EXHIBIT 10.38  
  
 FRANCHISE AGREEMENT  
  
  
 THE GREAT AMERICAN BACKRUB STORE, INC., a New York Corporation,  
hereinafter sometimes referred to as "Franchisor," and Roosevelt Field Partners,  
LLC, hereinafter referred to as "Franchisee," in consideration of the premises,  
covenants, and promises herein, agree as follows:  
  
  
 RECITALS  
 ARTICLE 1  
  
 SECTION 1.01. Franchisor is a corporation duly organized, validly  
existing, and in good standing under the laws of the State of New York.  
Franchisor's principal office is located at 000 Xxxxxxx Xxxxxx, Xxxxx 000, Xxx  
Xxxx, XX 00000.  
  
 SECTION 1.02. Franchisee's principal address is:  
 00000 X.X. 000xx Xxxxxx  
 Xxxxx, XX 00000  
  
 SECTION 1.03. Franchisor possesses rights under various registered and  
unregistered trademarks, service marks, trade names and styles relating to the  
trade name "The Great American BackRub," including distinctive logos, and also  
certain copyrighted material embodying the use of such marks and Franchisee  
specifically acknowledges Franchisor's exclusive right to said trademarks,  
service marks, trade names, and copyrighted material.  
  
 SECTION 1.04. As the result of the expenditure of time, effort and  
money in research and development, Franchisor has developed a system and  
acquired experience and knowledge with respect to a system for the operation of  
businesses offering back rub services and products in a specially designed and  
decorated building with distinctive fixtures, accessories and color scheme, all  
known as "The Great American BackRub". In addition, through its advertising  
programs and the quality of its service, Franchisor has established a  
reputation, demand and goodwill for back rub services and products under the  
name of "The Great American BackRub".  
  
 SECTION 1.05. Franchisor is also engaged in the business of granting to  
others, by means of non-exclusive franchise agreements, special limited licenses  
to utilize the name The Great American BackRub, the related proprietary marks  
and the associated concepts in connection with the operation by such persons of  
stores and the sale, distribution, and marketing of back rub services and  
products.  
  
  
  
  
 SECTION 1.06. All of the foregoing have a valuable significance to the  
public, and Franchisee, being cognizant thereof, desires to obtain from  
Franchisor, and Franchisor desires to grant to Franchisee, pursuant to the terms  
of this Agreement, a franchise to operate one The Great American BackRub store  
at the location hereinafter specified.  
  
 SECTION 1.07. Franchisor expressly disclaims the making of, and  
Franchisee acknowledges that he has not received or relied upon, any warranty or  
guaranty, express or implied, as to the revenues, profits or success of the  
business venture contemplated by this Agreement. Franchisee acknowledges that he  
has not received or relied on any representations about the franchise by  
Franchisor, or its officers, directors, employees or agents, that are contrary  
to the statements made in Franchisor's Uniform Franchise Offering Circular or to  
the terms herein, and further represents to Franchisor, as an inducement to its  
entry into this Agreement, that Franchisee has made no misrepresentations in  
obtaining the Franchise. Franchisee has applied for a franchise to own and  
operate a The Great American BackRub at the premises identified in Section 2.01  
hereof, and such application has been approved by Franchisor in reliance upon  
all of the representations made therein.  
  
 SECTION 1.08. The parties hereto, in consideration of the mutual  
agreements herein contained and promises herein expressed, and for other good  
consideration, acknowledged by each of them to be satisfactory and adequate, do  
hereby agree as follows:  
  
 TERMS AND CONDITIONS  
 ARTICLE 2  
  
 SECTION 2.01. Franchisor hereby grants to Franchisee and Franchisee  
hereby accepts subject to the terms and conditions of this Agreement the limited  
right and license to operate one The Great American BackRub store located at  
Roosevelt Field Mall, Long Island, New York (hereinafter sometimes referred to  
as the "Subject Location"), together with the limited right and license to  
utilize the related proprietary marks and Franchisor's system for the operation  
of one The Great American BackRub store. Termination or expiration of this  
Agreement shall constitute a termination or expiration of said Franchise.  
  
 SECTION 2.02. Franchisee acknowledges Franchisor's exclusive right to  
the name The Great American BackRub, and the programs, including all bulletins,  
procedures, supplements, forms, advertising matter, devices, marks, service  
marks, trademarks, trade names, logos and slogans, and goodwill associated  
therewith, whether currently being used or hereafter applied for or put to use,  
in connection with, or applicable to, The Great American BackRub program.  
Franchisee agrees that he will not use or attempt to use any of said names,  
marks, or logos, in his own name or that of any other partnership, person,  
corporation or other business entity and that he will use said names, marks, or  
logos exclusively for, and in connection with, the promotion and conduct of the  
business herein described.  
  
 SECTION 2.03. Subject to the terms and conditions hereof, and further  
provided that Franchisee has not breached any of the terms and conditions of  
this agreement,  
  
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Franchisor grants to Franchisee during the term of this Agreement, the right to  
use in connection with Franchisee's The Great American BackRub franchise  
Franchisor's marks, service marks, trademarks, trade names, logos and slogans,  
whether currently being used or hereafter applied for or put into use.  
  
 SECTION 2.04. The rights herein granted to Franchisee by Franchisor are  
specifically restricted to the operation by Franchisee of a The Great American  
BackRub at the Subject Location. The right and license herein granted to  
Franchisee shall be effective only with respect to the franchise located at the  
Subject Location. No branches or second locations shall be permitted under this  
Agreement, and Franchisee hereby acknowledges that no representations or  
warranties have been made by Franchisor with respect to the grant of any other  
franchises or permission to operate the franchise from an additional or any  
other location.  
  
 SECTION 2.05. The nature of the right and license herein granted to  
Franchisee is non-transferable. Franchisee may not directly or indirectly  
sublicense or subfranchise any other person, firm or corporation to own or  
operate a The Great American BackRub store, to utilize in any way the  
proprietary marks of Franchisor, or to utilize in any way all or any part of  
Franchisor's program. Further, without the prior written consent of Franchisor,  
Franchisee shall not sell, assign, or transfer said license or right, or any  
interest therein, except through an assignment of this Agreement in it entirety,  
and then subject to the provisions of and only to the extent permitted by  
Article 9 hereof.  
  
 SECTION 2.06. The license herein granted to Franchisee is  
non-exclusive. Franchisor reserves all rights to grant and sell similar  
franchises and licenses to others to operate, and to own or operate for its own  
account or with others, other The Great American BackRub stores at any location  
whatsoever.  
  
 SECTION 2.07. Franchisee acknowledges and agrees that Franchisor would  
be unable to protect its trade secrets against unauthorized use or disclosure  
and would be unable to encourage a free exchange of ideas and information among  
its franchisees if franchised owners of The Great American BackRub stores were  
permitted to hold interests in any other business which is in direct or indirect  
competition with Franchisee's The Great American BackRub. Therefore, during the  
term of the Franchise, neither Franchisee, any shareholder or partner (in the  
event Franchisee is a corporation or partnership), nor any member of his or  
their immediate families (including, but not limited to, spouse, child, spouse  
of a child, brother, sister or parent) shall have any interest as an owner,  
investor, partner, director, officer, employee, consultant, representative or  
agent, or in any other capacity, in any other business (a "Competing Business")  
which is in the business of selling back rub services, massages, or any related  
services or products. In the event this restriction is unenforceable under the  
provisions of any applicable law governing this Agreement, said restriction  
shall be modified such that the geographic limitations of said restriction shall  
prohibit the direct or indirect ownership or operation of a Competing Business  
within (i) a radius of ten (10) miles of the Subject Location, or (ii) a radius  
of three (3) miles from any other operating The Great  
  
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American BackRub store. This restriction shall not be applicable to any other  
The Great American BackRub store operated under Franchise Agreements granted by  
Franchisor nor the ownership of securities listed on a stock exchange or traded  
on the over-the-counter market that represent one percent (1%) or less of that  
class of securities. Franchisee shall not at any time directly or indirectly  
furnish any information to any person as to Franchisor's methods of operation,  
techniques or methods, advertising, publicity, promotions, or any other  
information relating to Franchisee's or Franchisor's business.  
  
 SECTION 2.08. If this Agreement expires prior to its expiration and the  
franchise is terminated by Franchisor in accordance with the provision of this  
Agreement, or, in the event this Agreement is terminated by Franchisee without  
cause, then Franchisee agrees that for a period of two (2) years, commencing on  
the effective date of termination, or the date on which Franchisee ceases to  
conduct business at the Subject Location, whichever is later, Franchisee will  
not have any interest as an owner, partner, director, officer, employee,  
consultant, representative or agent, or in any other capacity, in any store  
located or operating within (i) a radius of ten (10) miles of the Subject  
Location or, (ii) a radius of three (3) miles of any other The Great American  
BackRub in operation as of the effective date of said expiration or termination.  
This restriction shall not be applicable to any other The Great American BackRub  
operated under Franchise Agreements granted by Franchisor nor the ownership of  
securities listed on a stock exchange or traded on the over-the-counter market  
that represent one percent (1%) or less of that class of securities.  
  
  
 TERM/RENEWAL RIGHTS  
 ARTICLE 3  
  
 SECTION 3.01. The initial term (the "Initial Term") of the franchise  
and license herein granted shall expire, unless sooner terminated in accordance  
with the terms and conditions of this Agreement upon the EARLIER of:  
  
 A. The expiration of a five (5) year term commencing December 1, 1996  
(hereinafter referred to as "the effective date") and ending November 30, 2001;  
or  
  
 B. The expiration or termination of Franchisee's lease or sublease or  
his right to possession of the Subject Location (for whatever reason, including  
the termination of Franchisor's lease) provided neither Franchisee nor  
Franchisor have any right to renew such lease or sublease, as the case may be,  
or Franchisee fails or refuses to exercise any right to renew said lease;  
provided, however, in the event Franchisee desires to relocate said franchise  
location to a location acceptable to Franchisor, and provided further that said  
location is completed within sixty (60) days after termination of Franchisee's  
right to occupy the Subject Location, Franchisee shall be allowed to complete  
the Initial Term at said new location.  
  
 SECTION 3.02. Provided Franchisee shall have substantially complied  
with all of the terms and conditions of this Agreement and any other agreements  
between Franchisor and  
  
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Franchisee, and further provided Franchisee shall have substantially complied  
with the operating standards and criteria established by Franchisor, Franchisee  
shall have the right and option to extend the Initial Term of the franchise and  
license herein granted for one additional five (5) year term (the "Extension  
Term") terminating on the EARLIER of:  
  
 A. Five (5) years following the commencement of said Extension Term, or  
  
 B. The expiration or termination of Franchisee's lease or sublease or  
his right to possession of the Subject Location or Franchisee fails or refuses  
to exercise any right to sublease the Subject Premises from Franchisor.  
  
 SECTION 3.03. In order to exercise the right and option to extend the  
Initial Term, Franchisee must give Franchisor written notice (the "Extension  
Notice") of Franchisee's election to do so not more than twelve (12) months and  
not less than nine (9) months prior to the expiration of the Initial Term.  
Provided, however, Franchisor may, if it so elects, nullify and treat as null  
and void, any such option or the exercise thereof, if:  
  
 A. At the time of the exercise of any such option or of the  
commencement of the Extension Term, Franchisee is in default hereunder or under  
Franchisee's lease or sublease of the Subject Location; or  
  
 B. Franchisee's lease or sublease or his right to possession of the  
Subject Location has terminated, and Franchisee has no right to renew such lease  
or sublease, or chooses not to renew; or  
  
 C. Franchisor is sublessor of the Subject Location and cannot renew its  
lease on terms deemed reasonable by Franchisor; or  
  
 D. Franchisee does not, prior to the commencement of said Extension  
Term, make, at Franchisee's own expense, such capital expenditures as may be  
required by Franchisor to renovate and modernize the Subject Location,  
including, but not limited to, signs, point of sale/computerized cash  
register(s), equipment and leasehold improvements, so as-to reflect the then  
current operating systems and image of other The Great American BackRub  
locations; or  
  
 E. Franchisee does not pay to Franchisor, contemporaneously with giving  
the Extension Notice, the renewal fee specified in Section 4.08 hereof.  
  
 SECTION 3.04. In the event Franchisee exercises his option to extend  
the Initial Term pursuant to the terms of Sections 3.02 and 3.03 hereof, the  
Franchisee (and the owners of Franchisee, if Franchisee is a corporation) and  
Franchisor shall execute the then current form of Franchise Agreement and such  
ancillary agreements as are then customarily used by Franchisor in the grant of  
franchises for the ownership and operation of The Great American  
  
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BackRubs, but which shall provide for the same royalties and other fees and  
contributions as required in this Agreement. In addition, Franchisee and its  
owners shall execute general releases, in form and substance satisfactory to  
Franchisor, of any and all claims against Franchisor and its affiliates,  
officers, directors, employees and agents. Failure by Franchisee and its owners  
to sign such agreement(s) and releases within thirty (30) days after delivery  
thereof to Franchisee shall be deemed an election by Franchisee not to renew the  
Franchise.  
  
 SECTION 3.05. The franchise herein granted is for the Initial Term of  
five (5) years and, at the option of Franchisee, the five (5) year Extension  
Term described above. Franchisor may offer to Franchisee an option to extend the  
term of the franchise herein granted for an additional term, in addition to the  
Extension Term, of not less than five (5) nor more than ten (10) years,  
commencing upon the expiration of the Extension Term. Franchisor's decision to  
offer, or not offer, said option to Franchisee shall be based upon Franchisor's  
analysis of Franchisee's past performance and the future potential of the  
Subject Location. Franchisor shall not unreasonably withhold the offering of  
said option.  
  
 Franchisor's decision to offer, or not offer, said option shall be  
based upon all information available to Franchisor, including, but not limited  
to, the operating history of the franchise, the quality of operations, the level  
of Franchisee's involvement in the management of the franchise, Franchisee's  
operational proficiency and commitment to operational excellence, Franchisee's  
participation and cooperation with other franchisees and programs adopted by  
other franchisees, Franchisee's proficiency and commitment with respect to the  
marketing of the franchise, Franchisee's efforts to develop effective management  
personnel, the physical condition of the Subject Location, Franchisee's history  
of maintenance and capital improvements with respect to the Subject Location,  
Franchisee's participation in conventions and optional training programs offered  
by Franchisor, Franchisee's payment history to Franchisor and vendors, and the  
overall financial condition of Franchisee.  
  
 Franchisor shall notify Franchisee of Franchisor's decision to offer,  
or not offer, said additional term in writing not less than eighteen (18) months  
prior to the expiration of the Extension Term. Said offer to extend may be  
conditional and subject to Franchisee complying with specified conditions prior  
to the effective date of said option term. In the event that said offer to  
extend the term hereof is subject to specified conditions, Franchisee shall have  
a period of thirty (30) days within which to notify Franchisor in writing of  
Franchisee's acceptance, or rejection, of said conditions.  
  
 In the event that Franchisor does offer Franchisee an option to extend  
the term of the franchise, Franchisee shall be required to pay to Franchisor a  
renewal fee pursuant to the terms of Section 4.08 hereof and shall be required  
to execute and be bound by the then current form of franchise agreement used by  
Franchisor in the grant of The Great American BackRub franchises, but which  
shall provide for the same royalties and other fees and contributions as  
required in this Agreement.  
  
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 In the event that Franchisor notifies Franchisee that Franchisor has  
elected not to offer Franchisee an option to extended the term hereof, or if  
Franchisee elects not to comply with the conditions set forth in Franchisor's  
offer of said option, Franchisee shall have the right to sell the franchise  
herein granted pursuant to the terms and conditions of Article 9 hereof,  
including, but not limited to, the provisions of Section 9.06. In addition,  
notwithstanding any provisions of Article 9 to the contrary, said buyer shall be  
required to sign and be bound by the then current form of franchise agreement  
used by Franchisor in the grant of a The Great American BackRub franchise.  
  
 FEES  
 ARTICLE 4  
  
 SECTION 4.01. Franchisee shall pay Franchisor an initial,  
non-recurring, non-refundable (except as provided in Sections 4.02 and 13.01  
hereof) franchise fee of Twelve Thousand Five Hundred Dollars ($12,500).  
Provided, however, if Franchisee has executed an "Option Agreement" with  
Franchisor and Franchisee has complied with all terms thereof, Franchisee shall  
be given a credit for all amounts paid to Franchisor pursuant to said Option  
Agreement. Said franchise fee shall be payable upon the execution and delivery  
of this Agreement. Except as provided in Sections 4.02 and 13.01 hereof, the  
initial franchise fee shall be deemed fully earned by Franchisor upon the  
execution and delivery of this Agreement and full payment of said initial  
franchise fee shall be in addition to the monthly royalty fees payable to  
Franchisor by Franchisee pursuant to Section 4.05 hereof and shall be in  
addition to any and all other sums required to be paid to Franchisor by  
Franchisee pursuant to any other term or provision of this Agreement whether for  
advertising contributions, training fees, or for any other reason or purpose.  
Except as provided in Sections 4.02 and 13.01 hereof, said initial franchise fee  
is not refundable under any circumstances, in full or in part including any  
termination of this Agreement nor at any other time nor under any other  
circumstances whatsoever.  
  
 SECTION 4.02. Franchisee agrees that if Franchisor determines, pursuant  
to the terms of Section 6.03 hereof, that Franchisee has not successfully  
completed Franchisor's initial training course relating to the operation of a  
The Great American BackRub franchise, Franchisor shall return to Franchisee the  
initial franchise fee paid to Franchisor by Franchisee pursuant to Section 4.01  
hereof and this Agreement shall be deemed to be null and void and without  
further effect.  
  
 SECTION 4.03. Upon the request of Franchisee, any sums paid to  
Franchisor pursuant to Section 4.01 hereof shall be deposited with an escrow  
agent, mutually acceptable to both parties, who shall hold said sums until the  
earlier of (1) notification from Franchisor that Franchisee did not successfully  
completed the initial training course as specified in Section 6.03 hereof in  
which event said deposited sum shall be paid to Franchisee, or (2) Franchisee  
has commenced operation of the franchise at the Subject Location in which event  
said deposited sum shall be paid to Franchisor. Any costs associated with said  
escrow shall  
  
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be paid by Franchisee and all interest, if any, earned on said deposit while  
held in said escrow agent shall inure to the party to whom said deposit is  
ultimately paid.  
  
 SECTION 4.04. A Franchisee who has not previously attended and  
successfully completed Franchisor's initial franchisee training course shall pay  
to Franchisor a non-refundable fee of Two Thousand Five Hundred Dollars ($2,500)  
for Franchisee's attendance at Franchisor's initial training course relating to  
the operation of a The Great American BackRub franchise. Said fee shall be  
subject to all of the terms and conditions of Section 6.03 hereof. Said sum  
shall be paid to Franchisor upon execution and delivery of this Agreement.  
  
 SECTION 4.05. In addition to the initial payment set forth in Section  
4.01 hereof, Franchisee agrees to pay to Franchisor a monthly royalty fee equal  
to Six Percent (6%) of Franchisee's gross monthly revenues (as said term is  
hereinafter defined) derived from the operation of the franchise for each month  
or any portion thereof during the term of this Agreement. Said fee shall be paid  
on or before the tenth (10th) day of each month and shall be based upon gross  
revenues for the preceding calendar month. Along with said payment Franchisee  
shall furnish Franchisor with written reports on forms specified by Franchisor  
for this purpose signed by Franchisee stating gross revenues for the preceding  
calendar month as designated and classified on Franchisor's forms. In addition,  
provided said function is an available feature of any computerized point of sale  
or accounting system specified by Franchisor, Franchisor may require Franchisee  
to electronically transfer said information or data to Franchisor.  
  
 SECTION 4.06. In addition to any other payment herein required, at any  
time during the initial term of this Agreement, or any extension hereof,  
Franchisor may establish an Advertising Fund. In such event, Franchisor shall  
give Franchisee written notice of the establishment of said Advertising Fund not  
less than thirty (30) days prior to any date that payment to said Advertising  
Fund shall be payable pursuant to this Agreement. In the event that an  
Advertising fund is established, Franchisee shall pay to Franchisor, as an  
advertising and sales promotion fee, an amount equal to the GREATER of (i) Three  
Percent (3%) of Franchisee's gross monthly revenues, as said term is hereinafter  
defined, for each month (or any portion thereof) during the term of this  
Agreement, or (ii) Five Hundred Dollars ($500.00). Said fee shall be paid in the  
same manner as the monthly royalty fee specified in Section 4.05 hereof.  
  
 Franchisor shall retain said sums in a properly segregated fund.  
Franchisor shall supply Franchisee with a semi-annual statement for said fund  
indicating the gross amount of advertising and sales promotion fees collected  
from all franchisees, the total amount expended for advertising and sales  
promotion, and the balance of said fund. Franchisor shall have responsibility  
for disbursement of said funds. Provided, however, that not less than  
seventy-five percent (75%) of said fees shall be used for advertising and  
promotions in the general geographic area of the respective Great American  
BackRub stores which generated said fees. The manner, media and cost of such  
advertising or promotion shall be decided by Franchisor at its sole discretion.  
  
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 SECTION 4.07. The term "gross monthly revenues" is defined as the total  
gross revenue derived by Franchisee in accordance with such accounting practices  
and procedures as shall be determined and required by Franchisor with respect to  
the operations of the franchise, whether from sales for cash or credit, and  
without regard to the source of payment thereof or the collection thereof, or  
the cost of collection, including therein the sales of all merchandise and  
services, but exclusive of all sales taxes, use taxes, gross receipt taxes and  
other similar taxes added to the sales price and collected from the customer by  
Franchisee, and less any bona fide refunds. The term "sales of all merchandise  
and services" shall be determined and construed in its most comprehensive sense.  
  
 SECTION 4.08. In the event Franchisee should exercise its option to  
extend the Initial Term of the franchise and license herein granted pursuant to  
the terms and conditions of Sections 3.02, 3.03 and 3.04 hereof, Franchise shall  
pay to Franchisor a renewal fee of Five Thousand Dollars ($5,000).  
  
 SECTION 4.09. All royalty and service fees, advertising contributions,  
amounts due for purchases by Franchisee from Franchisor or its affiliates and  
other amounts which Franchisee owes to Franchisor or its affiliates shall bear  
interest after due date at the lesser of (i) eighteen percent (18%) per annum,  
or (ii) the highest applicable legal rate for open account business credit in  
the state in which the Subject Location is located. Franchisee acknowledges that  
this provision of this Agreement shall not constitute Franchisor's agreement to  
accept such payments after same are due or a commitment by Franchisor to extend  
credit to, or otherwise finance Franchisee's operation of, the franchise herein  
granted. Further, Franchisee acknowledges that his failure to pay all amounts  
when due shall constitute grounds for termination of this Agreement, as provided  
in Article 12, notwithstanding the provisions of this Section 4.09.  
  
 SECTION 4.10. Franchisee agrees to execute and deliver to Franchisor,  
within ten (10) days of receipt of Franchisor's written request, the appropriate  
preauthorized check and electronic funds transfer forms from Franchisee's  
checking account so that Franchisor will be able to electronically deposit any  
fees payable to Franchisor under the term of this Agreement on a timely basis.  
  
 LEASEHOLD RIGHTS AND OBLIGATIONS  
 ARTICLE 5  
  
 SECTION 5.01. Franchisee shall lease/sublease the Subject Location  
under the terms and conditions of that certain lease/sublease agreement dated as  
of the date of this Agreement.  
  
 SECTION 5.02. Franchisee, at Franchisee's sole expense, shall add such  
leasehold improvements to the Subject Location as may be required by Franchisor.  
Said leasehold improvements shall be constructed in strict conformity with  
designs, plans and specifications approved in writing by Franchisor prior to the  
commencement of any construction. Franchisee, at Franchisee's sole expense,  
shall equip and furnish the Subject Location with  
  
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such equipment, furniture, fixtures and signs as Franchisor may reasonably  
require in order to ensure a uniform appearance of all The Great American  
BackRub locations. Unless agreed to in a writing executed by Franchisor, all  
such improvements and furnishings shall be completed within sixty (60) days  
after the execution of this Agreement.  
  
 SECTION 5.03. Franchisee agrees to comply with all terms and conditions  
of the lease/sublease referred to in Section 5.01 hereof. Upon receipt of any  
notice of default or breach of the terms of said lease/sublease, Franchisee  
agrees to forthwith take all reasonable steps necessary to cure said default or  
breach. In the event Franchisee does not forthwith act to cure said default or  
breach, Franchisor, or its agents or employees, may, in addition to any other  
remedy available to Franchisor under the terms and conditions of this Agreement,  
and with impunity, take all reasonable steps including, but not limited to,  
entering the Subject Location for the purpose of operating the franchise,  
necessary to cure said default or breach. Franchisee shall immediately reimburse  
Franchisor for any costs incurred by Franchisor incidental to Franchisor's cure  
of said default or breach.  
  
 SECTION 5.04. Franchisee agrees to maintain all improvements,  
furniture, fixtures and equipment located in the Subject Location in good and  
safe working order and to replace (at Franchisee's expense) all worn, damaged or  
unsafe improvements, furniture, fixtures and equipment with new replacement  
items of equal or better quality which shall conform in appearance and design to  
the then current plans and specifications of Franchisor. In addition, Franchisor  
may from time to time require Franchisee to modify the appearance of the Subject  
Location to conform to the current design and appearance standards adopted by  
Franchisor. Franchisee shall, within a reasonable time after notice from  
Franchisor of such standards, take all steps, including remodeling or other  
substantial changes, necessary to comply with said standards at Franchisee's  
cost. In all events, Franchisee shall install and use only such furnishings,  
fixtures and equipment as shall conform to specifications of design, color,  
quality, performance and utility designated or approved in writing by  
Franchisor.  
  
 SECTION 5.05. Franchisee shall, at Franchisee's expense, maintain the  
interior and exterior of the Subject Location in a clean, orderly, safe, and  
sanitary condition satisfactory to Franchisor and shall make such repairs as are  
necessary to maintain an aesthetically pleasing appearance. All repairs,  
modifications, and remodeling of the Subject Location shall be made only after  
Franchisee has received the prior written consent of Franchisor.  
  
 SECTION 5.06. Franchisee agrees to indemnify, defend, and hold  
Franchisor harmless from any claim, action, proceeding or demand arising from or  
pertaining to Franchisee's improvements to, or modifications of, the Subject  
Location.  
  
 SECTION 5.07. Franchisee shall not install or use any sign, whether on  
the exterior or in the interior of the Subject Location, which has not received  
the prior written approval of Franchisor. As used herein the term "sign" shall  
be interpreted in its broadest sense and shall include all displays, cards,  
window advertising and promotional material.  
  
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 SECTION 5.08. Franchisor shall have the right to place in a conspicuous  
location in the Subject Location a sign of reasonable proportions, along with  
written material, which shall advise the public that Franchisee's business is a  
franchise, provide information to prospective franchisees, and a method for  
prospective franchisee to contact Franchisor.  
  
 SECTION 5.09. If Franchisee should fail to comply with any of the terms  
and conditions of this Article 5, in addition to any other relief available to  
Franchisor, Franchisor or any persons authorized by Franchisor, without  
liability to Franchisee, shall have the right, in addition to any rights  
Franchisor may have under the lease/sublease, to enter at any time upon the  
Subject Location and perform any act deemed necessary by Franchisor to remedy  
such failure and Franchisee shall immediately reimburse Franchisor for any costs  
incurred by Franchisor incidental thereto.  
  
 TRAINING  
 ARTICLE 6  
  
 SECTION 6.01. Franchisor shall make available to Franchisee  
Franchisor's customary initial training course concerning the operation of a The  
Great American BackRub location. Prior to the opening of the Subject Location,  
and as a condition precedent to Franchisee's rights hereunder, Franchisee shall  
attend and complete said course to the satisfaction of Franchisor.  
  
 SECTION 6.02. Franchisee shall be entitled to have one additional  
person attend Franchisor's customary initial training course, provided however,  
said additional person shall attend said training course at the same time as  
Franchisee. There shall be no additional training fee for said person's  
concurrent attendance at said training course.  
  
 SECTION 6.03. As provided in Section 4.04 hereof, Franchisee shall pay  
to Franchisor the sum of Two Thousand Five Hundred Dollars ($2,500.00)  
representing a non-refundable fee for Franchisee's attendance at said initial  
training course. Franchisee acknowledges that in the event Franchisee does not  
complete said training course to the satisfaction of Franchisor, no portion of  
said fee shall be returned to Franchisee. NOTWITHSTANDING ANY CONTRARY PROVISION  
IN THIS AGREEMENT, THE DETERMINATION OF WHETHER OR NOT FRANCHISEE HAS  
SUCCESSFULLY COMPLETED SAID INITIAL TRAINING COURSE SHALL BE MADE AT THE SOLE  
DISCRETION OF FRANCHISOR.  
  
 SECTION 6.04. In the event Franchisor determines that Franchisee has  
not successfully completed Franchisor's initial training course pursuant to  
Section 6.03 hereof, such decision shall render this Agreement null and void and  
without further effect,.  
  
 SECTION 6.05. All new employees of Franchisee shall be required to  
attend an initial training course conducted by Franchisor at a location  
designated by Franchisor, at the  
  
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option of Franchisor, by Franchisee using personnel and curriculum approved by  
Franchisor. No person shall provide any services in the Subject Location who has  
not completed said training course to the satisfaction of Franchisor. Franchisee  
shall be responsible for all salaries and wages, if any, due said employees  
during said training course. Franchisee shall pay Franchisor a basic training  
fee for each employee who participates in said training course. The current  
amount of said fee is set forth in Franchisor's Uniform Offering Circular. Said  
fee may increase during the term of this Agreement.  
  
 SECTION 6.06. Franchisor shall have the right to require Franchisee,  
and any employee of Franchisee, to attend, and successfully complete, advanced  
training courses related to the operations and services of the Subject Location.  
Franchisee shall not be required to attend more than one (1) such training class  
per calendar year. Franchisee shall be responsible for all wages due any  
employees during said training and all additional costs incurred by said  
employee. Franchisee shall pay Franchisor a fee for each employee who  
participates in any such training course. The current amount of said fee is set  
forth in Franchisor's Uniform Offering Circular. Said fee may increase during  
the term of this Agreement. Franchisor shall not charge any fee for Franchisee's  
attendance at any such training course.  
  
 SECTION 6.07. All expenses of travel, lodging, meals, and other living  
expenses, incurred by Franchisee, and/or any employees of Franchisee, in  
attending any initial or subsequent training program or programs shall be borne  
and paid by Franchisee.  
  
 OBLIGATIONS OF FRANCHISEE  
 ARTICLE 7  
  
 SECTION 7.01. Franchisee shall, beginning on the effective date of this  
Agreement and continuing during the remaining term of this Agreement,  
continuously operate a store at the Subject Location (except if prevented by an  
act of God or other causes beyond the control of Franchisee), using Franchisee's  
best efforts, skills and diligence in the conduct thereof, and regulating and  
controlling Franchisee's employees so that said employees maintain a high  
standard of professional competency and quality of service.  
  
 SECTION 7.02. Franchisee shall not operate, directly or indirectly, nor  
allow the operation of, any other business within or in connection with the  
Subject Location.  
  
 SECTION 7.03. Franchisee shall operate the Subject Location in strict  
conformity with such reasonable standards, specifications, requirements and  
instructions as Franchisor may hereafter adopt. Such standards, specifications,  
requirements and instructions shall include but not be limited to a computerized  
point of sale cash register and telephone modem specified by Franchisor.  
Franchisee agrees to provide Franchisor telephonic access to the information  
stored on the point of sale computerized cash register at such reasonable times  
as Franchisor shall designate. In addition, Franchisor may request Franchisee to  
electronically transfer information and/or data available from said computerized  
point of sale cash register to  
  
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Xxxxxxxxxx. Xxxxxxxxxx agrees to comply with said request in a timely manner.  
Franchisor shall have the right from time to time to make reasonable changes,  
modifications, or additions to any standards, specifications or requirements  
whenever Franchisor deems that such changes, modifications or additions are  
reasonably necessary to improve the standards of quality, service, repair and  
maintenance of the Subject Location or to protect any xxxx, trademark, service  
xxxx or trade name of Franchisor. Any such changes, modifications or additions  
shall automatically be binding upon Franchisee upon the giving of notice of same  
to Franchisee by Franchisor.  
  
 SECTION 7.04. Franchisee agrees that no employee of Franchisee whose  
professional competency or quality of service does not meet the standards  
established by Franchisor shall be allowed to work in the Subject Location.  
  
 SECTION 7.05. Franchisee shall display and sell in the Subject Location  
a limited line of retail products approved in advance by Franchisor. Prior to  
the sale of any product Franchisee shall obtain Franchisor's prior written  
consent to the sale of said product. Any such product shall strictly conform to  
standards and specifications determined by Franchisor for products sold in The  
Great American BackRub locations.  
  
 SECTION 7.06. Franchisee shall offer all services and products which  
Franchisor may uniformly require of all The Great American BackRub franchises.  
Franchisee shall perform all such services in strict conformity with  
Franchisor's standards and specifications and, in addition, Franchisee shall  
comply with all applicable laws and regulations relating to such services.  
Franchisee shall not offer any services which have not been previously approved,  
in writing, by Franchisor or which is prohibited by law or applicable  
regulation.  
  
 SECTION 7.07. All advertising or promotional materials to be used by  
Franchisee, including signs or displays on or in the Subject Location, must be  
approved in writing by Franchisor prior to any use thereof by Franchisee. Said  
prior approval requirement shall not apply to any advertising or promotional  
material supplied to Franchisee by Franchisor.  
  
 SECTION 7.08. Franchisee shall conform to all Federal, State and local  
health and building regulations and shall make prompt and timely payments of all  
taxes related to or arising from Franchisee's operation of the franchise.  
Franchisee shall keep in force and effect all local, State and national license  
which may be required for the lawful operation of the franchise.  
  
 SECTION 7.09. Franchisee shall immediately notify Franchisor of any  
apparent infringement of, or challenge to, Franchisee's use of any name, xxxx or  
logo used in connection with the franchise herein granted, or the claim by any  
person or entity of any right to any such name, xxxx or logo. Franchisee shall  
not communicate with any person other than Franchisor and its counsel in  
connection with any such alleged infringement, challenge or claim. Franchisor  
shall have sole discretion to take such action as it deems appropriate in  
connection with said alleged infringement, challenge or claim, and shall have  
the exclusive  
  
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right to control any litigation or administrative proceedings associated  
therewith. Franchisee agrees to execute any and all instruments and documents,  
render such assistance, and do such acts and things as may be reasonable,  
necessary or advisable to protect and maintain the interest of Franchisor in any  
litigation or other proceeding, or to otherwise protect and maintain the  
interest of Franchisor in said names, marks or logos.  
  
 ACCOUNTING PROCEDURES  
 ARTICLE 8  
  
 SECTION 8.01. Franchisee shall maintain a bookkeeping system in  
conformity with the accounting methods prescribed by Franchisor, and shall use  
such cash registers, books of accounts, reporting systems and methods which meet  
the requirements of Franchisor.  
  
 SECTION 8.02. Upon the written request of Franchisor, Franchisee agrees  
to furnish to Franchisor copies of designated sales tax returns, State, Federal  
and local payroll tax returns, and Federal and State income tax returns within  
thirty (30) days after receipt of said request.  
  
 SECTION 8.03. Franchisee shall furnish to Franchisor a copy of  
Franchisee's report of gross revenues, gross sales, or other data which  
Franchisee may be required to submit to any lessor/sublessor of the Subject  
Location within five (5) days after said reports are required to be submitted.  
  
 SECTION 8.04. Franchisor shall at all times be entitled to audit  
Franchisee's gross monthly revenues (as defined in Section 4.09 hereof) by  
Franchisor, its employees, agents or representatives. Such audit shall be  
limited to the determination of gross monthly revenues and shall be conducted  
during normal business hours and either at the Subject Location or the principal  
place of business of Franchisee. Franchisee agrees to supply Franchisor or its  
designated agent with all information, data and records reasonably necessary to  
complete said audit. If it is determined as a result of such audit that there  
has been a deficiency in the payments made to Franchisor, then such deficiency  
shall become immediately due and payable with interest at the highest rate  
allowable under applicable State and/or Federal law from the date when said  
payments should have been made not to exceed eighteen percent (18%) per annum.  
In addition, if any of Franchisee's reports shall be found to have understated  
gross monthly revenue by more than two percent (2%), in addition to any  
royalties due Franchisor, Franchisee shall pay all of Franchisor's reasonable  
costs and expenses connected with said audit. Further, in the event that any of  
said reports are found to have understated gross monthly revenues by more than  
five percent (5%), such understatement shall be deemed to be a breach of this  
Agreement by Franchisee. Any information gained from such audit shall be  
confidential and shall not be disclosed except to carry out the purposes hereof.  
  
 SECTION 8.05. The term "records" as used in Section 8.04 shall include,  
but shall not be limited to, cash register recordings, purchase records, bank  
statements, sales journals,  
  
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payroll tax returns, sales receipts, employment records, financial statements  
and other records normally maintained by such a business.  
  
  
 ASSIGNMENT  
 ARTICLE 9  
  
 SECTION 9.01. This Agreement and the franchise granted thereunder are  
fully assignable by Franchisor and shall inure to the benefit of any assignee(s)  
or other legal successor(s) to the interest of Franchisor herein, subject only  
to the condition that the Assignee of Franchisor shall, subsequent to any such  
assignment, remain liable, primarily and/or secondarily, for the performance of  
all obligations of Franchisor under this Agreement.  
  
 SECTION 9.02. Franchisee understands and acknowledges that the rights  
and duties created by this Agreement are personal to Franchisee or its owners  
and that Franchisor has granted the franchise in reliance upon the individual or  
collective character, skill, aptitude, business ability and financial capacity  
of Franchisee or its owners. Therefore, except as hereinafter provided with  
respect to an assignment to a corporation, neither the franchise nor the  
franchised business or any interest therein nor any part or all of the ownership  
of Franchisee may be voluntarily, involuntarily, directly or indirectly,  
assigned, sold, subdivided, sub franchised or otherwise transferred by  
Franchisee, or its owners, including without limitation by merger or  
consolidation, or issuance of additional securities representing ownership in  
Franchisee nor in the event of the death of Franchisee or an owner of  
Franchisee, by will, declaration of or transfer in trust or the laws of  
intestate succession without the prior written approval of Franchisor, and any  
such assignment or transfer without such approval shall constitute a breach  
hereof and conveys no rights to or interests in the franchise, franchised  
business or Franchisee.  
  
 SECTION 9.03. If Franchisee or its owners are in full compliance with  
this Agreement, Franchisor shall not unreasonably withhold its approval of an  
assignment, provided that the proposed assignee(s) is, in the opinion of  
Franchisor, of good moral character and has sufficient business experience,  
aptitude and financial resources to own and operate the franchised business and  
otherwise meets Franchisor's then applicable standards for Franchisees, and  
further provided that the following conditions are met prior to, or concurrently  
with, the effective date of the assignment:  
  
 (1) all obligations of Franchisee and its owners incurred in connection  
with this Agreement have been assumed by the assignee(s);  
  
 (2) Franchisee shall have paid such franchise fees, advertising  
contributions, amounts owed for purchases by Franchisee from Franchisor or its  
affiliates and any other amounts owed to Franchisor or its affiliates which are  
then due and unpaid;  
  
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 (3) the assignee(s) completes the training program required of new  
Franchisees prior to the effective date of the assignment and pays Franchisor  
the sum of Two Thousand Five Hundred ($2,500.00) as a fee for said course;  
  
 (4) if required, the owner/lessor of the Subject Location business has  
consented to Franchisee's assignment or sublease of said premises to the  
proposed assignee(s);  
  
 (5) the assignee(s) and if a corporation or partnership, its owners,  
shall, at Franchisor's option, have executed and agreed to be bound by:  
  
 (i) a Guaranty agreement, satisfactory in form and content to  
Franchisor, whereby the assignee assumes the obligation of Franchisee under this  
Agreement and the sublease described in Section 5.01 hereof; and  
  
 (ii) the then current form of franchise agreement and such  
ancillary agreements as are then customarily used by Franchisor in the grant of  
The Great American BackRub franchises, but which shall provide for the same  
royalties and other franchise fees and advertising contributions required  
hereunder and be a term equal to the remaining term of this franchise agreement;  
  
 (6) Franchisee or assignee(s) shall have paid to Franchisor  
Franchisor's standard assignment fee of Two Thousand Five Hundred Dollars  
($2,500) to defray expenses incurred by Franchisor in connection with the  
assignment, including, without limitation, training of assignee(s), legal and  
accounting fees, credit and other investigation charges and evaluation of the  
assignee(s) and the terms of the assignment.  
  
 (7) except to the extent limited or prohibited by applicable law,  
Franchisee and each of its owners if Franchisee is a corporation or partnership  
shall have executed a general release, in form satisfactory to Franchisor, of  
any and all claims against Franchisor and its affiliate, officers, directors,  
employees and agents;  
  
 (8) Franchisor shall have approved the material terms and conditions of  
such assignment and shall have determined that the price and terms of payment  
are not so burdensome as to adversely affect the future operations of the  
franchised business by the assignee(s);  
  
 (9) Franchisee and each of its owners if Franchisee is a corporation or  
partnership shall have executed a non-competition covenant in favor of  
Franchisor and the assignee(s), agreeing that for a period of not less than two  
(2) years, commencing on the effective date of the assignment, he will not have  
any direct or indirect interest as an owner, investor, partner, director,  
officer, employee, consultant, representative or agent, or in any other  
capacity, in any business that (i) sells services or products substantially the  
same as a The Great American BackRub , and (ii) which is located or operates  
within a radius of ten (10) miles of the  
  
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Subject Location or within a three (3) mile radius of any other The Great  
American BackRub in operation at the time of such transfer; and  
  
 (10) Franchisee shall have entered into an agreement with Franchisor  
agreeing to subordinate to such assignee's obligations to Franchisor, including,  
without limitation, any franchise fees and advertising contributions, any  
obligations of such assignee(s) to make installment payments of the purchase  
price to Franchisee.  
  
 (11) Adequate provisions have been made by Franchisee, and approved by  
Franchisor, to assure that assignee has the financial capability to fulfill any  
and all contractual obligations to any existing customer/patron of the Subject  
Location arising from, or related to, any back rub services or products to be  
provided by Franchisee.  
  
 The Franchisor's consent to an assignment of any interest subject to  
the restrictions of Sections 9.02 and 9.03 of this Agreement shall not  
constitute a waiver of any claims it may have against the Franchisee, nor shall  
it be deemed a waiver of Franchisor's right to demand exact compliance with any  
of the terms or conditions of the franchise by the assignee.  
  
 SECTION 9.04. Within sixty (60) days from the date of this Agreement,  
the franchise and the assets and liabilities of the franchised business may be  
assigned to a newly organized corporation that conducts no business other than  
the franchised business, which is actively managed by Franchisee and in which  
Franchisee owns and controls all of the equity and voting power of all issued  
and outstanding capital stock. Such an assignment shall not relieve Franchisee  
of his obligations hereunder, and Franchisee and said corporation shall remain  
jointly and severally liable for all obligations hereunder. The articles of  
incorporation, by-laws and other organizational documents of such corporation  
shall recite that the issuance and assignment of any interest therein is  
restricted by the terms of Sections 9.02 and 9.03 of this Agreement and all  
issued and outstanding stock certificates of such corporation shall bear a  
legend reflecting or referring to the restrictions of said Sections 9.02 and  
9.03.  
  
 SECTION 9.05. The assignment of the rights, duties and obligations of  
Franchisee pursuant to Section 9.03 hereof shall not relieve Franchisee of the  
duties and obligations herein imposed on Franchisee. Provided, however, if at  
the expiration of six (6) months after the effective date of any transfer, the  
transferee has not defaulted or breached any of the terms or conditions of the  
then current agreement, subject only to the exception set forth in this Section  
9.05, Franchisor shall release Franchisee from all obligations or liabilities  
imposed on Franchisee pursuant to this agreement. During said six (6) month  
period, Franchisor shall give Franchisee written notice of any default or breach  
by said transferee. Notwithstanding the foregoing, said release shall not be  
effective with respect to any liability of Franchisee under the provisions of  
Section 7.09 hereof, nor for any liability of Franchisee with respect to the  
unexpired term, exclusive of any renewal terms, under the sublease referred to  
in Section 5.01.  
  
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 SECTION 9.06. In the event that Franchisee seeks the approval of  
Franchisor to an assignment pursuant to the terms of this Article 9, Franchisee  
shall include with such request a copy of any agreement relating to the proposed  
sale or assignment of the franchise herein granted. Franchisor shall have no  
obligation to consider any request for consent to any transferee if said  
agreement is not included with said request. Upon receipt of such offer from  
Franchisee, Franchisor shall have the option of purchasing or otherwise  
acquiring such of Franchisee's rights under this agreement and all such other  
property and rights of the Franchisee as may be embraced within said offer, upon  
the same terms and conditions as those set forth therein. Franchisor may  
exercise its option at any time within thirty (30) days after receipt of said  
offer from Franchisee by giving written notice of its acceptance to Franchisee.  
This Section shall not be applicable to any transfer made pursuant to Sections  
9.04 hereof.  
  
 SECTION 9.07. In the event Franchisee (or any of its owners) shall,  
subject to the restrictions and conditions of transfer contained in this Section  
9.07, attempt to raise or secure funds by the sale of securities (including,  
without limitation, common or preferred stock, bonds, debentures or general or  
limited partnership interests) in Franchisee or any affiliate of Franchisee,  
Franchisee acknowledges that the written information used with respect thereto  
may reflect upon Franchisor. No information respecting Franchisor or any of its  
affiliates shall be included in any securities disclosure document, unless such  
information has been furnished by Franchisor, in writing, pursuant to the  
written request of the Franchisee, in which the Franchisee states the specific  
purpose for which the information is to be used. Should Franchisor, in its sole  
discretion, object to any reference to Franchisor or any of it affiliates or to  
any of their businesses in such offering literature or prospectus, such  
literature or prospectus shall not be used unless and until the objections of  
Franchisor are withdrawn. The Franchisor assumes no responsibility for the  
offering whatsoever. The prospectus or other literature utilized in any such  
offering shall contain the following language in bold-face type on the first  
textual page thereof:  
  
"NEITHER THE GREAT AMERICAN BACKRUB STORE, INC. NOR ANY OF ITS AFFILIATES IS  
DIRECTLY OR INDIRECTLY THE ISSUER OF THE SECURITIES OFFERED HEREBY. NEITHER THE  
GREAT AMERICAN BACKRUB STORE, INC. NOR ANY OF ITS AFFILIATES ASSUMES ANY  
RESPONSIBILITY WITH RESPECT TO THIS OFFERING AND/OR THE ADEQUACY OR ACCURACY OF  
THE INFORMATION SET FORTH HEREIN, INCLUDING ANY STATEMENTS MADE WITH RESPECT TO  
ANY OF THEM. NEITHER THE GREAT AMERICAN BACKRUB STORE, INC. NOR ANY OF ITS  
AFFILIATES ENDORSES OR MAKES ANY RECOMMENDATION WITH RESPECT TO THE INVESTMENT  
CONTEMPLATED BY THIS OFFERING."  
  
 Franchisee and each of its owners agrees to indemnify, defend and hold  
harmless Franchisor and its affiliates, and their respective officers,  
directors, employees and agents, from any and all claims, demands, liabilities,  
and all costs and expenses (including, without limitation, reasonable attorneys'  
fee) incurred in the defense of such claims, demands or  
  
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liabilities, arising from the offer or sale of such securities whether asserted  
by a purchaser of any such security or by a governmental agency. Franchisor  
shall have the right (but not the obligation) to defend any claims, demands or  
liabilities and/or to participate in the defense of any action to which  
Franchisor or any of its affiliates or any of their respective officers,  
directors, employees or agents is named as a party.  
  
 SECTION 9.08. Any attempt by the Franchisee to transfer any rights or  
interests under this Agreement without having received the prior written consent  
of Franchisor shall constitute a material breach of this Agreement and  
Franchisor shall have the right to terminate this Agreement upon written notice  
to Franchisee.  
  
 INSURANCE/INDEMNIFICATION  
 ARTICLE 10  
  
 SECTION 10.01. In addition to any insurance required of Franchisee  
pursuant to any lease relating to the Subject Location, Franchisee shall  
purchase and maintain in effect at all times during the term of this Agreement  
policies of insurance, naming Franchisor and all employees of Franchisee as  
additional insureds, at Franchisee's sole cost and expense. Initially, said  
insurance will conform to the following specifications:  
  
 A. Combined single limit, liability and property insurance including,  
but not limited to, "all risk" buildings and contents insurance (including  
replacement cost and plate glass provisions) for all leased or owned property,  
general liability insurance (including premise operations, products,  
professional malpractice, and personal injury) and automobile insurance  
(including owned, hired or leased, non-ownership, medical payments and uninsured  
motorist) with policy limits of at least $1,000,000.  
  
 B. An all inclusive standard umbrella policy of at least $1,000,000.  
  
 C. Worker's compensation insurance as required by State law.  
  
 Franchisor shall have the right, upon thirty (30) days written notice,  
to require either an increase in said policy limits or additional coverage if  
Franchisor, in its sole discretion, deems such increase or additional coverage  
necessary. Franchisee shall supply Franchisor with current certificates of  
coverage indicating full payment of insurance policies in conformity with the  
then current requirements and copies of all applicable policies. Said policies  
shall contain endorsements requiring the insurer to give Franchisor thirty (30)  
days advance written notice in the event of any cancellation or change in the  
coverage, scope, or amount of such policy.  
  
 SECTION 10.02. Franchisee agrees, during and after the term of this  
Agreement, to indemnify, defend, and hold Franchisor harmless from and against  
any and all loss, damage, claims, whether or not properly founded, liability and  
attorneys' fees and other costs and expenses incurred by Franchisor as the  
result of any violation of this Agreement by, or any  
  
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act of omission or commission on the part of the Franchisee, or any of it  
agents, servants or employees, and from all claims, damages, causes of action,  
suits or rights of any persons, firm or corporations arising from the operation  
of the franchise herein discussed. The Franchisor shall have the right (but not  
the obligation) to defend any such claims, demands, or liabilities and/or to  
participate in the defense of any action to which Franchisor or any of its  
affiliates or any of their respective officers, directors, employees or agents  
is named as a party.  
  
 RELATIONSHIPS OF PARTIES/REPRESENTATIONS  
 ARTICLE 11  
  
 SECTION 11.01. It is specifically recognized and acknowledged by  
Franchisee that the success of the business venture to be undertaken by  
Franchisee by virtue of this Agreement depends to a great extent upon the  
ability of Franchisee as an independent party and entrepreneur as well as on  
market conditions beyond the control of either Franchisor or Franchisee.  
Franchisee acknowledges that Franchisee has entered into this Agreement after  
making an independent investigation of Franchisor's operations and programs and  
not upon any representation as to the profits, success, or other benefits which  
Franchisee will realize. Franchisee acknowledges that there have been no  
representations or warranties not expressly stated in this Agreement, or  
Franchisor's Uniform Offering Circular, made by Franchisor or any representative  
thereof or any other person on its behalf with respect to the potential success  
of Franchisee's business or otherwise.  
  
 SECTION 11.02. Franchisee is not and shall not hold itself out as an  
agent, legal representative, partner subsidiary, joint venturer or employee of  
Franchisor. Franchisee shall have no right or power to, and shall not bind or  
obligate Franchisor in any way, manner or thing whatsoever, nor represent that  
it has any right to do so. In all public records and in its relationship with  
other persons, on letterheads, and business forms, Franchisee shall indicate its  
independent ownership of said business, and that it is only a franchisee of  
Franchisor. Notwithstanding any other provision of this Agreement, Franchisor  
and Franchisee shall not, under any circumstances, be deemed to be a joint  
employer of any employee of Franchisee.  
  
 TERMINATION  
 ARTICLE 12  
  
 SECTION 12.01. Provided Franchisee is not in default of any of the  
terms and conditions of this Agreement, or any other agreement between  
Franchisee and Franchisor, Franchisee shall have the right to terminate this  
Agreement by giving Franchisor notice at least one hundred twenty (120) days  
prior to any intended termination date. During said period Franchisee shall  
continue to maintain complete operations as if said notice had not been given.  
Franchisee shall fully cooperate with Franchisor to expedite the transfer or  
closing of said business. Such notice of termination shall not entitle  
Franchisee to the return of any fees paid to Franchisor nor shall Franchisee be  
relieved of any debt, duty or obligation owing to Franchisor arising from, or  
related to, this Agreement, including, but not limited to, the obligation of  
Franchisee pursuant to the sublease described in Section 5.01 hereof.  
  
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 SECTION 12.02. In addition to any other rights Franchisor may have to  
terminate this Agreement, Franchisor shall have the right and option to  
terminate this Agreement upon the occurrence of any of the following:  
  
 A. Failure of Franchisee to cure any breach or default of the terms and  
conditions of this Agreement within five (5) days after Franchisor gives  
Franchisee written notice of said breach or default. Provided, however, if cure  
of said default or breach cannot be reasonably accomplished within five (5)  
days, Franchisee shall be allowed such additional time, not to exceed twenty  
(20) days, as reasonably necessary to accomplish said cure.  
  
 B. The third written notice within any period of twenty-four (24)  
months to Franchisee by Franchisor of any breach or default, whether  
subsequently cured or not, of the terms and conditions of this Agreement.  
  
 C. Unless otherwise prohibited by applicable law, if Franchisee becomes  
insolvent or commits an act of bankruptcy, or makes a general assignment for the  
benefit of creditors, or to an agent authorized to liquidate his property or  
assets, or becomes or is adjudicated a bankrupt, or voluntarily files a petition  
in bankruptcy or reorganization, or to effect a plan or other arrangement with  
creditors, or files an answer to the creditor's petition or other petitions  
filed against him (admitting the material allegations thereof) for an  
adjudication, or for reorganization, or to effect a plan or other arrangement  
with creditors, or applies for or suffers the appointment of a receiver or  
trustee of any of his assets and property, or such receiver or trustee is  
appointed for any of his property or assets, and such trustee or receiver so  
appointed is not discharged within fifteen (15) days after the date of his  
appointment, or all or substantially all of the property of the Franchisee is  
attached by the United States or any officer or instrumentality thereof, and so  
remains and continues for a period of fifteen (15) days, or a writ or warrant of  
attachment, or any similar process is issued by any court against all or any  
substantial portion of the property or assets of the Franchisee and such writ,  
warrant of attachment, or any similar process is not released or bonded within  
fifteen (15) days after entry or levy.  
  
 D. Upon the closing of the Franchisee's business for a period of five  
(5) or more consecutive days without prior approval in writing of Franchisor  
except for acts of God and other circumstances clearly beyond Franchisee's  
control.  
  
 E. In the event of any material breach by Franchisee of any other  
written agreement between Franchisor and Franchisee.  
  
 F. In the event that Franchisee, or any employee of Franchisee, is  
convicted of a criminal offense relating to any act committed on, or relating  
to, the Subject Location.  
  
 SECTION 12.03. If this Agreement is terminated for any reason  
whatsoever, Franchisor shall have the right, without obligation and at the  
expense of Franchisee, to  
  
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remove from the Subject Location all identification to an extent and in a manner  
sufficient to remove therefrom all similarities to the appearance of a The Great  
American BackRub location; and, in addition:  
  
 A. All Franchisee's rights as a franchisee shall terminate and  
Franchisee will immediately thereafter cease to use by advertising or otherwise,  
The Great American BackRub programs or any part thereof, or any forms, systems,  
slogans, signs, marks, symbols, or devices used in connection with The Great  
American BackRub program, including the name The Great American BackRub, or any  
variation thereof, in any manner whatsoever,  
  
 B. Franchisee will assist Franchisor in every way possible to bring  
about a complete and effective transfer of the business, its customers,  
facilities, and services to Franchisor or its designee.  
  
 C. Franchisee will pay all debts owing to Franchisor, including but not  
limited to fees and rents, immediately upon termination.  
  
 D. Franchisee will pay all creditors immediately upon termination.  
  
 E. Franchisee will return immediately to Franchisor in good condition  
all manuals furnished by Franchisor, all advertising material, stationery,  
printed forms, and all other materials relating to the operation of this  
franchise in his possession at the time of such termination.  
  
 F. Franchisee shall relinquish and take all steps necessary to transfer  
all telephone numbers, listings and directory advertising relating to the  
Subject Location or Franchisee's business into Franchisor's name.  
  
 G. Franchisee will comply with all the provisions of this Agreement  
relative to termination.  
  
 SECTION 12.04. In the event of the termination of this Agreement for  
any reason, Franchisor shall repurchase from Franchisee, and Franchisee shall  
sell to Franchisor, all usable merchandise bearing Franchisor's name or the name  
"The Great American BackRub," or any variation thereof. Said merchandise shall  
be purchased at the then current wholesale price.  
  
 SECTION 12.05. Written notice of any breach or default of this  
Agreement shall be personally served on Franchisee or sent, certified mail,  
return receipt requested to the address set forth in Section 14.07 hereof, or  
such address as Franchisee may hereafter designate in writing to Franchisor. If  
said notice is served by mail, it shall be deemed served on the earlier of the  
date delivered to the intended address or three (3) days after mailing.  
  
 Notwithstanding the above, all written notices and reports permitted or  
required to be delivered by the provisions of this Agreement shall be deemed so  
delivered at the time  
  
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delivered by hand, or one (1) business day after sending by facsimile or  
comparable electronic system or two (2) business days after deposited with  
Federal Express or a comparable overnight courier company or three (3) business  
days after being placed in the U.S. mail by Registered or Certified Mail, return  
receipt requested, postage prepaid, and addressed to the party to be notified at  
its most current principal business address of which the notifying party has  
been notified.  
  
 SECTION 12.06. In the event said notice specifies that Franchisee's  
default or breach constitutes a non-curable breach under the terms and  
conditions hereof, this Agreement, and Franchisee's rights hereunder, shall  
terminate ten (10) days following service of said notice.  
  
 SECTION 12.07. Except as provided in Section 12.08 of this Article, all  
controversies, disputes or claims arising between Franchisor and Franchisee in  
connection with, arising from, or with respect to: (1) any provision of this  
Agreement or any other related agreement; (2) the relationship of the parties  
hereto; (3) the validity of this Agreement or any other related agreement, or  
any provision thereof; or (4) any specification, standard or operating procedure  
relating to the establishment or operation of the franchised business which  
shall not be resolved within fifteen (15) days after either party shall notify  
the other in writing of such controversy, dispute or claim, shall be submitted  
for arbitration to the New York, New York office of the American Arbitration  
Association on demand of either party. Such arbitration proceedings shall be  
conducted in New York, New York, except that for Franchisees located outside New  
York, arbitration will be conducted in the state where the Subject Location is  
located. Except as otherwise provided in this Agreement, arbitration proceedings  
shall be conducted in accordance with the then current Commercial Arbitration  
Rules of the American Arbitration Association. The arbitrator shall have the  
right to award or include in his award any relief which he deems proper in the  
circumstances, including without limitation, money damages (with interest on  
unpaid amounts from date due), specific performance and injunctive relief. The  
award and decision of the arbitrator shall be conclusive and binding upon all  
parties hereto and judgment upon the award may be entered in any court of  
competent jurisdiction. The parties acknowledge and agree that any arbitration  
award may be enforced against either or both of them in a court of competent  
jurisdiction and each waives any right to contest the validity or enforceability  
of such award. The parties further agree to be bound by the provision of any  
statute of limitations which would be otherwise applicable to the controversy,  
dispute or claim which is the subject of any arbitration proceeding initiated  
hereunder. Without limiting the foregoing, the parties shall be entitled in any  
such arbitration proceeding to the entry of an order by a court of competent  
jurisdiction pursuant to an opinion of the arbitrator for specific performance  
of any of the requirements of this Agreement. This provision shall continue in  
full force and effect subsequent to and notwithstanding expiration or  
termination of this Agreement.  
  
 SECTION 12.08. The rights of Franchisor and Franchisee hereunder are  
cumulative and no exercise or enforcement by Franchisor or Franchisee of any  
right or remedy hereunder shall preclude the exercise or enforcement by  
Franchisor or Franchisee of any other right or remedy hereunder or which  
Franchisor or Franchisee is entitled by law to enforce.  
  
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 SECTION 12.09. Notwithstanding the provisions of Section 12.07 above,  
Franchisor shall have the right to enforce by judicial process any rights it may  
have to possession of the Subject Location under any lease or sublease with  
Franchisee. Further, Franchisee agrees that Franchisor shall have the right to  
seek preliminary injunctive relief to restrain conduct by Franchisee in the  
development or operation of the franchise herein granted that could materially  
damage the goodwill associated with any of Franchisor's proprietary rights  
and/or marks or any The Great American BackRub location, provided that  
Franchisor agrees to arbitrate any such dispute concurrently with and subsequent  
to the grant or denial of such preliminary injunctive relief, and the sole  
remedy of Franchisee, in the event of entry of a preliminary injunction, shall  
be the dissolution of such injunction, if warranted upon hearing duly had (all  
claims for damages by reason of the wrongful issuance of any such injunction  
being expressly waived hereby).  
  
 SECTION 12.10. If a claim for amounts owed by Franchisee to Franchisor  
or any of its affiliates is asserted in any judicial or arbitration proceeding,  
or if Franchisor or Franchisee is required to enforce this Agreement in a  
judicial or arbitration proceeding, the party prevailing in such proceeding  
shall be entitled to reimbursement of its costs and expenses, including, but not  
limited to, reasonable accounting fees, attorneys fees and arbitrator's fees.  
Attorneys' fees shall include, without limitation, reasonable legal fees,  
whether incurred prior to, or in preparation for or contemplation of the filing  
of any written demand or any claim, action, hearing or proceeding to enforce the  
obligations of Franchisor under this Agreement or any other related agreement  
between the parties.  
  
 SECTION 12.11. Pending a decision of said arbitration proceeding, the  
franchise herein granted shall, at the sole option of Franchisor, be operated by  
Franchisor, who shall have sole authority as to the operation of said business.  
Franchisor shall deposit all revenues from the operation of said business, less  
normal operating expenses, including but not limited to rent, employee wages and  
benefits, reasonable merchandise purchases, utilities, taxes and insurance, in a  
separate account. The balance of said trust account shall be subject to the  
decision of said arbitration proceeding and, if said balance, or any portion  
thereof, is awarded to Franchisee, Franchisee shall be entitled to an accounting  
of all funds received and disbursed.  
  
 LICENSES  
 ARTICLE 13  
  
 SECTION 13.01. In the event that any license, permit or similar  
governmental approval is required by the appropriate authorities of the state,  
county or city in which the franchise herein granted will be operated, then this  
Agreement is contingent upon the Franchisee securing such license. Franchisee  
agrees to make due and diligent application for such license and shall cooperate  
with the authorities in connection with such license application. In the event  
after such due and diligent application the Franchisee is unable to secure said  
license(s) within thirty (30) days following the effective date hereof,  
Franchisee shall give written notice to Franchisor by certified mail of his  
inability to secure such a  
  
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license. Upon expiration of ten (10) days from date of receipt of such notice,  
this Agreement shall be deemed null and void and have no further effect. Except  
for such training fees paid pursuant to Section 4.04, all moneys paid hereunder  
by the Franchisee to Franchisor shall be refunded. All sums due to the  
Franchisee after deducting appropriate charges, shall be returned within ten  
(10) days after receipt of such termination notice. Franchisee agrees that he  
will make immediate application to the proper authorities of the State in which  
the Subject Location is located to obtain such licenses and shall diligently and  
in good faith do all such things as may be necessary for that purpose.  
Franchisee represents that he has no knowledge or reason to believe that a  
license would not be granted to him on proper application.  
  
 SECTION 13.02. In the event that during the term of this Agreement any  
license, permit or other approval described in Section 13.01 immediately above  
is revoked, suspended, or terminated, or Franchisee's right to operate the  
franchise is terminated or suspended, Franchisor shall have the right to  
terminate this Agreement upon ten (10) days written notice to Franchisee.  
  
  
 MISCELLANEOUS  
 ARTICLE 14  
  
 SECTION 14.01. The waiver of Franchisor of any breach or default by the  
Franchisee shall not affect or impair Franchisor's right in respect to any  
subsequent default of the same or a different kind. Nor shall any delay or  
omission of Franchisor to exercise any right arising from any default affect or  
impair Franchisor's right as to the same or any future default.  
  
 SECTION 14.02. This Agreement shall be governed by and construed in  
accordance with the laws of or applicable to the State of New York, as amended;  
except that for franchises located outside of New York, the laws of the state in  
which the Subject Location is located will apply.  
  
 SECTION 14.03. All terms and words used in this Agreement, regardless  
of the number and gender in which they are used, shall be deemed and construed  
to include any other number, singular or plural, and any other gender,  
masculine, feminine or neuter, as the context or sense of this Agreement or any  
paragraph or clause herein may require, the same as if such words had been fully  
and properly written in the number and gender.  
  
 SECTION 14.04. This Agreement and the lease/sublease referred to in  
Section 5.01 hereof, contains the entire agreement of the parties and supersedes  
all prior negotiations, representations, inducements, promises, or agreements,  
oral or otherwise. Franchisee acknowledges that Franchisor has not made any  
representations, promises, or inducements, not embodied herein.  
  
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 SECTION 14.05. Should any part of this Agreement for any reason be  
declared invalid, such decision shall not affect the validity of any remaining  
portion, which remaining portion shall remain in force and effect as if this  
agreement had been executed with the individual portion thereof eliminated, and  
it is hereby declared the intention of the parties hereto that they would have  
entered into this agreement notwithstanding the invalid portion hereof.  
  
 SECTION 14.06. Should either party to this Agreement institute legal  
action for the enforcement of any provision of this Agreement, the prevailing  
party in said action shall be entitled to, in addition to any other relief,  
reasonable attorneys' fees and costs.  
  
 SECTION 14.07. All notices and reports to Franchisor or Franchisee, if  
not personally served, shall be deemed so delivered one (1) business day after  
sending by facsimile or comparable electronic system, or two (2) business days  
after deposit with Federal Express or a comparable overnight courier company, or  
three (3) business days after being placed in the U.S. mail by Registered or  
Certified Mail, return receipt requested. All notices shall be sent postage  
prepaid and addressed to the respective party as follows, or as either party may  
from time to time designate in writing.  
  
 Franchisor: Franchisee:  
  
 The Great American BackRub Store, Inc. 00000 X.X. 000xx Xx.  
 000 Xxxxxxx Xxxxxx, Xxxxx 000 Xxxxx, XX 00000  
 Xxx Xxxx, XX 00000  
  
 SECTION 14.08. This Agreement may be modified or amended only by a  
written document of equal dignity.  
  
 SECTION 14.09. This Agreement shall be binding on the parties, their  
heirs, executors, personal representatives, successors or assigns.  
  
 SECTION 14.10. To the extent that Section 2.06, Section 2.08, or  
Section 9.03(9) is deemed unenforceable by virtue of its scope in terms of area,  
business activity prohibited, or length of time, but may be made enforceable by  
reductions of any or all thereof, Franchisee and Franchisor agree that same  
shall be enforced to the fullest extent permissible under the laws and public  
policies applied in the jurisdiction in which enforcement is sought.  
  
 SECTION 14.11. This Agreement is executed in duplicate originals, any  
one of which may be introduced into evidence as conclusive of the content  
thereof.  
  
  
  
  
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 IN WITNESS WHEREOF the parties hereto have entered into this Agreement  
this 19th day of November, 1996, at New York, New York.  
  
  
  
"Franchisor" "Franchisee"  
  
THE GREAT AMERICAN BACKRUB STORE, INC. ROOSEVELT FIELD PARTNERS, LLC  
a New York Corporation  
  
  
By: /s/ Xxxxxxxx X. Xxxxxx By: /s/ Illegible  
 ---------------------- ------------------  
 Xxxxxxxx X. Xxxxxx Illegible  
Title: CEO  
  
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 XXXXX XX XXX XXXX  
  
 ADDENDUM ATTACHED TO AND FORMING A PART OF THE  
 FRANCHISE AGREEMENT  
 BETWEEN THE GREAT AMERICAN BACKRUB STORE, INC. AS FRANCHISOR, AND  
 ROOSEVELT FIELD PARTNERS, LLC, AS FRANCHISEE,  
 DATED NOVEMBER 19, 1996  
  
1. Section 3.04 of the Franchise Agreement is the same as written with the  
 following addition:  
  
 provided, however, that all rights enjoyed by the Franchisee and any  
 causes of action arising in its favor from the provisions of Article 33  
 of the General Business Law of New York State and the regulations  
 issued thereunder shall remain in force; it being the intent of this  
 proviso that the non-waiver provisions of Sections 687.4 and 687.5 of  
 the General Business Law of New York State be satisfied.  
  
2. Section 9.03(7) of the Franchise Agreement is the same as written with  
 the following addition:  
  
 provided, however, that all rights enjoyed by the Franchisee and any  
 causes of action arising in its favor from the provisions of Article 33  
 of the General Business Law of New York State and the regulations  
 issued thereunder shall remain in force; it being the intent of this  
 proviso that the non-waiver provisions of Sections 687.4 and 687.5 of  
 the General Business Law of New York State be satisfied.  
  
 Except as specifically modified herein, the Agreement shall remain in  
full force and effect as written.  
  
 IN WITNESS WHEREOF, the parties hereto have executed this Rider to the  
Franchise Agreement on the date stated.  
  
 THE GREAT AMERICAN BACKRUB STORE, INC.  
  
  
 By: /s/ Xxxxxxxx X. Xxxxxx  
 ----------------------------  
 Xxxxxxxx X. Xxxxxx  
 Title: CEO  
  
  
 /s/ Illegible  
 -------------------------------  
 Franchisee  
  
  
 -------------------------------  
 Franchisee  
  
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