

Billings, Montana  
FRANCHISE AGREEMENT

37-107

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THIS AGREEMENT between KAMPGROUNDS OF AMERICA, INC., a Montana corporation, with its principal office at Suite 200, Mutual Life Building (P.O. Box 1138), Billings, Montana, hereafter called "KOA", and JWR Jean W. and Mary A. Reed

whose address is 3435 Shasta Way

Klamath Falls, OR 97601

hereafter called "FRANCHISEE."

WITNESSETH:

KOA has developed and perfected a national system of franchised campgrounds to provide the general public with clean and comfortable camping accommodations of the highest quality. The success of the entire KOA system is dependent upon the continuing good reputation of each campground operated within the system and upon the continuing good will of the public toward the name KOA and Kampgrounds of America, Inc. The success of both parties to this agreement and of all other franchisees is directly affected by the business conduct of all KOA franchisees, and therefore adherence to the terms of this agreement is a matter of mutual importance and consequence.

Accordingly the parties hereto mutually covenant and agree as follows:

1. **Franchise and Territory.** KOA grants to FRANCHISEE, subject to the terms and conditions herein, an exclusive franchise to construct and operate one KOA Kampground within, and only within, the following described territory (hereafter referred to as the "franchise territory"): Klamath County, Oregon plus an extension of the county into California to a southern boundary thirty-five (35) miles south of Klamath Falls.

A map of the foregoing franchise territory is hereto attached and by reference made a part of this agreement. In the event of any conflicts or inconsistencies between the above description and the attached map, the map description will control.

This franchise agreement and all fees paid and provided for herein are for the franchised operation of one KOA Kampground located at a site within the franchise territory to be hereafter agreed upon between the parties hereto.

In the event that FRANCHISEE shall be granted the right to construct and operate additional KOA Kampgrounds within the franchise territory, FRANCHISEE agrees to pay such additional franchise purchase, renewal, royalty and other fees and to assume such obligations as those prevailing between KOA and other franchisees under franchise agreements being entered into at the time that the right to construct and operate additional KOA Kampgrounds is granted. KOA and FRANCHISEE shall enter into and execute a separate franchise agreement for each such additional KOA Kampground within the franchise territory upon the then current standard form being offered by KOA to new franchisees. In such case the franchise territory included in any prior franchise agreement will be deemed to be automatically amended so as to exclude all of the franchise territory included in any new franchise agreement.

2. **Marks and Names.** FRANCHISEE acknowledges and recognizes the exclusive right of KOA to grant this franchise and to grant similar franchises in other territories and also the exclusive right of KOA to all service marks, trademarks, copyrights, certification marks, designs, slogans, names and matters now or hereafter displayed or used as a part of the KOA franchise system and the exclusive right of KOA to use and grant the right to others to use the said marks and names and the names "Kampgrounds of America, Inc.", "KOA", "AOK", or any other combination thereof for any purpose whatsoever. FRANCHISEE is granted the right, during the period when this agreement is in force, to use the service marks, trademarks, copyrights, certification marks, designs, slogans, names or other identifying marks of KAMPGROUNDS OF AMERICA, INC. only as these names and marks pertain to the KOA Kampground system. FRANCHISEE further agrees not to infringe upon, use or imitate the KOA system except under written agreement from KOA.

3. **FRANCHISEE'S Representations, Duties and Obligations.** FRANCHISEE agrees:

(a) To pay KOA a franchise purchase fee of \$14,000 payable as follows: i) \$7,000 upon the execution of this agreement, ii) an additional \$7,000 upon the date set for commencement of construction of the KOA building and campground as hereafter provided, or in the event that the said building and campground are commenced prior to the aforesaid date, then the said final amount shall be paid on or before the actual commencement date thereof. In the event that KOA does not execute this franchise agreement or if any prospective franchisee withdraws his execution of this agreement by written notice prior to its execution by KOA, any part of the franchise purchase fee previously paid KOA by the prospective franchisee will be refunded. However, in the event this franchise agreement is executed by both parties, none of the franchise purchase fee paid KOA by the FRANCHISEE is refundable. The foregoing \$14,000 payment shall hereafter be referred to as "franchise purchase fee".

(b) To pay KOA a royalty on a weekly basis of 8 percent of total registration receipts. Said royalties are payable commencing with the time at which FRANCHISEE'S KOA Kampground licensed hereunder opens for business. FRANCHISEE shall complete the KOA prescribed registration forms and remit royalties to KOA no later than Monday following the week being reported. For the purpose of this agreement, FRANCHISEE shall be deemed to have commenced business at the time any of the campground campsites are offered for rental and "total registration receipts" shall mean and include all receipts derived from the renting, use or occupancy of campsites and lodging facilities of every kind and nature at the campground, including charges for utility hookups but excluding sales, excise and like taxes which may be required by law to be collected. The foregoing royalty payments shall hereafter be referred to herein as "royalty".

(c) To pay KOA an annual franchise renewal fee of \$300.00, regardless of whether the campground is in operation, on or before next August 31 for the next ensuing year and to pay a like amount on or before August 31 of each year thereafter during the term of this franchise agreement. Said fees shall hereafter be referred to herein as "franchise renewal fees".

(d) To pay promptly when due all charges and amounts covering goods and services furnished FRANCHISEE by or through KOA, including but not limited to merchandise, inventory, goods, fixtures, equipment and like items.

(e) To maintain a high moral and ethical standard and atmosphere at FRANCHISEE'S KOA Kampground; to comply with all local, state and federal laws, ordinances, rules and regulations pertaining thereto; to maintain its

EXHIBIT "3"



premises and accommodations in a clean, safe and orderly manner and to provide efficient, courteous and high quality service to the public.

(f) To use every reasonable means to encourage the use of KOA and the KOA system on a national basis by the traveling public and to use its best efforts towards the promotion of its KOA Kampground.

(g) To commence construction of KOA approved buildings and campground on or before Construction

19\_\_\_\_; to complete such construction on or before Completed, 19\_\_\_\_ and to operate said KOA Kampground and keep the same open during the period of time listed in the current KOA Kampground Directory, but in any event not less than 90 consecutive days during each year. Plans and specifications for the building, facilities and campground (including, but not limited to, landscaping, exterior design, color scheme, building structure, floor plan, decorations and fixtures) must conform to those established by KOA and must be approved in writing by a KOA officer prior to the commencement of the building and campground. If FRANCHISEE does not commence construction by the date required hereunder or having so commenced does not prosecute the same with reasonable diligence and complete the same by the date required hereunder, or if FRANCHISEE does not operate the campground for the minimum period above specified, this franchise agreement and all rights hereunder may at KOA's option be cancelled as provided elsewhere herein.

(h) To provide services and facilities to the public as specified in the KOA Guidelines—Campground Development Manual and the KOA Kampground Operations Manual, to comply with the terms and provisions of the foregoing manuals and to observe the rules, regulations and campground standards established by KOA. Such services and facilities will include clean, quiet premises, drinking water, washbasins, hot showers, flush toilets, fireplaces, picnic tables, adequate lighting, water supply, sanitary dump station, weed and insect control, public phone listed under KOA, an area map showing other KOA locations within two days' travel, a mail and message service, a bulletin board, and information on local activities and tourist attractions; all such services to be without additional charge to the camper. In addition, FRANCHISEE will provide the services of a campground convenience store, coin operated laundry, a reservation system and electrical outlets. KOA reserves the right to revise and amend the foregoing services and facilities requirements, manuals, rules, regulations and campground standards from time to time.

(i) To permit inspection of premises, facilities, records, books and accounts by KOA representatives and to give free accommodations to any such representative when on official duty for such time as may be reasonably necessary.

(j) To assume sole and entire responsibility and indemnify and save harmless KOA from any and all claims, liability, responsibility and damage, or any costs or expenses by reason of any loss of life or injuries to persons or property that may be sustained on or near or in connection with the operation of the above described franchise premises; to indemnify KOA and to save KOA harmless in regard to any and all liability that may be incurred; to indemnify and save harmless KOA as to any liability and costs incurred therein by reason of any mechanic's lien due, or claims from materials furnished or claimed to have been furnished, or labor performed or claimed to have been performed during the term hereof in or about or in connection with the said campground, or any appurtenances thereof, when such materials have been furnished or labor performed at the instance or request of or under contract with FRANCHISEE.

(k) To procure before the commencement of campground construction and maintain in full force and effect during the entire term of this agreement, at FRANCHISEE'S sole cost and expense, an insurance policy or policies protecting the FRANCHISEE and KOA and their respective officers and employees against any loss, liability, or expense whatsoever, from fire, personal injury, death, property damage, or otherwise, arising out of or in connection with the construction, operation, condition, use or occupancy of the campground. KOA shall be named as an additional insured in such policy or policies (workmen's compensation or employer's liability insurance excepted). Such policy or policies shall be written by a responsible insurance company or companies satisfactory to KOA and shall include coverages equal to or exceeding coverages provided under the master insurance program available to KOA franchisees and shall include the following: (i) comprehensive general public liability insurance, including product, contractual and personal injury liability, with limits of not less than a \$1,000,000 combined single limit for personal injury and property damage and (ii) workmen's compensation or employer's liability insurance as provided by FRANCHISEE'S state law. The insurance afforded by the policy or policies respecting such liability shall not be limited in any way by reason of any insurance which may be maintained by KOA. A certified copy of the insurance policy showing compliance with the foregoing requirements will be furnished to KOA before the commencement of campground construction and filed annually thereafter. Such policies shall state that they shall not be cancelled or altered without at least 30 days' prior written notice to KOA. Should FRANCHISEE, for any reason, not procure and maintain the foregoing insurance coverage, KOA shall have the right to immediately procure such coverage and to charge the costs of the same to FRANCHISEE which shall be paid immediately upon notice.

(l) To file with KOA financial statements including a balance sheet and a profit and loss statement within 90 days following the close of FRANCHISEE'S fiscal or calendar year. Said financial statements shall be submitted upon forms prescribed by KOA.

(m) FRANCHISEE shall be eligible for membership in the Kampground Owners Association, the primary purpose of which shall be to consider and discuss common problems relating to the operations of KOA units and to make recommendations to KOA with respect to advertising expenditures and other appropriate matters.

(n) Upon approval of the Kampground Owners Association, all franchisees, whether members of the said association or not, may pay an agreed upon amount for advertising and promotion expenses and for other matters pertaining to the welfare of the KOA franchisees.

(o) To not engage in any other type of business activity on the KOA Kampground without first obtaining approval in writing from a KOA officer.

(p) To display only KOA approved signs and marks.

(q) To not engage, directly or indirectly during the term of this agreement, in the ownership or operation, as a shareholder, through agents, affiliates or otherwise, of any business which is the same or substantially similar to the business covered by this agreement without first obtaining the written consent of KOA. The foregoing shall not preclude the ownership of stock in a company whose shares are traded publicly. If for any reason any court having jurisdiction finds the provisions of this subparagraph unreasonable in duration or geographic scope, such provisions shall be confined to such time and territory as said court determines to be valid.

~~(c) To have at least one person representing FRANCHISEE attend KOA-U prior to the commencement of construction of FRANCHISEE'S campground.~~

(s) To have at least one person representing FRANCHISEE attend KOA-U school of management at least once during the term of his agreement; to make reasonable efforts to participate in educational opportunities that KOA sponsors such as KOA-U, regional conferences, conventions and similar educational activities.

#### 4. KOA's Services to FRANCHISEE. KOA agrees:

(a) To make available to FRANCHISEE upon request all its services including consulting with KOA officials and staff upon problems relating to design, construction and operation of a KOA Kampground so that FRANCHISEE will have available to him the experience and knowledge of KOA and other franchisees relating to such problems.

~~(b) To provide KOA-U, a campground development school. KOA agrees to pay round trip tourist class transportation for one person to attend KOA-U and to provide meals, lodging and surface transportation for one person.~~



with respect to prices of equipment and supplies.

(e) To make an annual distribution of the KOA Kampground Directory.

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(f) To work with campground equipment manufacturers, suppliers, and other interested organizations in order to encourage camping in general and utilization of KOA facilities in particular.

(g) To lease to FRANCHISEE a suitable, standard KOA sign for use at the entrance to FRANCHISEE'S KOA Kampground and such suitable, standard-designed, distinctive highway KOA signs as are specified by KOA, the rental for said signs to be covered by the payment of the franchise purchase fee. At the termination of this agreement for any cause, the FRANCHISEE agrees to deliver the foregoing signs to KOA in the same condition as when received, reasonable wear and tear excepted. In the event of such termination and the refusal of FRANCHISEE to deliver the said signs to KOA, KOA shall have the right to enter the FRANCHISEE'S premises and to take possession of the signs.

5. **Kampground Directory Listings.** While KOA takes every precaution to make certain that the KOA Kampground Directory contains correct listings of all campgrounds, yet it is recognized by the parties hereto that because of the possibilities for error and omission, KOA should not be held liable for such. Accordingly, FRANCHISEE hereby releases KOA and saves it harmless of and from any and all claims, liabilities, responsibilities and damages arising out of any error or omission in the said directory. In the event that FRANCHISEE shall violate any term, provision, covenant, condition or agreement contained in this franchise agreement, KOA, at its option, shall have the right and privilege to omit FRANCHISEE'S listing from the next published directory.

6. **Term.** This franchise agreement shall be in effect for a term of five years commencing with the effective date hereof, subject, however, to FRANCHISEE'S right to terminate this agreement upon 90 days' notice in writing delivered to KOA between January 1 and March 1 of any year. In the event that FRANCHISEE shall terminate this agreement as aforesaid, FRANCHISEE will promptly pay all amounts due and owing KOA hereunder.

7. **Renewal.** If FRANCHISEE shall keep and perform all of the covenants and agreements herein contained to be kept and performed during the term of this agreement, FRANCHISEE shall have the privilege and option of renewing this franchise for the same term and upon the same conditions and terms prevailing between KOA and other Franchisees under franchise agreements being entered into at the time of the commencement of the additional term. If FRANCHISEE shall desire to exercise the option for the renewal of the term as above specified, it shall give KOA written notice thereof not less than 90 days before the end of the term of this agreement. In the event this franchise agreement is renewed, KOA and FRANCHISEE shall enter into a new franchise agreement upon the then current standard form being offered by KOA to new franchisees with the annual franchise renewal fees and royalty provisions stated in such form but the requirement for the franchise purchase fee or its equivalent shall be waived by KOA.

8. **Termination.** If any one or more of the following violations or defaults shall continue for a period of 30 days following written notice from KOA to FRANCHISEE of such violation or default, then KOA shall have the right to terminate and cancel this agreement:

(a) FRANCHISEE shall violate any term, provision, covenant, condition or agreement herein contained, including but not limited to FRANCHISEE'S failure to make payment to KOA of the franchise purchase fee, franchise renewal fee, royalty or any other charge, or FRANCHISEE'S failure to commence and complete the construction of the building and campground within the time provided above, or FRANCHISEE'S failure to comply with the services and facilities requirements, manuals, rules, regulations and campground standards established by KOA; or

(b) FRANCHISEE shall fail to make payments to KOA of any other charge or amount owed KOA, including but not limited to payments covering merchandise, inventory, goods, fixtures, equipment and like items.

In any such event, KOA at its option, may deliver to FRANCHISEE a notice of termination and this agreement shall thereupon be terminated and FRANCHISEE shall be liable in damages to KOA for any and all amounts due on the effective date of such termination. In the event of termination or cancellation of this agreement as aforesaid, or for any other cause or reason whatsoever, all sums of money previously paid KOA by FRANCHISEE hereunder shall be retained by and shall remain the property of KOA for services rendered by KOA and for value received by FRANCHISEE, and as liquidated damages and not as a penalty.

9. **Obligations Upon Termination.** In the event of termination of this franchise agreement for any reason or cause whatsoever, all rights of FRANCHISEE hereunder shall thereupon terminate and FRANCHISEE shall immediately thereafter cease to use, by advertising or otherwise, directly or indirectly, the said KOA system or any parts thereof, and without limiting the generality of the foregoing, FRANCHISEE shall cease to use and shall withdraw from use all signs, both exterior and interior, furnishings, advertising matter, or any other articles which display the names "Kampgrounds of America, Inc.", "KOA", "AOK", or any combination thereof, the trade names, trademarks, services marks, certification marks, copyrights, designs, slogans, names and matters used or identified with the KOA system or similar thereto or suggestive thereof. FRANCHISEE further agrees, upon any termination of this agreement, to cease and refrain from holding itself out to the public in any way as a member of the KOA system or as a franchisee or operator of a KOA Kampground and to distinguish FRANCHISEE'S campgrounds thereafter so clearly from those of KOA and from those within the KOA system so as to avoid all possibility of any confusion by the public. All manuals, bulletins, instruction sheets, forms, plans, advertising material or other material relating to the KOA system shall be returned to KOA by FRANCHISEE. KOA shall be entitled to injunctive and equitable relief for any violation of the terms and conditions of this paragraph or any and all relief that a court of competent jurisdiction shall see fit to render for a violation thereof.

10. **Right to Purchase.** If FRANCHISEE desires to sell the campground made the subject of this agreement, including the land and all appurtenances and buildings thereon, or any interest or portion thereof, and receives an acceptable bona fide offer for the purchase of the same, KOA shall have and is hereby granted an option to purchase the property included in the prospective sale upon the same terms and conditions as such bona fide offer. Immediately upon receipt of such offer, FRANCHISEE will give KOA written notice of all of the terms and conditions thereof, after which KOA shall have 30 days from receipt of said notice within which to exercise its option in writing. If KOA exercises the option, the property involved shall be sold to KOA by FRANCHISEE upon the same terms and conditions as the bona fide offer. In the event that FRANCHISEE is a corporation, the terms and conditions of sale contained in this paragraph shall apply to the sale or transfer of its shares or any part thereof.

11. **ASSIGNMENT.** FRANCHISEE shall not sell, assign, transfer, pledge, mortgage, or in any way encumber this agreement or any right or interest of FRANCHISEE thereunder without the prior written consent of KOA (which consent shall not be unreasonably withheld) nor shall FRANCHISEE suffer or permit any assignment, transfer, or encumbrance by judicial process or operation of law. In the event FRANCHISEE is a corporation the transfer or pledge of any of FRANCHISEE'S shares shall be construed to be an assignment for the purpose of this provision. In the event KOA consents to any sale, assignment or transfer as provided herein, FRANCHISEE will pay KOA a transfer fee of \$2,000, to cover KOA's costs and expenses incurred in connection with the said sale, assignment or transfer. Upon the payment of the foregoing transfer fee, KOA and the assignee will enter into a new franchise agreement upon the then current standard form being offered by KOA to new franchisees. If FRANCHISEE is an individual, he may assign this agreement within one year after its effective date to a corporation without the consent of KOA or the payment of the foregoing transfer fee, provided, however, that FRANCHISEE remains the legal and beneficial owner of at least 66-2/3rds percent of all of the voting stock of such corporation during the entire term of this agreement; this provision, however, will not be applicable to any franchise agreement entered into as a result of FRANCHISEE'S renewing an earlier franchise agreement.



12. Relationship of Parties. The relationship existing between KOA and FRANCHISEE under the terms of this agreement shall not be deemed to create, nor will any operations performed by any of the parties hereto under this agreement constitute a joint endeavor, adventure, undertaking, association, partnership, or principal and agent relationship of any kind. Nothing herein contained shall be deemed to impose upon any party to this franchise agreement any responsibility for the obligations herein assumed by the other party to this agreement.

13. Name of Kampground. FRANCHISEE shall not adopt or use any name for its KOA Kampground without first obtaining the written consent of KOA to the use of the desired name.

14. Remedies Not Exclusive. In the event of a breach by any party hereto of a provision hereof or in the event of any default as defined herein, the party aggrieved thereby shall have all the rights and privileges accorded it by law or otherwise. No remedy herein conferred upon or reserved to any of the parties herein is exclusive of any other remedy or remedies, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

15. Waivers. No delay, waiver, omission or forbearance on the part of KOA to exercise any right, option, duty or power arising out of any breach or default by FRANCHISEE, or by any other franchisee, of any of the terms, provisions or covenants contained herein, shall constitute a waiver by KOA thereof to enforce any such right, option or power as against FRANCHISEE, or as to subsequent breach or default by FRANCHISEE.

16. Partial Invalidity. Any provision of this agreement prohibited by law or by court decree in any locality or state shall be ineffective to the extent of such prohibition without in any way invalidating or affecting the remaining provisions of this agreement, or without invalidating or affecting the provisions of this agreement within states and localities where not prohibited by law or court decree.

17. Performance, Interpretations and Forum. It is stipulated that this agreement has been negotiated, executed and delivered within the State of Montana and is to be performed at Billings, Yellowstone County, Montana. This agreement shall be construed and interpreted and the rights and obligations of the parties hereunder governed in accordance with the laws of Montana.

18. Construction. All terms and words used in this franchise agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter; as the context or sense of this agreement or any paragraph or clause herein may require, as if such words had been fully and properly written in the appropriate number and gender. If FRANCHISEE consists of two or more individuals, corporations, associations or other entities, such individuals, corporations, associations or entities shall be jointly and severally liable hereunder.

19. Notices. Any notices or demands required hereunder shall be in writing and shall be delivered in person or sent by United States certified or registered mail to the addresses hereinabove set out. The address of either KOA or FRANCHISEE set forth above may be changed from time to time by giving written notice in that regard. Notice by mail shall be deemed to have been served when posted in the United States Post Office, postage prepaid.

20. Headings. The headings as to the contents of particular paragraphs herein are inserted only for convenience and are in no way to be construed as part of this agreement or as a limitation on the scope of the particular paragraphs to which they refer.

21. Representations by KOA. No agent or representative of KOA has authority to make any representations, statements, warranties, or agreements not herein expressed, including but not limited to development costs, the availability of financing, and the costs and availability of land within the franchise territory, it being understood that decisions as to these matters are the sole responsibility of FRANCHISEE. KOA assumes no responsibility for obtaining FRANCHISEE'S financing for the construction and development of the KOA Kampground licensed hereunder.

22. Miscellaneous. Time is of the essence of this agreement. This agreement contains the full and entire agreement between the parties hereto and there are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written between the parties hereto other than those set forth and duly executed in writing. No agreement of any kind shall be binding upon either party unless and until the same has been made in writing and duly executed by both parties.

23. Validity and Payments. This franchise agreement is not valid until signed by the FRANCHISEE and by an authorized officer of KOA. All payments required hereunder must be made payable to Kampgrounds of America, Inc.

24. Binding Effect. This franchise agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and authorized assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this franchise agreement at Billings, Montana.  
After Recording, Return To: D.L. Hoots, AHy; 2261 So. 6th - Suite 2  
City, 97601.

Tax Smts: JEAN W REED : 3435 SHASTA WAY  
MARY A. REED : KLAMATH FALLS, ORE 97601

FRANCHISEE

(Sign)

1/ Jean W. Reed  
1/ Mary A. Reed

Date executed by FRANCHISEE

June 4, 1976

KAMPGROUNDS OF AMERICA, INC.

By John Costello  
President - Vice President - Secretary-Treasurer

Date executed by KOA and effective date of

franchise agreement June 11, 1976

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 11th day of  
JUNE A.D., 1976 at 3:10 o'clock P.M., and duly recorded in Vol. M 76  
of DEEDS on Page 8701.

FEE \$ 69.00

WM. D. MILNE, County Clerk

By Hazel Drazil Deputy