

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JANI-KING INTERNATIONAL, INC., )  
a corporation organized under )  
the laws of the State of Texas, )

JANI-KING FRANCHISING, INC., )  
a corporation organized under )  
the laws of the State of Texas, )

and )

OHIO SERVICES-CLE, LLC )  
dba JANI-KING OF CLEVELAND, )  
a limited liability company organized )  
under the laws of the State of Ohio, )

Plaintiffs, )

v. )

UNITED STATES SMALL BUSINESS )  
ADMINISTRATION, )

and )

JOVITA CARRANZA, )  
in her official capacity as Administrator of the )  
United States Small Business Administration, )

Defendants )

Case No.: \_\_\_\_\_

EMERGENCY INJUNCTIVE  
RELIEF REQUESTED

**DECLARATION OF JOSEPH S. CAROLLO**

I, Joseph S. Carollo, hereby declare under penalty of perjury as follows:

1. I am the President of Ohio Services-CLE, LLC dba Jani-King of Cleveland (“Ohio Services”). Ohio Services is a limited liability company organized under the laws of the State of Ohio of which my wife owns 51 percent. I own the remaining 49 percent. Ohio Services is a “master franchise” of JANI-KING® in an exclusive territory consisting of a portion of the State of Ohio. As a JANI-KING® master franchise, Ohio Services is in some sense both a franchisor

and a franchisee. Ohio Services has been licensed by a subsidiary of Jani-King International, Inc. (“Jani-King International”), Jani-King Franchising, Inc. (“JKF”), to use certain JANI-KING® trademarks (the “Proprietary JANI-KING® Trademarks”) and related intellectual property. JKF has also authorized Ohio Services to sub-license such Proprietary JANI-KING® Trademarks and related intellectual property to operators of commercial cleaning services in its exclusive territory pursuant to franchise agreements with such operators (the “Ohio JANI-KING® Unit Franchisees”). I make this Declaration to advise the Court of certain facts, of which I have personal knowledge, regarding the threat to the economic viability and survival of Ohio Services resulting from the refusal of the U.S. Small Business Administration (the “SBA”) to even consider—much less approve—Ohio Services’ application for loans pursuant to the Paycheck Protection Program (“PPP”) established by the March 27, 2020 Coronavirus Aid, Relief, and Economic Security (“CARES”) Act.

2. My understanding of the CARES Act in general and the PPP loan program in particular is that they were intended to help small businesses, such as Ohio Services and the Ohio JANI-KING® Unit Franchisees, avoid closing their doors permanently. The way that the SBA is implementing the CARES Act, however, makes Ohio Services and any Ohio JANI-KING® Unit Franchisee ineligible to participate in the PPP loan program. As a result of the SBA’s position, the very survival of Ohio Services is in jeopardy—as is the survival of at least some of the Ohio JANI-KING® Unit Franchisees.

3. Currently, Ohio Services has more than 135 Ohio JANI-KING® Unit Franchisees that are active in its exclusive territory. The relationship between Ohio Services and each of the Ohio JANI-KING® Unit Franchisees is governed by a franchise agreement (the “Franchise

Agreement”).<sup>1</sup> Each of the Ohio JANI-KING® Unit Franchisees appointed by Ohio Services is an independently owned and operated business that offers commercial cleaning services under the Proprietary JANI-KING® Trademarks at its franchised location(s).<sup>2</sup>

4. Like other franchisors, Ohio Services requires that the Ohio JANI-KING® Unit Franchisees comply with the brand standards of the trademark owner (in this case, Jani-King International) for the right to be licensed to use the Proprietary JANI-KING® Trademarks and other intellectual property, including trade secrets, upon which the JANI-KING® franchise system is based (the “JANI-KING® Brand Standards”). The JANI-KING® Brand Standards are set forth in the Franchise Agreement and the JANI-KING® Policy and Procedures Manual incorporated by reference in the Franchise Agreement.

5. Like other franchisors, Ohio Services also provides valuable services to the JANI-KING® Unit Franchisees in exchange for the royalty payments that the franchisees are required to pay. For example, in the hospitality industry, hotel franchisors operate reservation systems on behalf of all of the franchisees and require individual hotel operators to honor the reservations made through the franchisor’s reservation system. In the restaurant industry, franchisors control

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<sup>1</sup> A copy of the current form of the Franchise Agreement, entitled “Ohio Services, CLE dba Jani-King of Cleveland Franchise Agreement,” is attached as **Exhibit 1**.

<sup>2</sup> Consistent with the status of the JANI-KING® Unit Franchisees as independent contractors, ¶ 12.6 of the Franchise Agreement states as follows:

The Parties agree and understand that Franchisee will be at all times an independent contractor under this Agreement and will not, at any time, directly or indirectly, hold itself out as an agent, servant, or employee of Franchisor. Nothing in this Agreement may be construed to create a partnership, joint venture, agency, employment or fiduciary relationship of any kind. None of Franchisee’s employees will be considered to be Franchisor’s employees. Neither Franchisee nor any of Franchisee’s employees whose compensation Franchisee pays may in any way, directly or indirectly, expressly or by implication, be construed to be Franchisor’s employee for any purpose. Franchisee may not, without our prior written approval, have any power to obligate Franchisor for any expenses, liabilities or other obligations, other than as specifically provided in this Agreement.

the supply of key ingredients used by their franchisees while mandating the use of certain recipes, standard menus, and sometimes even pricing strategies.

6. Ohio Services has 21 employees, of whom 18 are employed on a full-time basis. All of Ohio Services' full-time employees have remained on the company's payroll since the coronavirus pandemic appeared in the United States. Ohio Services' employees provide a number of support services necessary for the Ohio JANI-KING® Unit Franchisees to operate their commercial cleaning franchises in accordance with the JANI-KING® Brand Standards. My understanding of the Franchise Agreement is that it obligates Ohio Services to provide the Ohio JANI-KING® Unit Franchisees with, among other things: (a) confidential manuals, training aids, and other pertinent information concerning the JANI-KING® Brand Standards, (b) initial and ongoing training, recommendations, and advice regarding operation of their commercial cleaning franchises in accordance with the JANI-KING® Brand Standards, and (c) promotional materials, sales and service manuals, equipment, and other materials necessary to operate their commercial cleaning franchises in accordance with the JANI-KING® Brand Standards. In performing these contractual obligations, employees of Ohio Services are in regular contact with the Ohio JANI-KING® Unit Franchisees, by telephone, email, and—at least before the recent coronavirus outbreak—in-person visits and on-site inspections. The same is true with respect to the billing and collection services that Ohio Services provides, as described in the following paragraph, with one important exception. To perform the billing and collection function on behalf of the Ohio JANI-KING® Unit Franchisees, Ohio Services has similar types of communications with and—in ordinary times—visits to customers for which the Ohio JANI-KING® Unit Franchisees provide commercial cleaning services under the Proprietary JANI-KING® Trademarks.

7. Pursuant to the Franchise Agreement, Ohio Services handles the billing and collection of accounts for which the Ohio JANI-KING® Unit Franchisees perform commercial cleaning services and remits such collections to each franchisee, minus a deduction for any royalties or other charges that the franchisee owes to Ohio Services. This arrangement improves the cash flow of the franchisees because they actually receive payment from Ohio Services once the accounts are billed—before the invoices are even collected. My understanding is that most other JANI-KING® master franchisors “charge back” the franchisees for previously advanced payments if the customer has not paid the invoiced amount within a certain period of time. Ohio Services, however, offers the Ohio JANI-KING® Unit Franchisees a “no charge back” guarantee—effectively, a form of insurance—in exchange for a premium. Under the “no charge back” guarantee, Ohio Services bears the risk of loss that individual customers will not pay amounts invoiced on behalf of the JANI-KING® Unit Franchisees.

8. Because of the coronavirus pandemic, the risk that customers will not pay their bills has already increased and is likely to increase even further the longer that many businesses are shut down. To be sure, there are some types of customers (such as hospitals and grocery stores) that are using more cleaning services now than previously. Overall, however, demand for commercial cleaning services has decreased as many types of businesses—such as shopping malls, office buildings, movie theaters, bowling alleys, hotels, and sit-down restaurants, among others—have shut down. Some businesses that have heretofore been open during the pandemic, such as car dealerships, may well shut down as sales plummet. For many customers that typically use commercial cleaning services, the longer they are shut down, the more likely it is that the closures will become permanent and/or result in bankruptcy filings. Already, Ohio Services has seen a

significant increase in the age of its accounts receivable. In our experience, even businesses that remain open are finding it increasingly difficult to pay their bills.

9. Since the coronavirus outbreak, Ohio Services has not laid off any of its full-time employees. Laying off these Ohio Services employees would cause hardship not only to these employees and their families but also to the Ohio JANI-KING® Unit Franchisees for which Ohio Services provides support services. The support that Ohio Services provides helps ensure that the Ohio JANI-KING® Unit Franchisees comply with the JANI-KING® Brand Standards that are essential to the success of the entire JANI-KING® franchise system. It also includes the billing and collection services previously described.

10. Without healthy unit franchisees to generate revenue, Ohio Services cannot remain in business very long. Many of the Ohio JANI-KING® Unit Franchisees have expressed concern to me about their viability. The degree of concern varies by franchisee upon the mix of customers for which the franchisee provides commercial cleaning services. As previously discussed, some sectors of the economy have been hit harder than others. Ultimately, no Ohio JANI-KING® Unit Franchisee can remain in business if a significant share of its customer base is not economically viable.

11. To help the Ohio JANI-KING® Unit Franchisees cope with the financial and other challenges resulting from the coronavirus, Ohio Services has provided them with information about recent changes in the law and various sources of assistance. This information has included information about new loan programs available under the CARES Act, specifically, Economic Injury Disaster Loan (“EIDL”) program grants and PPP loans. Attached as **Exhibit 2** is a memorandum that I sent to the Ohio JANI-KING® Unit Franchisees enclosing a number of materials about recent changes in the law and new forms of assistance available under the CARES

Act and the March 18, 2020 Families First Coronavirus Act. The enclosures to this memorandum included the accompanying International Franchise Association (“IFA”) IFA Coronavirus Updates publication entitled “Coronavirus Relief Bills: Requirements and Opportunities for Franchise Businesses.” According to the IFA publication, PPP loans “should be available to nearly all franchisees.” The IFA publication identified four categories of “organizations experiencing COVID-19 disruptions” eligible for PPP loans, including the following two: (a) “any small business concern, business concern, non-profit organization, sole proprietorship, independent contractor or self-employed individual that employs fewer than 500 employees per physical location” and (b) “any organization operating as a franchise that is assigned a franchise identifier code by the SBA” on the SBA Franchise Directory ([www.sba.gov/sba-franchise-directory](http://www.sba.gov/sba-franchise-directory)). Although I am not a lawyer, the foregoing was consistent with my understanding from reading the CARES Act itself, *i.e.* that eligibility extended to any small business (one with fewer than 500 employees regardless of whether it is a “franchise”—much less one listed on the SBA Franchise Registry.)

12. On April 3, 2020, once lenders began accepting applications for PPP loans, Ohio Services submitted an application for a PPP loan to a local lender with which our company has a longstanding banking relationship, Erie Bank. A copy of Ohio Services’ PPP loan application to Erie Bank is attached as **Exhibit 3**.

13. In response to Ohio Services’ PPP loan application, on April 6, 2020, I received the email attached as **Exhibit 4** from Wes Gillespie, President of Erie Bank, stating:

Joe, please call me first thing in the morning. I believe we have a problem with your PPP application. The lender’s application ask[]s if the business is a Franchise, if so it must be registered and listed in the SBA Franchise Directory with a Franchise Identification code, if the answer is no, the business may be ineligible for the PPP program. Is Jani-King listed in the SBA Franchise directory?

14. The following day, April 7, 2020, I spoke with Mr. Gillespie about Ohio Services' PPP loan application. During our conversation, I let him know that the JANI-KING® franchise agreement was not listed in the SBA Franchise Directory but that JKF was seeking to have it listed. Shortly thereafter, I received the email from Mr. Gillespie attached as **Exhibit 5** stating in part:

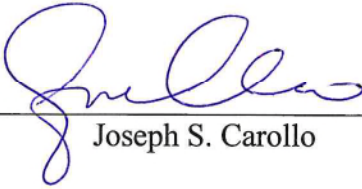
Joe, I am sorry, both our 3rd party processor as well as SBA told us that as the current program is written, you would have to be on the SBA Franchise list or we can't submit the application. I'm really sorry, but it's out of my control on my end because it's right on the lender's certified application that we have to submit for the loan guarantee. I'm trying to figure out a way to do it, but don't see an option right now..I would have called you but on a Zoom meeting right now, I can call you later.

15. On April 7, 2020, after receiving the foregoing email from Mr. Gillespie, I discussed the situation with executives of Jani-King International and JKF. According to Jani-King International and JKF, other JANI-KING® master franchises were also experiencing difficulties with their PPP loan applications. The following day, I received word from Jani-King International and JKF that the SBA had stated that no JANI-KING® master franchise would be approved for a PPP loan and that no JANI-KING® master franchise agreement would be placed on the SBA Franchise Registry because the SBA considers JANI-KING® master franchises to be "passive" operations.

16. I do not have personal knowledge of the foregoing statement attributed to the SBA but do have personal knowledge that Ohio Services is not a "passive" operation. To the contrary, the employees of Ohio Services are—on a daily basis—actively involved in the provision of the services that our company provides to the Ohio JANI-KING® Unit Franchisees, as previously described. Ohio Services would become "passive" only if, because of the coronavirus, it were forced to close its doors. My hope is that the SBA will change its position with respect to the PPP loan program so that Ohio Services can remain in business until the coronavirus pandemic has passed and business operations have returned to normal.



I hereby declare under penalty of perjury that the foregoing is correct.



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Joseph S. Carollo

# **EXHIBIT 1**

# OHIO SERVICES-CLE, LLC dba JANI-KING OF CLEVELAND

## FRANCHISE AGREEMENT

THIS AGREEMENT (this "**Agreement**") is made and entered into in Cleveland, Cuyahoga, Ohio by and between OHIO SERVICES-CLE, LLC dba JANI-KING OF CLEVELAND an Ohio Limited Liability Company, hereinafter referred as "**Franchisor**", and:

hereinafter referred to, singularly or collectively, as "**Franchisee**", doing business as a:

Limited Liability Company  
formed under the state of Ohio

Corporation,  
incorporated under the laws of Ohio

for the purposes of allowing Franchisee to operate a business as a Franchisee of Franchisor. Franchisee and Franchisor may be jointly referred to as the "**Parties**."

### FRANCHISE SUMMARY

EFFECTIVE DATE: \_\_\_\_\_, 2\_\_\_\_. PLAN: \_\_\_\_\_

INITIAL FRANCHISE FEE DOWN PAYMENT:

(\$\_\_\_\_\_)

\_\_\_\_\_ Dollars

PROJECTED INITIAL FRANCHISE FEE MONTHLY PAYMENT:

\$\_\_\_\_\_ PER MONTH FOR \_\_\_\_\_ MONTHS

INITIAL BUSINESS:

(\$\_\_\_\_\_)(Thousand)

INITIAL OFFERING PERIOD: \_\_\_\_\_ (\_\_\_\_\_) DAYS

TERRITORY: Counties:

Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Ashland, Erie, Huron, Mahoning, Ottawa, Portage, Richland, Stark, Summit, Trumbull, Wayne

in the State of Ohio

FRANCHISEE ADDRESS:

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

COUNTY: \_\_\_\_\_ TELEPHONE NUMBER: (\_\_\_\_) \_\_\_\_\_

E-MAIL: \_\_\_\_\_

FEDERAL TAX ID# \_\_\_\_\_

## **RECITALS**

### **SECTION 1**

1.1. WHEREAS, Jani-King owns a system (the "**System**") consisting of the Proprietary Marks (as defined herein), and certain proprietary know-how and other Confidential Information (as defined herein) for:

(a) The franchising of comprehensive cleaning and maintenance businesses using the System and the Confidential Information, and the supply and distribution of complete cleaning and/or maintenance related services, including, but not limited to, commercial, industrial, and institutional cleaning (the "**Services**"); and

(b) The supply and distribution of cleaning and maintenance products using the System and the Confidential Information, and the promotion, sale and delivery of the same (the "**Products**").

1.2. WHEREAS, Franchisor is authorized to grant a license to use the System, the Proprietary Marks and/or the Confidential Information.

1.3. WHEREAS, Franchisee desires to use the System in Franchisee's business as a Jani-King Franchisee.

1.4. WHEREAS, the Parties to this Agreement desire that the Franchisor grant to the Franchisee a license to use the System developed by Jani-King in the Territory for the operation of a cleaning and maintenance business, and agree that such business will be governed by the terms, covenants, and conditions contained in this Agreement and the brand standards in Franchisor's Policy and Procedures Manual (the "**Manual**").

1.5. NOW, THEREFORE, in consideration of the full and faithful performance of each and every one of the covenants, terms and conditions contained herein, the Parties agree as follows:

### **SECTION 2**

2.1. Franchisor grants to the Franchisee, upon the terms and conditions herein contained, a license and right to use the System developed by Jani-King in connection with the Franchisee's operation of a Jani-King cleaning and maintenance business ("Franchised Business") in the territory described in the Franchise Summary (the "**Territory**"). The "**Franchise Summary**" is defined as all information contained on the first page of this Agreement appearing below the words "FRANCHISE SUMMARY."

### **SECTION 3**

#### **GRANT OF FRANCHISE**

3.1. For and in consideration of the full and faithful performance of each and every one of the covenants, terms and conditions herein contained and agreed to by Franchisee, the Franchisor grants to the Franchisee the right to establish and operate the Franchised Business within the "TERRITORY" described in the Franchise Summary.

3.2. Franchisee will operate the business at or from a location of its choosing within the Territory subject to the approval of Franchisor and Franchisee's continued compliance with the terms and conditions set forth herein.

## SECTION 4

### **FRANCHISEE PLEDGES:**

#### 4.1. To operate the Franchised Business in the Territory described herein; using the System

4.1.1. Franchisee agrees that it will not use any name in the operation of the Franchised Business other than those specifically authorized by Franchisor. Franchisee is authorized to use the title "Authorized Franchisee of Jani-King® and/or "Independent Franchisee of Jani-King ® in conjunction with the operation of its Franchised Business. Franchisee is not authorized and agrees not to use the trademark "Jani-King" in any as part of a corporate name or other legal name of an entity used to purchase the franchise. Franchisee is prohibited from using (i) any other janitorial, maintenance or cleaning service name in conjunction with their formal name (for example, "ABC Custodials", "ABC Maintenance", "ABC Cleaning Services") (ii) a name prefix of "Jani-", or any other similarly spelled or sounding prefix, (iii) the words "Services", "Cleaning", and "Maintenance" or (iv) any other trademarks, trade names or service marks or any name that has not been granted prior written approval by Jani-king's Corporate Office. All directory listings, letterhead, or any other visual or printed matter used by Franchisee to communicate to anyone must conform to Franchisor's brand standards. Franchisee is prohibited from using the term "dba Jani-King" in conjunction with the operation of its Franchised Business.

4.1.2. Franchisor has developed and used, and continues to develop, use, and control in connection with its System certain Proprietary Marks that have become associated with its System so as to impart to the public superior standards of quality and service. The "**Proprietary Marks**" as used in this Agreement means all trademarks, trade names, trade dress, service marks, slogans and logos, including, but not limited to, the mark "Jani-King", the mark "The King of Clean" or any other trademark or service mark which may be authorized in writing by an officer of Franchisor now or at any time in the future.

4.1.3. Franchisor has developed and continues to develop, in connection with its System, certain brand standards, customer information, guidelines, recommendations, and advice containing confidential information, programs, devices, methods, techniques and/or processes which are not generally known to the public pertaining to franchising, promotion, marketing, operation and management of a business, including, but not limited to, the System, as defined herein, which includes but is not limited to information regarding the operational, sales, promotional methods and techniques, and marketing methods and techniques related to the System. Such information includes, but is not limited to; (a) Jani-King's DVD's, manuals, forms, the information contained and compiled therein, and the updates and memoranda thereto; (b) names of agents, suppliers, and customers, and their requirements, specifications, and preferences; (c) the contractual arrangements with agents, suppliers, and customers; (d) the financial details (including but not limited to credit and discount terms) of relationships with its agents, suppliers, or customers; (e) the names of prospective customers and their requirements, specifications, and preferences; (f) Jani-King's accounting software; (g) information concerning and presented at Jani-King meetings; (h) security and access information; (i) information provided through initial and ongoing specialized training; and (k) Jani-King's business plans and strategies (collectively, the "**Confidential Information**").

4.1.4. All use of the Proprietary Marks and Confidential Information by Franchisee must be in accordance with the terms of this Agreement and the brand standards in the Manual and shall inure to the benefit of Franchisor and all such Proprietary Marks and Confidential Information will remain the sole property of Franchisor.

4.1.5. Franchisee has the right to advertise the Franchised Business with the Territory in accordance with the terms of this Agreement and the brand standards in the Manual. Franchisee may conduct its own advertising campaigns using such items as direct mail, flyers, newspaper ads and other approved forms of advertising. Franchisee agrees to submit to Franchisor, prior to use by Franchisee, samples of any and all advertising and

promotional plans and materials of any type which contain in any manner any of the Proprietary Marks, including without limitation the trade names, trademarks, service marks, slogans and logos as are now or which in the future may be approved for use by Regional Franchisee. Franchisee must obtain Franchisor's prior approval of all advertising that Franchisee desires to use in connection with its Franchised Business by submitting it to Franchisor at least thirty (30) days prior to publication, including any advertising on the Internet, which Franchisor may grant or withhold in its business judgment. To protect the System, Proprietary Marks, and Jani-King name, Franchisor has the right to require Franchisee to include certain statements in and/or make changes to Franchisee's proposed advertising prior to approval. Franchisee's advertising materials may not contain any statement or material which, in Franchisor's sole business judgment may be considered: (a) in bad taste or offensive to the public or to any group of persons; (b) defamatory of any person or an attack on any competitor; (c) to infringe upon the use, without permission, of any other persons' trade name, trademark, service mark or identification; or (d) inconsistent with the public image of the System. Franchisee acknowledges that the advertising the Franchised Business in accordance this Agreement and Jani-King's brand standards is essential to protect the goodwill toward the System, Proprietary Marks, and Jani-King name.

Franchisee acknowledges and agrees that any and all copyright in and to advertising materials developed by Franchisee or on Franchisee's behalf will be Franchisor's sole property, and Franchisee must execute such documents (and, if necessary, require your independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision.

4.1.6. Franchisee may not develop, create, distribute, contribute to, disseminate or use any digital or Internet communication including websites, blogs, instant message services, social media sites such as Facebook, Twitter, and Instagram, and all other digital communication methods or any multimedia, telecommunication, mass electronic mail, or audio/visual advertising, promotional or marketing materials ("**Digital Advertising**"), directly or indirectly related to the Franchised Business, Franchisor, the System, or Proprietary Marks, without Franchisor's prior written consent, which consent may be withheld in Franchisor's sole determination. All Digital Advertising is subject to Section 4.1.5 above. Franchisee may not maintain a website, unless such presence is a page on Jani-King's own website domain. Franchisor reserves the right to develop, publish and control the content of all Digital Advertising. Franchisee acknowledges that Franchisor owns all Digital Advertising related to, containing, or associated with the System, Proprietary Marks, or Jani-King name.

4.2.1. Franchisee agrees to devote sufficient time and effort to its business pursuant to this Agreement.

4.2.2. Franchisee, will comply with established Jani-King brand standards, as they may be amended from time to time, and agrees not to deviate therefrom without prior written consent of Franchisor.

4.2.3. All of Franchisee's, owners, shareholders, members, officers, directors, and managers (each, a "**Principal**" and collectively, the "**Principals**") who will actively participate in the operations of the Franchise Business agree to successfully complete the initial training program within six (6) months of the signing of this Agreement.

4.3. In consideration of the rights herein granted under (the "**PLAN**") identified in the Franchise Summary, and the initial services to be performed by Franchisor in connection with Franchisee's use in the Territory of the System, Proprietary Marks and Confidential Information as pledged herein, Franchisee will pay to the Franchisor, upon execution of this instrument, the INITIAL FRANCHISE FEE DOWN PAYMENT, as stated in the Franchise Summary herein (the "**Initial Franchise Fee Down Payment**"). Franchise authorizes Franchisor's deduction of Initial Franchise Fee Monthly Payments, as stated in the Franchise Summary herein, (the "**Initial Franchise Fee Monthly Payments**") from the Gross Revenue, as define herein, in the amount and number of payments stated In the Franchise Summary, provided Franchisee's franchise produces gross revenue in an amount equal to or greater than the Initial Franchise Fee Monthly Payments. "**Gross Revenue**" is defined as all revenue invoiced by anyone for any contract services, one-time cleans, extra work, sales of supplies, equipment or goods and any other revenue related to or derived from the provision of any cleaning and maintenance services

including, but not limited to, commercial, industrial, and institutional, as well as the sale, leasing or distribution of related supplies and equipment in connection with the conduct and operation of Franchisee's business or otherwise directly or indirectly, in whole or in part, performed or sold by, or for the benefit of Franchisee, Franchisee's guarantors, agents, representatives, and/or employees, or the Principals or any of the spouses of the Principals, regardless of the entity or business name used.

4.3.1. Payment of this sum will entitle Franchisee to the non-exclusive right to use the System developed by Jani-King in connection with the Franchised Business in the Territory described herein. Franchisor will secure commercial cleaning and maintenance contracts and offer to the Franchisee the opportunity to perform services in accordance with those commercial cleaning and maintenance contracts which contracts will have cumulative initial gross monthly billings in the amount equal to the amount stated as the "INITIAL BUSINESS" in the Franchise Summary (the "**Initial Business**").

4.3.2. Except as otherwise noted herein, the Initial Franchise Fee Down Payment is non-refundable and is in addition to royalties and other payments set out herein.

4.3.3. ANY COMMERCIAL AND MAINTENANCE CONTRACTS THAT FRANCHISOR OFFERS TO FRANCHISEE THE RIGHT TO PROVIDE SERVICES WILL COUNT AGAINST THE INITIAL BUSINESS, WHETHER FRANCHISEE ACCEPTS THE OFFER OR NOT. However, in the event that Franchisor is unable to secure and offer to the Franchisee the right to provide services to commercial cleaning and maintenance contracts with cumulative total of initial gross monthly billings equal to or greater than the "Initial Business" within the time period stated as the "INITIAL OFFERING PERIOD" in the Franchise Summary (the "**Initial Offering Period**"), a portion of the Initial Franchise Fee Down Payment may be refundable. If the Franchisor fails to offer the full amount of Initial Business prior to the end of the Initial Offering Period, an amount equal to the lesser of (i) three times the amount of Initial Business not offered to the Franchisee or (ii) the total Initial Franchise Fee Down Payment paid by Franchisee to Franchisor may be refunded. Any refund will be first applied to any money owed to Franchisor, Jani-King Leasing Corporation, an affiliate of Franchisor, and any unpaid fees or charges that would result in a negative due Franchisee Report (as defined in Section 4.8.1 below). Any remaining portion of the refund will be credited to the Franchisee, unless agreed to otherwise, in writing, by Franchisor and Franchisee. A refund or other written agreement between the Parties, under this provision will fulfill Franchisor's obligation to offer any remaining portion of the Initial Business used to calculate the refund.

4.4. In addition to the Office Supply and Advertising Package provided to Franchisee by Franchisor as described in Schedule One of this Agreement, Franchisee is required to purchase the Professional Products and Equipment listed in Schedule One as the "Supply and Equipment Package", and also purchase, lease or provide proof of ownership to Franchisor of the following:

A commercial backpack vacuum, a commercial upright vacuum, a commercial floor polisher, and a commercial scrubber. These items are not included in the Office Supply and Advertising Package furnished by Franchisor.

The Supply and Equipment Package, the Additional Electric Equipment, and a valid Worker's Compensation Insurance must be obtained by the Franchisee for themselves personally and their employees. before any Initial Business will be offered. Franchisor reserves the right, upon thirty days' notice to Franchisee, to require Franchisee to purchase all cleaning equipment and supplies for the operation of its franchise from one or more of Franchisor's affiliates, or from a vendor approved by Franchisor.

4.5.1 Franchisee agrees to pay to Franchisor or Franchisor's designee, by the tenth day of each month a royalty fee equal to (10%) of the monthly Gross Revenue (the "**Royalty Fee**"). The minimum royalty is (\$100.00) monthly during the first (12) months of operation (as measured from the month Franchisor satisfies the Initial Business Offering Obligation and (\$250.00) per month thereafter. Such minimum royalty is subject to annual adjustment for increases in the Consumer Price Index.

“**Gross Revenue**” is defined as all revenue invoiced by anyone for any contract services, one-time cleans, extra work, sales of supplies, equipment or goods and any other revenue related to or derived from the provision of any cleaning and maintenance services including, but not limited to, commercial, industrial, and institutional, as well as the sale, leasing or distribution of related supplies and equipment in connection with the conduct and operation of the Franchised Business or otherwise directly or indirectly, in whole or in part, performed or sold by, or for the benefit of Franchisee, Franchisee’s guarantors, agents, representatives, and/or employees, or the Principals or any of the spouses of the Principals, regardless of the entity or business name used.

4.5.2. Franchisee agrees to pay Franchisor an advertising fee (the “**Advertising Fee**”) up to (3%) of Franchisee’s Gross Revenue. Franchisee agrees to pay the Advertising Fee, commencing on the tenth day of the month and continuing on the tenth day of every month thereafter for the remainder of the term. Franchisee agrees that the Advertising Fee shall be maintained and administered by Franchisor or its designee as follows:

The Advertising Fee will be used by us or our designee as follows:

(1.) We will direct all advertising programs and will have sole discretion to approve or disapprove the creative concepts, materials and media used in the programs. The Advertising Fee is intended to be used to maximize general public recognition and acceptance of the registered trademarks and enhance the collective success of all franchises operating under the Jani-King System. None of the Advertising Fee is specifically or principally used for advertising that is principally a solicitation for the sale of franchises. In using the Advertising Fee, neither Franchisor, nor Franchisor’s designees are required to make expenditures for Franchisee which are equivalent or proportionate to Franchisee’s payment or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising. Neither Franchisor, nor Franchisor’s designees are required to advertise in the area where you are located.

(2.) The Advertising Fee may be used to satisfy any and all costs of maintaining administering, directing and preparing advertising (including, without limitation, the cost of preparing and conducting television, radio, internet, website, magazine and newspaper advertising campaigns; direct mail and outdoor billboard advertising; vehicle decaling; public relations activities; employing advertising agencies to assist therein; travel and associated expenses of personnel dispatched to assist in account startups and account bidding; and costs of our personnel and other departmental costs for advertising that is internally administered or prepared by us). Sums paid by Franchisee relating to the Advertising Fee will also be used to defray any of our administrative costs incurred in activities reasonably related to advertising programs. The Advertising Fee is a payment to us for advertising and related costs and we do not have any duty to you related to the use of the Advertising Fee.

(3.) The Advertising Fee may also be used in our National Vehicle Program (“**NVP**”) which is a voluntary program through which Franchisee can purchase a select number of vehicles from a national vehicle manufacturer. In the event Franchisee participates in the NVP, Franchisee is required to have a decal installed on any vehicle purchased through the NVP. The cost and installation of the vehicle decal will be paid out of the Advertising Fee.

4.6. Franchisee further agrees to pay to Franchisor a finder’s fee (each, a “**Finder’s Fee**”) on any additional business or contracts in excess of the Initial Business of which the Franchisee accepts the designation, from Franchisor, as authorized franchisee to service such business, whether or not that additional business or contract resulted from an increase in the contract price for existing business, an expansion of service for existing business at the same or other locations, or completely new business. Finder’s Fees are in addition to royalty fees, Initial Franchise Fee Monthly Payments, and other payments set out in this Agreement, and are calculated on the gross monthly billing for an account according to the formulas listed below. Franchisor has no obligation to offer Franchisee the right to provide service to additional business or contracts beyond the Initial Business. Should



Franchisor, in Franchisor's sole discretion, decide to offer Franchisee the right to service any additional business or contracts, Franchisee may either decline or accept the offer at the time it is made.

Following Franchisor's offer and Franchisee's acceptance of the right to provide service to any additional business or contract, Franchisee agrees to pay an amount as a Finder's Fee according to the guidelines established by the Franchisor. Franchisor will, from time to time, establish such guidelines, policies and procedures as necessary to calculate the applicable Finder's Fee, taking into consideration industry standards and increases in costs and expenses of soliciting new accounts, and Franchisor reserves the right to increase or decrease the Finder's Fee in all categories. Currently, the following guidelines will apply, but any guideline or policy regarding the calculation of a Finder's Fee or the payment thereof, for any account, may be changed by the Franchisor at any time prior to the offering of the account:

(1) Upon acceptance of the right to perform services on any additional business, the Franchisee will sign an Account Acceptance/Declination & Finder's Fee Agreement, which will include the Finder's Fee calculations, and the terms for the financed portion of any Finder's Fee, if any, according to the provisions set out in the Finder's Fee Schedules below.

(2) For each of the Finder's Fee Schedules set out below, the following terms apply to calculate the Finder's Fee for the additional business:

"OVER" / "UP TO": To determine the proper formula for a Finder's Fee payment structure within the appropriate Schedule, the Monthly Billing categories are listed by ranges, where the monthly billing will exceed the amount listed as "OVER", but be less than the amount listed as "UP TO". If the monthly billing may fluctuate, the proper category of Monthly Billing will be determined by the maximum gross monthly billing allowed by the account contract.

**DOWN PAYMENT:** The initial payment due at the time of acceptance of the right to provide services to the account, or as otherwise established under these guidelines, calculated by multiplying the percentage stated in the appropriate category of Monthly Billing under Down Payment, times the appropriate gross monthly billing. All Down Payments will be calculated using the gross billing for the "First Full Month of Service". "First Full Month of Service", for purposes of calculating the Down Payment, is defined as the first month in which the service is performed on or before the 15<sup>th</sup> day of the month. If a partial month is the First Full Month of Service, the gross monthly billing, for purposes of calculating the Down Payment, is determined as though the account had been serviced for the entire month. If the account begins service after the 15<sup>th</sup>, the following month will be used for purposes of the Down Payment, and no payment is due for the initial period. The Down Payment is due along with the monthly Franchisee Report for the First Full Month of Service (and second month as required) and may be payable as a deduction from the account billing on the Franchisee Report.

**MONTHLY PAYMENT:** The payment made each month for the designated number of months, calculated by multiplying the percentage stated in the appropriate schedule under Monthly Payment, times the gross monthly billing for the current accounting month. However, the total of the amounts paid as Monthly Payments (exclusive of the Down Payment) will not exceed a sum greater than 300% of: (a) for Multi-Tenant Accounts, the maximum gross monthly billing that would be generated in a month in which the building was at a (100%) occupancy factor, exclusive of any Down Payment; or (b) for Public Event or Seasonal Accounts, the average gross monthly billing for the first 12 months service is performed under the account contract, exclusive of any Down Payment. Monthly Payments will begin the month following any scheduled Down Payment.

**MONTHS:** The number of months a Monthly Payment must be made under the terms of the Finder's Fee Promissory Note, subject to the maximum sum described in the definition of Monthly Payment.

(3) Accounts will be identified according to the following definitions and the Finder's Fee will be calculated using the formula set out in the appropriate Finder's Fee Schedule for the type of account:

1. **FIXED RATE ACCOUNT:** An account that has a constant monthly billing established by the account contract, and has a term of one year or longer. The Finder's Fee may be paid in full at the time of acceptance of the account, in which event, Franchisee will pay three times the amount of the maximum gross monthly billing allowed under the contract, or the fee and payment will be structured according to the Schedule.

FINDER'S FEE SCHEDULE (FIXED RATE ACCOUNT):

MONTHLY BILLING		DOWN	MONTHLY	
<u>OVER</u>	<u>UP TO</u>	<u>PAYMENT</u>	<u>PAYMENT</u>	<u>MONTHS</u>
0	50	\$150 (max)	N/A	N/A
51	1,500	60%	20%	13
1,501	3,000	40%	15%	20
3,001	6,000	30%	10%	30
6,001	10,000	15%	10%	32
10,001	Unlimited	5%	5%	65

2. **VARIABLE RATE ACCOUNT:** An account with a monthly billing that may fluctuate, depending on the occupancy of the property, where the billing is based on a set price per square foot of service area, and has a term of one year or longer. Any city, State or Federal account or Public School will be bid as a Multi-Tenant account. The Finder's Fee may be paid in full at the time of acceptance of the account, in which event, Franchisee will pay three times the amount of the maximum gross monthly billing that would be generated in a month in which the building was at a (100%) occupancy factor, or the fee and payment will be structured according to the Schedule.

FINDER'S FEE SCHEDULE (VARIABLE RATE ACCOUNT):

MONTHLY BILLING		DOWN	MONTHLY	
<u>OVER</u>	<u>UP TO</u>	<u>PAYMENT</u>	<u>PAYMENT</u>	<u>MONTHS</u>
50	3,000	30%	5%	72
3,001	6,000	15%	5%	72
6,001	Unlimited	5%	5%	72

3. **SEASONAL ACCOUNT:** An account that will be serviced for a limited period of time but may recur on a seasonal basis. This account may have a constant or fluctuating monthly billing amount. A Down Payment is due only for the initial season. Monthly Payments are due each month until the total paid as Monthly Payments is equal to 300% of the average gross monthly billing for the first 12 months service is performed under the account contract, which may occur over several seasons.

4. **PUBLIC EVENT FACILITIES:** An account involving a public facility that houses special events for A limited duration, but similar events recur on a regularly scheduled basis. The monthly billing will fluctuate, depending on the type of event or use of the facility, where the billing is based on the labor-hours required to service the property, and has a term of one year or longer. Monthly Payments are due each month until the total paid as Monthly Payments is equal to 300% of the average gross monthly billing for the first twelve months service is performed under the account contract.

5. **APARTMENT TURNAROUND:** An account where one or more apartments or other facilities are serviced on a recurring basis as a make ready between occupancies or other uses. The monthly billing will fluctuate depending on the number of units serviced, but the account contract has a term of one year or more.

**FINDER'S FEE SCHEDULE (SEASONAL ACCOUNT, PUBLIC EVENT FACILITIES, OR APARTMENT TURNAROUND):**

	<u>DOWN</u>	<u>MONTHLY</u>	
<u>MONTHLY BILLING</u>	<u>PAYMENT</u>	<u>PAYMENT</u>	<u>MONTHS</u>
Any Amount	20%	10%	All*

\*Each month service is performed.

6. **OTHER NON-STANDARD ACCOUNTS:** The Franchisor will establish the Finder's Fee on any other account that does not fall within one of the above definitions, prior to the account being offered to the Franchisee for designation of service. The Finder's Fee on nonrecurring contracts, initial cleaning or one time cleaning contracts will vary but do not currently exceed (25%) of the total invoiced amount.

(4) Franchisor will establish policies and procedures from time to time which regulate the amount and calculation, terms of payment, credits on termination or transfers of accounts, and other issues concerning Finder's Fees.

4.7 When available in the Cleveland region, franchisee agrees to pay Franchisor a technology licensing fee ("**Technology Fee**") equal to 2.5% of Franchisee's Gross Revenue. Franchisee agrees to pay the Technology Fee, commencing on the tenth day of the month and continuing on the tenth day of every month thereafter for the remainder of the term. Franchisee agrees that Franchisor, in Franchisor's sole discretion, may increase the Technology Fee up to 5% of Franchisee's Gross Revenue.

4.8. Franchisee agrees that Franchisor has the exclusive right to perform all billing and accounting functions for the services provided by Franchisee. Each month, Franchisee agrees to pay Franchisor (5%) of Franchisee's Gross Revenue, as an accounting fee ("**Accounting Fee**") to cover Franchisor's administrative costs for this service.

4.8.1 Franchisor each month will invoice customers serviced by the Franchisee for the cost of services rendered or supplies provided. Each month, after deduction of all appropriate fees and charges including, but not limited to, the royalty fees, Accounting Fees, any note payments, the Initial Franchise Fee Monthly Payments, Finder's Fees, advertising fees, transfer fees, technology fees, any advances made to Franchisee by Franchisor, Non-Reported Business Fees, or attorney's fees and court costs incurred by Franchisor in enforcing payment of accounts by customers, Franchisor will issue a report to Franchisee which will provide an accounting of Franchisee's business during the previous month (the "**Franchisee Report**"). On the tenth day of each month, Franchisor will issue a report to Franchisee which will provide an accounting of Franchisee's business during the previous month (the "Franchisee Report").

The amount of money appearing in the "Due Franchisee Column" of the Franchisee Report for the preceding month less any monies not collected from the customers ("Charge Back") as a result of missed cleans, one time cleans over 60 days that are uncollectible, poor service, supply disputes, breakage, theft or damage to Client's facility not covered by the Business Protection Plan and specific payment term accounts over 60 days. Jani-King reserves the right to suspend or terminate service to any Account for non-payment. No fees will be refunded in the event a charge back is necessary. All Client contracts and receivables are the property of Franchisor. In the event the tenth day of the month falls on a Saturday, Sunday or recognized holiday, then all such amounts due to

Franchisee will be disbursed before the end of the next business day.

4.8.2 Franchisor reserves the right to cancel Accounts for non-payment.

4.9. Franchisee agrees to make all payments due Franchisor promptly in accordance with the terms of this Agreement, and recognizes that any failure on the part of the Franchisee to do so will be deemed a material breach of this Agreement, and will give Franchisor the right to terminate this Agreement immediately and retain all sums previously paid to Franchisor by Franchisee.

4.10.1. During the term of this Agreement, Franchisee agrees to maintain and preserve full, complete and accurate books, records and accounts regarding the Franchised Business.

4.10.2 Franchisee shall, at Franchisee's sole cost and expense, prepare and submit to Franchisor, upon request, and within (30) days after said request, a complete financial statement for the preceding twelve month period or any other calendar year, or a financial statement compiled and reviewed by a certified accountant or public accounting firm, together with such other information as Franchisor may reasonably require in order for Franchisor to determine that Franchisee is properly reporting and accounting for all Gross Revenue.

4.10.3. Franchisor reserves the right to inspect or examine any and all accounts, books, records and tax returns, including payroll records of Franchisee, the Principals, and any Affiliate (as defined below) of Franchisee or the Principals, at any reasonable time, so far as the same pertain to the Franchisee's obligations under this Agreement. Franchisor also has the right, at any time, to have an independent audit made of the books or financial records of Franchisee, the Principals, and any Affiliate of Franchisee or the Principals. Any such inspection, examination or independent audit will be performed at the cost or expense of Franchisor unless the same is necessitated by the failure of Franchisee to provide the reports requested or to preserve records as provided herein, or unless the inspection, examination or independent audit discloses that any statement or report made by Franchisee is in error to an extent of (5%) or more, in which case Franchisee must immediately pay to Franchisor the amount in error and shall reimburse Franchisor for any and all costs and expenses connected with the inspection or audit (including, without limitation, reasonable accounting and attorneys' fees). Franchisee is solely responsible for keeping accurate, complete, and current payroll records. "**Affiliate**" means, at the time of determination: (i) any Person that directly or indirectly through one or more intermediaries controls, is controlled by or under common control with the Person specified; (ii) any director, manager (to the extent the Person is a limited liability company), officer or subsidiary of the Person specified; and (iii) any spouse, parent, child, sibling, mother in law, father in law, son in law, daughter in law, brother in law or sister in law of the Person specified. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to elect a majority of the board of directors (or other governing body) or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. In any event and without limiting the generality of the foregoing, any Person owning 10% or more of the voting securities of another Person will be deemed to control that Person. "**Person**" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, joint venture, trust, association, union, entity, or other form of business organization or any governmental entity whatsoever.

4.11. Franchisee agrees to be solely responsible for the services and results of services performed at locations where cleaning and maintenance services are performed pursuant to this Agreement, and to hold harmless and indemnify Franchisor from any and all claims arising from actions by Franchisee or Franchisee's employees, agents, or representatives.

4.12. Franchisee agrees to maintain a clean and safe place of business in compliance with OSHA and other governmental and industry standards and to conduct the Franchised Business in a manner that would bring goodwill and public approval to Franchisee and Jani-King.

4.12.1. Franchisee is solely responsible for any leases of real or personal property in connection with the operation of the Franchised Business. Franchisee's office location, furniture and décor will comply with Franchisor's brand standards. Franchisee must at all times during the term of this Agreement maintain such office and all fixtures, furnishings, signs and equipment located thereon in good order and condition, and in a manner which will portray the goodwill and a positive image of the Jani-King name and reputation as such may be prescribed by Franchisor from time to time. No other business venture may operate out of the premises utilized by Franchisee for Franchisee's office without the prior written consent of Franchisor.

4.13.1 Franchisee agrees to be solely responsible for and indemnify and hold harmless Franchisor, Jani-King International, Inc., and their officers, directors, and employees for all loss or damage originating from or in connection with, or relating to the operation of Franchised Business and for all claims or demands for damages to property or for injury or death of persons directly or indirectly resulting from or related to the operation of Franchised Business. Franchisee also agrees that before Franchisee will be authorized to begin operating their franchised Business, Franchisee is required to obtain and carry the insurance listed below with the limits listed, naming Franchisor, Jani-King International, Inc., and their officers and directors as Additional Insured's from an insurer carrying an A.M. Best's Rating of A or better. Franchisee must provide Franchisor with proof of such required coverage in the following minimum amounts:

TYPE	LIMITS
Comprehensive General Liability	\$1,000,000 (per occurrence) \$ 2,000,000 (Aggregate)
Hired and Non-Owned Automobile Insurance	\$1,000,000 (combined single limit)
Excess or Umbrella Insurance	\$30,000,000 (Aggregate)
Workers' Compensation	Statutory Limits
Blanket Employees 3-D Crime Coverage	\$500,000

4.13.2. The various limits of the required insurance may be increased or have new types of coverage added as circumstances dictate. Franchisee must provide Franchisor with proof of the required insurance coverage and is required to notify their insurance carrier that the insurance carrier will provide any cancellation notice directly to Franchisor no less than (30) days prior to cancellation.

4.13.3. If Franchisee fails to secure the above listed insurance to the satisfaction of Franchisor, Franchisor may, in addition to other remedies, purchase such insurance for the benefit of Franchisee and seek prompt reimbursement from Franchisee for all premiums and other costs incurred. Franchisee shall be responsible for all premiums and other costs incurred by Franchisor up to and including the date Franchisor grants Franchisee written approval of Franchisee's insurance. Franchisor may deduct up to ten percent (10%) of any monthly fees due and payable to Franchisee until the full amount paid by Franchisor for such insurance is completely reimbursed. Franchisee agrees to indemnify and hold Franchisor harmless from any claims, loss or damage.

4.13.4 As an alternative to the requirement of purchasing the above insurance, Franchisor may offer to Franchisee, and Franchisee may participate in Franchisor's Business Protection Plan ("**BPP**") to the extent offered. Participation in the BPP is voluntary, and Franchisee is not obligated or required to participate. If Franchisee does not participate in the BPP, Franchisee must provide Franchisor with a certificate of insurance

showing that Franchisee has obtained the equivalent amount of insurance coverage with limits as shown above or as established in the Manual.

4.13.5. Participation in the BPP is restricted to individuals and entities who are engaged in the janitorial industry. Members in the BPP are not individual insurance policies and the policy limits are shared between all BPP members. If Franchisee does participate in the BPP, Franchisee is not required to purchase the required liability insurance listed above. BPP does not include coverage on any personal or business use automobile(s) or Franchisee's equipment, supplies, or building if Franchisee's building is different from Franchisor's. Franchisee is required to purchase this insurance and supply proof of insurance to Franchisor before Franchisee will be authorized to begin operations of the franchise. In the event Franchisee does not purchase this insurance, Franchisor reserves the right to purchase the insurance for Franchisee and charge Franchisee for the cost of the insurance.

The BPP also includes (1) assistance with risk assessment; (2) management of overall claims handling processes; (3) assistance with compliance of workers' compensation laws; (4) assistance with risk control; (5) assistance with Certificates of Insurance; (6) insurance coverage analysis; (7) assistance with premium audits; (8) general risk management services; (9) periodic safety training; and (10) other regulatory compliance assistance.

4.13.6. Franchisee's membership in BPP can be terminated if Franchisee: (1) fails to pay any amount owed for Franchisee's participation in the BPP (2) if Franchisee fails to report all revenue generated by Franchisee's participation in the janitorial industry (3) if Franchisee files a fraudulent insurance claim under any of the insurance coverage obtained by Franchisee from BPP (4) if Franchisee does not participate in the janitorial industry for a full calendar year, or (5) excessive claims due to negligence.

4.14. In connection with Franchisee's agreement to indemnify and hold harmless Franchisor, Jani-King International, Inc., their officers, directors, and employees (the "**Jani-King Parties**") for all loss or damage as set forth in Section 4.13.1 of this Agreement, Franchisee agrees to defend the Jani-King Parties and any of their subsidiaries named in any lawsuit based on such loss or damage and to pay all costs and reasonable attorneys' fees associated with such defense. If any of the Jani-King Parties wishes to retain their own counsel to defend any such action, Franchisee agrees to reimburse the Jani-King Parties for all reasonable costs and legal fees incurred by the Jani-King Parties for such defense. Said reimbursement must be made to Franchisor in a timely manner as such fees are incurred by Franchisor and billed to Franchisee.

4.15.1 The Principals agrees during the term of this Agreement not to engage in or have any financial interest in, either as an officer, agent, stockholder, employee, director, member, owner or partner, any other business which performs cleaning, cleaning management services franchising or contracting cleaning management sales or any related business, except as otherwise approved in writing by Franchisor.

4.15.2 In the event this Agreement is sold, assigned, terminated or transferred, for any reason whatsoever, The Principals and their spouses, agrees not to engage in or have any financial interest in, either as an officer, agent, stockholder, employee, director, owner or partner, any other business which performs cleaning, cleaning management services franchising or contract cleaning management sales or any related business: (a) within the Territory covered by this Agreement for a period of two years from the effective date of such sale, assignment, termination, or transfer; and (b) in any other territory covered by a Jani-King franchise agreement for a period of one year from the effective date of such sale, assignment, termination or transfer. The Principals and their spouses during the periods referred to in this subsection, further agrees not to divert or attempt to divert from Jani-King or Jani-King's franchisees, by soliciting customers previously serviced by Franchisee or other Jani-King franchisees to perform any business in which Jani-King or Jani-King's franchisees were engaged in any time during the 12 months preceding such sale, assignment, termination or transfer.

4.16. Franchisee represents and warrants that Franchisee is either a corporation or limited liability company (as indicated on Page 1 of this Agreement), duly incorporated or formed, validly existing and in good standing under the laws of Franchisee's state of incorporation or formation (as indicated on Page 1 of this Agreement). Franchisee has all the requisite power and authority to own and operate Franchisee's properties and carry on the Franchised Business as currently conducted and is duly licensed and qualified to transact business as a foreign entity in all jurisdictions in which the nature of the business conducted by it makes such qualification as a foreign entity necessary.

4.17. Prior to beginning operation of the franchise and before the Initial Offering Period will begin, Franchisee must submit proof of registration with all taxing authorities to which Franchisee will be responsible for paying taxes, including submitting a Federal tax identification number, and any state and municipal taxing identification numbers. Franchisee agrees to pay all personal property, sales, excise, use and other taxes, regardless of type or nature, which may be imposed, levied, assessed or charged, on, against or in connection with any services sold or furnished hereunder, whether from any state, municipality, county or parish, or other governmental unit or agency, which may have jurisdiction over such products, service and equipment. Franchisee must also pay all personnel performing services for Franchisee in full compliance with all Federal, state, local, and municipal laws, statutes, and regulations. Failure to pay taxes will result in termination of this Agreement.

4.18. Prior to beginning operation of the franchise and before the Initial Offering Period will begin, Franchisee must submit proof of a valid and active business checking account in Franchisee's name, such account being with a reputable banking institution. Franchisee agrees to timely pay all debts, obligations and encumbrances that might arise as a result of its operation of the Franchised Business. Franchisee understands that in the event it be adjudicated bankrupt, or becomes insolvent, or a receiver (whether permanent or temporary) of Franchisee's property, or any part thereof, is appointed by a court of competent jurisdiction, or if Franchisee makes a general assignment for the benefit of creditors or if any judgment against Franchisee remains unsatisfied for (30) days or longer, or if Franchisee defaults on any payments or obligations due Franchisor, or Franchisor's suppliers, or others arising out of the purchase of supplies or the purchase or lease of equipment for use in the operation of a Jani-King franchise, or if Franchisee infringes, abuses or misuses any of the Jani-King trademarks or trade names, or if the Franchisee fails to comply with any of the provisions of this Agreement except as to performance on customer accounts as set forth below, and has failed to take appropriate corrective action to the satisfaction of Franchisor within (30) days after written notice by Franchisor of such failure or default, then Franchisor may, at Franchisor's option, terminate this Agreement and all rights of Franchisee hereunder will cease at the end of said (30) day period or such longer period as required by law.

4.19. Franchisee agrees to be solely responsible for the services, and results of such services, performed at locations where cleaning and/or maintenance services are performed by Franchisee and Franchisee's representatives. Franchisee agrees to be solely responsible for providing all labor, materials, tools and supplies necessary to provide the service to such premises. Franchisee is solely responsible for choosing the times and methods of providing the services in conjunction with the instructions of the customer and in accordance with the terms of the contract under which the services are provided. All of such services will meet the customer requirements and Jani-King Brand Standards.

The following procedures apply if any contract we previously offered the right to you to provide services as part of the Initial Business requests a transfer to another franchisee or cancels the cleaning contract:

(1) If an account cancels due to non-performance, theft, failure by Franchisee to service the account to the approval of the customer, failure by Franchisee to maintain good customer relations, or failure by Franchisee to comply with the Manual, Franchisee will not be offered the right to service an additional account to replace the cancelled account.

(2) If an account requests a transfer to a new franchisee due to non-performance, theft, failure by Franchisee to service the account to the approval of the customer, failure by Franchisee to maintain good customer relations, or failure by Franchisee to comply with the brand standards in the Manual, the contract for said account will automatically revert to Franchisor to be offered to another franchisee and Franchisee will not be offered the right to service an additional account to replace the transferred account.

(3) If an account cancels at no fault of the actions of Franchisee and before Franchisee has serviced the account for 12 full months, Franchisee will be offered the right to provide service to one or more accounts with cumulative gross monthly billings equal to at least the gross monthly billing of the cancelled account within a reasonable period of time at no additional cost to Franchisee. This provision applies until you have serviced that replacement account for the remainder of the initial 12-month period. If any replacement account or combination of accounts has a greater gross monthly billing than the cancelled account being replaced, the amount of gross monthly billing in excess of the cancelled account will be applied to the obligation of other Initial Business, or if the Initial Business obligation has been fulfilled, Finder's Fees will be charged. Franchisor is not otherwise obligated to replace the accounts that are serviced by Franchisee if the account(s) cancel before the full term of the account.

EXAMPLE: An account with a gross monthly billing of \$1,000 cancels after seven months through no fault of Franchisee. Franchisor will replace the account with another account having a gross monthly billing of at least \$1,000 per month. If the replacement account also happens to cancel at no fault of Franchisee at any time during the next five months you service the account(s), Franchisor will replace the replacement account(s) with other account(s). If the cumulative gross monthly billings of the replacement accounts exceed \$1,000, the gross monthly billing in excess of \$1,000 would apply against other Initial Business obligation, or Finder's Fees will be charged.

4.19.1 Franchisee is solely responsible for ensuring that its representatives are in uniforms that comply with Franchisor's brand standards, including that said uniforms are approved, neat, and clean at any time Franchisee's representatives are performing services at a customer's facility. A personal identifying name tag is considered a part of the uniform and is required for compliance with Franchisor's brand standards.

4.19.2. To protect the reputation of the Jani-King name and the Proprietary Marks, Franchisor may inspect any premises or communicate with any customers serviced by Franchisee from time to time to ensure that the Franchisee meets the customer's requirements and Jani-Kings brand standards. Franchisee is solely responsible for ensuring that its representatives are in uniforms that comply with Franchisor's brand standards, including that said uniforms are approved, neat and clean at any time Franchisee's representatives are performing services at a customer's facility. A personal identifying nametag is considered a part of the uniform and is required for compliance with Franchisor's brand standards.

4.19.3. Franchisee must cooperate fully with Franchisor, and pay an hourly rate ("**Service Fee**"), plus expenses and travel time, on each occasion Franchisor has to dispatch Franchisor's staff or another franchisee to an account in order to correct a deficiency in satisfying the customer's requirement or complying with the brand standards of Jani-King.. The Service Fee charged is currently \$50 per hour. This fee may be increased at the sole discretion of Franchisor who will provide notice to Franchisee before such fee increase. In order to promote full compliance with the customer's requirement and all Jani-King brand standards, a Complaint Fee may also be charged against the Franchisee as provided in Section 4.19.5.

4.19.4. Franchisee acknowledges that responding to customer demands, complaints, and emergencies is important for protecting customer goodwill toward the Jani-King name, the System, and Proprietary Marks. Franchisor may establish systems for customers to submit demands, complaints, and emergency communications to Franchisee through Franchisor's system. Franchisee must address all customer demands, complaints, and emergencies in a timely manner and diligent manner. Franchisee will cooperate fully with Franchisor in investigating and resolving the demand, complaint, or emergency and Franchisee will confirm resolution of the matter to Franchisor.



Franchisor can elect to dispatch another franchisee to correct deficiencies in satisfying a customer's requirements or complying with Jani-King's brand standards if Franchisor is not able to reach the Franchisee or the Franchisee is not available for an immediate visit or performance of services. Further, Franchisor can elect to dispatch Franchisor's own staff to the account and correct all deficiencies in performance and Franchisee will be assessed the Service Fee, plus expenses for the franchisee's and Franchisor's time and effort to satisfy the customer's requirements or comply with Jani-King's brand standards. Notwithstanding the above, Franchisor reserves the right to dispatch another franchisee to the customer without contacting, or attempting to contact, Franchisee if Franchisor determines, in Franchisor's sole reasonable discretion, that the customer's premises has an emergency requiring immediate attention.

4.19.5. Franchisee will be charged a \$50.00 complaint fee ("Complaint Fee") if there is a customer complaint, demand, or emergency which requires Franchisor or another franchisee to respond to or service the customer under the following circumstances: (1) Franchisee's failure to respond to the customer in a timely or diligent manner; (2) Franchisee's unavailability to provide immediate service to the customer; (3) Franchisee's failure to cooperate fully with Franchisor in investigating or resolving the matter; (4) Franchisee's failure to timely and diligently respond to Franchisor's efforts to contact Franchisee; or (5) if Franchisee was notified of the complaint, demand, or emergency and, after two hours following the opening of the customer's business the following day, the deficiency in satisfying the customer's requirements or complying with Jani-King's brand standards has not been corrected to the satisfaction of the customer.

"Service" or "respond to" the customer in this case means communicating with the customer to determine the nature of the complaint, demand, or emergency, and what needs to be done to resolve the situation, and to provide the customer relations necessary to try to protect the account from cancellation or damages to Jani-King's goodwill and does not mean providing cleaning or maintenance services to the customer to resolve a complaint.

4.19.6. The \$50.00 Complaint Fee, plus the Service Fee and expenses, will be charged to the Franchisee responsible for the complaint, demand, or emergency even if the account must be transferred to save the account or if the account terminates for non-performance. The fees will be payable in the month they are incurred.

4.19.7 If Franchisee fails to comply with any provision of this Agreement, customer requirement, or Jani-King's brand standards, pursuant to the spirit and intent of this Agreement, and such deficiency continues for 72 hours after Franchisor has given notice to the Franchisee of non-compliance. Franchisor may exercise its right to suspend the authority of Franchisee to perform services for any or all accounts serviced by Franchisee, until such time as Franchisor is satisfied that Franchisee has complied with the provisions, or, at the option of Franchisor, to transfer the right to provide service to the account to another Franchisee, without notice or delay.

4.19.8 Franchisor may also exercise the option to transfer Franchisee's right to provide service to an account immediately upon receiving a request for transfer or cancellation from the customer, or if Franchisee provides any services to any customer and does not report and include such services in their Gross Revenue.

4.19.9. Franchisee will waive any and all payments for services which may become due and payable after Franchisor has exercised the option to transfer an account under any of the Sections 4.19.1 through 4.19.8, and Franchisee will not be entitled to any refund, rebate or reduction of any fees previously paid or pledged in connection with that customer's contract. If Franchisor does not exercise any option for any contract to revert hereunder, either in part or in full as to any deficiency or default, the election not to exercise any option will not constitute a waiver of such rights with regard to any subsequent deficiency or default.

4.20. At Franchisor's request, Franchisee will provide to Franchisor a list of all customers to which Franchisee is providing service and copies of the contracts under which service is being performed. Franchisee is prohibited, without Franchisor's prior written approval, from disclosing to anyone other than Franchisee's employees the names of the customers or any list of customers to whom Franchisee is providing service.

4.21.1. In the event Franchisee voluntarily wishes to discontinue providing service to an account, Franchisee must notify Franchisor, in writing. If the account's monthly billing amount is less than \$10,000, the written request must be made at least (10) days prior to the desired date of transfer. If the account's monthly billing is \$10,000 or more, the written request must be made at least (30) days prior to the desired date of transfer. Upon Franchisor's receipt of Franchisee's request to discontinue providing service or in the event Franchisee fails to provide to an account for a period of two days, for any reason, Franchisor may offer the right to provide service to another franchisee. In either event, Franchisee agrees that any and all payments (regardless of when services were rendered) after Franchisee no longer provided services to the account will be waived by Franchisee, and Franchisee will not be entitled to any refund or rebate of any fees paid or pledged previously to Franchisor for such business.

4.21.2. Franchisee may solicit potential customers to provide cleaning and maintenance services in the territory through its Franchised Business. All contracts for the provision of services by Franchisee must be drafted and/or approved by Franchisor. Franchisor reserves the right, at Franchisor's sole discretion, to suspend or cancel service of any contract serviced by Franchisee in the event the contract becomes delinquent in payment for services.

4.22. In order to promote full compliance with all Jani-King brand standards and policies, a (\$50.00) complaint fee ("**Complaint Fee**") will be charged to Franchisee in the event Franchisee does not respond to and provide service to a customer complaint within the time frames allotted for initial response or corrective action to a customer complaint, requiring the Regional Office personnel of Franchisor or another franchisee to respond to the complaint. "Serviced" or "respond to" the complaint in this case means communicating with the customer to determine the nature of the complaint and what needs to be done to resolve the situation, and to provide the customer relations necessary to try to protect the account. It does not mean providing cleaning or maintenance services to the client to solve the problem. An additional "Service Fee" as stated in Section 4.19.5 above, will be assessed, plus expenses (i.e., labor, materials, supplies, equipment, etc.), for all the time of Franchisor's representatives' or another franchisee required to resolve a complaint. A Complaint Fee will be charged under the following circumstances:

If at any time, whether through customer complaint or quality control, a deficiency in brand standards is discovered concerning an account cleaned by Franchisee and; Franchisor is unable to contact Franchisee during the four hour period immediately following the discovery of the deficiency (attempting a contact a minimum of once each hour) to notify Franchisee of the complaint to Franchisee.

The Complaint Fee, plus the Service Fee and expenses, will be charged under either of the following conditions:

- (a) Franchisor is unable to contact Franchisee during the four hour period (calling a minimum of once each hour) and the Operations Department or another franchisee must respond to the complaint; or,
- (b) If Franchisee was notified of the complaint and after two hours after the opening of the customer's business the next morning, the deficiency in performance has not been corrected to the satisfaction of the customer and Franchisor, thus requiring the Operations Department of Franchisor or another franchisee to respond to the complaint.

4.23. The (\$50.00) Complaint Fee, plus the Service Fee and expenses, will be charged to the Franchisee responsible for the complaint, even if the account must be transferred to save the account terminates for non-performance. The fees will be payable in the month they are incurred.

4.24. Franchisor reserves the right to establish brand standards pertaining to the operation of Franchisee's Franchised Business or this Agreement. Franchisor also reserves the right to provide guidelines, recommendations, and advice for the Franchisee to adopt, modify, or reject in Franchisee's operation of the Franchised Business. Franchisor will keep a current, updated Manual of all such brand standards and guidelines, recommendations, and advice at Franchisor's corporate office. In the event that brand standards kept by Franchisor differ from those kept by Franchisee, the brand standards maintained in Franchisor's corporate office will be controlling. Franchisor will lend Franchisee one copy of the Manual. The Manual may take the form of one or more of the following: one or more looseleaf or bound volumes; bulletins; notices; videos; CD-ROMS and/or other electronic media; online postings; e-mail and/or electronic communications; facsimiles; or, any other medium capable of conveying the Manual's contents. The Manual will, among other things, set forth Franchisor's brand standards and guidelines, recommendations, and advice for operating your Franchised Business. Franchisee agrees to be bound by the brand standards upon receipt of same by Franchisee, and to operate its franchise in strict compliance with brand standards in the Manual. Franchisor has the right to prescribe additions to, deletions from or revisions of the Manual (the "*Supplements to the Manual*"), all of which will be considered a part of the Manual. All references to the Manual in this Agreement will include the Supplements to the Manual. Supplements to the brand standards in the Manual will become binding on Franchisee as if originally set forth in the Manual, upon being delivered to Franchisee. The Manual and any Supplements to the Manual are material in that they will affect the operation of the Franchised Business, but they will not conflict with or materially alter Franchisee's rights and obligations under this Agreement.

4.25. Franchisee acknowledges that the System must continue to evolve in order to reflect the changing market and to meet new and changing customer demands, and that accordingly, variations and additions to the System and brand standards may be required from time to time in order to preserve and enhance the public image of the Jani-King name and Proprietary Marks. Accordingly, Franchisee agrees that Franchisor may, from time to time, hereafter or otherwise, change the System and brand standards, including, without limitation, the adoption and use of new or modified Proprietary Marks, Confidential Information, Products, and Services; and Franchisee agrees to be bound by these changes.

Franchisee agrees to promptly comply with all such additions, modifications and changes at Franchisee's sole cost and expense.

4.26. Franchisee agrees that if Franchisee develops any new concept, process or improvement in the System or the Confidential Information, Franchisee will promptly notify Franchisor and provide Franchisor with all necessary information concerning same, without compensation. Franchisee acknowledges that any such concept, process or improvement will become the property of Franchisor and Franchisor may utilize or disclose such information to other franchisees as Franchisor determines to be appropriate.

4.27 Franchisee agrees to maintain a valid and operational email address at which Franchisee may receive communications from Franchisor. Franchisee agrees to update Franchisor as to any changes to such email address.

4.28 At any and all times that Franchisee is actively servicing customers, Franchisee is solely responsible for employing one or more employees, not including any Principals, in connection with the provision of commercial cleaning services by Franchisee to customers, as contemplated in this Franchise Agreement. Franchisee is solely responsible for maintaining accurate, complete and current payroll records, and to abiding by all applicable wage and hour laws, rules and regulations, and any other federal, state or local laws applicable to Franchisee's relationship with its employees.

4.29. Upon termination or non-renewal of this Agreement for any reason, Franchisee must immediately and permanently cease all use of the Proprietary Marks, Confidential Information, and all aspects of the System, and cease indicating verbally or in writing to customers and any other franchisee that Franchisee is a Jani-King franchisee or associated with Jani-King. Franchisee must immediately return to Jani-King all advertising matter, products, and writings that contain Jani-King's Proprietary Marks, trade name, logo or copyright, as well as any Confidential Information. All such lists, files, and the information contained therein will remain the exclusive property of Franchisor.

4.30. If this Agreement is terminated or not renewed for any reason, Franchisee must surrender to Franchisor all property belonging to Franchisor. Franchisee must also pay, in full, all amounts owed to Franchisor at the date of termination or non-renewal and surrender any and all equipment belonging to Jani-King. If Franchisee has proclaimed to have terminated or not renewed the Agreement and refused to surrender the items described herein, Franchisee agrees to pay Franchisor \$500.00 per day for each day that it has not complied with the foregoing paragraph. The parties acknowledge that damages for Franchisee's failure to adhere to the foregoing paragraph are difficult to ascertain and therefore agree that this amount will be payable as liquidated damages and not as a penalty.

## **SECTION 5**

### **NONCOMPETITION**

5.1. Franchisor agrees to provide Franchisee with valuable initial and ongoing specialized training, the Confidential Information, and the Proprietary Marks. The initial specialized training provides training in Jani-King brand standards and its guidelines, recommendations, and advice related to operation of the Franchised Business. The ongoing specialized training includes updated information of the type provided in the initial training, as well as additional training and information compiled and developed over time as the System and brand standards evolve. Franchisee acknowledges that, whether or not the initial and ongoing specialized training, or Confidential Information is denoted, labeled or marked as confidential, Franchisor considers such training and Confidential Information to be, and treats it as, confidential.

5.2 In consideration for the valuable initial and ongoing specialized training, and Confidential Information described above, Franchisee and all of the Principals agree as follows:

5.2.1. Franchisee, the Principals and Franchisee's employees will not at any time, either during the term of this Agreement, or after the termination of this Agreement, communicate or disclose to any person or entity (other than Franchisor or a person or entity expressly designated by Franchisor in writing), or use outside the scope of the Franchised Business governed by this Agreement, any of the initial or ongoing specialized training or Confidential Information acquired by Franchisee, The Principals or Franchisee's employees.

5.2.2 Franchisee and the Principals agrees to use all reasonable efforts to maintain as confidential the initial and ongoing specialized training and Confidential Information. Accordingly, Franchisee and the Principals agrees that each of Franchisee, the Principals and Franchisee's employees may not duplicate, copy, record, or otherwise reproduce, in whole or in part, materials containing Confidential Information and/or information imparted through initial and/or ongoing specialized training, except as expressly authorized in writing by Franchisor.

5.2.3. Franchisee and the Principals agrees that, during the term of this Agreement and for a continuous uninterrupted period of one year thereafter (unless otherwise specified in this Section 5) commencing upon expiration or termination of this Agreement, regardless of the cause for termination, except as otherwise approved in writing by Franchisor, Franchisee, the Principals and Franchisee's employees may not, directly or indirectly, for itself/themselves or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or other business entity:

(a) Divert or attempt to divert to any competitor, by direct or indirect inducement or otherwise, any business or customer of the Franchised Business franchised hereunder or any other Jani-King franchisee.

(b) Do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Jani-King's trademarks or trade names or the Jani-King System;

(c) Employ, seek to employ, or otherwise directly or indirectly induce to leave his/her employment any person who is employed by or has been employed within the previous 12 months by Franchisor, or by any of Franchisor's affiliated companies.

(d) Own, maintain, operate, engage in or have any interest in any business which is commercial cleaning industry or commercial cleaning franchising industry (hereinafter referred to as "**Competing Business**") which Competing Business operates, solicits business, or is intended to operate or solicit business: within the Territory of this Agreement. The prohibition in this Section 5.2.3(d) does not survive the termination of this Agreement.

5.3. The Parties agree that each of the foregoing covenants will be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section is held unreasonable or unenforceable by a court or agency having valid jurisdiction over any final decision to which Franchisor is a party that is not appealed. Franchisee and the Principals expressly agrees that Franchisee, the Principals and Franchisee's employees will be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section.

5.4 Franchisee understands and acknowledges that Franchisor will have the right, in Franchisor's sole discretion, to reduce the scope of any covenant set forth in this Section, or any portion thereof, without Franchisee's consent, effective immediately upon written notice to Franchisee; and Franchisee agrees that Franchisee shall comply with any covenant as so modified, which modified covenant shall be fully enforceable notwithstanding the provisions of any other Sections hereof.

5.5. Franchisee acknowledges that any materials and information provided to Franchisee, The Principals, or Franchisee's employees by Franchisor will at all times be and remain the property of Franchisor. Franchisor also acknowledges that any materials, concept, process, or improvement developed in the operation or promotion of the business governed by this Agreement by Franchisee, the Principals or Franchisee's employees will at all times be and remain the property of Franchisor. Franchisee agrees to give Franchisor notice of and all necessary information related to such development(s). Upon sale, assignment, termination, expiration, or transfer of this Agreement, Franchisee will deliver to Franchisor all property belonging to Franchisor (including, but not limited to the materials described above) and/or relating to Franchisor's business. In addition, upon sale, assignment, termination, expiration, or transfer to this Agreement, Franchisee agrees to provide Franchisor, with a list of all customers that Franchisee is servicing or has serviced on or at any time during the (12) months preceding the date of such sale, assignment, termination, expirations, or transfer, and a copy of any contracts under which the service is or was provided in franchisees custody or control.

5.6. Franchisee expressly agrees that the existence of any claims that Franchisee, the Principals, or Franchisee's employees may have against Franchisor, whether or not arising from this Agreement, may not constitute a defense to the enforcement by Franchisor of the covenants in this Section. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees and all costs of court) incurred by Franchisor in connection with the enforcement of this section of this Agreement.

5.7. Franchisee acknowledges that a violation of any of the terms of this Section would result in irreparable injury to Franchisor for which no adequate remedy at law may be available. Franchisee acknowledges that the initial and ongoing specialized training and Confidential Information described herein have been

developed and compiled through Jani-King's time and effort in the industry and provide a blueprint for Jani-King's business. Accordingly, Franchisee acknowledges that, in addition to Franchisor's remedies at law, Franchisor may seek and obtain preliminary and permanent injunctive relief restraining the breach or threatened breach by Franchisee; and Franchisee consents to the issuance of an injunction prohibiting any conduct by Franchisee in violation of this Section.

5.8. Franchisee must require and obtain execution of covenants similar to those set forth in this Section (including covenants applicable upon and after the termination of a person's relationship with Franchisee) from any or all Principals and employees of Franchisee who have received or will receive initial and/or ongoing specialized training or Confidential Information directly or indirectly from Franchisor. Every covenant required by this paragraph shall be in a form satisfactory to Franchisor, including, without limitation, specific and express identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them. Failure by Franchisee to obtain execution of a covenant required herein will constitute an Event of default (as defined in Section 8) under the terms of this Agreement.

## **SECTION 6**

### **FRANCHISOR PLEDGES**

Franchisor pledges to do the following:

6.1.1. To offer Franchisee the opportunity to provide service to Franchisor's contracts located within the Territory, as defined herein, which have minimum cumulative gross monthly billings in an amount at least equal to the Initial Business. The contracts under which Franchisee will provide service are and will remain the property of Franchisor. The right to provide service to the Initial Business will be offered within the "Initial Offering Period." The Initial Offering Period will begin on the date after

- (i) All required equipment and supplies, have been obtained by Franchisee.
- (ii) Franchisee has successfully completed training as indicated by Franchisee's signing and returning to Franchisor the Acknowledgment of Completion of Training
- (iii) Franchisee's delivery to Franchisor of written proof that Franchisee has obtained the insurance required under this Agreement including Workers' Compensation for themselves and their employees.
- (iv) Franchisee's delivery of Articles of Incorporation or Formation and a certificate of good standing from the jurisdiction in which Franchisee was formed.
- (v) Franchisee's delivery of a properly completed Internal Revenue Service Form W-9 Request for Taxpayer Identification Number certifying the Taxpayer Identification Number (Employer Identification Number) assigned by the Internal Revenue Service that will be used for operation of Franchisee's business
- (vi) Franchisee's delivery of proof of Franchisee's registration with all state and local tax authorities to which Franchisee will be responsible for paying taxes and any other governmental regulatory agencies that require registration of the Franchisee's business activities or business activities in general, including any identification numbers assigned to Franchisee's business by such tax authorities and governmental agencies within the Territory; and
- (vii) Franchisee's delivery of proof of a valid and active business checking account held by Franchisee.

Notwithstanding, items (i) through (vii) above, the Initial Offering Period may begin at a later date if requested by Franchisee and agreed to by Franchisor, or as provided below. As a condition to Franchisee being eligible to provide service under the Jani-King name to certain customers and to protect the reputation and goodwill of the Jani-King name, Proprietary Marks, and the System, Franchisee and Franchisee's employees may be required to undergo background checks.

6.1.2. The actual time to secure and offer, as described above, the Initial Business to the Franchisee may, at Franchisor's sole discretion, be automatically extended under the following conditions: (1) If Franchisee requests a delay in the offering of the Initial Business; (2) If the Franchisee is in default under the terms and conditions of this Agreement or any other agreements between Franchisee and Franchisor; or (3) If any of the Initial Business previously provided to Franchisee requests a transfer to another Franchisee or requests to be cancelled due to non-performance in which case Franchisee is required to repeat and complete to Franchisor's satisfaction all JANI-KING training classes. In the event of the occurrence of any of the above conditions, Franchisor will have the remainder of the Initial Offering Period or a minimum of 120 days, whichever is longer, from the date: (1) Franchisee notifies Franchisor that they are ready to accept the right to service other business and has provided any documentation required under the this Agreement or under the Manual; (2) Franchisee has cured any default; or (3) the acknowledgment of retraining is signed, to offer the balance of Initial Business to Franchisee. Franchisor does not guaranty that the Initial Business will reach or remain at the level stated on the Franchise Summary throughout the term of this Agreement.

6.2. To provide Franchisee with the Office Supply and Advertising Package outlined in Schedule One of this Agreement.

6.3. To make available to Franchisee applicable confidential manuals, training aids, and other pertinent information concerning Jani-King brand standards and guidelines, recommendations, and advice..

6.4. To provide an initial training program to include Jani-King brand standards and guidelines, recommendations, and advice related to operation of the Franchised Business. Franchisee agrees to successfully complete the training within six months after the date of this Agreement. Franchisee further agrees that some or all of the initial training program may take place at Franchisor's principal place of business in Broadview Heights, Ohio.

6.5. To offer Franchisee the right to provide service under the Jani-King name to customers until Franchisee has been offered the right to provide service to customers with cumulative gross monthly billings in an amount equal to or greater than the Initial Business.

6.6. To provide additional training and support for Franchisee at reasonable rates as established by Jani-King, currently at a rate of \$50.00 per hour, plus expenses.

6.7. To allow Franchisee the non-exclusive right to use the Jani-King marks, insignia, logo, design and color scheme in the Territory subject to limitations and restrictions herein, and to allow Franchisee to utilize the processes, methods, materials, equipment, and promotional plans developed by Jani-King.

6.8. At Franchisor's discretion and at a reasonable cost, to make promotional materials, sales and service manuals, equipment, and other materials relevant to the operation of a Jani-King franchise available for loan to and use by Franchisee.

## **SECTION 7**

### **ADDITIONAL SERVICES**

7.1. There shall be no additional services provided by Franchisor to Franchisee except as explicitly set out in this Agreement.

## **SECTION 8**

### **DEFAULT AND TERMINATION**

8.1. **Right to Terminate Immediately.** Franchisor will have the right, at its option, to terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure any default, effective immediately upon written notice to Franchisee, either by mailing or hand delivery, upon the occurrence of any of the following events (each of which constitutes an “***Event of Default***”):

(a) If any of the Principals is convicted of, pleads guilty or no contest to, pleas down to a lesser crime, or receives deferred adjudication for a felony, a crime involving theft, a crime involving moral turpitude, or any other crime or offense that is reasonably likely, in the sole opinion of Franchisor, to adversely affect the System, any Jani-King trademarks, trade names, or the goodwill associated therewith or Franchisor’s interest therein.

(b) If Franchisee or any of the Principals discloses or divulges the contents of any Confidential Information, or any other trade secrets or confidential information provided to Franchisee by Franchisor in violation of the terms and conditions of this Agreement.

(c) If Franchisee abandons the Franchised Business or otherwise forfeits the right to do or transact business in the Territory where the Franchised Business is located.

(d) If Franchisee or any of the Principals purport to transfer any rights or obligations under this Agreement or any customer contract to any third party without the Franchisor’s prior written consent.

(e) If Franchisee or any of the Principals makes any material misrepresentations or untrue or false statements on the franchise application or in other correspondence relating to the acquisition of the Franchised Business.

(f) If the Franchisee has three or more Events of Default within a 12-month period, whether or not corrected after notice.

(g) If Franchisee is declared insolvent or bankrupt, or makes any assignment or trust mortgage for the benefit of creditors, or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer is appointed to take charge of all or a part of Franchisee’s property by a court of competent jurisdiction. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A., Sec. 101 et seq.)

8.2 **Right to Terminate Following 24-Hour Cure Period.** Franchisee’s conduct that reflects materially and unfavorably on the reputation of the Franchised Business or on the Jani-King name, the System, Proprietary Marks, or the associated goodwill and reputation thereof will constitute an Event of Default. Franchisor will have the right, at its option, to terminate this Agreement and all rights granted hereunder immediately for such Event of Default if Franchisee fails to cure the default to Franchisor’s satisfaction within 24 hours of receiving written notice thereof.

8.3. **Right to Terminate Following 30-Day Cure Period.** Franchisee’s failure to comply with any provision of this Agreement, the brand standards in the Manual, or any other agreement between Franchisor and Franchisee will constitute an Event of Default. If Franchisee fails cure such Event of Default to the satisfaction of the Franchisor within 30 days after written notice of default has been given thereof, Franchisor may, at its option, terminate this Agreement and all rights granted hereunder effective immediately upon Franchisee’s receipt of a written notice of termination, Events of Default by the Franchisee under this Section 8.3 include, without limitation, the occurrence of any of the following events:



(a) If Franchisee fails, refuses, or neglects promptly to pay any monies owing to Franchisor, or its subsidiaries or affiliates when due, or to submit the financial information required by Franchisor under this Agreement, or makes any false statements in connection therewith.

(b) If Franchisee (i) enters a contract with a customer without obtaining Franchisor's prior approval, (ii) takes payment directly from a customer, (iii) in any manner circumvents Franchisor's exclusive right to perform billing and accounting services for a customer, or (iv) otherwise does business with a customer without informing Franchisor of the terms of the customer contract or payment obligations of the customer.

(c) If Franchisee fails to maintain the brand standards that Franchisor requires in this Agreement or any other brand standards contained in Jani-King manuals, including the Manual.

(d) If Franchisee engages in conduct which reflects unfavorably on the reputation of the Franchised Business or on the Jani-King name, the System, Proprietary Marks, or the associated goodwill and reputation thereof

(e) If Franchisee fails, refuses, or neglects to obtain the Franchisor's prior written approval or consent as required by this Agreement, other than as provided in Section 8.1(d).

(f) If Franchisee or any of the Principals misuses or makes any unauthorized use of the Jani-King proprietary trademarks, trade names, service marks or other materials, including any forms of advertising, or otherwise materially impairs the goodwill associated with the Jani-King name or Franchisor's rights.

(g) If Franchisee is declared insolvent or bankrupt, or makes any assignment or trust mortgage for the benefit of creditors, or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer is appointed to take charge of all or a part of Franchisee's property by a court of competent jurisdiction. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A., Sec. 101 et seq.)

(h) If Franchisee fails, refuses, or neglects to comply with the requirements set forth in Section 4.10.2.

(i) If Franchisee ceases to be duly organized, validly existing, and in good standing under the laws of the state of Franchisee's formation or incorporation or to be duly licensed and qualified to transact business as a foreign entity in all jurisdictions in which the nature of the business conducted by it makes such qualification as a foreign entity necessary.

(j) Any other event specifically designated in this Agreement as an Event of Default.

8.4. The termination of this Agreement will be without prejudice to any remedy or cause of action which Jani-King may have against Franchisee for the recovery of any monies due Jani-King or any equipment or property of Jani-King, or to any other right of Jani-King to recover damages for any breach hereof.

8.5. If the provisions of this Agreement provide for periods of notice less than those required by applicable state law, or provide for termination, cancellation, non-renewal or the like other than in accordance with applicable state law, Section 12.2.2. of this Agreement will apply.

## **SECTION 9**

### **TERM AND EXTENSION**

9.1. Subject to Section 9.2 herein, this Agreement and the franchise and license granted hereunder, unless sooner terminated, will be and remain in full force and effect for a period of (10) years from and after the "Effective Date of this Agreement, which is the date identified in the Franchise Summary. This Agreement will expire 10 years after the Effective Date unless extended pursuant to the terms contained herein.

9.2. Provided Franchisee is not in default of this Agreement and provided Franchisee has delivered to Franchisor the required notice, Franchisee will have the option to renew this Agreement for an additional period of (10) years and for two subsequent, additional (10) year periods following the first extension (a total of (40) years when initial periods and renewal terms are combined). Prior to the expiration of each 10 year term, Franchisee must notify Franchisor, in writing, of Franchisee's intention to renew the Agreement not less than seven months nor more than (12) months prior to the end of the then current term.

9.3. As a condition to and at the time of any renewal, Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and Franchisor's subsidiaries, and their respective officers, directors, agents and employees in their corporate and individual capacities, including without limitation, claims arising under this Agreement and any federal, state and local laws, rules and ordinances.

9.4. As a further condition to and at the time of any renewal, Franchisee agrees to execute Franchisor's then current franchise agreement being used by Franchisor, which may differ substantially from the agreement under which the Franchisee has operated; and will execute such other ancillary agreements and documents as Franchisor may require. Franchisee understands that the newly executed agreement shall govern relations between Franchisor and Franchisee for the following (10) years. However, no additional Initial Franchise Fee or renewal fee must be paid by Franchisee at the time of renewal, nor will Franchisor be obligated to provide any additional Initial Business or training.

## **SECTION 10**

### **TRANSFER**

10.1. This Agreement will inure to the benefit of the successors and assigns of Franchisee. The interests of Franchisee in this Agreement are personal and may not be sold, assigned, transferred, shared or divided in any manner, by operation of law otherwise (each, a "**Transfer**"), by Franchisee without the written consent of Franchisor, which consent will not be unreasonably withheld. Franchisee will provide to Franchisor prior to the Transfer, a copy of any written agreements relating to the proposed Transfer, or any additional information which Franchisor may require in order to determine if Franchisor will grant Franchisor's consent to the proposed Transfer. For purposes of this Agreement, any change in stock ownership, voting or other control whatsoever of a corporation or other entity which acts as a Franchisee under this Agreement constitutes a transfer. For all purposes herein, a beneficiary of a trust which owns a beneficial interest in a Franchisee which is an entity will be deemed to have an interest in this Agreement. Provided further, for all purposes herein, in the event that a trust owns a beneficial interest in Franchisee which is an entity, any change in the beneficial interest of a beneficiary will constitute a "Transfer" hereunder. Any transaction or series of transactions which would have such an effect must be approved by Franchisor on the same basis as any other Transfer as set forth herein. Franchisee hereby covenants and warrants (i) that Franchisee's certificate or articles of incorporation or

formation, corporate charter, by-laws, LLC agreement, and/or company agreement limit Transfers as described in this Section 10, and (ii) if Franchisee is a corporation, that each security will bear a legend (in a form to which Franchisor consents) indicating that any Transfer is subject to this Section 10.

10.2. Franchisee agrees to pay to Franchisor the greater of \$4,000.00 or 10% of the sales price or exchanged value as a transfer fee (the “**Transfer Fee**”). This Transfer Fee must be paid before Franchisor will grant consent to the Transfer. If no monetary consideration or other exchange of value is made for the Transfer of a franchise, no Transfer Fee will be charged for a transfer to: (1) any party currently holding an interest in the franchise at the time of the Transfer; (2) a controlled corporation in which the current owners of the franchise retain (90%) percent or greater of the outstanding shares of stock; or (3) if the Transfer is to an immediate family member of the current owner (for the purposes of this Section 10.2, family members include Franchisee’s mother, father, brother, sister, and children only), whether an inter vivos Transfer or upon death. An administrative fee will be charged to cover necessary and reasonable costs and preparation of the documents associated with the Transfer if no Transfer Fee is assessed. The current administrative fee is \$300.00, but may be increased by Franchisor in the future.

10.3. Prior to the Transfer of the Franchised Business, Franchisee will provide to Franchisor a copy of any written agreements relating to the proposed Transfer or any additional information which Franchisor may require in order to determine if Franchisor will grant consent to the proposed Transfer. It is agreed that consent for Transfer will be granted only when: (a) all obligations under the terms of this Agreement have been fulfilled, (b) all money owed by Franchisee to Franchisor’s affiliates have been paid in full, (c) the purchaser of the franchise agrees to undergo and successfully completes the training required of a new Jani-King franchisee and (d) the purchaser of the franchise executes Franchisor’s then current franchise agreement which may differ substantially from this Agreement. Franchisee agrees to continue providing service to all of the Franchisor’s contracts to which Franchisee is providing service at the time of the proposed Transfer, until items (a) through (d) above are complete and such Transfer is consummated.

10.4. Franchisee also agrees to provide, as a condition of Franchisor’s consent to the Transfer of the Franchised Business, a personal covenant to the purchaser not to seek to divert business from Franchisor’s franchisees for a period of two years after the Transfer. Franchisee also agrees to provide, as a condition of Franchisor’s consent to the Transfer of a single customer contract, a personal covenant to the purchaser not to seek to divert business from that customer for a period of two years after the Transfer. The transferor must also execute a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor, Franchisor’s parent corporation and affiliated corporations, and the officers, directors, shareholders, and employees of Franchisor and each parent and affiliate corporation in their corporate and individual capacities including, without limitation, claims arising under this Agreement and federal, state, and local laws, rules, and ordinances.

10.5. This Agreement is fully assignable by Franchisor and will inure to the benefit of any assignee or other legal successor to the interest of Franchisor.

## **SECTION 11**

### **RIGHT OF FIRST REFUSAL**

11.1. In the event Franchisee receives a bona fide arms-length offer to purchase Franchisee's interest in this Agreement (or in the business conducted hereunder) from any third party, or in the event Franchisee proposes to convert, assign, or otherwise transfer Franchisee's interest in this Agreement (or in the business conducted hereunder), in whole or in part, to any third party, Franchisee hereby agrees to offer to Franchisor a first right to purchase or otherwise receive Franchisee’s interest under the same terms and conditions offered to or accepted

from the third party (the “**Right of First Refusal**”). Franchisee’s failure to offer to Franchisor the Right of First Refusal will be an Event of Default of the terms of this Agreement. Notwithstanding anything contained herein to the contrary, Franchisee will not be obligated to offer Franchisor the Right of First Refusal if the Transfer is solely between Franchisee and either (a) a corporation whose original sole shareholders are individuals who comprise the original Franchisee and/or (b) the immediate family of Franchisee or the immediate family of the individuals described in (a) herein. For the purpose of this section, immediate family means the spouse, children, siblings, or parents of Franchisee only.

11.2. Franchisee will make available to Franchisor in a written statement verified by Franchisee the terms of the offer received or made by Franchisee, and Franchisor will have thirty (30) days from the receipt of said statement to either accept or refuse such offer. Written notice of Franchisor’s decision to accept or refuse said offer will be delivered to Franchisee. Acceptance by Franchisor will be at the same price and on the same terms set forth in the written statement submitted by Franchisee.

11.3. In the event Franchisor fails to accept the offer within the 30-day period, Franchisee will be free to effect the disposition described in the statement upon the exact terms set forth in the statement delivered to Franchisor, provided that nothing in this paragraph may be interpreted as limiting the requirements of Section 10 hereof relating to Transfer of the Agreement.

11.4. Furthermore, in the event Franchisee is insolvent, or upon the filing of any petition by or against Franchisee under any provisions of any bankruptcy law, Franchisor will have the first right to purchase the business conducted by Franchisee, for an amount and pursuant to terms established by an independent appraiser selected by Franchisor.

## **SECTION 12**

### **GENERAL**

12.1. Nothing in this Agreement may be construed to prevent Franchisee from freely setting Franchisee’s own prices and discounts for services and products which Franchisee may render or sell provided such actions do not affect business of the franchisor.

12.2.1. Should any part of this Agreement for any reason be declared invalid, such decision will not affect the validity of the remaining portion, which remaining portion will remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including herein any such part, parts, or portion which may, for any reason, hereafter be declared invalid or unenforceable.

12.2.2. . If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of or refusal to renew this Agreement than is required hereunder, or the taking of some other action not required hereunder, or if under any applicable and binding law or rule of any jurisdiction, any provision of the Agreement or any requirement prescribed by Franchisor is invalid or unenforceable, the prior notice and/or other action required by such law or rule will be substituted for the comparable provisions hereof, and Franchisor will have the right to modify such invalid or unenforceable provision or requirement to the extent required to be valid and enforceable. Franchisee agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is comprehended within the terms of any provision hereof, as though it were separately

articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof, or any requirement prescribed by Franchisor, any portion or portions which a court may hold to be unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order. Such modifications to this Agreement will be effective only in such jurisdiction, unless Franchisor elects to give them greater applicability, and will be enforced as originally made and entered into in all the jurisdictions.

12.3. This Agreement and the Attachments and Exhibits hereto constitute the entire Agreement between us and you concerning the subject matter hereof and supersede all prior agreements, negotiations, representations, and correspondence concerning the same subject matter; provided, however, that nothing in this Agreement or any related agreement is intended to disclaim the representations we made in the Franchise Disclosure Document that we furnished to you. All transactions between Franchisee and Franchisor regarding any operation of a Jani-King Franchised Business granted under any Franchise Agreement dated prior to this Agreement will be controlled by this Agreement and the most current publication of the Jani-King Policies and Procedures Manual. Any amendment or modification to this Agreement is invalid unless made in writing and signed by all the parties.

12.4. Franchisee acknowledges that neither Franchisor nor anyone on Franchisor's behalf has made any representations, promises or agreements, orally or otherwise, respecting the subject matter of this Agreement which is not embodied herein. Franchisee specifically acknowledges that the only financial performance information Franchisor furnish is set forth in Item 19 of the franchise disclosure document; that no officer, director, employee, agent, representative or independent contractor of ours is authorized to furnish Franchisee or the Principals with any financial performance information; that, if they nevertheless do, neither Franchisee nor the Principals will rely on any such financial performance information provided by any such individual; and, that if any such individual attempts to or actually does give Franchisee or the Principals any such financial performance information in contravention of this provision, Franchisee will immediately communicate such activity to Franchisor. For the purpose of this Agreement, "financial performance information" means information given, whether orally, in writing or visually which states, suggests or infers a specific level or range of historic or prospective sales, expenses and/or profits of franchised or non-franchised units.

12.4.1. Franchisee acknowledges that Franchisee has carefully read this Agreement, that ample opportunity has been provided for Franchisee to obtain the services of an independent legal or financial advisor, and that the Franchisee has had the opportunity to have the Franchise Agreement and all supporting disclosure documentation, as well as any other information gathered by the Franchisee, reviewed by an attorney and/or financial advisor of Franchisee's own choice.

12.4.2. Franchisee further acknowledges that Franchisor does not authorize any representative of Franchisor to make any oral, written, visual or other claim or representation that is not contained in the Franchise Disclosure Document provided to Franchisee by Franchisor and does not permit any promises, agreements, contracts, commitments or representations except those stated in this Agreement.

12.5. Franchisee acknowledges that the Franchised Business and all documents and information Franchisee receives from Franchisor relating to the operation of the Franchised Business, including the manuals and communication tools and the training will be presented to Franchisee in the English language. Franchisee is solely responsible for ensuring that a representative of Franchisee that is fluent in the English language is present during any training provided by Jani-King and available for any translating necessary during the operation of the Franchised Business. Franchisee agrees that all controversies which may arise between Franchisor and Franchisee, including but not limited to performance or breach of this Agreement or any other agreement between the parties, whether entered into prior, on or subsequent to the date hereof, shall be resolved by arbitration in Cleveland, Ohio, in accordance

with the Commercial Arbitration Rules of the American Arbitration Association then in force. Franchisee further agrees to meet with the Franchisor prior to any arbitration in an effort to resolve any disputed and if necessary submit to mediation. Franchisee agrees that any filing fee for such arbitration shall be paid by the party requesting the arbitration.

12.6. The Parties agree and understand that Franchisee will be at all times an independent contractor under this Agreement and will not, at any time, directly or indirectly, hold itself out as an agent, servant, or employee of Franchisor. Nothing in this Agreement may be construed to create a partnership, joint venture, agency, employment or fiduciary relationship of any kind. None of Franchisee's employees will be considered to be Franchisor's employees. Neither Franchisee nor any of Franchisee's employees whose compensation Franchisee pays may in any way, directly or indirectly, expressly or by implication, be construed to be Franchisor's employee for any purpose. Franchisee may not, without our prior written approval, have any power to obligate Franchisor for any expenses, liabilities or other obligations, other than as specifically provided in this Agreement.

12.7. No waiver by Franchisor of any default in performance on the part of Franchisee, time being of the essence hereof and of performance hereunder, or like waiver by Franchisor of any breach or series of breaches, of any of the terms, covenants and conditions of this franchise will constitute a waiver of any subsequent breach or waiver of said terms, conditions or covenants.

12.8. Any notice required or permitted under this Agreement must be in writing and delivered by personal delivery service, by deposit in the U.S. mail, certified, return receipt requested, or by a recognized express delivery service providing written receipt of delivery at the address listed for the Franchisee in the Franchise Summary or to Franchisor at the following address:

OHIO SERVICES-CLE, LLC dba JANI-KING OF CLEVELAND  
Attn: Joe Carollo  
9075 Town Centre Drive Suite 200  
Broadview Heights, Ohio 44147

The address hereby given for the service of notice may be changed at any time by either party through written notice to be given to the other as provided herein.

12.9. THE PARTIES AGREE AND INTEND THIS INSTRUMENT TO BE OHIO, WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES. OHIO LAW WILL APPLY TO ALL CLAIMS, DISPUTES, AND DISAGREEMENTS BETWEEN THE PARTIES, WHETHER ARISING FROM ALLEGED BREACHES OF THE CONTRACT OR AGREEMENT OR OTHER CLAIMS ARISING IN ANY WAY FROM THE PARTIES' DEALINGS. JURISDICTION AND VENUE IS DECLARED TO BE EXCLUSIVELY IN CUYAHOGA COUNTY, IN THE STATE OF OHIO.

12.10. The submission of this Agreement does not constitute an offer to license, and this Agreement becomes effective only upon execution thereof by Franchisor and Franchisee and the compliance with Section 12.13.

12.11 THE PARTIES AGREE THAT ANY DAMAGES SOUGHT BY OR AWARDED TO FRANCHISEE WILL BE LIMITED TO FRANCHISEE'S TOTAL INVESTMENT WITH FRANCHISOR, AND NOT PUNITIVE OR EXEMPLARY DAMAGES WILL BE AWARDED TO FRANCHISEE.

12.12. This Agreement will not be binding on Franchisor unless and until it has been accepted and signed by an officer or director of Franchisor at Franchisor's home office in Cleveland, Cuyahoga County, Ohio.

12.13. The numbers and headings of paragraphs used herein are for convenience only and do not affect the substance of the paragraphs themselves.

12.14 The Franchisee certifies and warrants that all owners and spouses of owners and all persons who are a shareholder, member, manager, officer or director of any corporation or limited liability company who holds the franchise: (1) are listed in the attached SCHEDULE OF PRINCIPALS; and (2) that all such parties will execute all Guarantees or other documents required by JANI-KING. A party to this agreement may change its notice information by providing written notice to the other parties pursuant to the notice requirements stated above, and such change shall be effective as to each other party on the tenth day after delivery to such other party.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

OHIO SERVICES-CLE, LLC  
dba JANI-KING OF CLEVELAND

FRANCHISEE:

BY: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Owner, Partner or Authorized Officer)

TITLE: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

Social Security # \_\_\_\_\_

\_\_\_\_\_  
(Title of Authorized Officer)

\_\_\_\_\_  
Franchisee Federal Tax ID#: \_\_\_\_\_

ACCEPTED by the Home Office of Franchisor, in Broadview Heights, Ohio, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY: \_\_\_\_\_  
Authorized Representative



**SCHEDULE OF PRINCIPALS**

ANY OTHER PERSON NOT LISTED IN THIS AGREEMENT WHO IS A SPOUSE, PARTNER,  
OR AN OFFICER, DIRECTOR, MANAGER, MEMBER OR SHAREHOLDER OF FRANCHISEE:

Name: \_\_\_\_\_  
Relationship: \_\_\_\_\_  
Taxpayer ID: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Relationship: \_\_\_\_\_  
Taxpayer ID: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Relationship: \_\_\_\_\_  
Taxpayer ID: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Relationship: \_\_\_\_\_  
Taxpayer ID: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**SCHEDULE ONE**  
**“OFFICE SUPPLY AND ADVERTISING PACKAGE A”**

**LIST OF MATERIALS PROVIDED TO FRANCHISEE  
PURSUANT TO THE FRANCHISE AGREEMENT**

<b>ITEM</b>	<b>AMOUNT</b>
Business Cards	1,000
Advertising Tri-Fold Brochure	50
JANI-KING Pens	5
JANI-KING Envelopes	100
JANI-KING Border & Logo Paper	100
JANI-KING Tunics	3
JANI-KING T-Shirts	2
JANI-KING Polo Shirts	5
Inspection Pads	5
Memo Pads	5
Contact Evaluation Pads (requires signature)	10
Account Bid Sheet Pad	1 pad
Account Analysis Pad	1 pad
JANI-KING Logo binders	2
JANI-KING Executive Pad Holder	1
JANI-KING Tri-fold pad holder	3
JANI-KING Training DVD's	1 set
JANI-KING Trust your Keys DVD & Brochure	1 ea.
JANI-KING Customer Relations Handbook	1
Authorization for Extra Work Forms (replace as needed)	5
Transaction B Form (replace as needed)	5
One time charge sheet (replace as needed)	5
Franchisee absentee sheet	5
Supply Authorization sheet (replace as needed)	5

**“SUPPLY AND EQUIPMENT PACKAGE”****THE FOLLOWING SUPPLIES AND EQUIPMENT MUST BE PURCHASED BY EACH FRANCHISEE PURSUANT TO THE FRANCHISE AGREEMENT AND PRIOR TO FRANCHISOR OFFERING ANY OF THE INITIAL BUSINESS**

The products listed may be purchased from Franchisor, subject to shipping restrictions, or any other source. Franchisor reserves the right, upon thirty days’ notice to Franchisee, to purchase all cleaning equipment and supplies for the operation of its Franchised Business from one or more of Franchisor’s affiliates, or from a vendor approved by Franchisor. Prices currently charged by Franchisor may be changed or modified in the future.

ITEM	AMOUNT
Cream Cleanser	1
Carpet Spot Remover	1
Lobby broom with kick pan dust pan	1
Perfex Angle Broom + handle	1
Box Disposal Gloves	1
8 oz. Measuring Cup	1
Putty Knife	1
60” Fiberglass gripper mop handle	2
Microfiber 30 strand blue mop	2
Divided Bucket w/ Side Press	1
Blue Step On Lock Tab Mop Frame	1
Telescopic Mop Handle	1
Blue Tab Mop	5
Green Tab Mop	5
Red Tab Mop	5
14” Green Pad	1
14” Red TXP Pad	1
20” white polish floor pad	1
Brass Handle	1
14” brass channel w/squeegee	1

ITEM	AMOUNT
14” ergo-tec t-bar	1
14” micro strip washer sleeve	1
32 gl. Huskee brute	1
Brute dolly	1
9 Pocket Caddie Bag	1
Microfiber dust sleeve (black/wht.) 10/cs	1
High Dust Flex Frame	1
Microfiber duster sleeve (blue) 10/cs	1
Sanitary bowl swabs	2
Toilet bowl brush w/handle	1
Wet floor caution sign	2
TruShot Glass Cleaner 10 oz.	6
TruShot Restroom Cleaner 10 oz.	6
TruShot Multi-Surface Cleaner 10 oz.	6
TruShot Trigger Spray Bottle – Standard	4
TruFill Heavy Duty Neutral Floor Cleaner	4
12 pk. Blue Microfiber Towel	1
12 pk. Red Microfiber Towel	1
12 pk. Yellow Microfiber Towel	1
12 pk. Glass and Mirror Towel	1
Smart phone or personal computer that can send and receive emails (mandatory requirement at Franchisee cost)	

Franchisor may adjust the items included in the Supply and Equipment Package as industry standards change.

\*Franchisee purchasing a Plan D and higher “cash” will receive the supply package included at no charge with their plan.

**“ADDITIONAL ELECTRIC EQUIPMENT”**

**THE FOLLOWING EQUIPMENT MUST BE PURCHASED BY EACH FRANCHISEE PURSUANT TO THE FRANCHISE AGREEMENT AND PRIOR TO FRANCHISOR OFFERING ANY OF THE INITIAL BUSINESS**

The Products listed may be purchased from Franchisor or any other source. Prices currently charged by Franchisor may be changed or modified in the future.

Franchisee purchasing Plan E-5 “cash” will receive equipment (1A)  
 Franchisee purchasing Plan E-6 “cash” will receive equipment (1A, 1B)  
 Franchisee purchasing Plan E-7 “cash” will receive equipment (1A, 1B, 1C)  
 Franchisee purchasing Plan E-8 or higher “cash” will receive (1A, 1B, 1C, 1D)

Quantity		Description	Unit Price
1	1A	Pro Team Super Coach HEPA Vac w/tools; 10 qt	\$500.00 each
1	1B	ProForce 1500XP HEPA w/tools	\$508.02 each
1	1C	Advolution 20XP 2000rpm Burnisher	\$2,135.52 each
1	1D	SC351 Micro Scrubber with Pad Driver	\$3,223.18 each

In addition to the mandatory above equipment, Franchisee has the option to purchase the following pieces of equipment below:

QUANTITY	DESCRIPTION	UNIT PRICE
1	ReliaVac 12HP cloth bag 7.0 amp; 50' cord; headlight	\$219.98 each
1	ReliaVac 16HP cloth bag; 7.0 amp; 50' cord; headlight	\$296.46 each

In addition to all of the above equipment, any Franchisee purchasing Plans E-10 and higher must purchase the following equipment:

QUANTITY	DESCRIPTION	UNIT PRICE
1	Self-contained Extractor with 9 gallon solution tank	\$2,599.58 each

# **EXHIBIT 2**



Jani-King of Cleveland  
 9075 Town Centre Drive  
 Suite #200  
 Broadview Hts., OH 44147  
 (440) 546-0000  
 Fax (440) 546-0004

**United States**

Albuquerque  
 Atlanta • Austin  
 Baltimore  
 Baton Rouge  
 Birmingham  
 Boston • Buffalo  
 Charleston  
 Charlotte • Chicago  
 Cincinnati • Cleveland  
 Colton • Columbia  
 Columbus • Dallas  
 Dayton • Denver  
 Detroit • Fort Worth  
 Greensboro  
 Greenville/Spartanburg  
 Hampton Roads  
 Hartford • Hawaii  
 Houston • Huntsville  
 Indianapolis • Jackson  
 Jacksonville • Kansas City  
 Knoxville • Las Vegas  
 Los Angeles • Louisville  
 Madison • Memphis  
 Miami • Milwaukee  
 Minneapolis • Mobile  
 Nashville • New Jersey  
 New Orleans  
 New York • Oakland  
 Oklahoma City • Orlando  
 Philadelphia • Phoenix  
 Pittsburgh • Portland  
 Raleigh/Durham  
 Rhode Island • Richmond  
 Sacramento  
 St. Louis • Salt Lake City  
 San Antonio • San Diego  
 San Francisco • Seattle  
 Southeast Mississippi  
 Tampa Bay • Tucson  
 Tulsa • Washington, D.C.

**Argentina**

**Australia**

**Brazil**

**Canada**

Toronto  
 Windsor

**France**

**Great Britain**

**Hong Kong**

**Korea**

**Malaysia**

**Mexico**

**New Zealand**

**Singapore**

**Taiwan**

**Turkey**

Dear valued Jani-King of Cleveland Franchisees:

On March 18, 2020 and March 27, 2020, the President signed the Families First Coronavirus Act and the Coronavirus Aid, Relief, and Economic Security (CARES) Act in an effort to assist those families, businesses and workers affected by the current crisis resulting from COVID-19 in our communities. These Acts provide for paid leave for workers, assistance to families and individuals, direct payments to individuals, loans and grants to businesses and tax benefits.

We have included a summary of the required paid leave benefits. If you have more than fifty employees, you are required to provide these benefits and to post the attached notice in a place where your employees will see it by April 8, 2020. If you have less than 50 employees, the act provides that the Secretary of Labor has the authority to enact regulations exempting you if complying with this act would jeopardize the viability of your business. No such regulation has been enacted. The Department of Labor website, however, advises that any business owner who feels that this exemption would apply to them should gather documentation showing that complying would damage the viability of the business. This could be due to lack of workers to perform work if your employees take off, or it could be due to financial constraints.

Additionally, we are providing a summary of some of the financial benefits of the CARES Act that may be useful for you. These programs will be introduced in more specificity in the coming days, so you should look out for additional information on the websites. The act expanded unemployment benefits by reducing the waiting period, reducing requirements to look for work, permitting recovery for reduced hours, allowing for more significant recovery, increasing the time benefits are available, making benefits available to independent contractors and small business owners, and increasing other eligibility requirements. If necessary, you or your employees should contact your state unemployment office.

Finally, the CARES Act provides for 1 million small businesses to receive Economic Injury Disaster Loan (EIDL) program grants. If you are interested in applying for this, you should act as soon as possible. You can find more information on the Small Business Administration (SBA) Website. It is not yet clear if Jani-King franchisees will be eligible for this program. However, if you receive the grant and are later denied, you do not have to pay back the grant amount, which is up to \$10,000. **We therefore encourage you to apply, even though eligibility has not yet been determined. It is important that you apply for this loan with your business entity and EIN information, not Jani-King's information.** Please see the attachment for guidance on information necessary for the application.

This is a lot of information, and we do not want to overwhelm anyone, but we wanted to get you as much information as possible for your franchise to receive benefits being offered by federal and state governments. The rules or regulations can change and will change so make sure to talk to your accountant so he or she can help you know how they affect you, and offer you additional guidance once they have a clearer picture of how all these Acts and programs work together.

Our offices continue to receive updates and requests for our services every day. We also have large shipments of supplies and resources you may need as they last, on top of resources that you may have already secured locally yourself. Please stay in contact with the office to make sure they know your capabilities, and/or needs throughout this crisis. If you need anything please don't hesitate to ask anyone on our team.

Stay Safe and Keep it Clean!

Sincerely,

*Joe Carollo*

Joe Carollo  
 President  
 Jani-King of Cleveland

### CARES ACT PROGRAMS FOR BUSINESSES

We are providing you with a brief synopsis of these programs at this time. As regulations come out, we will be providing more information on how to apply for the specific programs. All items cannot be utilized by all businesses, and franchises are often not eligible for some SBA loans. We will provide you with guidance specific to your business as it is received. This list does not include benefits for individuals, such as direct checks.

1. Paycheck Protection Program: This is a loan for 2.5 times average monthly payroll cost for the year prior to the date of the loan. The interest rate for the loan is less than 4% with a payback period of up to ten years. A portion of the loan is forgivable if you maintain the same average number of employees. This loan will be administered by banks, and it will likely take a few weeks for regulations and application criteria to be released.
2. Emergency Economic Injury Disaster Loan (EIDL) and Grants: This is an extension of an existing SBA loan program, to be administered by the SBA. The interest rate is 3.75%. When applying for this loan, a ten thousand dollar grant for immediate use can be requested. This grant will be available to 1 million small businesses. The grant does not have to be repaid, regardless of a final loan decision. **Although as a franchisee, you may not be eligible for the loan, we encourage you to apply and request the emergency grant.** Please see the attachment for instructions on applying.
3. Unemployment Expansion: Unemployment was expanded to add \$600 per week to state benefits available, extend the eligibility period, provide benefits for small businesses owners and independent contractors, eliminate some eligibility requirements and eliminate the waiting period.
4. Tax Credit for Retained Workers: 50% refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. Available to employers whose operations were suspended or reduced pursuant to a shut-down order or whose gross receipts declined by more than 50% compared to the same quarter of the prior year.
5. Tax Credits For Paid Leave: Advance tax credit for the paid sick leave required for the COVID-19 crisis pursuant to the Families First Coronavirus Response Act.
6. Deferral of Payment of Payroll Taxes- Defer payment of the employer share of the Social Security tax, one half to be paid in 2021 and the other half in 2022.
7. Other Tax Benefits: The CARES Act contains other tax benefits for business owners which should be reviewed by your CPA, such as changes to qualified improvement property deductions and modifications for net operating losses.

8. Treasury Fund: Companies who did not receive adequate relief under other programs will be eligible to apply for loans, loan guarantees and other programs through a \$454 billion treasury fund. The details of how to apply for these loans have not yet been released.

#### State Websites for Additional Resources

##### Louisiana:

<https://www.sba.gov/offices/district/la/new-orleans>

<http://www.laworks.net/>

<https://gov.louisiana.gov/>

##### Mississippi

<https://www.sba.gov/offices/district/ms/jackson>

<https://mdes.ms.gov/unemployment-claims/>

<https://www.coronavirus.ms.gov/>

##### Arkansas

<https://www.sba.gov/offices/district/ar/little-rock>

<https://www.dws.arkansas.gov/unemployment/>

<https://govstatus.egov.com/ar-covid-19>

##### Texas

<https://www.sba.gov/offices/district/tx/dallas-fort-worth>

<https://twc.texas.gov/jobseekers/unemployment-benefits-services>

<https://gov.texas.gov/>

##### Alabama:

<https://www.sba.gov/offices/district/al/birmingham>

<https://labor.alabama.gov/unemployment.aspx>

<https://governor.alabama.gov/newsroom/covid-19/>

##### Florida:

<https://www.sba.gov/offices/district/fl/jacksonville>

<https://www.stateofflorida.com/articles/florida-unemployment/>



<https://www.flgov.com/> (FLORIDA IS THE ONLY STATE IN OUR REGION THAT OFFERS ITS OWN DISASTER LOAN PROGRAM)

Georgia:

<https://www.sba.gov/offices/district/ga/atlanta>

<https://dol.georgia.gov/unemployment-benefits> (In Georgia – for reduced hours claims, the employer must assist in the claim for benefits)

<https://gov.georgia.gov/>

IFA CORONAVIRUS  
UPDATES



# Coronavirus Relief Bills: Requirements and Opportunities for Franchise Businesses

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On March 27, 2020, President Trump signed into law the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#). Prior to that, the Families First Coronavirus Response Act (FFCRA) became law on March 18, 2020.

Congress passed these two coronavirus emergency aid packages to provide liquidity into the marketplace, direct assistance to businesses and workers, and paid leave benefits to many small business employees.

These two new laws contain both potentially burdensome requirements and financial opportunities for franchise businesses. Please go through the list of provisions below, read the details, and see what you may need to do.

Importantly, please use the below analysis as a guide. This is not legal advice and you should not regard it as such; you may consider retaining legal counsel to help you make decisions for your business.

Additional resources, including access to IFA's ongoing coronavirus webinar series, are at [franchise.org/coronavirus](https://franchise.org/coronavirus).

We at IFA are here to help you navigate this coronavirus crisis. If you have questions on any of the issues below, please contact Caleb Gunnels on IFA's Government Relations team at [cgunnels@franchise.org](mailto:cgunnels@franchise.org).

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## **EMERGENCY FAMILY AND MEDICAL LEAVE (SEC. 3102, FFRCA)**

**WHAT IS IT?** Most franchise businesses are required to provide up to 12 weeks of job-protected Family and Medical Leave Act (FMLA) leave for “a qualifying need related to a public health emergency” to employees.

**WHO IS COVERED?** Private sector employers with fewer than 500 employees must provide FMLA leave to both full-time and part-time employees who have been on the payroll for at least 30 calendar days.

**WHEN IS IT REQUIRED?** These provisions are effective on Wednesday, April 1, 2020, and will expire on December 31, 2020.

### **WHAT MUST BE PROVIDED?**

- Employers covered by the law must provide a maximum of 12 weeks of leave.

- The first two weeks (10 work days) of emergency FMLA leave can be unpaid. An employee can opt to substitute accrued vacation, personal, or sick leave during this time, but an employer may not require an employee to do so.
- The remaining 10 weeks of FMLA leave is required to be paid, generally at two-thirds of the employee’s regular rate, for the number of hours the employee would otherwise be scheduled to work.
- The required pay for leave is capped at \$200 per day and \$10,000 in the aggregate.

**HOW DO I COMPLY?** Please see the U.S. Department of Labor’s [guidance document](#) for further information.

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## **PAID SICK LEAVE (SEC. 5102, FFRCA)**

**WHAT IS IT?** In addition to the Family and Medical Leave requirements, most franchise businesses will also be required to provide 80 hours (10 days) of paid sick leave to employees.

**WHO IS COVERED?** Private sector employers with fewer than 500 employees must provide the leave. Any full-time or part-time employees are eligible for the leave.

**WHEN IS IT REQUIRED?** These provisions are effective on Wednesday, April 1, and will expire on December 31, 2020.

**WHAT DOES IT COVER?** The bill requires covered employers to provide paid sick time to an employee who is unable to work (or telework) because:

- the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19,
- the employee has been advised by a health care provider to self-quarantine because of COVID-19,
- the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis,

- the employee is caring for an individual subject or advised to quarantine or self-isolate,
- the employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions, or
- the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

The required pay for this leave is capped at \$511 per day (\$5,110 in the aggregate) where leave is taken for reasons (1), (2), and (3) noted above (generally, an employee’s own illness or quarantine); and \$200 per day (\$2,000 in the aggregate) where leave is taken for reasons (4), (5), or (6) (generally, care for others or school closures).

**HOW DO I COMPLY?** Please see the U.S. Department of Labor’s [guidance document](#) for further information.

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## **UNEMPLOYMENT BENEFITS (SEC. 2102 and 2104, CARES Act)**

**WHAT IS IT?** The CARES Act expanded the size (adding \$250 billion) and scope of unemployment benefits.

**WHO IS ELIGIBLE?** Nearly every employee in the country. Categorized as employees who are unable to work for reasons related to COVID-19.

Examples and reasons include:

- an individual who has been diagnosed with COVID-19 or is seeking a medical diagnosis for symptoms;
- a member of the individual’s household has been diagnosed with COVID-19;
- an individual is providing care for a family member who has been diagnosed with COVID-19;
- a child or other person for which the individual has primary caregiving responsibility is unable to attend school as a direct result of COVID-19;
- the individual is unable to reach the place of employment because of an imposed quarantine;
- the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine;
- the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19;
- the individual has to quit his or her job as a direct result of COVID-19;

- the individual’s place of employment is closed as a direct result of the COVID-19).

This section also includes relief for workers who are self-employed, as well as independent contractors.

**WHO IS INELIGIBLE?** An individual who has the ability to telework with pay, and/or an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets any of the examples under eligibility (above).

**WHEN IS IT AVAILABLE?** Provisions apply retroactively to January 27, 2020, and expire July 31, 2020.

**WHAT IS COVERED?** Makes unemployment benefits more generous by adding a \$600/week across-the-board payment (in addition to state unemployment benefits) increase through the end of July. In addition, for those who need it, the bill provides an additional 13 weeks of benefits beyond what states typically allow.

**HOW COULD THIS SECTION IMPACT MY BUSINESS?** An employee who is let go may now earn an extra \$600 per week (\$15/hr), in addition to state unemployment benefits which vary by state. This additional income has small businesses concerned it may be more difficult to bring back some employees after the virus passes, as well as maintain their workforce at the same level to qualify for Paycheck Protection Loans.

## **PAYCHECK PROTECTION PROGRAM (SEC. 1102, CARES Act)**

**WHAT IS IT?** The Small Business Administration (SBA) is guaranteeing \$349 billion worth of zero-SBA fee, less-than-four-percent interest loans to small businesses that cover 2.5 times of their average total payroll costs incurred during the one-year period prior to the date on which the loan is made. Maximum loan available is \$10 million.

Loans may be forgiven if the borrower maintains the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019. In other words, businesses are eligible if their 2019 and 2020 employee averages are equal during the same time frame.

**WHO IS ELIGIBLE?** Four categories of organizations experiencing COVID-19 disruptions are eligible (Of note, this loan program should be available to nearly all franchisees):

- Any small business concern, business concern, non-profit organization, sole proprietorship, independent contractor or self-employed individual that employs fewer than 500 employees per physical location.
- Any organization that meets the SBA's size standards.
- Any organization that is assigned a North American Industry Classification System code beginning with 72.
- Any organization operating as a franchise that is assigned a franchise identifier code by the SBA: [www.sba.gov/sba-franchise-directory](http://www.sba.gov/sba-franchise-directory)

**WHEN IS IT AVAILABLE?** Immediately upon the issuance of guidance. Loans can cover the period beginning on February 15, 2020 and ending on June 30, 2020.

**WHAT DOES IT COVER?** Eligible organizations may use these loans to cover payroll costs for both full-time and part-time employees (which includes salary, wage, commission or other compensation), or payment of tips, sick/medical/family/vacation leave, group health care benefits and insurance premiums, retirement benefits, state and local taxes assessed on employee compensation, or the sum of payments of any compensation. These loans also can be used toward mortgage interest (but not principal), rent and utilities.

**WHAT DOES IT NOT COVER?** These loans cannot be used to pay wages for family or sick leave for which a credit is allowed under the second coronavirus relief bill (*the Families First Coronavirus Response Act, Public Law 116-127*). These loans can also not be used for mortgage principal.

**HOW CAN YOU APPLY?** Details from the SBA are forthcoming within 30 days after enactment. Please stay tuned to IFA channels for additional information as it becomes available.

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## **EMERGENCY ECONOMIC INJURY DISASTER LOANS (SEC. 1110, CARES Act)**

**WHAT IS IT?** This provision expanded eligibility for access to SBA's Economic Injury Disaster Loans (EIDLs). The SBA shall waive any personal guarantee on advances and loans below \$200,000 on these loans made in response to COVID-19 before December 31, 2020.

**WHO IS ELIGIBLE?** Businesses, sole proprietorships, independent contractors, non-profits, cooperatives or ESOPs with fewer than 500 employees.

**WHEN IS IT AVAILABLE?** Immediately upon enactment through December 31, 2020.

**WHAT DOES IT COVER?** Providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

**HOW CAN YOU APPLY?** Visit [disasterloan.sba.gov/ela](http://disasterloan.sba.gov/ela).

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## **TREASURY FUND (SEC. 4003, CARES Act)**

**WHAT IS IT?** The Treasury Department is now offering to businesses access to a \$454 billion "Exchange Stabilization Fund" to provide loans, loan guarantees, and other investments.

**WHO IS ELIGIBLE?** Any business created or organized in the United States and that has significant operations in and a majority of its employees based in the United States, and is not otherwise receiving adequate relief under other provisions of the bill.

Eligible companies must meet several additional criteria, and loans through the Federal Reserve generally (though with possible exceptions) prevent the borrower from repurchasing stock and dividend payments while the loan is outstanding, plus an additional year.

**WHEN IS IT AVAILABLE?** These Treasury loans may be available upon enactment until December 31, 2020.

**HOW CAN YOU APPLY?** Details from the Treasury Department are forthcoming. Please stay tuned to IFA channels for additional information.

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## EMPLOYEE RETENTION CREDIT (SEC. 2301, CARES Act)

**WHAT IS IT?** The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis.

**WHO IS ELIGIBLE?** The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19 related shut-down order, or (2) whose gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

**WHEN IS IT AVAILABLE?** The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

**WHAT DOES IT COVER?** The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.

For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee.

**WHAT DOES IT NOT COVER?** It does not cover “an eligible employer who receives a covered loan (Paycheck Protection Loan) under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act” – in other words, **businesses who receive an SBA Paycheck Protection Loan are not eligible for this credit.**

**HOW CAN YOU APPLY?** Through the IRS. Please stay tuned to IFA channels for additional information as it becomes available.

## ADVANCE FUNDING OF TAX CREDITS FOR PAID LEAVE PROGRAM (SEC. 3606, CARES Act)

**WHAT IS IT?** Section 3606 allows employers to receive an advance tax credit for Required Paid Sick Leave (*under the Families First Coronavirus Response Act*) from Treasury instead of having to be reimbursed on the back end. It also creates regulatory authority for the Secretary of treasury to implement the tax credit advances.

Please also see Section 1110 (Emergency Economic Injury Disaster Loan), Section 1102 (Paycheck Protection Program) and Section 2301 (Employee Retention Tax Credit) above.

**WHEN IS SECTION 3606 EFFECTIVE AND HOW CAN YOU APPLY?** Details and guidance forthcoming by the Secretary of Treasury. Please stay tuned to IFA channels for additional information as it becomes available.

## DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES (SEC. 2302, CARES Act)

**WHAT IS IT?** The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they are otherwise responsible for paying to the federal government with respect to their employees.

**WHAT IS COVERED?** Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires

that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

**WHEN IS IT EFFECTIVE?** From date of the bill’s enactment. The Secretary of Treasury will issue rules and guidance for enforcement of this section.

## QUALIFIED IMPROVEMENT PROPERTY (QIP) (SEC. 2307, CARES Act)

**WHAT IS IT?** The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies’ access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

**WHO IS ELIGIBLE?** Any business that made or is planning to make improvement to facilities.

**WHAT DOES IT COVER?** Costs associated with improving facilities (for example: interior improvements, which include but are not limited to investments in new lighting, flooring, sprinkler systems, woodwork, and other common business improvements.) The CARES Act also allows you to amend a prior year’s return using this rule.

**WHEN IS THE EFFECTIVE DATE?** Immediately.

## Modifications For Net Operating Losses (SEC. 2303, CARES Act)

**WHAT IS IT?** The provision relaxes the limitations on a company’s use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income.

These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

**WHEN DOES IT TAKE EFFECT?** The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years.

EIDL LOAN AD GRANT INSTRUCTIONS

Application is Available at <https://www.sba.gov/page/disaster-loan-applications>

Please choose the Economic Injury Disaster Loans and Loan Advance, then click on apply for a COVID-19 Related Disaster Loan.

Choose the correct business, LLC with under 500 employees or sole proprietor.

You will need the following information: **Business Legal Name (Your LLC)**

Trade Name: **Jani-King**

EIN: **Your Business EIN**

Organization Type: **(LLC, Corporation, Sole Proprietorship, )**

Non-Profit Organization: **No**

Franchise: **Yes**

Gross Revenues for the 12 Months Prior to January 31, 2020: **These amounts can be found in the Franchise Portal**

Cost of Goods Sold for the 12 Months Prior to January 31, 2020: **Franchise Deductions and Expenses plus Payroll expenses**

Primary Business Address: **Your Business Address that your LLC or business is registered to**

Business Phone: **Your telephone number**

Date Business Established: **Day you began your business, or if a purchase of an existing franchise, the day on the previous franchise agreement**

Current Ownership Since: **Date you started your LLC or signed franchise agreement if no LLC**

Business Activities: **Business Services**

Detailed Business Activity: **None of the below**

Number of Employees as of January 31, 2020: **(Fill in employee number)**

Ownership Name, Address, Social Security Number, Ownership Percentage, place of birth, contact information and citizenship of each owner.

Any information of criminal offenses, arrests within the last year.

Federal debarment status, if any.

You will then check the box for the \$10,000 advance and fill in your banking information for deposit of the funds.

# EMPLOYEE RIGHTS

## PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

### ▶ PAID LEAVE ENTITLEMENTS

**Generally, employers covered under the Act must provide employees:**

Up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅔ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### ▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.*

### ▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

<ol style="list-style-type: none"> <li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li> <li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li> <li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li> <li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li> </ol>	<ol style="list-style-type: none"> <li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li> <li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li> </ol>
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### ▶ ENFORCEMENT

The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information  
or to file a complaint:  
1-866-487-9243  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



## FAMILIES FIRST PAID LEAVE REQUIREMENTS

Two (2) Weeks Paid Sick Leave for the following reasons at the following rate of pay:

1. If the employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19, he/she can take the above leave with full pay up to \$511/day or \$5,110 aggregate;
2. If the employee is advised by a health care provider to self-quarantine due to concerns related to COVID-19, he/she can take the above leave with full pay up to \$511/day or \$5,110 aggregate;
3. If the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis, he/she can take the above leave with full pay up to \$511/day or \$5,110 aggregate;
4. If the employee is caring for an individual who is subject to a quarantine or isolation order as described above or who has been advised by a health care provider to self-quarantine as described above, he/she can take the above leave with two-thirds (2/3) of normal pay up to \$200/day or \$2,000 aggregate;
5. If the employee is caring for a son or daughter and the school or place of care of the son or daughter has been closed, or the child care provider of the employee's son or daughter is unavailable due to COVID-19 precautions, he/she can take the above leave with two-thirds (2/3) of normal pay up to \$200/day or \$2,000 aggregate; and
6. If the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and Secretary of Labor, he/she can take the above leave with two-thirds (2/3) of normal pay up to \$200/day or \$2,000 aggregate.

**This time does not have to be consecutive and is calculated for salary, part-time and hourly employees utilizing the guidance in the Act. This time is in addition to any other PTO time the employee has. There are various methods to determine hours and pay in the Act.**

Emergency Family Medical Leave Act (FMLA) Expansion: This portion of the Act expands FMLA leave by making it available to every employee who has been employed more than 30 days for the following reason and at the following pay rate:

1. If the employee is caring for a son or daughter and school or place of care of the son or daughter has been closed, or the child care provider of the employee's son or daughter is unavailable due to COVID-19 precautions, he/she may take FMLA leave with the first two weeks unpaid (the employee can use PTO or benefits above if desired), then the remainder ten (10) eligible weeks will be paid at two-thirds (2/3) of the employee's normal pay up to \$200/day or \$10,000 aggregate (or \$12,000 aggregate if combined with above).

**This will be calculated for salary, part-time and hourly employees utilizing the guidance in the Act. There are various methods to determine hours and pay.**

**Amounts paid for these benefits are 100% reimbursable through a payroll tax credit. Contact your accountant for assistance.**



# **EXHIBIT 3**



**Paycheck Protection Program  
Lender Application Form - Paycheck Protection Program Loan Guaranty**

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

The purpose of this form is to collect identifying information about the Lender, the Applicant, the loan guaranty request, sources and uses of funds, the proposed structure (which includes pricing and the loan term), and compliance with SBA Loan Program Requirements. This form reflects the data fields that will be collected electronically from lenders; no paper version of this form is required or permitted to be submitted. As used in this application, "Paycheck Protection Program Rule" refers to the rules in effect at the time you submit this application that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Instructions for Lenders

All Paycheck Protection Program (PPP) loans are processed by all Lenders under delegated authority from SBA. This application must be submitted and signed electronically in accordance with program requirements, and the information requested is to be retained in the Lender's loan file.

<b>A. Lender Information</b>			
Lender Name:	CNB Bank	Lender Location ID:	59954
Address:	1 S Second Street	City:	Clearfield
		St:	PA
		Zip:	16830
Lender Contact:	Kyle G. Kunes	Ph:	814)375-6800
		Cell or Ext:	(814 )590 - 0018
Contact Email:	Kyle.Kunes@CNBBank.bank	Title:	Commercial Banking Officer

<b>B. Applicant Information</b>				
Applicant	Check One:	<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other		
	Applicant Legal Name:	Ohio Services-CLE LLC		
	DBA:	Jani-King Cleveland	Business Tax ID:	[REDACTED]
	Applicant Address:	9075 Town Centre Dr	City, State, Zip:	Broadview Heights, Oh 4414
	Applicant Primary Contact:		Phone:	21216701-6528

<b>C. Loan Structure Information</b>							
Amount of Loan Request:	\$	Guarantee %:	100%	Loan Term in # of Months:	24	Payment:	Deferred 6 mos.
Applicant must provide documentation to Lender supporting how the loan amount was calculated in accordance with the Paycheck Protection Program Rule and the CARES Act, and Lender must retain all such supporting documentation in Lender's file.							
Interest Rate:	1%						

<b>D. Loan Amount Information</b>	
Average Monthly Payroll multiplied by 2.5	\$248,332
Refinance of Eligible Economic Injury Disaster Loan, net of Advance (if Applicable; see Paycheck Protection Program Rule)	\$0
<b>Total</b>	<b>\$248,332</b>

<b>E. General Eligibility</b> <i>(If the answer is no to either, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> <li>The Applicant has certified to the Lender that (1) it was in operation on February 15, 2020 and had employees for whom the Applicant paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC, (2) current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant, (3) the funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, and (4) the Applicant has not received another Paycheck Protection Program loan.</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> <li>The Applicant has certified to the Lender that it (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, meets the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<b>F. Applicant Certification of Eligibility</b> <i>(If not true, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> <li>The Applicant has certified to the Lender that the Applicant is eligible under the Paycheck Protection Program Rule.</li> </ul>	<input checked="" type="checkbox"/> True

<b>G. Franchise/License/Jobber/Membership or Similar Agreement</b> <i>(If applicable and no, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> <li>The Applicant has represented to the Lender that it is a franchise that is listed in the SBA's Franchise Directory.</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<b>H. Character Determination</b> (If no, the loan cannot be approved)	
<ul style="list-style-type: none"> <li>The Applicant has represented to the Lender that neither the Applicant (if an individual) nor any individual owning 20% or more of the equity of the Applicant is subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or is presently incarcerated, or on probation or parole.</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> <li>The Applicant has represented to the Lender that neither the Applicant (if an individual) nor any individual owning 20% or more of the equity of the Applicant has within the last 5 years, for any felony: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment).</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>I. Prior Loss to Government/Delinquent Federal Debt</b> (If no, the loan cannot be approved)	
<ul style="list-style-type: none"> <li>The Applicant has certified to the Lender that neither the Applicant nor any owner (as defined in the Applicant's SBA Form 2483) is presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy.</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> <li>The Applicant has certified to the Lender that neither the Applicant nor any of its owners, nor any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government.</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>J. U.S. Employees</b> (If no, the loan cannot be approved)	
<ul style="list-style-type: none"> <li>The Applicant has certified that the principal place of residence for all employees included in the Applicant's payroll calculation is the United States.</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>K. Fees</b> (If yes, Lender may not pass any agent fee through to the Applicant or offset or pay the fee with the proceeds of this loan)	
<ul style="list-style-type: none"> <li>Is the Lender using a third party to assist in the preparation of the loan application or application materials, or to perform other services in connection with this loan?</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**SBA Certification to Financial Institution under Right to Financial Privacy Act (12 U.S.C. 3401)**

By signing SBA Form 2483, Borrower Information Form in connection with this application for an SBA-guaranteed loan, the Applicant certifies that it has read the Statements Required by Law and Executive Orders, which is attached to Form 2483. As such, SBA certifies that it has complied with the applicable provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) and, pursuant to that Act, no further certification is required for subsequent access by SBA to financial records of the Applicant/Borrower during the term of the loan guaranty.

**Lender Certification**

On behalf of the Lender, I certify that:

- The Lender has complied with the applicable lender obligations set forth in paragraphs 3.b(i)-(iii) of the Paycheck Protection Program Rule.
- The Lender has obtained and reviewed the required application (including documents demonstrating qualifying payroll amounts) of the Applicant and will retain copies of such documents in the Applicant's loan file.

I certify that:

- Neither the undersigned Authorized Lender Official, nor such individual's spouse or children, has a financial interest in the Applicant.

Authorized Lender Official: Wesley Gillespie  
Signature  
 Type or Print Name: Wesley Gillespie

Date: 4-6-20  
 Title: Regional President

NOTE: According to the Paperwork Reduction Act, you are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated burden for completing this form, including time for reviewing instructions, gathering data needed, and completing and reviewing the form is 25 minutes per response. Comments or questions on the burden estimates should be sent to U.S. Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Rm. 10202, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**

# **EXHIBIT 4**

---

**From:** Gillespie, Wesley  
**Sent:** Monday, April 6, 2020 12:23 AM  
**To:** Joe Carollo  
**Subject:** SBA PPP Program

**Joe, please call me first thing in the morning. I believe we have a problem with your PPP application. The lender's application ask's if the business is a Franchise, if so it must be registered and listed in the SBA Franchise Directory with a Franchise Identification code, if the answer is no, the business may be ineligible for the PPP program. Is Jani-king listed in the SBA Franchise directory?**

**I am double checking this first thing in the morning, but you might want to check with your CPA firm in Columbus to see if they have heard this before..so sorry, I am checking on it, but wanted to make you aware..**

**Wes**

IMPORTANT: This email and any attachments are for the sole use of the intended recipient(s) and contain information that may be confidential and/or legally privileged. If you have received this email in error, please notify the sender by reply email and delete the message. Any disclosure, copying, distribution or use of this communication by someone other than the intended recipient is prohibited.

# **EXHIBIT 5**

**From:** Gillespie, Wesley <[wesley.gillespie@eriebank.bank](mailto:wesley.gillespie@eriebank.bank)>  
**Sent:** Tuesday, April 7, 2020 3:26 PM  
**To:** Joe Carollo <[JCarollo@janikingcleveland.com](mailto:JCarollo@janikingcleveland.com)>  
**Subject:** Re: SBA PPP Program

Joe, I am sorry, both our 3rd party processor as well as SBA told us that as the current program is written, you would have to be on the SBA Franchise list or we can't submit the application. I'm really sorry, but it's out of my control on my end because it's right on the lender's certified application that we have to submit for the loan guarantee. I'm trying to figure out a way to do it, but don't see an option right now..I would have called you but on a Zoom meeting right now, I can call you later..

Wes

---

**From:** Gillespie, Wesley  
**Sent:** Monday, April 6, 2020 12:23 AM  
**To:** Joe Carollo  
**Subject:** SBA PPP Program

Joe, please call me first thing in the morning. I believe we have a problem with your PPP application. The lender's application ask's if the business is a Franchise, if so it must be registered and listed in the SBA Franchise Directory with a Franchise Identification code, if the answer is no, the business may be ineligible for the PPP program. Is Jani-king listed in the SBA Franchise directory?

I am double checking this first thing in the morning, but you might want to check with your CPA firm in Columbus to see if they have heard this before..so sorry, I am checking on it, but wanted to make you aware..

Wes

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JANI-KING INTERNATIONAL, INC.,** )  
a corporation organized under )  
the laws of the State of Texas, )

**JANI-KING FRANCHISING, INC.,** )  
a corporation organized under )  
the laws of the State of Texas, )

and )

**OHIO SERVICES-CLE, LLC** )  
dba **JANI-KING OF CLEVELAND,** )  
a limited liability company organized )  
under the laws of the State of Ohio, )

**Case No.: 1:20-cv-989**

**Plaintiffs,** )

**EMERGENCY INJUNCTIVE**

v. )

**RELIEF REQUESTED**

**UNITED STATES SMALL BUSINESS** )  
**ADMINISTRATION,** )

and )

**JOVITA CARRANZA,** )  
in her official capacity as Administrator of the )  
United States Small Business Administration, )

**Defendants** )

**PLAINTIFFS’ MOTION FOR TRO AND PRELIMINARY INJUNCTION**

Plaintiffs Jani-King International, Inc. (“Jani-King”), Jani-King Franchising, Inc. (“JKF”) and Ohio Services-CLE, LLC, d/b/a Jani-King of Cleveland (“Ohio Services”) (collectively, the “Plaintiffs”), by counsel, respectfully move for the issuance of a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. A proposed Order granting this motion is being filed contemporaneously herewith. In support of this motion, Plaintiffs rely upon the previously filed Verified Complaint and upon the Memorandum in



Support of Plaintiffs' Motion for TRO and Preliminary Injunction being filed contemporaneously herewith.

**RULE 65 CERTIFICATION BY COUNSEL FOR PLAINTIFFS**

Undersigned counsel, acting for and on behalf of all Plaintiffs in this action, hereby certifies in accordance with Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure that I made efforts to give notice of the filing of the Verified Complaint and related documents filed in support of the Plaintiffs' Emergency Motion for TRO and Preliminary Injunction to counsel whom Plaintiffs understand have represented and may continue to represent some or all Defendants in the Verified Complaint. Such efforts consisted of serving copies of the Verified Complaint filed in the above-captioned case, the Plaintiffs' Emergency Motion for TRO and Preliminary Injunction, and all supporting papers upon the Defendants by and upon the following counsel by electronic mail and U.S. mail:

Hon. Timothy J. Shea,  
United States Attorney for the District of Columbia  
United States Attorney's Office for the District of Columbia  
555 Fourth Street, N.W.  
Washington, D.C. 20530  
Email: [timothy.j.shea@usdoj.gov](mailto:timothy.j.shea@usdoj.gov)

Hon. William P. Barr,  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Email: [attorney.general@usdoj.gov](mailto:attorney.general@usdoj.gov)

Christopher Pilkerton, Esq.  
General Counsel  
United States Small Business Administration  
409 Third Street, S.W., Suite 7000  
Washington, D.C. 20024-3212  
Email: [christopher.pilkerton@sba.gov](mailto:christopher.pilkerton@sba.gov)

Earlier today, I also contacted the General Counsel of the Small Business Administration to advise him that Plaintiffs would be seeking temporary and permanent injunctive relief and inviting him to discuss the matter. Given the exigent circumstances and the irreparable harm faced by the Plaintiffs, as set forth in the Memorandum and Verified Complaint, counsel respectfully submits that this notice is sufficient and fulfills Fed. R. Civ. P. 65(b).

Dated: April 17, 2020

Respectfully submitted,

JANI-KING INTERNATIONAL, INC.;  
JANI-KING FRANCHISING, INC.;  
and OHIO SERVICES–CLE, LLC  
dba JANI-KING OF CLEVELAND

By: /s/ Michael J. Lockerby

Counsel

Michael J. Lockerby (D.C. Bar No. 502987)  
Frank S. Murray, Jr. (D.C. Bar No. 1142916)  
Jack G. Haake (D.C. Bar No. 1024798)  
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3000 K Street, N.W., Sixth Floor  
Washington, D.C. 20007-5143  
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(202) 672-5399 (fax)

Peter L. Loh (*pro hac vice* to be filed)  
FOLEY & LARDNER LLP  
2021 McKinney Avenue, Suite 1600  
Dallas, Texas 75201  
(214) 999-3000  
(214) 999-4667 (fax)

*Counsel for Plaintiffs,  
Jani-King International, Inc.,  
Jani-King Franchising, Inc., and  
Ohio Services–CLE, LLC  
dba Jani-King of Cleveland*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of April, 2020, I caused a copy of the foregoing PLAINTIFFS' MOTION FOR TRO AND PRELIMINARY INJUNCTION to be sent by email and by overnight delivery to the following:

Hon. Timothy J. Shea,  
United States Attorney for the District of Columbia  
United States Attorney's Office for the District of Columbia  
555 Fourth Street, N.W.  
Washington, D.C. 20530  
Email: [timothy.j.shea@usdoj.gov](mailto:timothy.j.shea@usdoj.gov)

Hon. William P. Barr,  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Email: [attorney.general@usdoj.gov](mailto:attorney.general@usdoj.gov)

Christopher Pilkerton, Esq.  
General Counsel  
United States Small Business Administration  
409 Third Street, S.W., Suite 7000  
Washington, D.C. 20024-3212  
Email: [christopher.pilkerton@sba.gov](mailto:christopher.pilkerton@sba.gov)

By: /s/ Michael J. Lockerby  
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JANI-KING INTERNATIONAL, INC., )  
a corporation organized under )  
the laws of the State of Texas, )

JANI-KING FRANCHISING, INC., )  
a corporation organized under )  
the laws of the State of Texas, )

and )

OHIO SERVICES-CLE, LLC )  
dba JANI-KING OF CLEVELAND, )  
a limited liability company organized )  
under the laws of the State of Ohio, )

Plaintiffs, )

v. )

UNITED STATES SMALL BUSINESS )  
ADMINISTRATION, )

and )

JOVITA CARRANZA, )  
in her official capacity as Administrator of the )  
United States Small Business Administration, )

Defendants )

Case No.: 1:20-cv-989

EMERGENCY INJUNCTIVE  
RELIEF REQUESTED

**ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Upon consideration of Plaintiffs' Emergency Motion for TRO and Preliminary Injunction, the Memorandum in Support and Declaration of Joseph S. Carollo, and Plaintiffs' Verified Complaint, the Court HEREBY GRANTS the Plaintiffs' Motion and FINDS as follows:

A. Plaintiffs will suffer irreparable harm without the preliminary injunctive relief that they seek;

B. The balance of equities favors the Plaintiffs;

C. Plaintiffs are likely to succeed on the merits of their claim that the CARES Act does not permit the United States Small Business Administration to impose restrictions on eligibility for Paycheck Protection Program that are not contained in the statute;

D. The public interest favors the preliminary injunctive relief that Plaintiffs seek;

E. Plaintiffs provided Defendants with proper notice of the motion and request for relief; and

F. In accordance with Fed. R. Civ. P. 65(c) and *NRDC v. Morton*, 337 F. Supp. 167, 169 (D.D.C. 1971), *aff'd on other grounds*, 458 F.2d 827 (D.C. Cir. 1972) (bonds for injunctive relief may be reduced when plaintiff initiates a public interest litigation), that this injunction shall be effective upon Plaintiffs' giving of security in the amount of \$10 by depositing that amount with the Clerk of Court.

IT IS HEREBY ORDERED THAT:

The United States Small Business Administration ("SBA") and all persons bound by Fed. R. Civ. P. 65(d)(2) are temporarily restrained and preliminarily enjoined from enforcing or using SBA SOP 50 10 5(K) or any other rule or regulation to refuse to accept a PPP loan application from a franchise that is not listed in the SBA Franchise Directory;

The SBA and all persons bound by Fed. R. Civ. P. 65(d)(2) are ordered to notify, as expeditiously as possible, all SBA lending banks to immediately discontinue using and implementing SBA SOP 50 10 5(K) to bar SBA lenders from accepting PPP loan applications from a franchise that is not listed in the Directory as criteria for determining PPP loan application acceptability and eligibility;

The SBA and all persons bound by Fed. R. Civ. P. 65(d)(2) are ordered to determine that members of the JANI-KING® Franchise System with fewer than 500 employees are eligible borrowers under the PPP Loan Program

SO ORDERED

Dated this \_\_\_\_ day of April, 2020.

---

The Honorable Trevor N. McFadden  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JANI-KING INTERNATIONAL, INC.,** )  
a corporation organized under )  
the laws of the State of Texas, )

**JANI-KING FRANCHISING, INC.,** )  
a corporation organized under )  
the laws of the State of Texas, )

and )

**OHIO SERVICES-CLE, LLC** )  
dba **JANI-KING OF CLEVELAND,** )  
a limited liability company organized )  
under the laws of the State of Ohio, )

**Case No.: 1:20-cv-989**

**Plaintiffs,** )

**EMERGENCY INJUNCTIVE  
RELIEF REQUESTED**

v. )

**UNITED STATES SMALL BUSINESS  
ADMINISTRATION,** )

and )

**JOVITA CARRANZA,** )  
in her official capacity as Administrator of the )  
United States Small Business Administration, )

**Defendants** )

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR TRO AND PRELIMINARY INJUNCTION**

Plaintiffs—Jani-King International, Inc. (“Jani-King International” or “The JANI-KING® Trademark Owner”), Jani-King Franchising, Inc. (“JKF” or “The JANI-KING® Franchisor”), and Ohio Services–CLE, LLC d/b/a Jani-King of Cleveland (“Ohio Services” or “The JANI-KING® Ohio Master Franchise”)—by counsel, respectfully state as follows in support of their motion for temporary restraining order and preliminary injunction against Defendants, the United States Small Business Administration (the “Agency”) and Jovita Carranza, in her official capacity as Administrator of the Agency (the “Administrator”) (collectively, the “SBA”).<sup>1</sup>

**I. PRELIMINARY STATEMENT**

As passed by Congress and signed by the President, the CARES Act<sup>2</sup> could not be more clear: *any* “small business”—defined as one with 500 or fewer employees—is eligible for emergency relief to cover payroll costs of employees who otherwise would be laid off as a result of the COVID-19 pandemic shutdown. The CARES Act thus established, on a temporary basis, the Paycheck Protection Program (“PPP”) loan program (the “Temporary PPP Loan Program”). The SBA already administers other loan programs intended to aid “small business.”<sup>3</sup> The CARES Act therefore entrusted administration of the Temporary PPP Loan Program to the SBA,

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<sup>1</sup> Plaintiffs hereby incorporate by reference the allegations of the Verified Complaint (cited herein as “Compl.”) and Declaration of Joseph S. Carollo (the “Carollo Declaration,” cited herein as “Carollo Decl.”).

<sup>2</sup> The Coronavirus Aid, Relief, and Economic Security Act, Public L. No. 116–136 §§ 1101–03, 1107, and 1104 (the “CARES Act”) became law on March 27, 2020.

<sup>3</sup> These include the pre-existing SBA loan guarantee program established by Section 7(a) of the Small Business Act, 15 U.S.C. § 636(a) (the “Section 7(a) SBA Loan Program”).

which began accepting applications on April 3, 2020. The experience of the past two weeks, however, makes clear that this trust was misplaced.

One of the countless examples of this abuse of the public trust is the SBA's determination that Plaintiff Ohio Services—which is owned by a husband and wife and has only 21 employees, 18 of whom are full-time—is *not* a “small business” eligible for emergency relief under the Temporary PPP Loan Program. (Compl. ¶¶ 7, 9, 58, 62). The SBA's determination that a 21-employee business does not have fewer than 500 employees is not merely “arbitrary, capricious, and contrary to law” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 501 *et seq.* (the “APA”). Rather, it is truly a lawless act.

By authorizing the SBA to administer the Temporary PPP Loan Program, Congress and the President sought to enlist the SBA's help in battling the adverse economic effects of the COVID-19 pandemic. Congress and the President could not have envisioned that the SBA would exploit this crisis and its control over the Temporary PPP Loan Program to help it wage a different war. If successful in this other war, the SBA will have expanded both its empire within the federal bureaucracy and its power over a sector of the economy—franchising—that has been estimated to account for more than ten percent of all private non-farm employment. The “collateral damage” in this other war that the SBA has been waging is not limited to Plaintiff Ohio Services. The casualties include other members of the JANI-KING® Franchise System, other commercial cleaning franchises, and other franchised businesses that have been wrongfully denied eligibility for emergency relief under the Temporary PPP Loan Program.

To grant the temporary and preliminary injunctive relief that Plaintiffs seek, the Court need not decide *at this juncture* whether the SBA had authority to simply decree two years ago—with no statutory or regulatory authority whatsoever—that a franchised business is

ineligible under the Section 7(a) SBA Loan Program unless its franchise agreement is listed in the SBA Franchise Directory. Nor does the Court need to decide *just yet* whether, as a prerequisite for obtaining loans under the Section 7(a) SBA Loan Program, the SBA has statutory and regulatory authority to require a franchisor to surrender rights over the control of its federally registered trademarks that the federal trademark statute, the Lanham Act, expressly protects.

To determine that Plaintiffs are likely to succeed on the merits for purposes of granting temporary and preliminary injunctive relief, the Court need not address these and other questions of law presented by the Complaint. To grant the injunctive relief that Plaintiffs seek, the Court need only decide a simple, straightforward question of statutory interpretation: *does the CARES Act mean what it says?* What the CARES Act actually says about eligibility is that “any business concern...shall be eligible to receive a covered loan if the business concern...employs not more than...500 employees.” 15 U.S.C. § 636(a)(36)(D)(i). The only other eligibility requirement under the Temporary PPP Loan Program is that the applicant make a good faith certification as to the application process and use of the funds. 15 U.S.C. § 636(a)(36)(G).

Under the eligibility criteria for the Temporary PPP Loan Program established by the CARES Act, there is no question that Plaintiffs can make the requisite showing of likelihood of success on the merits to obtain the temporary and preliminary injunctive relief that they seek. The other factors warranting injunctive relief—including the threshold issue of irreparable harm—are clearly established by the Verified Complaint and Carollo Declaration.<sup>4</sup> These show that the very survival of at least some members of the JANI-KING® Franchise System is in

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<sup>4</sup> For purposes of the pending motion, the Court is required to consider the factual allegations of the Verified Complaint as true. *See, e.g., O’Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1302 (1980); *Alaska Freight Lines v. Weeks*, 18 F.R.D. 64, 65 (D.D.C 1955).

jeopardy. So is the viability of the entire JANI-KING® Franchise System and its ability to ensure that commercial cleaning services offered under the Proprietary JANI-KING® Trademarks meet the JANI-KING® Brand Standards. In view of this threatened irreparable harm and the public interest reflected in federal trademark law and the CARES Act, the balance of hardships and the public interest also weigh in favor of granting the temporary and preliminary injunctive relief that Plaintiffs seek.

The day that Plaintiffs filed their Verified Complaint, April 15, 2020, the funding for the Temporary PPP Loan Program ran out. While Congress debates and hopefully appropriates additional funds, this Court has an opportunity in the interim to prevent irreparable harm to Plaintiffs, the JANI-KING® Franchise System, and potentially others by ordering the SBA to follow the CARES Act as enacted—not as rewritten by the SBA. Plaintiffs respectfully request that this Court do so.

## **II. FACTUAL AND LEGAL BACKGROUND**

### **A. The SBA Has Denied Eligibility Under the Temporary PPP Loan Program to JANI-KING® Franchises That Are Clearly Eligible Under the CARES Act.**

Nationwide, the JANI-KING® Franchise System consists of Plaintiff JKF (“The JANI-KING® Franchisor”); 87 JANI-KING® Master Franchises, including Plaintiff Ohio Services (“The Ohio JANI-KING® Ohio Master Franchise”); and approximately 5,600 JANI-KING® Unit Franchisees. (Compl. ¶ 3). Each has fewer than 500 employees. (*Id.*). Each is therefore a “small business” under the Temporary PPP Loan Program established by the CARES Act—but not according to the SBA. The SBA deemed Plaintiff Ohio Services to be ineligible even though this JANI-KING® Master Franchise, which is literally a “Mom and Pop” operation, has no more than 21 employees. (Compl. ¶¶ 60-62; Carollo Decl. ¶¶ 1, 6). This has not been an isolated occurrence. Since April 3, 2020, when applications opened up, the SBA has generally refused to

guarantee—and lenders have typically refused to submit—applications for PPP loans on behalf of any member of the JANI-KING® Franchise System. (Compl. ¶¶ 3, 60-62).<sup>5</sup>

To a certain extent, the SBA’s discriminatory treatment of the JANI-KING® Franchise System has reflected disparate treatment of all “franchises” vis-à-vis other types of “small business.” In defiance of the plain language of the CARES Act, the SBA has decreed that no eligible “small business” that happens to be a “franchise” can receive a PPP loan unless its franchise agreement has been approved by the SBA for listing in the SBA Franchise Directory that the SBA maintains at [www.sba.gov/sba-franchise-directory](http://www.sba.gov/sba-franchise-directory) (the “Directory”). (*Id.* ¶¶ 40-41, 48-50).<sup>6</sup> Although the Federal Trade Commission, not the SBA, is responsible for enforcement of the FTC Franchise Disclosure Rule, the SBA has also taken upon itself the responsibility for deciding whether a business meets the definition of a “franchise” established by the FTC. (*Id.* ¶¶ 31, 55). Even in normal times, the bottleneck created by the SBA’s officious intermeddling would be objectionable for a number of reasons. These include the fact that it finds no support in

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<sup>5</sup> Plaintiffs are aware of only one instance in which the SBA did accept and agree to guarantee a PPP loan to a JANI-KING® Unit Franchisee in Mississippi. Even then, the SBA later informed the lender—after the PPP loan had already closed and been funded—that the franchisee would be ineligible for the loan forgiveness provisions of the Temporary PPP Loan Program that, under the CARES Act, are supposed to be available to any qualifying “small business” that meets the criteria set forth in the statute. (*Id.* ¶ 59). More recently, on April 13, 2020, Plaintiff Jani-King International (The JANI-KING® Trademark Owner) did receive funding for a loan under the Temporary PPP Loan Program. The SBA presumably will deny eligibility for forgiveness of that loan under the Temporary PPP Loan Program as it did with the JANI-KING® Unit Franchisee in Mississippi. (*Id.* ¶ 66).

<sup>6</sup> Pursuant to the Section 7(a) SBA Loan Program, the SBA had previously revised its Standard Operating Procedures, SBA SOP 50 10 5 (J), Subpart B, Chapter 2, Paragraph II.D.8(b) (the “SOP”) to make listing in the Directory the only way to obtain SBA approval for such a loan to a franchise. Before 2018, listing in the Directory had simply been one method for pre-approval of a loan under the Section 7(a) SBA Loan Program. Effective January 1, 2018—the SBA decreed in a revised SOP—if a franchise agreement was not listed in the Directory, a franchise’s application could no longer be processed under the Section 7(a) SBA Loan Program. The SOP was never the subject of a notice of proposed rulemaking, much less an actual SBA regulation, as required by the APA.

any statute or regulation by which the SBA administers the Section 7(a) SBA Loan Program. In the midst of a pandemic, however, the SBA's obstructionist behavior threatens to cause many "small businesses" that are also "franchises" to suffer the very fate that the CARES Act was intended to avoid.

Since April 3, 2020, there has been a proverbial "rush to the land office" for companies to get their "franchise" agreements listed in the SBA's Directory.<sup>7</sup> In the process, the SBA has insisted that these franchise agreements be amended with SBA Addendum Form 2462 to modify terms that the federal bureaucracy does not like to see in franchise agreements between private parties. The SBA's power grab is wrong on many levels. For many franchised small businesses, however, it has simply delayed rather than prevented them from obtaining PPP loans altogether. (Compl. ¶ 6).<sup>8</sup> For the JANI-KING® Franchise System, however, the SBA's requirement of a Directory listing has generally operated as an absolute bar to eligibility for PPP loans.

Both before and after enactment of the CARES Act, the SBA has found members of the JANI-KING® Franchise System to be ineligible for listing in the Directory based on a determination that the franchisor and every single franchisee in the JANI-KING® Franchise System should—in effect—be treated as a single entity that, collectively, has more than the 500 employees necessary to qualify as a "small business" under the Temporary PPP Loan Program and the Section 7(a) SBA Loan Program. (Compl. ¶¶ 6, 9, 56, 57). To the extent that the SBA has ever articulated any rationale for its refusal to list any such franchise agreements in the

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<sup>7</sup> Many of these companies have dealer or distributor agreements that the FTC, state regulators, and courts have never found to be a "franchise." But that has not stopped the SBA from insisting otherwise, requiring applicants to acquiesce—under duress—to a characterization that could have long-term adverse consequences under various state franchise laws or even the FTC Franchise Disclosure Rule itself.

<sup>8</sup> The delay could prove fatal, however, for those remaining in the queue when initial funding for the Temporary PPP Loan Program ran out on April 15, 2020.



Directory, it has been the SBA's opinion that the JANI-KING® Franchisor, JANI-KING® Master Franchises, and JANI-KING® Unit Franchisees are "affiliates" of one another and therefore should be viewed as the equivalent of a single entity that—collectively—has more than the 500 employee threshold necessary to qualify as a "small business." (*Id.* ¶¶ 9, 33).

In business, law, and ordinary usage, the term "affiliate" is understood to mean companies under common ownership.<sup>9</sup> The SBA, however, finds members of the JANI-KING® Franchise System to be "affiliates" of one another based on contractual provisions whereby franchisees are licensed to use the franchisor's trademark. This finding has no factual or legal support and is contrary to basic principles of trademark law applicable to the JANI-KING® Franchise Agreements. Like most franchise agreements, the JANI-KING® Franchise Agreements require compliance with the JANI-KING® Brand Standards for the right to be licensed to use the Proprietary JANI-KING® Trademarks and other intellectual property, including trade secrets, upon which the JANI-KING® Franchise System is based. (*Id.* ¶ 26).

In exchange for the royalty payments that franchisees are required to pay, The JANI-KING® Franchisor provides valuable services to each JANI-KING® Master Franchise, and each JANI-KING® Master Franchise provides valuable services to its JANI-KING® Unit Franchisees. The provision of such services by the franchisor is common in franchising. For example, in the hospitality industry, hotel franchisors operate reservation systems on behalf of all of the franchisees and require individual hotel operators to honor the reservations made through the franchisor's reservation system. Similarly, in the restaurant industry, franchisors control the supply of key ingredients used by their franchisees while mandating the use of certain recipes,

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<sup>9</sup> With the exception of 16 JANI-KING® Master Franchises that have the same ultimate parent as the JANI-KING® Franchisor, the more than 5,688 members of the JANI-KING® Franchise System have no common ownership. (*Id.* ¶¶ 3, 7-8).

standard menus, and sometimes even pricing strategies. (*Id.* ¶ 27). In the JANI-KING® Franchise System, The JANI-KING® Franchisor provides support services necessary to ensure that the JANI-KING® Master Franchises and each of their JANI-KING® Unit Franchisees operate their commercial cleaning franchises in accordance with the JANI-KING® Brand Standards. (*Id.* ¶ 28).

Each JANI-KING® Master Franchise handles the billing and collection of accounts for which the JANI-KING® Unit Franchisees perform commercial cleaning services and remits such collections to each franchisee, minus a deduction for any royalties or other charges that the franchisee owes to the JANI-KING® Master Franchise. This arrangement improves the cash flow of the JANI-KING® Unit Franchisees because they actually receive payment from the JANI-KING® Master Franchise once the account payments are due—before many of the invoices are even collected. Ultimately, most JANI-KING® Unit Franchisees bear the risk of non-payment because most JANI-KING® Master Franchises “charge back” the franchisees for previously advanced payments if the customer has not paid the invoiced amount within a certain period of time. (*Id.* ¶ 29).<sup>10</sup> The JANI-KING® Unit Franchisees also bear the risk that their franchised businesses will not be profitable.

The fact that all of the JANI-KING® Franchise Agreements include a license to use the Proprietary JANI-KING® Trademarks establishes one of the three essential definitional elements of a “franchise” within the meaning of the FTC Franchise Disclosure Rule: a license to use, or an

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<sup>10</sup> Pursuant to a program developed by The JANI-KING® Franchisor, however, some JANI-KING® Master Franchises offer the JANI-KING® Unit Franchisees a “no charge back” guarantee—effectively, a form of insurance—in exchange for payment of a premium. Under the “no charge back” guarantee, JANI-KING® Master Franchises thus act as the insurer that individual customers will not pay amounts invoiced on behalf of the JANI-KING® Unit Franchisees, thereby mitigating at least some of the risk of non-payment. (*Id.* ¶ 29).

association with, a franchisor's trademark. Section 45 of the federal trademark statute, the Lanham Act, permits franchisors to control the quality of the goods and services provided by their franchisees.<sup>11</sup> In fact, the Lanham Act not only gives licensors the right to control the quality of goods and services sold under their marks, it also imposes an affirmative duty on licensors to control, supervise, and ensure the quality of goods and services sold under their marks by licensees.<sup>12</sup> A licensor that fails to discharge this duty forfeits its rights to the mark.<sup>13</sup>

Not only does Section 45 of the Lanham Act permit and indeed require the control over use of the Proprietary JANI-KING® Trademarks set forth in the JANI-KING® Franchise Agreements, such control is essential to the success of the JANI-KING® franchise system, as federal courts have long recognized. In the words of one district court, “the cornerstone of a franchise system must be the trademark or trade name of a product,” and “[u]niformity of product and control of its quality and distribution . . . causes the public to turn to franchise stores for the product.” The Fourth Circuit has similarly recognized that the benefits of being part of a franchise or other branded distribution system include “the right to use a trademark” and “the right to become a part of a system whose business methods virtually guarantee . . . success” because the franchised business “is identified with a network of stores whose very uniformity and predictability attracts customers.” In that case, which involved the McDonald's franchise system, the Fourth Circuit observed that a franchisee benefits from the uniformity and predictability that results from “pervasive franchisor supervision” over “all facets of the

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<sup>11</sup> 15 U.S.C. § 1127; *Mid-State Aftermarket Body Parts, Inc. v. MQVP, Inc.*, 466 F.3d 630, 634 (8th Cir. 2006); *Shell Oil Co. v. Commercial Petroleum, Inc.*, 928 F.2d 104, 108 (4th Cir. 1991).

<sup>12</sup> See, e.g., *Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.*, 549 F.2d 368, 387 (5th Cir. 1977); *Dawn Donut Co., Inc. v. Hart's Food Stores, Inc.*, 267 F.2d 358, 367 (2d Cir. 1959).

<sup>13</sup> See generally *Kentucky Fried Chicken Corp.*, 549 F.2d at 387.

business, from the design of the menu board to the amount of catsup on the hamburgers, nothing is left to chance.” (Compl. ¶ 32).

In other words, control over use of the JANI-KING® Proprietary Marks by JANI-KING® Master Franchises and JANI-KING® Unit Franchisees shows merely that the franchisor is exercising its rights and responsibilities under Section 45 of the Lanham Act to ensure that the JANI-KING® Proprietary Marks are used only in accordance with the JANI-KING® Brand Standards. It does not establish that the JANI-KING® Franchisor, the JANI-KING® Master Franchises, and the JANI-KING® Unit Franchisees are “affiliates” of one another. Under the federal trademark statute, the control that a trademark licensor is entitled to exercise includes the absolute discretion whether to license or approve the assignment of a license to another person or entity. Yet according to the SBA’s SOP—which does not even have the force of an Agency regulation—a franchise agreement that allows the franchisor to exercise its “sole discretion” whether to approve a sale or transfer, or even a franchise agreement that is silent on the standard for consent, makes the franchisor and franchisee “affiliates” of one another. (SBA SOP 50 10 5 (K), Subpart B, Chapter 2, Paragraph II.D.8(f)). This provision in particular and the SOP in general are thus contrary to federal trademark law. The SOP has never been the subject of any valid Agency regulation that would make it binding on the public. And the SOP is not consistent with the provisions of any statute authorizing the SBA to enforce either the Section 7(a) SBA Loan Program or the Temporary PPP Loan Program established by the CARES Act. (Compl. ¶ 33).

**B. No Statute Authorizes the SBA to Discriminate Against JANI-KING® Franchises and Other Franchises in Determining PPP Loan Eligibility.**

The SBA is not permitted to administer the Temporary PPP Loan Program in ways that deviate from the plain language of the CARES Act. Plaintiffs meet the eligibility requirements because each “employs not more than . . . 500 employees”<sup>14</sup> and can make the requisite certification.<sup>15</sup> Under the CARES Act, eligibility for a loan under the Temporary PPP Loan Program does *not* require a “franchise” to be listed in the Directory.<sup>16</sup> In evaluating the eligibility of a borrower for a PPP loan, a lender is to consider whether the borrower: (1) was in operation on February 15, 2020; (2) had employees for whom the borrower paid salaries and payroll taxes; or (3) paid independent contractors. 15 U.S.C. § 636(a)(36)(F)(ii)(II). No other eligibility criteria are set forth in the statute. To find that the SBA has acted in a way that is arbitrary, capricious, and contrary to law, the Court need not go any further.

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<sup>14</sup> 15 U.S.C. § 636(a)(36)(D)(i).

<sup>15</sup> The CARES Act provides that an eligible recipient applying for a covered loan certify:

(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

(II) that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

15 U.S.C. § 636.

<sup>16</sup> The CARES Act’s sole reference to the Directory is that it automatically waives affiliation rules for a loan under the Temporary PPP Loan Program to “any business concern operating as a franchise that is assigned a franchise identifier code” by the SBA. 15 U.S.C. § 636(a)(36)(D)(iv).

The CARES Act does instruct the SBA to promulgate rules to implement the Temporary PPP Loan Program and makes the SBA responsible for administering the Temporary PPP Loan Program. 15 U.S.C. § 636(a)(36)(F)(ii). On April 1, 2020, the SBA promulgated such regulations pursuant to the PPP Loan Program Provisions of the CARES Act.<sup>17</sup> These regulations, SBA 3245, provide no support for the SBA's position that a franchised business must have its franchise agreement listed in the Directory to apply for a PPP loan. Indeed, the pertinent language in the regulation merely states: "SBA will maintain a centralized list of franchise and other similar agreements that are eligible for SBA financial assistance, which will identify any additional documentation necessary to resolve any eligibility or affiliation issues between the franchisor and the small business applicant." 13 C.F.R. § 121.301(f)(7)(i). The SBA has acknowledged that this requirement is not anywhere in its regulations. *See* 83 Fed. Reg. 49010 ("Although not included in the regulations, SBA is providing below a description of the franchise procedures currently in effect for lending to franchisees in the Business Loan Programs.").

Nor is such a requirement to be found anywhere in the statute or implementing regulations for the Section 7(a) SBA Loan Program, which long predates the Temporary PPP Loan Program and presumably will be around long after this emergency relief program has expired. Before January 1, 2018, the SBA allowed franchise businesses applying for SBA financing to choose between undergoing the eligibility and affiliation analysis on a business-by-business basis or to apply to be on the Directory. However, after January 1, 2018, the SBA made

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<sup>17</sup> *See* Business Loan Program Temporary Changes; Paycheck Protection Program, RIN 3245-AH34 (Interim Final Rule Apr. 1, 2020) ("SBA 3245") (Compl., Ex. B).

what had been a permissive route for review the sole and mandatory route. The SBA did this without notice and without following rulemaking procedures.

Before passage of the CARES Act, the SBA issued so-called “affiliation” rules that require an entity to aggregate its separately-organized, commonly-controlled business concerns when calculating, among other things, how many employees it has for purposes of Section 7(a) loan consideration. In considering “affiliation” as to Section 7(a) loan applicants generally, the SBA considers factors such as ownership and the ability to control an affiliate. *See* 13 C.F.R. § 121.301.

In the case of applicants under the Section 7(a) SBA Loan Program, the SBA developed special “affiliation” rules for “franchises.” These were first established on January 31, 1996 and have undergone a number of changes over the years. Before July 27, 2016, the SBA’s “affiliation” rules did not treat “franchises” differently from other small businesses. From July 27, 2016 until February 10, 2020, the SBA “affiliation” rules governing “franchises” were found in 13 C.F.R. § 121.301(f)(5), which stated as follows:

The restraints imposed on a franchisee or licensee by its franchise or license agreement generally will not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. The SBA will consider only the franchise or license agreements of the applicant.

Effective March 11, 2020, the SBA amended its “affiliation” rules with respect to franchise agreements. *See* 13 C.F.R. § 121.301(f):

- (i) The restraints imposed on a franchisee by its franchise agreement generally will not be considered in determining whether the franchisor is affiliated with an applicant franchisee provided the applicant franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. SBA will

only consider the franchise agreements of the applicant concerned. SBA will maintain a centralized list of franchise and other similar agreements that are eligible for SBA financial assistance, which will identify any additional documentation necessary to resolve any eligibility or affiliation issues between the franchisor and the small business applicant.

(ii) For purposes of this section, “franchise” means any continuing commercial relationship or arrangement, whatever it may be called, that meets the Federal Trade Commission definition of “franchise” in 16 CFR part 436.

13 C.F.R. § 121.301(f)(7) (amended on Feb. 10, 2020, 85 Fed. Reg. 7651).

In short, no regulation of the SBA has ever mandated that a “franchise” be listed in the Directory to qualify for any SBA loan—not under the Section 7(a) SBA Loan Program and certainly not under the Temporary PPP Loan Program.

**C. Plaintiffs Face Irreparable Injury Unless this Court Prevents the SBA From Continuing to Disregard Express Provisions of the CARES Act.**

The Verified Complaint and accompanying declarations establish that the SBA has denied virtually every member of the JANI-KING® Franchise System access to PPP loans on the same terms as any other “small business” while also refusing to list JANI-KING® Franchise Agreements in the Directory—a prerequisite that is nowhere to be found in the CARES Act. (Compl. ¶¶ 39-40, 53, 57-66, Exs. E, F, G) (Carollo Decl. ¶¶ 12-16). The SBA’s conduct threatens Plaintiffs and indeed the entire JANI-KING® Franchise System with irreparable harm. In the case of at least some JANI-KING® Master Franchises and JANI-KING® Unit Franchisees, the potential consequences may include the very closures of their businesses and layoffs of employees that the CARES Act in general and the Temporary PPP Loan Program in particular were intended to avoid. (Compl. ¶ 67). Because of the COVID-19 pandemic, the risk that customers of the JANI-KING® Unit Franchisees will not pay their bills has already increased and is likely to increase even further the longer that many businesses are shut down. Already, various members of the JANI-KING® Franchise System has seen a significant increase



in the age of their accounts receivable. Even businesses that remain open are finding it difficult to pay their bills. (*Id.* ¶ 68). Without healthy JANI-KING® Unit Franchisees, JANI-KING® Master Franchises like Ohio Services will be severely damaged and may not remain viable. Without viable JANI-KING® Master Franchises, the very survival of Jani-King International and JKF is in jeopardy. (*Id.* ¶ 69).

### **III. ARGUMENT**

#### **A. Each of the Four Factors Governing Preliminary Injunctive Relief Weighs in Favor of Enjoining the SBA’s Violations of the APA.**

To secure the temporary and preliminary injunctive relief that they seek, Plaintiffs must establish that (1) they are likely to succeed on the merits of their claims against the SBA for violating the APA, (2) they are likely to suffer irreparable harm in the absence of temporary and preliminary relief, (3) the balance of equities tips in their favor, and (4) injunctive relief is in the public interest. *Jubilant DraxImage Inc. v. United States Int’l Trade Comm’n*, 396 F. Supp. 3d 113, 119 (D.D.C. 2019) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The last two factors ‘merge when the Government is the opposing party.’” *Id.* (quoting *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 10 (D.C. Cir. 2019)).

In this case, each of the four factors articulated by the Supreme Court in *Winter* and applied by this Court in *Jubilant DraxImage* weighs in favor of requiring the SBA to follow the law as enacted by Congress and signed by the President rather than allowing the SBA to hold emergency relief hostage to the SBA’s expansion of its bureaucratic empire. The first factor—likelihood of success on the merits—weighs in favor of Plaintiffs. On its face, the CARES Act makes PPP loans available to any small business. The CARES Act does not say the SBA can condition the grant of a PPP loan to a small business that is a “franchise” on having its franchise

agreement listed in the SBA Franchise Directory. Nor does the CARES Act permit the SBA, as a prerequisite for approving a PPP loan, to require that a franchise agreement or other trademark license be rewritten to contain terms imposed by the SBA in lieu of those agreed to by the parties. Indeed, no provision of any statute or regulation authorizes the SBA to require the listing of a franchise agreement in the SBA Franchise Directory as a prerequisite for *any* SBA loan program—much less the Temporary PPP Loan Program established by the CARES Act.

The second factor, irreparable harm, also weighs in favor of injunctive relief. In this case, money damages after the fact for loans that the SBA has wrongfully denied under the Temporary PPP Loan Program would not make any member of the JANI-KING<sup>®</sup> Franchise System whole. The Temporary PPP Loan Program was intended to prevent small businesses—including JANI-KING<sup>®</sup> franchises—from laying off employees and going out of business. The SBA's denial of PPP loans to JANI-KING<sup>®</sup> franchises threatens their very existence and the viability of the entire JANI-KING<sup>®</sup> Franchise System. At the very least, the SBA's lawless conduct threatens the JANI-KING<sup>®</sup> Franchise System's ability to ensure that the commercial cleaning services offered under the JANI-KING<sup>®</sup> Proprietary Trademarks live up to the JANI-KING<sup>®</sup> Brand Standards. This deprivation of Jani-King International's rights as a trademark owner and injury to the reputation of the JANI-KING<sup>®</sup> Proprietary Trademarks are irreparable both in fact and as a matter of law.

The third and fourth factors—the balance of equities and the public interest—also weigh heavily in favor of Plaintiffs. As previously discussed, the irreparable harm faced by Plaintiffs includes threats to the viability of the JANI-KING<sup>®</sup> Franchise System and the maintenance of the JANI-KING<sup>®</sup> Brand Standards as contemplated by the federal trademark statute, the Lanham Act. The public interest in preventing the collapse of small businesses during the COVID-19

pandemic reflected in the CARES Act outweighs whatever possible justification the SBA might have for insisting that the bureaucracy approve and in some cases rewrite their franchise agreements as a prerequisite to receiving emergency relief under the Temporary PPP Loan Program. Until two years ago, listing in the SBA Franchise Directory was not a prerequisite for *any* SBA loan program. When the SBA made that change, it did so in a way that was the opposite of “government in the sunshine.” Rather than go through the rulemaking process required by the APA, the SBA imposed this change by modifying its “Standard Operating Procedures”—procedures which, as a matter of law, cannot be imposed outside the Agency because they have not been the subject of a rulemaking.

**B. Plaintiffs Are Likely to Succeed on the Merits of Their APA Challenge to the SBA’s Administration of the Temporary PPP Loan Program.**

Plaintiffs are likely to succeed on the merits of their claim for violation of the APA. The APA permits judicial review of agency final actions that are not precluded from judicial review by statute or that are not committed to agency discretion by law. 5 U.S.C. §§ 701(a), 702. To the extent necessary to its decision and when presented, the reviewing court is to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. *Id.* at 706. This Court can set aside an agency action found to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and (3) without observance of procedure required by law.

The Supreme Court has articulated the following grounds for vacating arbitrary or capricious agency action:

[W]e will not vacate an agency’s decision unless it “has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before

the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”

*Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); see also *Safeguard Base Operations, LLC v. United States*, 140 Fed. Cl. 670, 689 (2018), *appeal dismissed*, 792 F. App’x 945 (Fed. Cir. 2019).

Here, the SBA failed to consider the very purpose of the CARES Act—providing emergency funding to small businesses without burdening these distressed businesses with red tape and lengthy eligibility determinations. To be eligible under the Temporary PPP Loan Program established by the CARES Act, a small business has to have no more than 500 employees. 15 U.S.C. § 636(a)(36)(D)(i)(I).

Rather than expediting loan approval as Congress intended, the SBA has imposed requirements that are nowhere to be found in the statute. These include making eligibility under the Temporary PPP Loan Program, at least for franchised businesses, subject to the following provisions of the SBA Standard Operating Procedure (SOP) 50 10 5(J), which has been in effect since January 1, 2018:

SBA has created the SBA Franchise Directory (the “Directory”) of all franchises and other brands reviewed by SBA that are eligible for SBA financial assistance. The Directory will only include business models that SBA determines are eligible under SBA’s affiliation rules and other eligibility criteria. **If the Applicant’s brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain SBA financing.**

SBA SOP 50 10 5(J) Chap. 2 § II D.8(b) (emphasis in original). This Directory listing requirement is not included in the CARES Act.

Moreover, the SBA’s franchise affiliation regulations also do not require this. Under 13 C.F.R. § 121.301(f)(7)(i), determining whether a franchisor is affiliated with the franchisee

applicant is primarily based on the applicant's "right to profit from its efforts and bears the risk of loss commensurate with ownership. . . . SBA will maintain a centralized list of franchise and other similar agreements that are eligible for SBA financial assistance, which will identify any additional documentation necessary to resolve any eligibility or affiliation issues between the franchisor and the small business applicant." *Id.* The SBA promulgated the language regarding the Directory in September 28, 2018—fully nine months after SOP 50 10 5(J) became effective. *See* 83 *Fed. Reg.* 49001, 49010. The SBA also explained:

Although not included in the regulations, SBA is providing below a description of the franchise procedures currently in effect for lending to franchisees in the Business Loan Programs. As of January 1, 2018, SBA created the SBA Franchise Directory (the Directory") of all franchise and other brands reviewed by SBA that are eligible for SBA financial assistance. The Directory only includes business models that SBA determines are eligible under SBA's affiliation rules and other eligibility criteria. ***If the Applicant's brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain SBA financing.*** (To help minimize confusion over brands that may appear to be franchises but that do not meet the FTC definition, SBA includes such brands on the Directory at their request if they are eligible in all other respects.) SBA Lenders are able to rely on the Directory and no longer need to review franchise or other brand documentation for affiliation or eligibility.

*Id.* (emphasis added). In effect, the SBA arbitrarily gave its internal SOP regulatory effect without including the SOP's requirements in the regulatory text and layered this regulatory requirement onto the Temporary PPP Loan Program without explanation and without consideration of the legislative intent of the CARES Act—to quickly provide funds to small business without the red tape associated with the current Section 7(a) SBA Loan Program.

Because the SBA failed to take into account the statutory purpose of quickly disbursing funds to eligible small businesses, the SBA acted arbitrarily and capriciously in violation of the APA. As in *DSE, Inc. v. United States*, 20 F. Supp. 2d 25 (D.D.C. 1998), *aff'd and remanded*, 169 F.3d 21 (D.C. Cir. 1999), this is a case in which the SBA has acted in ways that

are “inconsistent with the agency’s mission and the public interest” and reflect “obstinance.” *Id.* at 27. Unlike that case, however, here there is no time for “for the SBA’s top officials to review this matter in order to determine whether the SBA’s actions were consistent with its mission of advancing the interest of small business.” *Id.* Nor is there any need to defer to the SBA because its administration of the Temporary PPP Loan Program clearly exceeds its authority under the CARES Act. As this Court observed in *Elk Assocs. Funding Corp. v. U.S. Small Bus. Admin.*, 858 F. Supp. 2d 1 (D.D.C. 2012), the D.C. Circuit has “strongly intimated that injunctive relief is available, at a minimum, when the SBA exceeds its statutory authority.” *Id.* at 20.

**C. A Preliminary Injunction Is Necessary to Avoid Irreparable Injury to the Survival and Viability of Plaintiffs and the JANI-KING® Franchise System.**

The facts establishing the irreparable harm to Plaintiffs without the temporary and preliminary injunctive relief that they seek are set forth in detail in the Verified Complaint and the accompanying Carollo Declaration. Under these circumstances, money damages after the fact would be insufficient to make Plaintiffs whole for denial of PPP loans. Loans to help defray payroll costs of a JANI-KING® franchise that has already shut its doors are of no benefit to anyone. Even if some JANI-KING® franchises manage to stay in business during the COVID-19 pandemic, the JANI-KING® Franchise System could end up being merely a shadow of its former self. The injury faced by Plaintiffs and other members of the JANI-KING® Franchise System as a result of the SBA’s administration of the Temporary PPP Loan Program is irreparable because the harm is certain but difficult to value. *CSX Transp. v. Williams*, 406 F.3d 667, 673 (D.C. Cir. 2005) (quoting *Danielson v. Local 275*, 479 F.2d 1033, 1037 (2d Cir. 1973)); *see also Bell Helicopter Textron, Inc. v. Airbus Helicopters*, 78 F.Supp. 3d 253, 274-75 (D.D.C. 2015) (damages that “defy attempts at valuation” are irreparable (citing *i4i Ltd. P’ship v.*

*Microsoft Corp.*, 598 F.3d 831, 862 (Fed. Cir. 2010) (“Difficulty in estimating monetary damages is evidence that remedies at law are inadequate.”)).

Without preliminary injunctive relief, the value of the JANI-KING® Franchise System will be diminished in ways that are incalculable if Plaintiff Jani-King Franchising loses JANI-KING® Master Franchises and if JANI-KING® Master Franchises like Plaintiff Ohio Services lose JANI-KING® Unit Franchisees. Plaintiffs’ injury is also irreparable because it cannot be redressed by any other means. *See Eco Tour Adventures, Inc. v. Zinke*, 249 F. Supp. 3d 360, 386 (D.D.C. 2017) (failure to award disputed contract meant that company would not be treated as a preferred offeror in the future and plaintiff would be in a less favorable position, which was not able to be redressed); (*League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (organization’s mission was harmed because “after the registration deadlines for the November election pass, there can be no do over and no redress” (internal quotations removed))). Already, the first tranche of funding for the Temporary PPP Loan Program was exhausted before Plaintiffs and other members of the JANI-KING® Franchise System could even get into the queue. The SBA’s misapplication of the CARES Act needs to be corrected *before* additional funds are hopefully appropriated. Only then will JANI-KING® franchises in need of assistance be able to retain their employees on their payrolls as Congress and the President intended under the CARES Act.

**D. The Balance of Hardships Without Preliminary Injunctive Relief Weighs Decidedly in Favor of Plaintiffs and Against the SBA.**

The irreparable harm faced by Plaintiffs far outweighs any harm that the SBA might claim to face if it is simply ordered to comply with the CARES Act. If the SBA has some legitimate reason for insisting that “franchises” receiving SBA loans under the Section 7(a) SBA Loan Program have to be approved for inclusion in the SBA’s Directory as a prerequisite for

funding, the SBA will eventually have its day in court to explain itself. If the SOP by which the SBA imposed this mandate is somehow exempt from normal notice and rulemaking procedures, again, the SBA will have the opportunity to explain that too. To approve loans to franchised businesses under the Temporary PPP Loan Program, the SBA does not need to rewrite their franchise agreements to its liking.

**E. The Public Interest Reflected in the CARES Act Warrants Enjoining the SBA From Continuing to Violate Express Provisions of the Statute.**

Because they meet the statutory criteria for eligibility, Plaintiffs and other members of the JANI-KING® Franchise System are precisely the type of small businesses that the CARES Act was enacted to help during the COVID-19 pandemic. Ironically, the JANI-KING® commercial cleaning franchises being harmed by the SBA's misapplication of the law are in the front line of the fight against the coronavirus. There is also a public interest in the rule of law. The SBA's lawless behavior is contrary to the public interest. These public interest factors are yet another reason to grant the preliminary injunctive relief that Plaintiffs seek.

**IV. CONCLUSION**

The emergency relief available under the CARES Act should not be held hostage to an agenda on the part of the SBA that is different from, and indeed contrary to, the expeditious relief that is supposed to be available to any eligible "small business" under the Temporary PPP Loan Program. The statute is clear that Plaintiffs and other members of the JANI-KING® Franchise System qualify. The SBA's determinations to the contrary are arbitrary, capricious, and contrary to law. Accordingly, Plaintiffs respectfully request that their motion for temporary and preliminary injunctive relief be granted.



Dated: April 17, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of April, 2020, I caused a copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR TRO AND PRELIMINARY INJUNCTION to be sent by email and certified U.S. mail and to be delivered by hand to the following:

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