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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO.

TMC FRANCHISE CORPORATION
ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance (“AOD”) pursuant to RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Circle K franchises relating to hiring practices.

1.2 Circle K franchise operations in the United States are conducted through TMC Franchise Corporation (“TMC” or “Company”), an Arizona corporation with its principal office or place of business in Tempe, Arizona, that is a wholly owned subsidiary of Circle K Stores Inc. TMC enters into Circle K Franchise Agreements (“Franchise Agreements”) with independent franchise operators for Circle K-branded convenience stores that sell motor vehicle fuel and in-store goods at retail outlets.

1.3 References to “TMC” or “Company” include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and

1 assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, in
2 each case operating in the U.S.

3 II. INVESTIGATION

4 2.1 Circle K Stores Inc. owns and operates 32 convenience stores in Washington.
5 TMC franchises an additional 16 Circle K-branded convenience stores in Washington that are
6 independently owned and operated by franchisees.

7 2.2 During a portion of the period of the State's investigation, namely from 2013 to
8 2016, Franchise Agreements in Washington included language that restricted a franchisee's
9 ability to solicit or hire workers from another franchisee (a "No-Poach Provision").

10 Specifically, the Franchise Agreement used with new or renewing franchisees in Washington
11 from 2013 to 2016 contained a provision titled "Interference with Employment Relations" that
12 stated that, "Neither Franchisor nor Franchisee may employ or seek to employ, directly or
13 indirectly, any person who is at the time or was at any time during the prior six months
14 employed in any type of managerial position by the other party or any of its parents or
15 affiliates, or by [a] franchisee, developer or multi site operator in the system"

16
17 2.3 Prior to the initiation of the State's investigation in 2018, in the Company's
18 2016 renewal of its franchise disclosure documents ("FDD"), the Company revised its U.S.
19 form Franchise Agreement and, as part of those revisions, modified the Interference with
20 Employment Relations clause to remove the restriction on a franchisee soliciting or hiring
21 workers from another franchisee (the "Removed Restriction"). New or renewing Washington
22 Franchise Agreements entered into by the Company subsequent to the July 22, 2016 FDD
23 renewal date do not include the Removed Restriction.
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25 2.4 The Attorney General asserts that the No-Poach Provision in Franchise
26 Agreements entered into prior to the issuance of the 2016 renewal FDD constitutes a contract,

1 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
2 RCW 19.86.030.

3 2.5 TMC expressly denies that the conduct described in paragraph 2.2 above
4 constitutes a contract, combination, or conspiracy in restraint of trade in violation of the
5 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies that it has
6 engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade.
7 That is because the Company viewed the No-Poach Provision in its Franchise Agreement as a
8 way to reduce potential conflicts among its franchisees that could disrupt the franchise system
9 and the franchisor-franchisee relationship that the Company has with each of its franchisees.
10 However, the No-Poach Provision has not been the subject of any dispute in any legal
11 proceeding or settlement in Washington. In fact, the Company has never attempted to enforce a
12 No-Poach Provision with any of its franchisees and is not aware of any of its franchisees in
13 Washington enforcing or attempting to enforce any No-Poach Provision in their Franchise
14 Agreements against other franchisees. TMC nevertheless enters into this AOD to avoid
15 protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its
16 terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on
17 the part of Circle K.
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21 **III. ASSURANCE OF DISCONTINUANCE**

22 3.1 Subject to paragraph 2.5 above, TMC agrees that:

23 3.1.1. It will no longer include a No-Poach Provision in any of its future U.S.
24 Franchise Agreements;

25 3.1.2. It will continue not enforcing the No-Poach Provision in any of its
26 existing Franchise Agreements, and will not seek to intervene or defend in any way the legality

1 of any No-Poach Provision in any litigation in which a franchisee may claim third-party
2 beneficiary status rights to enforce an existing No-Poach Provision;

3 3.1.3. It will notify all of its franchisees in Washington of the entry of this
4 AOD and provide them a copy;

5 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
6 Washington franchisee to enforce any existing No-Poach Provision.

7 3.2 Within 60 days of entry of this AOD, TMC will have amended all existing
8 Franchise Agreements with entities in Washington to remove any No-Poach Provision in its
9 existing Franchise Agreements. If any franchise owner is unwilling to consent to the change to
10 its Franchise Agreement, prior to the 60-day deadline, TMC shall provide the name and
11 address of the resisting franchisee and the name and address of the franchisee's registered
12 agent to the Office of the Attorney General.

13 3.3 TMC has modified the form Franchise Agreement it uses on a nationwide basis
14 to remove any No-Poach Provision. Any existing franchisee that renews will be party to a new
15 Franchise Agreement or an amended existing Franchise Agreement that will not include a No-
16 Poach Provision.

17 3.4 Within 30 days of the conclusion of the time periods referenced in Sections
18 3.1.3 and 3.2, TMC will submit a declaration to the Attorney General's Office signed under
19 penalty of perjury stating that those provisions of this AOD have been satisfied.

20 IV. ADDITIONAL PROVISIONS

21 4.1 This AOD is binding on, and applies to TMC, including each of its respective
22 directors, officers, managers, agents acting within the scope of their agency, and employees, as
23 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
24 affiliates, partnerships, and joint ventures, or other entities through which the Company may
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1 now or hereafter act with respect to its U.S. franchise business and the conduct alleged in this
2 AOD.

3 4.2 This AOD is entered voluntarily and it shall not be construed as an admission of
4 law, fact, liability, misconduct, or wrongdoing on the part of TMC., and is not an order,
5 injunction or decree. By entering into this AOD, TMC neither agrees nor concedes that the
6 claims, allegations and/or causes of action which have or could have been asserted by the
7 Attorney General have merit, and TMC expressly denies any such claims, allegations, and/or
8 causes of action. However, proof of failure to comply with this AOD shall be *prima facie*
9 evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of
10 defending against imposition by the Court of injunctions, restitution, costs and reasonable
11 attorney's fees, and civil penalties of up to \$2,000.00 per violation.
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13 4.3 TMC will not, nor will it authorize any of its officers, employees,
14 representatives, or agents to, state or otherwise contend that the State of Washington or the
15 Attorney General has approved of, or has otherwise condoned, the conduct described in
16 Paragraph 2.2 with respect to the No-Poach Provision in the Company's Franchise
17 Agreements.
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19 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
20 Division of the Attorney General's Office under the Consumer Protection Act and any other
21 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.5 above that may have occurred
22 before the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph
23 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not
24 file suit or take any further investigative or enforcement action with respect to the acts set forth
25 above that occurred before the date of entry of this AOD.
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APPROVED ON this _____ day of _____ 2018.

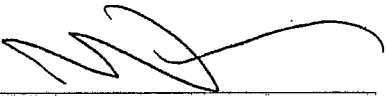
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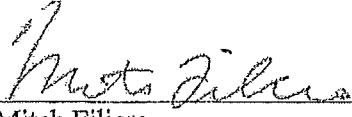
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