the Franchise Agreement and the provisions of this Addendum, the provisions of this Addendum will control. Winzer and you agree that the Franchise Agreement remains fully effective in all respects except as specifically modified herein, and that all the respective rights and obligations of Winzer and you under the Franchise Agreement remain as written unless modified herein.

2. You agree that this Addendum, as periodically supplemented by the Manual, including the GSA/DLA/Federal Government Business Policy, will govern all of your dealings under the GSA Contract, Cage Code and any other dealings with federal, state or local government entities.

3. You agree that you must at all times represent yourself as an authorized representative of Winzer, using Winzer’s name and business information, when conducting business under the GSA Contract and Cage Code or when entering into any transaction with the federal government. You acknowledge that you are not allowed to conduct business using your business name and address and/or company status under the GSA Contract and Cage Code or in transactions with the federal government.

4. If Winzer notifies you that Winzer has established a contract in its own name with any state or local government entity, you must at all times represent yourself as an authorized representative of Winzer when conducting business with that state or local government entity. If Winzer does not have a contract in its own name with a state or local government entity, you may conduct business with such state or local business entities using your business name and address and/or company status.

5. At its sole discretion, Winzer may make portions of the GSA Contract and Cage Code available to you as Winzer deems necessary for your actions under this Addendum. At its sole discretion, Winzer may periodically provide to you portions of applicable laws and regulations governing transactions with federal, state and local government entities and related materials governing transactions with federal, state and local government entities. You agree to be familiar with all materials provided by Winzer with respect to transactions with federal, state and local government entities.

6. In addition to the requirements of Section 3.6 of the Franchise Agreement, you agree to adhere to all applicable laws and regulations with respect to transactions with federal, state and local government agencies, including all laws and regulations governing sales to federal, state and local government entities. You further warrant and represent to Winzer that you are familiar with all applicable laws and regulations governing sales to federal, state and local government agencies, and agree to monitor and become familiar with any revisions or changes to such applicable laws and regulations.

7. In addition to the other training specified in Section 4.2 of the Franchise Agreement, at its sole discretion, Winzer may periodically provide to you training related to transactions with federal, state and local government agencies. You agree to attend all required training sessions.

8. In accordance with Section 5.2 of the Franchise Agreement, you must furnish all information requested by Winzer with respect to any transaction with a federal, state or local government agency in the format requested by Winzer. In particular, you acknowledge and agree that you must submit to Winzer, in advance, for Winzer's review and approval, all bids, contracts, orders, solicitations, requests for proposal ("RFP") and requests for quote ("RFQ"), before you quote, accept, submit or process any government bid, contract, order or solicitation. You must inform Winzer of any request for information ("RFI") received by a federal, state or local government agency related to your transactions with any such entity.

9. In addition to the indemnification provision in Section 5.7 of the Franchise Agreement, you must indemnify, defend and hold harmless Winzer from all claims, actions, damages, judgments, freight charges, bid fees, attorney's fees and other costs, expenses and losses, arising out of, in connection with or as a result of your transactions with any federal, state or local government agency, including violation of any applicable law or regulation related to such transactions by you or your Permitted Representatives.

10. Section 6.3 of the Franchise Agreement is amended to provide that you must honor all price terms of the GSA Contract and Cage Code, including quantity/volume discounts on orders from federal government accounts, or "Disaster Recovery" orders from state or local government accounts.

11. Unless Winzer otherwise consents, you will have no authority or responsibility for the submission of invoices for payment by any federal, state or local government agency. You further agree to promptly refer to Winzer any RFI received by you from any federal, state or local government agency regarding an invoice for payment.

12. Sections 6.4 and 6.6 of the Franchise Agreement are amended to provide that Winzer may deduct from your Periodic Gross Profits the freight charges and bid fees on sales to federal, state or local government agencies for purposes of reimbursing Winzer for amounts that cannot be invoiced to a federal, state or local government agency.

13. You acknowledge and agree that your violation of any material terms of this Addendum or the Manual, including Winzer's GSA/DLA/Federal Government Business Policy, is deemed a violation of Section 13.3(i) of the Franchise Agreement. Winzer may terminate your authority to conduct further business under the GSA Contract without give you an opportunity to cure, immediately on your receipt of written notice. Winzer may also terminate your License without giving you an opportunity to cure, immediately on your receipt of a written notice of default.

14. You acknowledge that Winzer has deemed the customers under its GSA Contract and Cage Code to be National Accounts within the meaning of Section 17.1(26) due to the special procurement procedures and/or pricing requirements of the GSA Contract and Cage Code. You agree that the customers under the GSA Contract and Cage Code are Winzer's customers and that none of the customers under the GSA Contract or Cage Code are or can qualify to become your Protected Customers within the meaning of Section 17.1(36).

IN WITNESS WHEREOF, you acknowledge this Addendum will become effective only on acceptance and execution by Winzer in the State of Texas, as of the Effective Date.

**WINZER FRANCHISE COMPANY, INC.:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FRANCHISEE:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT 5 TO FRANCHISE AGREEMENT**

**SBA ADDENDUM**

## **SBA ADDENDUM TO FRANCHISE<sup>1</sup> AGREEMENT**

{Note: Franchisee may be required to sign this standard form, or the then-current standard form approved by the U. S. Small Business Administration.}

**THIS ADDENDUM** (“Addendum”) is made and entered into on {Date}, by and between Winzer Franchise Company, Inc. (“Franchisor”), located at 4060 E. Plano Parkway, Plano, Texas 75074-1800, and {Franchisee Name} (Franchisee”), located at {Address}.

Franchisor and Franchisee entered into a Franchise Agreement on {Effective Date} (such Agreement, together with any amendments, the “Franchise Agreement”). Franchisee is applying for financing(s) from a lender in which funding is provided with the assistance of the U. S. Small Business Administration (“SBA”). SBA requires the execution of this Addendum as a condition for obtaining SBA-assisted financing.

In consideration of the mutual promises below and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree that notwithstanding any other terms in the Franchise Agreement or any other document Franchisor requires Franchisee to sign.

### **CHANGE OF OWNERSHIP**

- If Franchisee is proposing to transfer a partial interest in Franchisee and Franchisor has an option to purchase or a right of first refusal with respect to that partial interest, Franchisor may exercise such option or right only if the proposed transferee is not a current owner or family member of a current owner of Franchisee. If the Franchisor’s consent is required for any transfer (full or partial), Franchisor will not unreasonably withhold such consent. In the event of an approved transfer of the franchise interest or any portion thereof, the transferor will not be liable for the actions of the transferee franchisee.

### **FORCED SALE OF ASSETS**

- If Franchisor has the option to purchase the business personal assets upon default or termination of the Franchise Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties. If the Franchisee owns the real estate where the franchise location is operating, Franchisee will not be required to sell the real estate upon default or termination, but Franchisee may be required to lease the real estate for the remainder of the franchise term (excluding additional renewals) for fair market value.

<sup>1</sup> While relationships established under license, jobber, dealer and similar agreements are not generally described as "franchise" relationships, if such relationships meet the Federal Trade Commission's (FTC's) definition of a franchise (see 16 CFR § 436), they are treated by SBA as franchise relationships for franchise affiliation determinations per 13 CFR § 121.301(f)(5).

## COVENANTS

- If the Franchisee owns the real estate where the franchise location is operating, Franchisor has not and will not during the term of the Franchise Agreement record against the real estate any restrictions on the use of the property, including any restrictive covenants, branding covenants or environmental use restrictions. If any such restrictions are currently recorded against the Franchisee's real estate, they must be removed in order for the Franchisee to obtain SBA-assisted financing.

## EMPLOYMENT

- Franchisor will not directly control (hire, fire or schedule) Franchisee's employees. For temporary personnel franchises, the temporary employees will be employed by the Franchisee not the Franchisor.

As to the referenced Franchise Agreement, this Addendum automatically terminates when SBA no longer has any interest in any SBA-assisted financing provided to the Franchisee.

Except as amended by this Addendum, the Franchise Agreement remains in full force and effect according to its terms.

Franchisor and Franchisee acknowledge that submission of false information to SBA, or the withholding of material information from SBA, can result in criminal prosecution under 18 U.S.C. 1001 and other provisions, including liability for treble damages under the False Claims Act, 31 U.S.C. §§ 3729 – 3733.

### **Authorized Representative of FRANCHISOR:**

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

Print Name: {Franchisor Signatory}

Title: {Franchisor Signatory Title}

### **Authorized Representative of FRANCHISEE:**

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

Print Name: {Franchisee Signatory}

Title: {Franchisee Signatory Title}

**Note to Parties:** This Addendum only addresses "affiliation" between the Franchisor and Franchisee. Additionally, the applicant Franchisee and the franchise system must meet all SBA eligibility requirements

**EXHIBIT D**  
**GUARANTEE OF PERFORMANCE**




Form E  
GUARANTEE OF PERFORMANCE

For value received, GradeEight Holdings, a LLC (the "Guarantor"), located at 4060 E. Plano Parkway, Plano, Texas 75074, absolutely and unconditionally guarantees to assume the duties and obligations of WINZER FRANCHISE COMPANY, INC., located at 4060 E. Plano Parkway, Plano, TX 75074 (the "Franchisor"), under its franchise registration in each state where the franchise is registered, and under its Franchise Agreement identified in its 11/18 2021 Franchise Disclosure Document, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, whichever first occurs. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns.

The Guarantor signs this guarantee at Plano, Texas on the 21<sup>ST</sup> day of SEPTEMBER, 2021.

Guarantor:

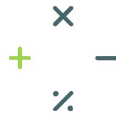
GradeEight Holdings, LLC

By: 

Name: Paul Seibert

Title: Executive Vice President

**EXHIBIT E**  
**FINANCIAL STATEMENTS**



REPORT OF INDEPENDENT AUDITORS AND  
CONSOLIDATED FINANCIAL STATEMENTS

**GRADE EIGHT HOLDINGS, LLC AND  
SUBSIDIARIES**

July 31, 2021, 2020, and 2019



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## **Report of Independent Auditors**

The Board of Directors  
Grade Eight Holdings, LLC and Subsidiaries

### **Report on the Financial Statements**

We have audited the accompanying consolidated financial statements of Grade Eight Holdings, LLC (formerly, SV-Winzer Holdings, LLC) and Subsidiaries, which comprise the consolidated balance sheet as of July 31, 2021, and the related consolidated statements of operations, changes in members' equity, and cash flows for the year then ended, and the related notes to the consolidated financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Grade Eight Holdings, LLC and Subsidiaries as of July 31, 2021, and the results of their operations and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

***Other Matter***

The consolidated financial statements of Grade Eight Holdings, LLC and Subsidiaries as of and for the years ended July 31, 2020 and 2019 were audited by another auditor whose report, dated October 26, 2020, expressed an unmodified opinion on those statements.

*Moss Adams LLP*

Dallas, Texas  
November 18, 2021

**Grade Eight Holdings, LLC and Subsidiaries**  
**Consolidated Balance Sheets**

	<b>ASSETS</b>		
	<u>2021</u>	<u>July 31, 2020</u>	<u>2019</u>
<b>CURRENT ASSETS</b>			
Cash and cash equivalents	\$ 875,634	\$ 3,720,607	\$ 4,999,447
Accounts receivable, net	12,841,967	10,729,054	11,789,224
Inventories, net	13,105,253	14,328,812	13,832,353
Other current assets	<u>703,432</u>	<u>1,255,646</u>	<u>653,980</u>
Total current assets	<u>27,526,286</u>	<u>30,034,119</u>	<u>31,275,004</u>
Property and equipment, net	10,585,136	5,443,185	6,817,389
Intangible assets, net	26,329,291	31,331,310	36,932,024
Goodwill, net	25,543,070	29,657,569	33,772,068
Other assets	<u>-</u>	<u>98,337</u>	<u>66,787</u>
<b>TOTAL ASSETS</b>	<b><u>\$ 89,983,783</u></b>	<b><u>\$ 96,564,520</u></b>	<b><u>\$ 108,863,272</u></b>

	<b>LIABILITIES AND MEMBERS' EQUITY</b>		
	<u>2021</u>	<u>July 31, 2020</u>	<u>2019</u>
<b>CURRENT LIABILITIES</b>			
Accounts payable	\$ 3,926,364	\$ 4,170,207	\$ 4,536,215
Accrued expenses	513,428	3,837,464	2,738,214
Current maturities of long-term debt	<u>22,119</u>	<u>-</u>	<u>105,410</u>
Total current liabilities	4,461,911	8,007,671	7,379,839
Deferred tax liabilities	5,491,304	5,175,441	6,545,289
Long-term debt, net	53,723,400	51,571,536	58,534,328
Other long-term liabilities	<u>245,400</u>	<u>416,000</u>	<u>-</u>
Total liabilities	63,922,015	65,170,648	72,459,456
Members' equity	45,800,000	45,300,000	45,300,000
Accumulated deficit	<u>(19,738,232)</u>	<u>(13,906,128)</u>	<u>(8,896,184)</u>
Total members' equity	<u>26,061,768</u>	<u>31,393,872</u>	<u>36,403,816</u>
<b>TOTAL LIABILITIES AND MEMBERS' EQUITY</b>	<b><u>\$ 89,983,783</u></b>	<b><u>\$ 96,564,520</u></b>	<b><u>\$ 108,863,272</u></b>

See accompanying notes to these consolidated financial statements.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Consolidated Statements of Operations**

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	Years Ended July 31,		
	2021	2020	2019
NET SALES	\$ 96,549,443	\$ 113,773,414	\$ 103,429,911
COST OF GOODS SOLD	<u>32,164,860</u>	<u>44,493,006</u>	<u>34,235,486</u>
GROSS PROFITS ON SALES	64,384,583	69,280,408	69,194,425
OPERATING EXPENSES			
Selling and marketing	27,035,971	28,730,727	30,100,929
Warehouse operations	15,843,561	15,310,258	14,712,687
Administrative costs	11,481,404	10,905,962	9,020,979
Auto, entertainment and travel	337,917	452,830	440,802
Depreciation and amortization	<u>12,243,884</u>	<u>12,828,822</u>	<u>11,864,279</u>
Total operating expenses	<u>66,942,737</u>	<u>68,228,599</u>	<u>66,139,676</u>
INCOME (LOSS) FROM OPERATIONS	(2,558,154)	1,051,809	3,054,749
OTHER INCOME (EXPENSE)			
Interest expense	(3,703,955)	(5,028,353)	(6,124,095)
Other income (expense), net	<u>(40,054)</u>	<u>(265,084)</u>	<u>(115,986)</u>
	<u>(3,744,009)</u>	<u>(5,293,437)</u>	<u>(6,240,081)</u>
LOSS BEFORE TAXES	(6,302,163)	(4,241,628)	(3,185,332)
INCOME TAX PROVISION	<u>(470,059)</u>	<u>768,316</u>	<u>(1,067,933)</u>
NET LOSS	<u>\$ (5,832,104)</u>	<u>\$ (5,009,944)</u>	<u>\$ (2,117,399)</u>

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See accompanying notes to these consolidated financial statements.



**Grade Eight Holdings, LLC and Subsidiaries**  
**Consolidated Statements of Changes in Members' Equity**

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	Members' Equity		Accumulated Deficit	Total
	Class A Units	Amount		
BALANCE, August 1, 2018	46,550	\$ 45,300,000	\$ (6,778,785)	\$ 38,521,215
Net loss	-	-	(2,117,399)	(2,117,399)
BALANCE, July 31, 2019	46,550	45,300,000	(8,896,184)	36,403,816
Redemption of membership units	(500)	-	-	-
Net loss	-	-	(5,009,944)	(5,009,944)
BALANCE, July 31, 2020	46,050	45,300,000	(13,906,128)	31,393,872
Member contribution	791	500,000	-	500,000
Net loss	-	-	(5,832,104)	(5,832,104)
BALANCE, July 31, 2021	<u>46,841</u>	<u>\$ 45,800,000</u>	<u>\$ (19,738,232)</u>	<u>\$ 26,061,768</u>

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See accompanying notes to these consolidated financial statements.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Consolidated Statements of Cash Flows**

	Years Ended July 31,		
	2021	2020	2019
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Net loss	\$ (5,832,104)	\$ (5,009,944)	\$ (2,117,399)
Adjustments to reconcile net loss to net cash provided by operating activities			
Bad debt expense	15,975	15,908	21,776
Depreciation and amortization	12,243,884	12,828,822	11,864,279
Amortization of deferred financing fees	451,864	401,149	368,419
Interest paid-in kind	-	442,715	836,109
Deferred income taxes	315,863	(1,369,848)	(1,143,459)
Gain (loss) on disposal of property and equipment	61,371	49,160	136,887
Changes in assets and liabilities			
Accounts receivable	(2,128,888)	1,044,262	(129,597)
Inventories	1,439,864	(496,459)	298,968
Other current assets	552,214	(601,666)	212,515
Other assets	98,337	(31,550)	(2,430)
Accounts payable	(243,843)	(366,008)	(743,534)
Accrued expenses	(3,909,036)	1,099,250	(654,736)
Other long-term liabilities	(185,881)	416,000	-
Net cash provided by operating activities	2,879,620	8,421,791	8,947,798
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Acquisition, net of cash acquired	(230,000)	-	(850,000)
Capital expenditures	(7,682,493)	(1,788,565)	(1,119,306)
Proceeds on sale of property and equipment	-	-	23,941
Net cash used in investing activities	(7,912,493)	(1,788,565)	(1,945,365)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Net borrowings on line of credit	2,700,000	-	-
Borrowings of long-term credit	-	20,000,000	-
Payments on long-term debt and capital lease obligations	(1,012,100)	(27,476,566)	(6,500,000)
Financing fees paid	-	(435,500)	-
Proceeds from issuance of membership units	500,000	-	-
Net cash provided by (used in) financing activities	2,187,900	(7,912,066)	(6,500,000)
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	<b>(2,844,973)</b>	<b>(1,278,840)</b>	<b>502,433</b>
<b>CASH AND CASH EQUIVALENTS, beginning of year</b>	<b>3,720,607</b>	<b>4,999,447</b>	<b>4,497,014</b>
<b>CASH AND CASH EQUIVALENTS, end of year</b>	<b>\$ 875,634</b>	<b>\$ 3,720,607</b>	<b>\$ 4,999,447</b>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION</b>			
Interest paid	\$ 3,682,875	\$ 5,918,895	\$ 5,110,626
Income tax	\$ 535,325	\$ 260,766	\$ 794,801
<b>SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES</b>			
Earnout assumed in conjunction with the acquisition	\$ 585,000	\$ -	\$ 624,000

See accompanying notes to these consolidated financial statements.

## **Grade Eight Holdings, LLC and Subsidiaries**

### **Notes to the Consolidated Financial Statements**

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#### **Note 1 – Summary of Significant Accounting Policies**

##### **Nature of Operations**

Grade Eight Holdings, LLC is a limited liability company with no set termination date. Grade Eight Holdings, LLC and its wholly owned subsidiary, Grade Eight Corp., are holding companies that conduct no operating activities and own no significant assets other than through its interests in its wholly owned subsidiary, Winzer Corporation, and indirectly the wholly owned subsidiaries of Winzer Corporation, Winzer Franchise Company, Inc., and FastServ Supply, Inc. (collectively referred to as the Company). The Company is headquartered in Plano, Texas, and distributes quality packaged fasteners, nuts, bolts, clamps, adhesives, sealers, electrical components, cutting fluid power fittings, chemicals, welding and shop supplies, janitorial supplies, and other related parts and services for the fastener, chemical, industrial, automotive, and maintenance industries throughout the United States. During the fiscal year ended July 31, 2021, the Company changed its legal name from SV-Winzer Holdings, LLC to Grade Eight Holdings, LLC.

During fiscal 1991, the Company began franchising, under which qualified persons or entities are granted the right to establish, develop, and own a franchised distribution business for the sale of supplies and repair parts in the automotive, industrial, and heavy-duty repair market. On October 29, 2012, the Company assigned the existing franchisees to its wholly owned subsidiary, Winzer Franchise Company, Inc. The Company had 301, 322, and 289 franchisees as of July 31, 2021, 2020, and 2019, respectively.

##### **Principles of Consolidation**

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (US GAAP). All intercompany accounts and transactions have been eliminated.

##### **Basis of Presentation**

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, which require management to make certain estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and the disclosures of contingent assets and liabilities as of the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reporting period. The Company bases its estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances at the time. Actual results could differ from those estimates under different assumptions or conditions.

## Grade Eight Holdings, LLC and Subsidiaries

### Notes to the Consolidated Financial Statements

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#### **Note 1 – Summary of Significant Accounting Policies (continued)**

##### **Cash and Cash Equivalents**

For purposes of consolidated financial statement presentation and reporting cash flows, all highly liquid investments with original maturities at the date of purchase of three months or less are considered cash equivalents. The Company maintains its cash in bank deposit accounts that may, at times, exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant risk related to deposits in excess of federally insured limits.

##### **Accounts Receivable and Allowance for Doubtful Accounts**

A majority of the Company's sales are made on credit. Accounts receivable are uncollateralized customer obligations due under normal trade terms requiring payment within 30 days from the invoice date. Amounts not collected from the franchisee customers are charged back to the selling franchisee. Accounts receivable are stated at the amount billed to the customer. The carrying amount of receivables is reduced by an allowance for doubtful accounts that reflects management's best estimate of the amounts that will not be collected. Management individually reviews all delinquent accounts receivable balances.

The Company records an allowance for doubtful accounts based on specifically identified amounts that management believes to be uncollectible. The Company also records an additional allowance based on certain percentages of aged receivables, which are determined based on historical and management's assessment of the general financial conditions affecting the customer base. If actual collections change, revisions to the allowance may be required. After all attempts to collect a receivable have failed, the receivable is written off against the allowance. The allowance for doubtful accounts at July 31, 2021, 2020, and 2019 was \$18,647, \$19,114, and \$45,539, respectively.

##### **Inventories**

Inventories are stated at the lower of average cost of the most recent purchases or net realizable value and is made up of purchased finished goods. The Company records an inventory reserve for slow moving, obsolete, or damaged inventory.

The reserve is estimated using a graduated model that increases the reserve percentage applied based on factors such as historical sales, inventory turn ratio, inventory fill rates, and salvage values for unusable or damaged inventories. Management estimates the reserve on a quarterly basis. As of July 31, 2021, 2020, and 2019, the inventory reserve was approximately \$789,000, \$1,060,000, and \$1,404,000, respectively.

##### **Long-Lived Assets**

The Company's amortized long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. If undiscounted estimated future cash flows are less than the carrying amount of the assets, an impairment loss must be recognized based on the fair value of the assets. Management determined there was no impairment of long-lived assets as of July 31, 2021, 2020, and 2019.

## Grade Eight Holdings, LLC and Subsidiaries

### Notes to the Consolidated Financial Statements

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#### **Note 1 – Summary of Significant Accounting Policies (continued)**

##### **Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation. Property and equipment acquired as a result of the business combinations are initially stated at fair value. Equipment under capital lease is stated at present value of minimum lease payments (or fair value, if less) at the inception of the lease. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful life of the asset. Depreciation and amortization of property and equipment are provided using the straight-line method based on estimated useful lives as follows:

Warehouse equipment	5 – 10 years
Office equipment	3 – 7 years
Computer software and equipment	3 years

##### **Intangible Assets and Goodwill**

The Financial Accounting Standards Board (FASB) issued guidance that allows private companies to elect not to separately identify and recognize certain intangible assets and noncompetition agreements acquired in a business combination. Under this alternative, a private company may elect not to recognize the following intangible assets in a business combination: customer-related intangible assets, unless they are capable of being sold or licensed independently from the other assets of a business, and noncompetition agreements. If adopted, the intangible asset alternative must be applied to all business combinations entered into after the effective date.

Adoption of this alternative also requires the adoption of the goodwill alternative issued by the FASB, which provides private companies with an alternative for the subsequent measurement of goodwill. Under this alternative, goodwill is amortized and is only tested for impairment when a triggering event occurs that indicates the fair value may be below the carrying amount. Entities that adopt the alternative are required to make a policy decision to test goodwill for impairment either at the entity level or at the reporting unit level. If adopted, the goodwill alternative must be applied to all existing and future goodwill.

The Company adopted both of these accounting alternatives and applied their provisions prospectively beginning September 29, 2017, and elected to test goodwill for impairment at the entity level. As a result of adopting the intangible asset alternative, certain acquired identifiable intangible assets and noncompetition agreements were not recorded as part of the business combinations described in Note 2.

## Grade Eight Holdings, LLC and Subsidiaries

### Notes to the Consolidated Financial Statements

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#### **Note 1 – Summary of Significant Accounting Policies (continued)**

Goodwill is the excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed. As a result of business combination, the Company recognized goodwill as well as additional intangible assets. Goodwill after adopting the private company alternative is amortized on a straight-line basis over 10 years. In addition, goodwill is tested for impairment at the entity level when a triggering event indicates that the fair value of the Company may be below its carrying value. No impairment loss was recorded in the years ended July 31, 2021, 2020, and 2019.

The intangible assets relate to the Company's tradename and franchise agreements for an acquisition on September 29, 2017. The tradename and franchise agreements were measured at fair value as of the acquisition date and are amortized over the estimated useful lives of 20 years and 7 years, respectively. The weighted average useful life of the intangible assets acquired was 10.4 years.

For acquisitions completed before September 29, 2017, the Company amortized intangibles on a straight-line basis over the expected period of benefit as follows:

Franchise relationships	7 – 20 years
Customer relationships	20 years
Trade names	5 – 20 years
Non-compete agreements	2 – 5 years
Websites	5 years

#### **Income Taxes**

Grade Eight Holdings, LLC (Holdings) is a limited liability company, and Grade Eight Corp (Corp.) is an S-corporation, whereby, in lieu of corporate income tax, the members and shareholders are taxed on the Holdings and Corp. taxable income. Therefore, Holdings and Corp. are not subject to U.S. federal and state income taxes. Income taxes for Winzer Corporation are accounted for using the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the carrying amounts of existing assets and liabilities and their respective tax bases.

Deferred tax assets and liabilities are measured using enacted tax rates expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the period in which those differences are deductible.

## Grade Eight Holdings, LLC and Subsidiaries

### Notes to the Consolidated Financial Statements

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#### **Note 1 – Summary of Significant Accounting Policies (continued)**

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income taxes are measured at the largest amount that is greater than likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company recognized both interest and penalties related to uncertain tax positions as part of the income tax provision. The Company maintains accruals for uncertain tax positions until examination of the tax year is completed by the applicable taxing authority, available review periods expire, or additional facts and circumstances cause us to change our assessment of the accrual amount.

#### **Deferred Financing Costs**

Deferred financing costs represent direct costs incurred to obtain long-term financing and are amortized to interest expense in the consolidated statements of operations over the term of the related debt using the straight-line method, which approximates the effective interest method.

#### **Recently Issued Accounting Pronouncements**

In February 2016, the FASB issued ASU No. 2016-2, *Leases* (Topic 842). Under the new ASU, lessees will be required to recognize the following for all leases (with the exception of short-term leases) at the commencement date: (1) a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis, and (2) a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. Under the new guidance lessor accounting is largely unchanged. The new lease guidance simplified the accounting for sale and leaseback transactions primarily because lessees must recognize lease assets and lease liabilities. Lessees (for capital and operating leases) and lessors (for sales-types, direct financing, and operating leases) must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The modified retrospective approach would not require any transition accounting for leases that expired before the earliest comparative period presented. This ASU is effective for private companies for years beginning after December 15, 2021. The Company is currently evaluating the impact of this standard.

#### **Revenue Recognition**

The Company's revenue is recognized at a point in time when control and risk associated with ownership transfers to the customer, typically when the product ships. Net sales are determined by deducting discounts, sales tax, and returns from gross sales. Freight charges billed to customers are recorded as revenue and included in net sales. Sales are paid for at the time of sale in cash, credit card, or may be on account, generally with payment terms of 30 days. The Company recognizes revenues based upon the price the Company expects to be entitled, which is generally fixed. Customers have the right to return certain products and equipment (unopened and unused) for credit or refund; however, the Company offers no implied or express warranty on the products or equipment. Historically, obligations for returns and refunds have not been material to the consolidated financial statements; therefore, no estimated revenue adjustment or returns liability have been recorded.

During the years ended July 31, 2021, 2020, and 2019, all revenue was attributable to domestic operations of the Company. This revenue was wholly generated through point in time product shipments and retail sales.

## Grade Eight Holdings, LLC and Subsidiaries

### Notes to the Consolidated Financial Statements

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#### **Note 1 – Summary of Significant Accounting Policies (continued)**

Effective August 1, 2020, the Company accounted for revenue under Accounting Standards Codification (ASC) Topic 606, *Revenue from Contracts with Customers*. ASC 606 was applied to all contracts that were not complete as of the date of adoption, using the modified retrospective transition method which resulted in no material impact to any line items within the Company's consolidated statements of operations or consolidated balance sheets as a result of applying ASC 606 for the fiscal year ended July 31, 2021.

#### *Franchisees*

During the year ended July 31, 1991, the Company began franchising, under which qualified persons or entities are granted the right to establish, develop, and own a franchised distribution business for the sale of supplies and repair parts in the automotive, industrial, and heavy-duty repair market. In October of 2012, the Company assigned the existing franchisees to its wholly owned subsidiary, Winzer Franchise Company, Inc. Franchise related sales account for approximately 85% of all recorded revenue for the Company.

#### *Net Revenue*

The Company reports sales made by the franchisees as revenue. The Company manages the inventory supply chain and retains all of the inventory risk including obsolescence and shrinkage, and records the cost of the related inventory as cost of goods sold. Additionally, the Company provides all back-office support and is wholly responsible for collection of accounts receivable. Although any uncollectible amounts from the franchisee customers are ultimately charged back to the selling franchise, the Company would absorb any bad debt in the event a franchise became insolvent.

#### *Franchise Fees*

For the years ended July 31, 2021, 2020, and 2019, the franchise fees earned were approximately \$103,000, \$46,000, and \$48,000, respectively. Per the franchise agreement, franchise fees must be paid on or before the effective date of the agreement. The fee is considered fully earned and is non-refundable on the effective date of the agreement. This revenue stream is recognized over a 5-year period, and there are no termination or cancellation fees.

#### *Retail*

The Company operates 11 retail stores, eight in Texas, one in New Mexico, and two in Nevada. The stores sell a variety of maintenance, repair, and operation-related products and equipment. All sales are recorded at the time the product transfers to the customer (point of sale) and are paid for at the time of sale in cash, credit card, or on account. Retail sales account for approximately 14% of all recorded revenue for the Company.



## **Grade Eight Holdings, LLC and Subsidiaries**

### **Notes to the Consolidated Financial Statements**

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#### **Note 1 – Summary of Significant Accounting Policies (continued)**

##### **Sales by Franchisees and Related Selling Expenses**

The Company invoices and ships inventory directly to customers for sales made by franchisees. The franchisees are paid the margin between their cost and the selling price to the customers, less the Company's franchise service fee and reimbursement of certain other costs. The Company reports the net expense to franchisees as selling and marketing expenses included in the consolidated statements of operations. For the years ended July 31, 2021, 2020, and 2019, net payments included in the expense were approximately \$25,835,305, \$25,496,000, and \$27,316,000, respectively.

##### **Equity Based Compensation**

The Company accounts for its equity-based compensation plans by recognizing the costs of employee services received in exchange for an award of equity instruments based on grant-date fair value of the awards. Compensation expense related to the equity-based awards that are subject to vesting requirements are recognized over the vesting period.

##### **Fair Value of Financial Instruments**

The Company's carrying value for its financial instruments, which includes cash and cash equivalents, accounts receivable, accounts payable, and long-term debt, approximates fair value.

##### **Risks and Uncertainties**

Actual results and outcomes may differ from management's estimates and assumptions due to risks and uncertainties, including uncertainty in the current economic environment due to the recent outbreak of a novel strain of the coronavirus (COVID-19).

#### **Note 2 – Acquisitions**

##### **Evans Standard Products**

On January 2, 2019, Winzer Corporation acquired certain assets and assumed certain liabilities from Evans Standard Products, Inc. (Evans). This transaction resulted in a change of control and was accounted for as a business combination. The purpose of the acquisition was to expand the Company's customer base.

The total purchase price of the acquisition was allocated to the assets acquired and liabilities assumed based on their respective fair values. The transaction was neither financed nor was equity issued to fund the transaction. The source of cash used to pay the purchase price was from the Company's operating cash. The Company recognized \$30,500 in transaction expenses in the year ended July 31, 2019, which are included in administrative costs in the consolidated statements of operations.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 2 – Acquisitions (continued)**

In connection with the purchase of Evans, the purchase price included contingent consideration payable to the seller based on the Company meeting certain revenue targets for the acquired business for each of the 12-month periods ended January 2, 2020, 2021, and 2022. The range of undiscounted amounts the Company could pay as contingent consideration is between \$195,000 and \$1,125,000. The fair value of this liability was recognized at the acquisition date in the amount of \$624,000, using a probability-weighted model.

During the fiscal year 2020, the Company and seller agreed to extend the contingent consideration for the two remaining 12-month periods by 12 months. This was primarily due to COVID-19, and the remaining periods now end January 2, 2022 and 2023. Management has assessed the contingent consideration for the extended periods and has concluded the remaining liability of \$416,000 to be the estimated consideration to be paid. Thus, there was no activity in the consolidated statement of operations or consolidated statement of cash flows to reflect any fair value adjustments.

The following table summarizes the recognized amounts of the assets acquired and liabilities assumed at the acquisition date:

Consideration	
Purchase price - cash	\$ 850,000
Contingent consideration	<u>624,000</u>
Total consideration	<u>\$ 1,474,000</u>
Assets acquired	
Inventories	\$ 108,389
Property and equipment	3,000
Goodwill	<u>1,362,611</u>
Net identifiable assets acquired	<u>\$ 1,474,000</u>

The goodwill of \$1,362,611 arising from the acquisition is largely due to the Company's customer relationships and the trained and assembled workforce that do not qualify for separate recognition. Goodwill is expected to be deductible for tax purposes.

**Delta Supply Company, LLC**

On February 11, 2021, Winzer Corporation acquired certain assets and assumed certain liabilities from Delta Supply Company, LLC (Delta). This transaction did not meet the characteristics of a business combination and was accounted for as an asset acquisition.

The total purchase price of the acquisition was allocated to the assets acquired and liabilities assumed based on their respective fair values. The transaction was neither financed nor was equity issued to fund the transaction. The source of cash used to pay the purchase price was from the Company's operating cash.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 2 – Acquisitions (continued)**

In connection with the purchase of Delta, the purchase price included contingent consideration payable to the seller based on the Company meeting certain revenue targets for the acquired business for each of the 12-month periods ended February 2022, 2023, and 2024. The Company estimated the range of undiscounted amounts the Company could pay as contingent consideration is between \$292,500 and \$990,000. The fair value of this liability was recognized at the acquisition date in the amount of \$585,000.

The following table summarizes the recognized amounts of the assets acquired and liabilities assumed at the acquisition date:

Consideration		
Purchase price - cash	\$	230,000
Contingent consideration		<u>585,000</u>
Total Consideration	<u>\$</u>	<u>815,000</u>
Assets acquired		
Inventories	\$	216,304
Intangibles		<u>598,696</u>
Net identifiable assets acquired	<u>\$</u>	<u>815,000</u>

**Note 3 – Property and Equipment**

Property and equipment consist of the following as of July 31:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Computer software and equipment	\$ 9,633,972	\$ 7,670,010	\$ 5,980,530
Warehouse equipment	2,339,169	2,244,142	2,022,359
Leasehold improvements and other	958,020	926,552	907,906
Office equipment	403,932	402,269	389,099
Construction in progress	<u>6,066,792</u>	<u>509,636</u>	<u>706,186</u>
	19,401,885	11,752,609	10,006,080
Accumulated depreciation	<u>(8,816,749)</u>	<u>(6,309,424)</u>	<u>(3,188,691)</u>
Total	<u>\$ 10,585,136</u>	<u>\$ 5,443,185</u>	<u>\$ 6,817,389</u>

Depreciation expense for property and equipment as of and for the years ended July 31, 2021, 2020, and 2019 was \$3,151,684, \$3,113,609, and \$2,205,841, respectively.

As of July 31, 2021, construction in progress consists of implementation costs related to the Company's new software systems.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 4 – Intangible Assets and Goodwill**

Intangible assets and goodwill and related accumulated amortization by major asset type are as follows:

	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>
<u>July 31, 2021</u>			
Franchise relationships	\$ 35,498,696	\$ (19,111,905)	\$ 16,386,791
Trade name	<u>12,300,000</u>	<u>(2,357,500)</u>	<u>9,942,500</u>
Total	<u>\$ 47,798,696</u>	<u>\$ (21,469,405)</u>	<u>\$ 26,329,291</u>
Goodwill	<u>\$ 41,144,990</u>	<u>\$ (15,601,920)</u>	<u>\$ 25,543,070</u>
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>
<u>July 31, 2020</u>			
Franchise relationships	\$ 34,900,000	\$ (14,126,190)	\$ 20,773,810
Trade name	<u>12,300,000</u>	<u>(1,742,500)</u>	<u>10,557,500</u>
Total	<u>\$ 47,200,000</u>	<u>\$ (15,868,690)</u>	<u>\$ 31,331,310</u>
Goodwill	<u>\$ 41,144,990</u>	<u>\$ (11,487,421)</u>	<u>\$ 29,657,569</u>
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>
<u>July 31, 2019</u>			
Franchise relationships	\$ 34,900,000	\$ (9,140,476)	\$ 25,759,524
Trade name	<u>12,300,000</u>	<u>(1,127,500)</u>	<u>11,172,500</u>
Total	<u>\$ 47,200,000</u>	<u>\$ (10,267,976)</u>	<u>\$ 36,932,024</u>
Goodwill	<u>\$ 41,144,990</u>	<u>\$ (7,372,922)</u>	<u>\$ 33,772,068</u>

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 4 – Intangible Assets and Goodwill (continued)**

Intangible asset amortization expense for each of the years ended July 31, 2021, 2020, and 2019, was \$5,600,714. Amortization expense for goodwill for the years ended July 31, 2021, 2020, and 2019 was \$4,114,499, \$4,114,499, and \$4,057,724, respectively. Estimated future amortization expense is as follows:

Years Ending July 31,	<u>Intangible Assets</u>	<u>Goodwill</u>	<u>Total</u>
2022	\$ 5,660,584	\$ 4,114,499	\$ 9,775,083
2023	5,660,584	4,114,499	9,775,083
2024	5,660,584	4,114,499	9,775,083
2025	1,505,823	4,114,499	5,620,322
2026	59,870	4,114,499	4,174,369
Thereafter	<u>7,781,848</u>	<u>4,970,575</u>	<u>12,752,423</u>
Total	<u>\$ 26,329,291</u>	<u>\$ 25,543,070</u>	<u>\$ 51,872,361</u>

A rollforward of goodwill for the years ended July 31, 2021, 2020, and 2019 is as follows:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Balance, beginning of period	\$ 29,657,569	\$ 33,772,068	\$ 36,467,181
Acquisitions	-	-	1,362,611
Amortization	<u>(4,114,499)</u>	<u>(4,114,499)</u>	<u>(4,057,724)</u>
Total	<u>\$ 25,543,070</u>	<u>\$ 29,657,569</u>	<u>\$ 33,772,068</u>

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 5 – Long-Term Debt**

Long-term debt consisted of the following as of July 31:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Term Loan	\$ 51,560,000	\$ 52,560,000	\$ 41,110,000
Senior Subordinated Notes	-	-	10,690,872
Junior Subordinated Notes	-	-	8,005,525
Revolving line of credit	<u>2,700,000</u>	<u>-</u>	<u>-</u>
Long-term debt before discount	54,260,000	52,560,000	59,806,397
Deferred financing fees, net	<u>(536,600)</u>	<u>(988,464)</u>	<u>(1,166,659)</u>
Total debt, net of discount	<u>53,723,400</u>	<u>51,571,536</u>	<u>58,639,738</u>
Current portion of long-term debt	<u>-</u>	<u>-</u>	<u>(105,410)</u>
Long-term portion	<u>\$ 53,723,400</u>	<u>\$ 51,571,536</u>	<u>\$ 58,534,328</u>

**Credit Agreement**

In September 2017, the Company entered into a credit agreement (Credit Agreement) with companies that are owners of the Company and related to the Company through common ownership. The Credit Agreement included initial commitments totaling \$62,000,000, consisting of a \$52,000,000 term loan (Term Loan) and up to \$10,000,000 in revolving loan advances (Revolver). The Credit Agreement also allows for additional incremental commitments up to \$30,000,000 under the Term Loan and Revolver in total, of which the additional commitment related to the Revolver may not be more than \$5,000,000. The funds from the Credit Agreement were used to pay outstanding principal and interest on the long-term debt of the Company and pay the sellers in the acquisition (Note 2). The Credit Agreement is secured by substantially all the assets of the Company.

In February 2020, the Company executed the Second Amendment of the Credit Agreement, which modified the agreement to increase the total term loan balance by \$20,000,000 to be used to repay the Senior Subordinated Notes and the Junior Subordinated Notes, as well as pay any fees associated with repaying the balance. The total debt extinguished as of February 2020 was \$19,210,250 for both notes.

The Credit Agreement requires the Company to maintain certain financial ratios and meet other financial covenants. At July 31, 2021, the Company was not in compliance with certain covenants and received a waiver from the lenders.

## Grade Eight Holdings, LLC and Subsidiaries

### Notes to the Consolidated Financial Statements

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#### **Note 5 – Long-Term Debt (continued)**

The Term Loan requires quarterly principal payments of \$130,000 with payments due beginning January 31, 2018 through July 31, 2023. With the Second Amendment, the quarterly principal payment was increased by \$50,000 beginning April 30, 2020. Any outstanding principal and interest related to the Term Loan are due at maturity on September 29, 2023. Any prepayments on the Term Loan are first applied to the next four quarterly payments and then reduce future quarterly principal payments and the final principal payment proportionally. The interest rate on the Term Loan is dependent upon the type of loan borrowed, as defined by the Credit Agreement. Interest is paid at least every quarter. The interest rate on the Term Loan was 5.75%, 6.20%, and 7.23% at July 31, 2021, 2020, and 2019, respectively.

The Revolver requires interest payments at least every quarter. Any principal and interest outstanding are due at maturity on September 29, 2022. Fees amounting to 0.50% annually of the unused balance are accrued and payable quarterly. The interest rate on the Revolver is dependent upon the type of loan the Company borrowed, as defined by the Credit Agreement. The interest rate on the Revolver was 7%, 5.75%, and 8.36% at July 31, 2021, 2020, and 2019, respectively. The balance outstanding on the Revolver was approximately \$2,700,000, \$0, and \$0 at July 31, 2021, 2020, and 2019, respectively.

Beginning with the fiscal year ending July 31, 2019, the Company was required to pay excess cash flow payments, as defined by the Credit Agreement, which are applied to amounts outstanding under the Credit Agreement. During the years ended July 31, 2021, 2020, and 2019, the Company prepaid approximately \$1,200,000, \$8,000,000, and \$6,500,000, respectively, on the Term Loan. As of July 31, 2021, 2020, and 2019, due to the prepayments, there are no amounts due under the excess cash flow payment.

#### **Note Purchase Agreement**

In September 2017, the Company entered into a note purchase agreement (Note Purchase Agreement) with companies that are owners of the Company. Borrowings under the Note Purchase Agreement includes notes totaling \$10,300,000 that are subordinated to the Credit Agreement (Senior Subordinated Notes) and notes totaling \$6,900,000 that are subordinated to the Credit Agreement and the Senior Subordinated Notes (Junior Subordinated Notes). The funds from the Note Purchase Agreement were used to pay outstanding principal and interest on the long-term debt of the Company and pay the sellers in the acquisition (Note 2). The Note Purchase Agreement was paid off in February 2020 using the funds from the Second Amendment of the Credit Agreement.

The Senior Subordinated Notes required cash interest payments monthly at an interest rate of 10.00% per annum. Additional interest of 2.00% per annum was also accrued and was added to the principal balance monthly from September 29, 2017 through September 29, 2022. All interest accrued but not yet paid was due in full on September 30, 2022. After September 2022, cash interest payments were to be made monthly at an interest rate of 12.00% per annum. All remaining outstanding principal and interest on the Senior Subordinated Notes were to be due in full on March 29, 2024.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 5 – Long-Term Debt (continued)**

The Junior Subordinated Notes required cash interest payments monthly at an interest rate of 6.00% per annum. Additional interest of 8.00% per annum was also accrued and was added to the principal balance monthly from September 29, 2017 through September 29, 2022. All interest accrued but not yet paid was due in full on September 30, 2022. After September 2022, cash interest payments were to be made monthly at an interest rate of 14.00% per annum. All remaining outstanding principal and interest on the Junior Subordinated Notes were to be due in full on March 29, 2024.

The Note Purchase Agreement required the Company to maintain certain financial ratios and meet other financial covenants. At July 31, 2020 and 2019, the Company was in compliance with such covenants.

**Deferred Financing Fees**

During 2018, the Company paid \$1,842,093 in financing fees related to Credit Agreement and Note Purchase Agreement. In February 2020, the Company amended the Credit Agreement, which included an additional \$435,500 in financing fees. Deferred financing fees are presented net of accumulated amortization of \$1,528,448, \$1,076,584, and \$675,434 as of July 31, 2021, 2020, and 2019, respectively. Amortization of financing fees is recorded as interest expense in the consolidated statement of operations and totaled \$451,864, \$375,860, and \$368,419 for the years ended July 31, 2021, 2020, and 2019, respectively.

Scheduled future maturities of long-term debt at July 31, 2021 were as follows:

Years Ending <u>July 31,</u>	<u>Contractual Maturities</u>
2022	\$ -
2023	2,700,000
2024	<u>51,560,000</u>
Total	<u>\$ 54,260,000</u>



## **Grade Eight Holdings, LLC and Subsidiaries**

### **Notes to the Consolidated Financial Statements**

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#### **Note 6 – Members' Equity**

Concurrently with the acquisition of the Company on September 29, 2017, the Company amended and restated the limited liability company agreement. As part of the agreement, the Company is authorized to issue Class A units and Class P units.

#### **Class A Units**

The Company authorized 46,841 units of Class A Units, of which 46,841 units were issued and outstanding as of July 31, 2021, and 46,550 units were issued and outstanding as of July 31, 2020 and 2019. During the year ended July 31, 2021, the Company issued 791 Class A units in exchange for \$500,000 cash and a note receivable for \$500,000. As of July 31, 2021, an aggregate of \$1,250,000 in notes receivable issued in exchange for Class A Units were outstanding and is included as a contra-equity account included in members' equity on the consolidated balance sheet. Class A unitholders are entitled to one vote for each Class A Unit held. Class A unitholders' liability is limited to its capital contributions and members' equity attributable to the Class A Units. In June 2020, 500 units were redeemed and \$500,000 of previously issued notes receivable were forfeited.

#### **Class P Units**

The Company authorized 6,774 Class P Units. The Company has designated Class P Units to be issued to employees and other individuals as determined by the Board. The Class P Units represent a profits interest in the Company and carry the rights, preferences, limitations, and obligations designated by the Company's limited liability company agreement. Vesting of the Class P Units is determined based on each individual grant agreement, and they are designated as either Time Vesting Units or Performance Vesting Units, each with separate vesting criteria and timing. During the years ended July 31, 2021, 2020, and 2019, 1,269, 0.0, and 157, Class P units granted were designated as Time Vesting Units, respectively, and 2,059, 0.0, and 173, Class P units granted were designated as Performance Vesting Units, respectively. During the years ended July 31, 2021, 2020, and 2019, 0.0, 1,440, and 329 Class P Units were forfeited, respectively.

Class P Performance Vesting Units will vest upon the disposition and sale of the Company, whereby the equity investors in the Company achieve a minimum of 2.0 times their initial investment. The Company will recognize compensation costs for the Class P Performance Vesting Units with performance conditions if and when the Company concludes that it is probable that the performance conditions will be achieved. As of July 31, 2021, 2020, and 2019, no Class P Performance Vesting Units were vested, and 2,565 were non-vested. No compensation costs related to the Class P Performance Vesting Units was recognized during the years ended July 31, 2021, 2020, and 2019. The Company will reassess the probability of the vesting of the Class P Performance Vesting Units at each reporting period and adjust the compensation costs based on its probability assessment.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 6 – Members’ Equity (continued)**

Class P Time Vesting Units vest 20% per year on the anniversary of the grant date. When a Class P unitholder leaves the Company, the Class P Units will remain outstanding until a defined event occurs in accordance with the limited liability company agreement. The fair value of the Class P Units as of the grant date was determined to be immaterial as it relates to the overall financial statements. At July 31, 2021, 1,405 Class P Time Vesting Units were vested, and 1,501 were non-vested. At July 31, 2020, 886 Class P Time Vesting Units were vested, and 1,014 were non-vested. At July 31, 2019, 430 Class P Time Vesting Units were vested, and 1,891 were non-vested. The Company recognized no amounts for compensation expense during the years ended July 31, 2021, 2020, and 2019.

**Note 7 – Profit Sharing Plan**

The Company has a 401(k) profit sharing plan for its employees under which eligible employees may contribute a part of their salary to the plan. The Company matches an amount equal to 50% of the employee’s contribution, up to 6% of the employee’s salary. Matching contributions by the Company amounted to approximately \$243,406, \$213,000, and \$185,000 for the years ended July 31, 2021, 2020, and 2019, respectively.

**Note 8 – Commitments**

The Company leases facilities and certain equipment under noncancelable long-term operating leases expiring at various times through 2032. At July 31, 2021, minimum lease payments required under leases that have initial or remaining noncancelable lease terms in excess of one year are as follows:

Years Ending <u>July 31,</u>	
2022	\$ 2,232,154
2023	1,724,710
2024	1,111,755
2025	683,968
2026	476,277
Thereafter	<u>240,000</u>
Total	<u>\$ 6,468,864</u>

Total rent expense was \$2,542,106, \$2,599,169, and \$2,490,798 for the years ended July 31, 2021, 2020, and 2019, respectively.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 9 – Income Taxes**

Income tax expense (benefit) for the years ended July 31, 2021, 2020, and 2019 consist of the following:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Current expense (benefit)			
Federal	\$ (930,593)	\$ 1,801,533	\$ 163,643
State	<u>144,671</u>	<u>336,633</u>	<u>(88,117)</u>
Total current (benefit) expense	(785,922)	2,138,166	75,526
Deferred expense (benefit)			
Federal	272,508	(1,002,806)	(1,307,637)
State	<u>43,355</u>	<u>(367,044)</u>	<u>164,178</u>
Total deferred expense (benefit)	<u>315,863</u>	<u>(1,369,850)</u>	<u>(1,143,459)</u>
Total	<u>\$ (470,059)</u>	<u>\$ 768,316</u>	<u>\$ (1,067,933)</u>

In the years ended July 31, 2021, 2020, and 2019, the Company's effective tax rate reflected in income tax expense differed from the statutory tax rate as a result of changes to the tax positions and permanent tax differences related to uncertain tax positions.

At July 31, 2021, the Company had approximately \$0 of net operating loss carryforward available to reduce future taxable income. Management has determined, based on the nature of the temporary differences, the Company's recent history of taxable income and its expectations for future taxable income, that it is more likely than not that the Company will realize the benefit of the deferred tax assets. Accordingly, the Company has not provided a valuation allowance for deferred tax assets at July 31, 2021, 2020, and 2019.

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 9 – Income Taxes (continued)**

The tax effects of differences that give rise to significant portions of the deferred tax assets and the deferred tax liabilities at July 31, 2021, 2020, and 2019 are presented below:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Deferred tax assets			
Inventory capitalization	\$ 98,480	\$ 123,470	\$ 830,622
Net operating losses	-	-	483,646
Inventory reserve	191,940	257,940	268,469
Deferred rent	-	-	19,677
Stock compensation	33,870	33,870	28,446
Depreciation	(217,680)	13,170	179,164
Interest	137,500	1,192,540	357,567
Goodwill and intangibles	470,840	-	-
Other	4,540	4,650	47,488
	<u>                    </u>	<u>                    </u>	<u>                    </u>
Total deferred tax assets	\$ 719,490	\$ 1,625,640	\$ 2,215,079
Deferred tax liabilities			
Self-developed software	(501,750)	(501,750)	(501,561)
Deferred rent	(97,120)	(93,550)	-
Goodwill and intangibles	(5,454,380)	(6,119,500)	(8,208,903)
Other	(157,544)	(86,281)	(49,904)
	<u>                    </u>	<u>                    </u>	<u>                    </u>
Total deferred tax liabilities	(6,210,794)	(6,801,081)	(8,760,368)
	<u>                    </u>	<u>                    </u>	<u>                    </u>
Total	\$ (5,491,304)	\$ (5,175,441)	\$ (6,545,289)

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Balance, beginning of period	\$ 746,394	\$ 268,870	\$ 463,684
Additions based on tax positions	-	632,033	607
Payments	(535,325)	(154,509)	(12,742)
Changes in estimates	(211,069)	-	(182,679)
	<u>                    </u>	<u>                    </u>	<u>                    </u>
Total	\$ -	\$ 746,394	\$ 268,870

**Grade Eight Holdings, LLC and Subsidiaries**  
**Notes to the Consolidated Financial Statements**

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**Note 9 – Income Taxes (continued)**

The Company has elected to classify interest and penalties related to uncertain income tax in income tax expense. At July 31, 2021, 2020, and 2019, the Company had accrued approximately \$104,000 for potential payment of interest and penalties. The liability for uncertain income tax positions, which includes interest and penalties, is presented in accrued expenses on the consolidated balance sheets. The uncertain income tax positions primarily relate to potential state tax issues.

The statute of limitations for federal tax is open for the 2018, 2019, and 2020 fiscal years and for state income tax the open statutes range from the 2012 through 2020 fiscal years.

**Note 10 – Related Parties**

The Company entered into an advisory services agreement with a member on September 29, 2017, which requires monthly payments of the greater of (i) \$25,000 or 0.3% of the Company's consolidated revenue per month. Total management fee expenses for the years ended July 31, 2021, 2020, and 2019 was \$338,754, \$351,235, and \$320,247, respectively, which is included in administrative costs in the consolidated statements of operations.

**Note 11 – Subsequent Events**

The Company has evaluated whether any subsequent events have occurred that would require disclosure in the consolidated financial statements and concluded were none. The evaluation was performed through November 18, 2021, which is the date the consolidated financial statements were available to be issued.

**NOTICE**

**THE FOLLOWING FINANCIAL STATEMENT IS PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS OR HER OPINION WITH REGARD TO THEIR CONTENT OR FORM.**

<b>Grade Eight Corp</b>		
BALANCE SHEET (Unaudited)		
FOR PERIOD ENDING AUGUST 31, 2021		
		(Winzer - F/S)
<b>Assets</b>		<b>Aug</b>
<b>Current Assets</b>		
CASH		3,410,739.32
TRADE ACCOUNTS RECEIVABLE,		11,446,713.67
INVENTORY		13,789,212.71
DEFERRED INCOME TAX		0.00
RECEIVABLE-STOCKHOLDER		0.00
PREPAID & OTHER CUR ASSETS		5,934,997.57
<b>TOTAL CURRENT ASSETS</b>		<b>34,581,663.27</b>
<b>Property, Plant &amp; Equipment</b>		
Total PP&E		5,460,181.62
<b>Non-Current Assets</b>		
GOODWILL, LESS ACCUM AMORT		25,765,336.79
INTANGIBLE, LESS ACCUM AMORT		25,263,869.07
INTERCOMPANY		18,384.55
OTHER ASSETS		94,427.90
<b>TOTAL OTHER ASSETS</b>		<b>56,602,199.93</b>
<b>TOTAL ASSETS</b>		<b>91,183,863.20</b>
<b>Liabilities &amp; Equities</b>		
<b>Current Liabilities</b>		
ACCOUNTS PAYABLE		4,389,179.74
ACCRUED EXPENSES		2,363,349.84
SR TERM DEBT CURRENT		0.00
CAPITAL LEASE - CURRENT		20,902.10
ACCRUED INTEREST (REVOLVER)		298,995.98
FEDERAL INCOME TAX PAYABLE		(802,071.55)
<b>TOTAL CURRENT LIABILITIES</b>		<b>6,270,356.11</b>
<b>Non-Current Liabilities</b>		
SR TERM DEBT - NONCURRENT		51,560,000.00
SR & JR SUB DEBT - NONCURRENT		0.00
DEFERRED FINANCING COSTS (L)		(497,174.09)
CAPITAL LEASE - NONCURRENT		35,948.21
REVOLVING LINE OF CREDIT		3,300,000.00

	CONT PERFORM PYMT-NONCURRENT	208,000.00
	SR & JR SUB (PIK)	0.00
	DEFERRED TAX LIABILITY	6,258,562.78
	<b>TOTAL LIABILITIES</b>	<b>67,135,693.01</b>
	<b>Equity</b>	
	COMMON STOCK	906,859.00
	ACCUM. EARNINGS (DEFICIT)	23,905,848.37
	CONTRA EQUITY	(750,000.00)
	CURRENT PROFIT LOSS	(514,537.18)
	TREASURY STOCK	500,000.00
	DIVIDENDS PAID	0.00
	<b>TOTAL EQUITY</b>	<b>24,048,170.19</b>
	<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>91,183,863.20</b>
		\$0.00



<b>Grade Eight Corp</b>	
INCOME STATEMENT (Unaudited)	
FOR PERIOD ENDING AUGUST 31, 2021	
Total Company	(Unaudited)
	<b>Aug</b>
Net Sales	8,779,455
Cost of Goods Sold	2,828,296
GROSS PROFIT	5,951,159
SG&A	6,051,823
NET INCOME/(LOSS) Before Interest & Taxes	(100,664)
OTHER (INCOME) / EXPENSE	356,638
INCOME TAX	57,235
NET (INCOME)/LOSS	(514,537)

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**CONFIDENTIAL OPERATIONS MANUAL  
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## EXHIBIT G

### AGENCIES/AGENTS FOR SERVICE OF PROCESS

This list includes the names, addresses and telephone numbers of state agencies having responsibility for franchising disclosure/registration laws, and serving as our agents for service of process (to the extent that we are registered in their states).

State	State Agency	Agent for Service of Process
CALIFORNIA	California Commissioner of Business Oversight Department of Financial Protection and Innovation 320 West 4 <sup>th</sup> Street, Suite 750 Los Angeles, CA 90013 (213) 576-7505 Toll-free (866-275-2677)	Commissioner of the Department of Financial Protection and Innovation
HAWAII	Business Registration Division Department of Commerce and Consumer Affairs 335 Merchant Street, Room 203 Honolulu, HI 96813 (808) 586-2722	Commissioner of Securities of the State of Hawaii
ILLINOIS	Office of Attorney General Franchise Division 500 South Second Street Springfield, IL 62706 (217) 782-4465	Illinois Attorney General
INDIANA	Indiana Secretary of State Securities Division 302 West Washington St., Room E-111 Indianapolis, IN 46204 (317) 232-6681	Indiana Secretary of State 201 State House Indianapolis, IN 46204
MARYLAND	Office of the Attorney General Division of Securities 200 St. Paul Place Baltimore, MD 21202-2020 (410) 576-6360	Maryland Securities Commissioner 200 St. Paul Place Baltimore, MD 21202-2020 (410) 576-6360
MICHIGAN	Michigan Department of Attorney General Consumer Protection Division Antitrust and Franchise Unit 670 Law Building Lansing, MI 48913 (517) 373-7117	Michigan Department of Commerce, Corporations and Securities Bureau
MINNESOTA	Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, MN 55101-2198 (651) 593-1500	Minnesota Commissioner of Commerce

## EXHIBIT G

### AGENCIES/AGENTS FOR SERVICE OF PROCESS

State	State Agency	Agent for Service of Process
NEW YORK	NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21 <sup>st</sup> Floor New York, NY 10005 212-416-8222	Attn: New York Secretary of State New York Department of State One Commerce Plaza, 99 Washington Avenue, 6 <sup>th</sup> Floor Albany, NY 11231-0001 (518) 473-2492
NORTH DAKOTA	North Dakota Securities Department 600 East Boulevard, 5 <sup>th</sup> Floor Bismarck, ND 58505-0510 (701) 328-4712	North Dakota Securities Commissioner
RHODE ISLAND	Department of Business Regulation Division of Securities 1511 Pontiac Avenue, Building 69-1 Cranston, RI 02920 (401) 462-9585	Director of Rhode Island Department of Business Regulation
SOUTH DAKOTA	Department of Labor and Regulation/ Division of Insurance/Securities Regulation 124 South Euclid Avenue, 2 <sup>nd</sup> Floor Pierre, SD 57501-3185 (605) 773-3563	Director of South Dakota Division of Insurance
VIRGINIA	State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9 <sup>th</sup> Floor Richmond, VA 23219 (804) 371-9051	Clerk of State Corporation Commission 1300 East Main Street, 1 <sup>st</sup> Floor Richmond, VA 23219 (804) 371-9733
WASHINGTON	Department of Financial Institutions Securities Division P.O. Box 9033 Olympia, WA 98507-9033	Director of Department of Financial Institutions Securities Division 150 Israel Road SW Tumwater, WA 98501 (360) 902-8760
WISCONSIN	Wisconsin Securities Commissioner Securities and Franchise Registration 345 W. Washington Avenue Madison, WI 53703 (608) 266-8559	Commissioner of Securities of Wisconsin

## EXHIBIT H

### PERMITTED REPRESENTATIVE CONFIDENTIALITY AGREEMENT

THIS PERMITTED REPRESENTATIVE CONFIDENTIALITY AGREEMENT (“Agreement”) is made by and among **WINZER FRANCHISE COMPANY, INC.** (“Winzer”), \_\_\_\_\_ (“Franchisee”) and \_\_\_\_\_ (“Permitted Representative”).

**WHEREAS**, Winzer distributes quality packaged fasteners, nuts, bolts, clamps, adhesives, sealers, electrical components, cutting tools, fluid power fittings, chemicals, welding and shop supplies, janitorial supplies and other related parts and services throughout the United States to customers in fastener, chemical, industrial, automotive and maintenance supply operations, directly through its own employees and through a system of independent franchisees, and Winzer has developed its Confidential Information over a period of time and at considerable expense.

**WHEREAS**, Winzer and Franchisee entered the Franchise Agreement and Permitted Representative is about to commence employment or activities as a Permitted Representative with Franchisee in a position requiring responsibility and trust and will thereby gain access to Winzer’s Confidential Information, such that Winzer requires Permitted Representative to agree to refrain from disclosing Winzer’s Confidential Information, and to refrain from diverting customers from Winzer, Franchisee or the Business in order to fulfill Permitted Representative’s obligation to promote and develop Franchisee’s Business during the Affiliation Period.

**NOW, THEREFORE**, in consideration of Periodic Gross Profits payments and/or other benefits to be received by Permitted Representative, and the recitals and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** Any capitalized terms that are used in this Agreement without definition will have the meaning ascribed to the capitalized term in the Franchise Agreement. Otherwise the capitalized terms are defined as follows:

(a) **“Affiliation Period”** means the period of time beginning when employment, contractual relationship or other affiliation is created between Permitted Representative and Franchisee, being \_\_\_\_\_, 20\_\_ and ending on the date of termination of Permitted Representative’s employment, contractual relationship or affiliation with Franchisee.

(b) **“Business”** means the Franchisee’s direct sales business using Winzer’s Marks and the System for the promotion, sale and support of Approved Winzer Products to Customers in the Licensed Market.

(c) **“Confidential Information”** means Permitted Representative’s knowledge of the operation of the Business, including Winzer’s contracts, forms, information, knowledge, know-how, methods, operating procedures, processes, specifications, standards, systems, trade secrets, and all other proprietary, confidential or competitively sensitive information, including but not limited to the Confidential Operations Manual, franchisee price index or similar price indices applicable to

Approved Winzer Products, Periodic Gross Profits payment method, product backlog, shipment and refund (credit) history and practices, computer-generated financial and other reports, staff composition and organization systems; quality assurance programs; strengths and weaknesses of the Winzer franchise system, corporate plans, product introductions, product acceptance, business plans, marketing methods, customer complaints of which Permitted Representative becomes aware, certain franchisee information, market research, duties imposed by Winzer, and any other information that Winzer may designate, identify or treat as confidential or proprietary. Confidential Information does not include information that (i) Permitted Representative demonstrates lawfully came to Permitted Representative's attention prior to disclosure by Franchisee or Winzer; (ii) at the time of disclosure to Permitted Representative, had lawfully become a part of the public domain, through publication or communication by others; (iii) after disclosure to Permitted Representative, lawfully becomes a part of the public domain, through publication or communication by others (but in no event through any act or omission of Permitted Representative, Franchisee, or Franchisee's agents); provided, however, that information that comes to Permitted Representative because of any prior affiliation with Franchisee and/or Winzer will be deemed Confidential Information.

(d) **"Confidentiality Period"** means the time period beginning on the Effective Date of this Agreement and ending one year after the Termination Date.

(e) **"Franchise Agreement"** means the agreement between Winzer and Franchisee under which Franchisee was granted certain rights with respect to the Business; Franchisee received valuable training from Winzer and was given access to Winzer's Confidential Information; and Franchisee agreed to refrain from disclosing Winzer's Confidential Information and to refrain from diverting customers from Winzer.

(f) **"Franchise Period"** means the time period beginning when the franchise relationship is established between Winzer and Franchisee and ending on the date of expiration or termination of the franchise relationship between Winzer and Franchisee, regardless of the reason for the termination of the franchise relationship.

(g) **"Franchisee"** means Franchise Name, an authorized franchisee of Winzer.

(h) **"Permitted Representative"** means Permitted Rep Name, a permitted representative of Franchisee.

(i) **"Prohibited Persons"** means any and all customers with whom Franchisee or Permitted Representative previously dealt on behalf of Winzer, any and all customers who purchased Approved Winzer Products within 12 months of the Termination Date (regardless of whether such customers specifically dealt with Franchisee or Permitted Representative), and any and all potential customers identified to Franchisee or Permitted Representative through the efforts of Winzer including, but not limited to prospective customer identified on lists developed by others and paid for by Winzer; provided, however, that Franchisee may elect (by written directive to Winzer as of the Effective Date) to exclude any customers who were customers of Permitted Representative and to whom Permitted Representative made sales in the 12 months before Permitted Representative became affiliated with Franchisee and/or Winzer.



(j) “**Prohibitions**” means the covenants described in Section 2 of this Agreement.

(k) “**Termination Date**” means the earlier of the end of the Franchise Period or the Affiliation Period.

(l) “**Winzer**” means Winzer Franchise Company, Inc., a Texas corporation.

2. **Prohibitions.** Permitted Representative acknowledges that the Confidential Information has been developed by Winzer at great effort, time and expense, and contains trade secrets of Winzer, and that Permitted Representative will have regular and continuing access to Confidential Information during the Affiliation Period. Permitted Representative accordingly promises and agrees that Permitted Representative, directly or indirectly, for himself or herself, or through, on behalf of or in conjunction with any other person or entity, without the prior written consent of Winzer and Franchisee, will not:

(a) Use any Confidential Information for his or her own benefit except in the performance of Permitted Representative’s duties in connection with the Business;

(b) Disclose, disseminate or divulge any Confidential Information to any person or entity for the benefit of himself or herself or any other person in any other business or in any manner not specifically authorized or approved in writing by Winzer;

(c) Disparage Winzer, Franchisee or any other WINZER franchisee or their respective employees or agents;

(d) Seek, solicit or encourage the disclosure of additional Confidential Information from Winzer, Franchisee, any other WINZER franchisee or any employee or independent contractor affiliated with Winzer, Franchisee or any WINZER franchisee during the Confidentiality Period;

(e) Contact, solicit, divert, take away, accept, or attempt to contact, solicit, divert, take away or accept the business or patronage given to Winzer, Franchisee or any other WINZER franchisee by any Prohibited Persons or any other customers for himself or herself, or on behalf of any competitor or any other person during the Confidentiality Period; and

(f) Own, operate, maintain, engage in, be employed by, have any interest in or perform any services for any business that is a competitor of Winzer or Franchisee during the Confidentiality Period unless such activities would not result in a violation of any other Prohibition under this Agreement.

3. **Reduction of Prohibitions.** Winzer may, in its sole and absolute discretion, reduce the scope of any Prohibition without Permitted Representative’s consent, effective immediately on written notice to Permitted Representative. Permitted Representative agrees to promptly comply with any reduced Prohibition of which he or she is given notice, which will be fully enforceable notwithstanding Section 14 or anything else to the contrary in this Agreement.

4. **Time Periods.** The Prohibitions in this Agreement will continue in effect without limitation as to time unless otherwise noted. If Permitted Representative violates any Prohibition that includes a limitation as to time, the running of the time period of such Prohibition so violated will be

automatically suspended on the date of such violation and will resume on the date that such violation ceases and all appeals, if any, are resolved.

5. **Severability.** Each Prohibition is independent of every other Prohibition. If any portion of a Prohibition is held invalid or unenforceable by a court or tribunal unless its terms are limited by either length of time or geographic scope, Permitted Representative agrees to be bound by the lesser obligation as if the amended Prohibition were stated in this Agreement. If an entire Prohibition is held invalid or unenforceable by a court or tribunal, the remaining Prohibitions in this Agreement will continue in effect.

6. **Conditions Precedent.** Permitted Representative acknowledges that the Prohibitions in this Agreement are conditions precedent to engagement or employment by Franchisee, and that the Prohibitions are necessary to protect the Confidential Information. Permitted Representative acknowledges that the Prohibitions will not prevent Permitted Representative from earning a livelihood during the Confidentiality Period.

7. **Winzer as Beneficiary.** Permitted Representative acknowledges that Winzer is a beneficiary of this Agreement and may independently enforce any part of this Agreement without Franchisee's participation or consent. Permitted Representative acknowledges that Franchisee must adhere to the Franchise Agreement, and that Permitted Representative must adhere to Winzer's directives to and through Franchisee in connection with standards and specifications related to operation of the Business under the Franchise Agreement. Notwithstanding the foregoing, nothing in this Agreement is intended to create an employment relationship between Permitted Representative and Winzer, or to give Permitted Representative any right or privilege that Winzer has reserved to its franchisees.

8. **Franchisee Audits.** Permitted Representative must keep complete and accurate records related to the operation of the Business and must permit Winzer and its representatives to inspect or audit those records as part of an audit of Franchisee as permitted under the terms of the Franchise Agreement. During any inspection or audit, Permitted Representative agrees to cooperate fully and to give any assistance reasonably requested by Franchisee or Winzer.

9. **No Competitive Prohibitions.** Permitted Representative represents to Franchisee and Winzer that Permitted Representative is not subject to any currently effective contract or agreement that would impair or prevent Permitted Representative from entering into this Agreement or from fully performing the duties of Permitted Representative. Without limiting the foregoing, Permitted Representative represents and agrees that Permitted Representative will not utilize any confidential information or trade secrets of any other person or former employer in the performance of Permitted Representative's duties with Franchisee.

10. **Return of Tangible Manifestations.** On the Termination Date, Permitted Representative must return to Winzer or Franchisee and will not keep copies of tangible manifestations of the Confidential Information received under this Agreement.

11. **Assignment.** This Agreement will be binding on and inure to the benefit of the parties and their respective executors, heirs, legal representatives, successors and permitted assigns. Winzer may freely assign its rights under this Agreement. Permitted Representative may not assign its obligations under this Agreement without the prior written consent of Winzer and Franchisee.

12. **Notices.** Any notice or other communication required or permitted to be given to any party or other person under this Agreement will be in writing. A notice will be deemed to have been delivered: (a) if mailed, 3 days after deposited in the United States mail, postage prepaid; (b) if faxed, on delivery if delivered during normal business hours of the recipient, otherwise the following business day; (c) if hand-delivered, upon delivery against receipt or upon refusal to accept the notice; or (d) if delivered by overnight courier, 1 business day after deposited with such courier, charges prepaid. In each case, a notice must be addressed to the party or other person at the address set forth below or at such other address as the party or other person may have designated in writing:

To Winzer: Mr. Paul Seibert, Executive Vice President  
Winzer Franchise Company, Inc.  
4060 E. Plano Parkway  
Plano, Texas 75074-1800

To Franchisee: {Franchise Name}  
{Street Address}  
{City, State & Zip}

To Permitted Representative: {Permitted Rep Name}  
{Street Address}  
{City, State & Zip}

13. **Equitable Relief and Recovery of Costs.** Permitted Representative acknowledges that his or her violation of any Prohibition will cause irreparable injury to Winzer and Franchisee for which no adequate remedy at law is available. Permitted Representative agrees that, in addition to any other legal and equitable rights and remedies, Winzer and/or Franchisee will be entitled to the issuance of an order of specific performance, a restraining order and/or temporary, preliminary or permanent injunctive relief upon the posting of a bond in the sum of \$1,000, restraining any actual or threatened violation by Permitted Representative of the Prohibitions. In any action for equitable relief, the return of Confidential Information, damages or any other legal or equitable remedy permitted by law, Permitted Representative agrees to pay reasonable attorneys' fees, cost and out-of-pocket expenses of Franchisee and/or Winzer that are related to the action for enforcement or damages.

14. **Governing Law.** This Agreement will be governed by, interpreted and enforced in accordance with the laws of the state in which Franchisee has its principal place of business on the Effective Date.

15. **Entire Agreement, Amendment, Modification and Waiver.** This Agreement sets forth the entire understanding of the parties as to the subject matter; provided, however, that Franchisee and Permitted Representative may enter into an employment agreement or other agreement regarding their business relationship. No amendment, modification or waiver of any condition, provision or term of this Agreement will be valid or of any effect unless made in writing, signed by the party or parties to be bound, specifying with particularity the nature and extent of such amendment, modification or waiver. The Prohibitions of this Agreement may not be amended or modified by any other agreement entered into between Franchisee and Permitted

Representative. Waiver of any breach of condition, provision or term of this Agreement will not constitute a waiver of any other breach of the same or a different condition, provision or term of this Agreement.

16. **Effective Date.** This Agreement is signed and executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, but is effective as of the date that Permitted Representative's Affiliation Period commences as specified in Section 1(a) of this Agreement.

**WINZER FRANCHISE COMPANY, INC.**

**FRANCHISEE**

\_\_\_\_\_  
Paul Seibert, Executive Vice President

\_\_\_\_\_  
Franchise Name

**PERMITTED REPRESENTATIVE**

\_\_\_\_\_  
Permitted Rep Name

Instructions for Franchisee: Prepare and sign in triplicate. Return all three signed copies to Winzer for execution by Winzer; two fully-executed copies will be returned to Franchisee; one fully-executed copy for Franchisee and one fully-executed copy for Permitted Representative.

## EXHIBIT I

### PERMITTED REPRESENTATIVE INDEMNITY AGREEMENT

This AGREEMENT is made and entered into by and between WINZER FRANCHISE COMPANY, INC. ("Winzer"), {FRANCHISEE NAME} ("Franchisee") and {PROSPECT NAME} ("Prospect"), having an address of {Street Address, City, State & Zip}.

WHEREAS, Prospect wishes to become a Permitted Representative of Franchisee, an authorized WINZER franchisee, and Winzer wishes to allow Prospect to become a Permitted Representative of Franchisee.

WHEREAS, Prospect was formerly employed by {Full Company Name} ("{Company Name}"), Prospect wishes to become a Permitted Representative of Franchisee, and Winzer will allow Prospect to become a Permitted Representative of Franchisee,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Winzer, Franchisee and Prospect agree as follows:

1. Winzer hereby agrees to allow Prospect to become a Permitted Representative of Franchisee based upon and on the condition that Prospect makes the representations set forth below and also signs Winzer's standard Permitted Representative Confidentiality Agreement.

2. Prospect hereby agrees and acknowledges that Winzer is proceeding with a Permitted Representative Confidentiality Agreement with Prospect based upon the following express representations, the truthfulness and accuracy of which Prospect hereby acknowledges, agrees and expressly adopts:

a. Prospect terminated his/her employment or independent contractor relationship with {Company Name} as of {Date}.

b. Prospect has returned to {Company Name} all material and other information in his/her possession relating to {Company Name} that {Company Name} represented to Prospect or otherwise designated as being confidential and proprietary to {Company Name}.

c. Prospect had no materials or information in his/her possession, custody, or control that were prepared by or for {Company Name} or related to {Company Name} or any of {Company Name}'s customers or prospective customers except information relating to Prospect's compensation, such as payroll or commission checks, statements of income, or any forms that were filed or are to be filed with the Internal Revenue Service or any State revenue collecting service relating to Prospect's employment with or representation of {Company Name}.

d. Prospect has not violated any restrictive covenants in favor of {Company Name}, and will not violate any restrictive covenants in favor of {Company Name} by entering into an agreement with Franchisee and Winzer.

e. Prospect has not provided nor will Prospect provide to Winzer, or to any of its employees, franchisees or agents, any material or information that {Company Name} has represented to Prospect or has designated to be confidential or proprietary to {Company Name}.

3. Prospect hereby agrees to indemnify, defend, and hold harmless Winzer from all claims, actions, judgments, damages, including attorneys' fees and other costs, expenses and losses, arising out of, in connection with, or as a result of any acts by Prospect that are in violation of any restrictive covenants in favor of (Insert Company).

4. Prospect hereby acknowledges and agrees that Winzer has relied on each of the representations made by Prospect herein in allowing Prospect to become a Permitted Representative of Franchisee.

5. This agreement is governed by the laws of the State of Texas.

6. In the event of Prospect's default or a dispute arising from this Agreement, Prospect agrees that venue for any legal action will be in any court of competent jurisdiction in Dallas County, Texas, and Prospect waives all questions of personal jurisdiction for the purposes of carrying out this provision.

7. Prospect agrees that Winzer will be entitled to recover its reasonable costs and expenses, including attorney's fees, if Winzer commences an action to enforce this Agreement, or is required to defend itself due to Prospect's violation of this agreement.

8. Signed and executed as of \_\_\_\_\_, 20\_\_\_\_.

WINZER FRANCHISE COMPANY, INC.:

FRANCHISEE:

\_\_\_\_\_  
Paul Seibert, Executive Vice President

\_\_\_\_\_  
Franchisee Signature

PROSPECT:

\_\_\_\_\_  
Prospect Signature

I, {Franchisee Name}, hereby acknowledge and agree that I am responsible for ensuring that Prospect, {Prospect Name}, as a Permitted Representative of my franchise, complies with all obligations and restrictions outlined in this Agreement, as well as those listed in my Franchise Agreement and Winzer's Confidential Operations Manual as they relate to Permitted Representatives and their involvement in the Business, and that any violations of those agreements and their covenants by Prospect will be considered the same as a violation by me.

---

Franchisee Signature

---

Date

**EXHIBIT J**  
**CONFIDENTIALITY AGREEMENT**  
**(FRANCHISE ASSET PURCHASE)**



## CONFIDENTIALITY AGREEMENT

This **CONFIDENTIALITY AGREEMENT** (“Agreement”) is entered into between WINZER FRANCHISE COMPANY, INC., a Texas corporation (“Winzer”) and \_\_\_\_\_, having an address of \_\_\_\_\_ (“Prospect”) as of \_\_\_\_\_ (“Effective Date”).

WHEREAS, Winzer distributes quality packaged fasteners, nuts, bolts, clamps, adhesives, sealers, electrical components, cutting tools, fluid power fittings, chemicals, welding and shop supplies, janitorial supplies and other related parts and services throughout the United States, and Prospect is engaged in the sales of fastener, chemical, industrial, automotive and maintenance supply products in \_\_\_\_\_.

WHEREAS, Winzer is interested in acquiring certain assets of Prospect, and entering into a franchise relationship(s) with Prospect’s owner(s) and specified employees.

WHEREAS, in order to evaluate the potential business opportunities, each party must provide the other party with information that the party identifies and treats as confidential.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definition of Confidential Evaluation Material. The Confidential Evaluation Material includes all confidential information furnished by a party to the other party in the mutual evaluation process, including but not limited to a party’s product catalogs, price lists, cost lists, customer lists, supplier lists, financial statements, names and identities of sales representatives, agents, or customers, as well as any other information that a party identifies, designates or treats as confidential.

2. Non-Use. Each party agrees not to use the Confidential Evaluation Material of the other party for any purpose except to evaluate a possible transaction between the parties.

3. Non-Disclosure. Except as otherwise set forth in this Agreement, neither party will disclose any of the other party’s Confidential Evaluation Material to any third party without prior written approval of the party owning the Confidential Evaluation Material. Each party agrees to limit disclosure of the other party’s Confidential Evaluation Material to its officers, directors, key employees and representatives who have a need to know the Confidential Evaluation Material, or any attorneys, accountants or consultants who may be assisting in evaluation of the transaction contemplated between the parties.

4. Protection of Confidential Evaluation Material. Each party agrees to accord to the other party’s Confidential Evaluation Material the same degree of care and use the same confidentiality protection practices as exercised or employed with respect to the party’s own confidential information. It is Prospect’s responsibility to insure that Prospect’s officers, directors, employees, and representatives who are given access to the Confidential Evaluation Material will be bound by and will conduct their evaluation in accordance with the terms of this

Agreement. It is Winzer's responsibility to insure that Winzer's officers, directors, employees, and representatives who are given access to the Confidential Evaluation Material will be bound by and will conduct their evaluation in accordance with the terms of this Agreement.

5. Exclusions. This Agreement does not apply to Confidential Evaluation Material that: **(a)** is previously known to the recipient; or already in the recipient's possession on a non-confidential basis; or in the hands of the recipient (including third parties) by any means other than a breach of this Agreement; **(b)** is or becomes part of the public domain, or otherwise is or becomes generally available to the public, other than through a wrongful act by the non-owner; **(c)** is independently developed in good faith by a representative of a party who did not have access to the other party's Confidential Evaluation Material; and **(d)** is sought by subpoena or written discovery ("Process"), provided that the owner of the Confidential Evaluation Material will be immediately notified of the receipt of Process, whereon the owner may request that the person on whose behalf the Process was issued delete the Confidential Evaluation Material from the scope of Process and, if the person refuses, then such owner may seek any and all available remedies, including, without limitation, commencing proceedings to enjoin the disclosure of Confidential Evaluation Material or intervening in pending proceedings to seek the entry of protective orders or other appropriate relief. No provision of this Agreement will be construed to interfere with a party's obligations to comply with a lawful court order. No disclosure of Confidential Evaluation Material by a party pursuant to Process will be deemed to place the Confidential Evaluation Material in the public domain, or to relieve the party from the future performance of all of its confidentiality obligations under this Agreement, absent express orders of the court to the contrary.

6. Return of Documents. At any time on written request of the party owning the Confidential Evaluation Material, the recipient will return the documents or other tangible property or records containing Confidential Evaluation Material, or will certify that the documents or other tangible property or records containing Confidential Evaluation Material have been destroyed, and that the recipient has not made or kept any copies of the other party's Confidential Evaluation Material.

7. Binding Effect. This Agreement will be binding on and inure to the benefit of the parties, their legal representatives, successors and assigns. This Agreement does not obligate Winzer or Prospect to enter into any further agreements of any nature.

8. Legal Fees and Costs. If a party breaches this Agreement, the defaulting party will pay the reasonable attorney's fees and other costs incurred by the other party in enforcing or commencing to enforce the provisions of this Agreement. If any legal proceeding is commenced to enforce or interpret any provisions of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees in addition to costs and disbursements allowed by law.

9. Amendment. No amendment, modification or waiver of any condition, provision or term of this Agreement will be valid or of any effect unless made in writing, signed by the party or parties to be bound and specifying with particularity the nature and extent of such amendment, modification or waiver.

10. Notice. Any notice or other communication given to any party pursuant to this Agreement will be in writing. A party's legal counsel may give a notice. A notice will be deemed to have been delivered: **(a)** if mailed, 3 days after deposited in the U.S. mail, postage prepaid; **(b)** if hand-delivered, on delivery against receipt or on refusal to accept the notice; or **(c)** if delivered by overnight courier, one business day after deposited with a courier, charges prepaid. In each case, a notice must be addressed to the party at the following address or at such other address as the party may have designated in writing:

If to Winzer:

Winzer Franchise Company, Inc.  
Attention: \_\_\_\_\_  
4060 E. Plano Parkway  
Plano, Texas 75074-1800

If to Prospect:

Attention: \_\_\_\_\_

11. Execution by Facsimile. This Agreement may be executed by facsimile, and will be deemed effectively executed on the receipt by Winzer and Prospect of the signature page of this Agreement, duly executed by the other party to this Agreement.

12. Counterparts. This Agreement may be executed in 2 or more counterparts, each of which will be deemed an original.

13. Entire Agreement. This Agreement sets forth the entire understanding of the parties. There are no representations of any kind except as contained in this Agreement.

IN WITNESS, the parties have executed this Agreement as of the Effective Date.

**WINZER FRANCHISE COMPANY, INC.**

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

**(Name of Prospect)**

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

**EXHIBIT K**

**GENERAL RELEASE**

**This GENERAL RELEASE** is made and executed by **NAME**, individually (“you”), as of \_\_\_\_\_, 20\_\_ (“Effective Date”).

WHEREAS, WINZER FRANCHISE COMPANY, INC., a Texas corporation (“Winzer”) and you entered into a franchise agreement dated \_\_\_\_\_, and (describe reason for signing release).

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

You, for yourself and each of your past and present heirs, executors, administrators, representatives, successors and assigns, in their corporate and individual capacities (collectively “Releasor”), hereby release and forever discharge Winzer and each of its predecessors, successors, affiliates, subsidiaries, assigns, officers, directors, shareholders, agents and employees, and their respective heirs, executors, administrators, representatives, successors and assigns, in their corporate and individual capacities (collectively “Releasees”), from, in respect of and in relation to any and all claims, demands, causes of action, suits, debts, obligations, sums of money, acts, omissions or refusals to act, damages, judgments and demands, of any kind whatsoever, joint or several, known or unknown, which against Releasees the Releasor ever had, now has or which Releasor hereinafter can, shall or may have, for, upon or by reason of any matter, cause or thing may whatsoever, through the Effective Date.

{FOR CALIFORNIA RESIDENTS}

YOU ACKNOWLEDGE THAT YOU ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

YOU, BEING AWARE OF THIS CODE SECTION, HEREBY EXPRESSLY WAIVE ALL OF YOUR RIGHTS THEREUNDER AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT OF ANY APPLICABLE JURISDICTION, INCLUDING, WITHOUT LIMITATION, CALIFORNIA AND/OR {JURISDICTIONS OF FRANCHISEE(S)’ RESIDENCE AND LOCATION OF FRANCHISED UNITS}.

\_\_\_\_\_  
Name, individually

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

I hereby certify that before me, a Notary Public of the State aforesaid, personally appeared **NAME** who made oath in due form of law that he was executing the foregoing General Release for the purposes therein contained.

As witness, my hand and Notarial Seal on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT L**  
**STATE EFFECTIVE DATES**

### State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

State	Effective Date
California	[ ]
Hawaii	[ ]
Illinois	[ ]
Indiana	[ ]
Maryland	[ ]
Michigan	November 2, 2021
Minnesota	[ ]
New York	[ ]
North Dakota	[ ]
Rhode Island	[ ]
Virginia	[ ]
Washington	[ ]
Wisconsin	[ ]

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**EXHIBIT M**

**RECEIPTS**



**RECEIPT**  
(YOUR COPY)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Winzer Franchise Company, Inc. (“we” or “us”) offers you a franchise, we must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale.

New York requires that we give you this disclosure document at the earlier of the 1<sup>st</sup> personal meeting, or 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

Iowa requires that we give you this disclosure document at the 1<sup>st</sup> personal meeting.

Michigan requires that we give you this disclosure document 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If we do not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit G.

The name, principal business address and telephone number of each franchise seller offering the franchise: Jon Kerr, Paul Seibert, Rick Beter and Lou Lessen, at 4060 E. Plano Parkway, Plano, Texas 75074-1800, (214) 341-2122; and \_\_\_\_\_.

Issuance Date: November 18, 2021

See Exhibit G for our registered agents authorized to receive service of process.

I have received this disclosure document dated November 18, 2021, which includes the following Exhibits:

- |  |   |
|--|---|
| A. Franchisees and Company-Owned Outlets             | H. Permitted Representative Confidentiality Agreement   |
| B. Former Franchisees                                | I. Permitted Representative Indemnity Agreement         |
| C. Franchise Agreement, State Riders and Attachments | J. Confidentiality Agreement (Franchise Asset Purchase) |
| D. Guarantee of Performance                          | K. General Release                                      |
| E. Financial Statements                              | L. State Effective Dates                                |
| F. Confidential Operations Manual Table of Contents  | M. Receipts   |
| G. Agencies/Agents for Service of Process            |   |

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee (Signature)

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee (Signature)

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

Please sign and date this copy of the Receipt and keep it for your records.

**RECEIPT**  
(OUR COPY)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Winzer Franchise Company, Inc. (“we” or “us”) offers you a franchise, we must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale.

New York requires that we give you this disclosure document at the earlier of the 1<sup>st</sup> personal meeting, or 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

Iowa requires that we give you this disclosure document at the 1<sup>st</sup> personal meeting.

Michigan requires that we give you this disclosure document 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If we do not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit G.

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| D. Guarantee of Performance                          | K. General Release                                      |
| E. Financial Statements                              | L. State Effective Dates                                |
| F. Confidential Operations Manual Table of Contents  | M. Receipts   |
| G. Agencies/Agents for Service of Process            |   |

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee (Signature)

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee (Signature)

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

You should return 1 copy of the Receipt by signing, dating and mailing it to: Paul Seibert, Winzer Franchise Company, Inc., 4060 E. Plano Parkway, Plano, Texas 75074-1800.