

Agreement in all respects;

14.2.9 That the transferee, at its expense, refurbish the Premises to conform to Franchisor's then-current standards and specifications and complete the refurbishing and other requirements within the time specified by Franchisor;

14.2.10 That Franchisee remain liable for all of the obligations to Franchisor in connection with the Franchised Business which arose prior to the effective date of the Transfer and execute any and all instruments reasonably requested by Franchisor to evidence such liability;

14.2.11 That the transferee (or, if the transferee is a corporation or partnership, a principal of the transferee acceptable to Franchisor) and the transferee's manager (if transferee or transferee's principal will not manage the Franchised Business), at the transferee's expense, complete any training programs then in effect for franchisees and managers upon such terms and conditions as Franchisor may reasonably require;

14.2.12 Upon sale or other alienation of the franchise by Franchisee, the Franchisee will be required to pay a non-refundable transfer fee equal to the greater of Five Thousand Dollars (\$5,000.00) or ten percent (10%) of the sales price, or total consideration, monetary and/or non-monetary, but not to exceed the then current Initial Franchise Fee (currently \$12,500.00). Upon sale or other alienation of the franchise by Franchisee to another franchisee, the Franchisee will be required to pay a non-refundable transfer fee equal to ten percent (10%) of the sales price, or total consideration, monetary or non-monetary, but not to exceed the current Initial Franchise Fee (currently \$12,500.00). The transfer fee is for the training, supervision, administrative costs, overhead, counsel fees, accounting and other Franchisor expenses in connection with the transfer. Such fee shall be due at the time of Transfer. However, in the case of a Transfer to a corporation formed by Franchisee for the convenience of ownership, no such Transfer fee shall be required, if Franchisee owns 51% of the equity interests in such corporation.

14.3 If any party holding any direct or indirect interest in this Agreement, in Franchisee or in all or substantially all of the assets of the Franchised Business proposes to Transfer any interest in this Agreement, Franchisee or all or substantially all of the assets of the Franchised Business, the Transfer of which would have the effect of

transferring such interest or assets, by accepting any bona fide offer from a third party to purchase such interest and/or assets, such party shall notify Franchisor in writing of each such offer, and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of such written notification, to send written notice to the transferor that Franchisor intends to purchase the transferor's interest or the assets on the same terms and conditions offered by the third party. If Franchisor elects to purchase the transferor's interest or assets, closing on such purchase must occur within thirty (30) days from the date of the notice to the transferor of the election to purchase by Franchisor. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of an initial offer. Failure of Franchisor to exercise the option afforded by this Section shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Agreement with respect to a proposed Transfer. If the consideration, terms and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms and/or condition, then Franchisor may purchase the interest or assets proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the cash consideration, an independent appraiser shall be designated by Franchisor, and the determination of such appraiser shall be binding.

14.4 Upon the death or mental incapacity of any person with an interest in the Franchised Business, the Transfer of which would have the effect of transferring control of Franchisee, the executor, administrator or personal representative of such person shall transfer, within six (6) months after such death or mental incapacity, such interest to a third party approved by Franchisor. Such Transfers, including, without limitation, Transfers by devise or inheritance, shall be subject to the same conditions as any intervivos Transfer. However, in the case of Transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Section 14, the personal representative of the deceased shall have a reasonable time to dispose of the deceased's interest, which disposition shall be subject to all the terms and conditions for Transfers contained in this Agreement. If the interest is not disposed of within a reasonable time, not to exceed six months, Franchisor may terminate this Agreement.

14.5 Franchisor's consent to a Transfer of any interest in this Agreement, in Franchisee or in all or substantially all of the assets of the Franchised Business shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

14.6 All materials required for any offering of securities of Franchisee by federal or state law shall be submitted to Franchisor by the offeror for review prior to filing with any government agency; and any materials to be used in any exempt offering shall be submitted to Franchisor for review prior to their use. No offering shall imply, by use of the Proprietary Marks or otherwise, that Franchisor is participating in an underwriting, issuance or offering of any of its Proprietary Marks or other property; that Franchisor is participating in an underwriting, issuance or offering of securities of either Franchisee or Franchisor; and Franchisor's review of any offering shall be limited solely to the subject of the relationship between Franchisee and Franchisor. Franchisee and the other participants in the offering must fully indemnify Franchisor in connection with the offering. For each proposed offering, Franchisee shall pay to Franchisor a non-refundable fee of Five Thousand Dollars (\$5,000.00) or such greater amount as may be necessary to reimburse Franchisor for its out-of-pocket costs and in connection with reviewing the proposed offering for its other reasonable costs expenses and materials, including, without limitation, legal and accounting fees. Franchisee shall give Franchisor written notice at least thirty (30) days prior to the date of commencement of any offering, filing or other transaction covered by this Section. Any such offering shall be subject to Franchisor's prior written consent and right of first refusal as provided herein.

14.7 If Franchisee is a corporation or partnership, Franchisee shall require each shareholder or partner (as the case may be) holding an interest in Franchisee to execute and deliver to Franchisor a covenant by which such person or entity agrees not to transfer any interest in Franchisee except in accordance with the terms and conditions of this Agreement. The organization documents of any Franchisee entity shall recite that they are subject to all restrictions contained in this Agreement. Franchisor shall also have the right to require, as a condition of any assignment of this Agreement that the owners enter into a Buy-Sell Agreement among themselves in a form and containing such terms as Franchisor prescribes for transfer of ownership in such

entity.

14.8 Franchisee shall provide Franchisor with copies of all documents to be executed prior to any transfer of assignment of interest in this Agreement or Franchisee's entity. Franchisor shall use its reasonable efforts to approve or disapprove these within thirty (30) days of receipt.

14.9 If, for any reason, this Agreement is not terminated pursuant to Section 15 and it is contemplated that this Agreement will be assumed by or assigned to a person or entity who has made a bona fide offer to accept an assignment or assumption of this Agreement, pursuant to the U.S. Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment or assumption, shall be given to Franchisor within twenty (20) days after receipt of such proposed assignee's offer to accept assignment or assumption of this Agreement, and, in any event, within ten (10) days prior to the date that the application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Franchisor shall have the right and option, exercisable within 30 days after receipt of such notice, to accept an assignment of this Agreement to Franchisor itself, upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the proposed assignee, less any brokerage commissions which may be payable by Franchisee out of the consideration to be paid by such assignee for the assignment of this Agreement.

## 15. DEFAULT AND TERMINATION

15.1 Franchisee shall be deemed to be in default under this Agreement, and all rights granted to Franchisee herein shall automatically terminate without notice to Franchisee, if Franchisee shall become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee; if Franchisee is adjudicated bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or

federal law should be instituted by or against Franchisee; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless a bond is filed); if Franchisee is dissolved; if execution is levied against Franchisee's business or property; if suit to foreclose any lien or mortgage against the Premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of the Franchised Business shall be sold after levy thereupon by any sheriff, marshall, constable, or the like.

15.2 Upon the occurrence of any of the following events of default, Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon the provision of notice to Franchisee:

15.2.1 If Franchisee fails to locate an approved site or to construct and open the Franchised Business within the time limits provided in the Site Selection Addendum or Section 5.3 of this Agreement;

15.2.2 If Franchisee and/or Franchisee's manager fails to satisfactorily complete the initial training program described in Section 6.1 hereof to Franchisor's satisfaction;

15.2.3 If Franchisee at any time ceases to operate or otherwise abandons the Franchised Business, or loses the right to possession of the Premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Business is located; provided, however, that if, through no fault of Franchisee, the Premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within ninety (90) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate or reconstruct the Premises, which approval shall not be unreasonably withheld;

15.2.4 If Franchisee or any principal or officer of Franchisee is convicted of a felony, a crime involving moral turpitude or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith or Franchisor's interest therein;

15.2.5 If any purported assignment or Transfer of any direct or indirect interest in this Agreement, in Franchisee or in all or substantially all of the assets of the Franchised Business is made to any third party without Franchisor's prior

written consent, contrary to the terms of Section 14 hereof;

15.2.6 If an approved Transfer is not effected within the time provided following death or mental incapacity, as required by Section 14 herein;

15.2.7 If Franchisee fails to comply with the covenants hereof or fails to obtain execution of the covenants required herein;

15.2.8 If, contrary to any covenant contained within this Agreement, Franchisee discloses or divulges or uses the contents of the manual or other confidential information provided to Franchisee by Franchisor;

15.2.9 If Franchisee knowingly maintains false books or records, or submits any false reports (including, without limitation, the application for this franchise) to Franchisor;

15.2.10 If Franchisee misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristics of the System, or otherwise materially impairs the goodwill associated therewith or Franchisor's rights therein;

15.2.11 If Franchisee refuses to permit Franchisor to inspect the Premises, or the books, records or accounts of Franchisee in accordance with this Agreement;

15.2.12 If Franchisee, upon receiving a notice of default, fails to initiate immediately a remedy to cure such default; or

15.2.13 If Franchisee, after curing a default, commits the same default again within a two-year period, whether or not cured after notice.

15.3 Except as otherwise provided in Sections 15.1 and 15.2 of this Agreement, upon any other default of this Agreement by Franchisee, Franchisor may terminate this Agreement by giving written Notice of termination stating the nature of the default to Franchisee at least thirty (30) days prior to the effective termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction and by promptly providing proof thereof to Franchisor within the thirty (30) day period. If any such default is not cured within the specified

time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require. Defaults which are susceptible of cure hereunder include the following illustrative events:

15.3.1 If Franchisee fails to comply with any of the requirements imposed by this Agreement;

15.3.2 If Franchisee fails, refuses or neglects promptly to pay any monies owing to Franchisor or its affiliates when due, or to submit the financial or other information required by Franchisor under the Agreement or any franchising agreement between Franchisor and Franchisee;

15.3.3 If Franchisee fails to maintain or observe any of the standards or procedures prescribed by Franchisor in this Agreement, the Manual or otherwise in writing;

15.3.4 Except as provided in Section 15.2 hereof, if Franchisee fails, refuses or neglects to obtain Franchisor's prior written approval or consent as required by this Agreement;

15.3.5 If Franchisee acts, or fails to act, in any manner which is inconsistent with or contrary to its lease or sublease for the Premises, or in any way jeopardizes its right to renewal of such lease or sublease; or

15.3.6 If Franchisee engages in any business or markets any service product under a name or mark which, in Franchisor's opinion, is confusingly similar to the Proprietary Marks;

15.3.7 If a threat or danger to public health or safety results from the construction, maintenance or operation of the Franchised Business.

## 16. OBLIGATIONS UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, all rights granted hereunder to Franchisee shall forthwith terminate, and:

16.1 Franchisee shall immediately cease to operate the Franchised Business, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a

present or former franchisee of Franchisor.

16.2 Franchisee shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the Proprietary Mark DIPPIN' DOTS® and all other Proprietary Marks and distinctive forms, slogans, signs, symbols and devices associated with the System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, products and any other articles which display the Proprietary Marks.

16.3 Franchisee shall take such action as may be necessary to cancel any assumed name registration or equivalent registration obtained by Franchisee which contains the mark DIPPIN DOTS® or any other Proprietary Marks, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after termination or expiration of this Agreement.

16.4 Franchisee shall, at Franchisor's option, assign to Franchisor any interest which Franchisee has in any lease or sublease for the Premises. If Franchisor does not elect or is for whatever reason unable to exercise its option to acquire the lease or sublease for the Premises, Franchisee shall make such modifications or alterations to the Premises immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of the Premises from that of franchised businesses operating under the System, and Franchisee shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose. If Franchisee fails or refuses to comply with the requirements of this Section, Franchisor shall have the right to enter upon the Premises, without being guilty of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

16.5 Franchisee agrees, if it continues to operate or subsequently begins to operate any other business, not to use any reproduction, copy or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which, in Franchisor's sole discretion, is likely to cause confusion, mistake or deception, or which is likely to dilute Franchisor's rights in and to the Proprietary Marks. Franchisee further agrees not to utilize any designation or origin, description or representation (including but not limited to reference to Franchisor, the System, or the Proprietary Marks) which, in Franchisor's sole discretion, suggests or represents a present or former association or



connection with Franchisor, the System or the Proprietary Marks.

16.6 Franchisee shall promptly pay all sums owing to Franchisor and its affiliates. In the event of termination for any default of Franchisee, such sums shall include all damages, costs and expenses, including reasonable attorney's fees, incurred by Franchisor as a result of the default, which obligation shall give rise to and remain, until paid-in-full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures and inventory owned by Franchisee and on the Premises operated hereunder at the time of default.

16.7 Franchisee shall immediately deliver to Franchisor the Manual and all other records, correspondence and instructions containing confidential information relating to the operation of the Franchised Business, all of which are acknowledged to be the property of Franchisor.

16.8 Franchisor shall have the option, to be exercised within thirty (30) days after termination, to purchase from Franchisee any or all of the furnishings, equipment, signs and fixtures related to the operation of the Franchised Business at fair market value and to purchase any or all supplies and inventory of the Franchised Business at Franchisee's cost. If the parties cannot agree on the price of any such items within a reasonable time, an independent appraisal shall be conducted, at Franchisor's sole discretion, and the appraiser's determination shall be binding. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set off all amounts due from Franchisee, and the cost of the appraisal, if any, against any payment thereof.

16.9 Franchisee shall assign to Franchisor any interest which Franchisee may have in and to the telephone number(s) of the Franchised Business, and Franchisee must immediately cease use of said telephone number(s).

16.10 Franchisee shall comply with the covenants contained in Section 17.3 of this Agreement.

## 17. COVENANTS

17.1 Franchisee covenants that, during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (or, if Franchisee is a corporation or partnership, a principal or general partner of Franchisee) or Franchisee's

fully-trained manager shall devote full time and best efforts to the management and operation of the Franchised Business.

17.2 Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable, specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional and marketing methods and techniques of Franchisor and the System. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of or in conjunction with any person or legal entity:

17.2.1 Divert or attempt to divert any present or prospective business or customer of any Franchised Business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks or the System; or

17.2.2 Employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment.

17.3 Franchisee covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, during the Term of the Franchise Agreement and for a continuous uninterrupted period of two (2) years commencing upon the date of: (a) a Transfer permitted under Section 14 of this Agreement; (b) expiration of this Agreement; (c) termination of this Agreement (regardless of the cause for termination); (d) a final order of a duly authorized arbitration, panel or arbitrators for a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to enforcement of this Section 17.3; or (e) any or all of the foregoing; either directly or indirectly, for itself, or through, on behalf of or in conjunction with any person or legal entity, own, maintain, operate, engage in, be employed by, provide assistance to or have any interest in (as owner or otherwise) any business that: (x) features the sale of ice cream, yogurt or frozen flavored water; and (y) is, or is intended to be, located at or within a six (6) mile radius of the Approved Location or of any other franchised business then-operating under the System.

17.4 Sections 17.2.2 and 17.3 shall not apply to ownership by Franchisee of a less than five (5%) percent

ownership in a corporation which has securities registered under the Securities Exchange Act of 1934.

17.5 Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 17. Franchisee agrees to pay all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 17, or any other provision of this Franchise Agreement.

17.6 At Franchisor's request, Franchisee shall obtain and furnish to Franchisor executed covenants similar in substance to those set forth in Section 10 and this Section 17 (including covenants applicable upon the termination of a person's relationship with Franchisee and the provisions of Section 16 of this Agreement as modified to apply to an individual) from any or all of the following person: (a) all managers of Franchisee and any other personnel employed by Franchisee who have received or will receive training from Franchisor; (b) all officers, directors and holders of a beneficial interest of five percent (5%) or more of the securities of Franchisee and of any corporation directly or indirectly controlling, controlled by or under common control with Franchisee, if Franchisee is a corporation; and (c) the general partners and any limited partners (including any corporation, and the officers, directors and holders of a beneficial interest of one percent (1%) or more of the securities of any corporation which controls, directly or indirectly, any general or limited partner), if Franchisee is a partnership. Every covenant required by this Section shall be in a form approved by Franchisor, including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

## 18. CORPORATE OR PARTNERSHIP FRANCHISEE

18.1 If Franchisee is a corporation, Franchisee shall comply with the following requirements:

18.1.1 Franchisee shall be duly organized and its charter shall at all times provide that its activities are confined exclusively to operating the Franchised Business or such other businesses as have been fully described and approved in writing by Franchisor.

18.1.2 Franchisee shall maintain a current list of all owners of record and all beneficial owners of any class of voting securities or securities convertible into voting securities of Franchisee and shall furnish the list to Franchisor upon request.

18.1.3 Franchisee shall maintain stop-Transfer instructions against the Transfer on its records of any equity securities, and each stock certificate of Franchisee shall have conspicuously endorsed upon its face a statement in a form satisfactory to Franchisor that is held subject to, and that further assignment or Transfer thereof is subject to, all restrictions imposed upon assignments and other Transfers by this Agreement; provided, however, that the requirements of this Section 18.1.3 shall not apply to a publicly-held corporation.

18.2 If Franchisee or any successor to or assignee of Franchisee is a partnership, it shall comply with the following requirements:

18.2.1 Franchisee shall furnish Franchisor with a copy of its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto.

18.2.2 Franchisee shall prepare and furnish to Franchisor, upon request, a list of all general and limited partners in Franchisee.

## 19. TAXES, PERMITS AND INDEBTEDNESS

19.1 Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the operation of the Franchised Business. Franchisee shall pay to Franchisor an amount equal to any sales tax, gross receipts tax or similar tax (other than income tax) imposed on Franchisor with respect to any payments to Franchisor required under this Agreement, unless the tax is credited against income tax otherwise payable by Franchisor.

19.2 In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event shall Franchisee permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the

Premises, or any improvements thereon.

19.3 Franchisee shall comply with all federal, state and local laws, rules and regulations, and shall timely obtain any and all permits, certificates or licenses necessary for the full and proper conduct of the Franchised Business, including, without limitation, licenses to do business, fictitious name registrations, sales tax permits and fire clearances.

19.4 Franchisee shall immediately notify Franchisor in writing of the commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation or financial condition of the Franchised Business or Franchisee.

## 20. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

20.1 It is understood and agreed by the parties that this Agreement does not create a fiduciary relationship, that Franchisee shall be an independent contractor and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of the other for any purpose whatsoever.

20.2 During the term of this Agreement, Franchisee shall hold itself out to the public as an independent contractor operating the Franchised Business pursuant to a franchise agreement from Franchisor. Franchisee agrees to take such action as may be necessary to do so, including, without limitation exhibiting a notice of that fact in a conspicuous place at the Premises, the content of which Franchisor reserves the right to specify.

20.3 Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and Franchisor shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Franchisor be liable by reason of any act or omission of Franchisee in its operation of the business franchised hereunder or for any claim or judgment arising therefrom against Franchisee or Franchisor. Franchisee shall indemnify and hold Franchisor, and Franchisor's officers, directors and employees harmless against any claims, losses, costs, expenses, liabilities and damages arising directly or indirectly from, as a result of or in connection with

Franchisee's operation of the Franchised Business, as well as the costs, including, without limitation, attorneys' fees, of the indemnified party in defending against them.

21. APPROVALS AND WAIVERS

21.1 Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefore, and such approval or consent must be obtained in writing.

21.2 Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefore.

21.3 No failure of Franchisor to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms thereof. Waiver by Franchisor of any particular default of Franchisee shall not affect or impair Franchisor's rights with respect to any subsequent default of the same, similar or different nature; nor shall any delay, forbearance or omission of Franchisor to exercise any power or right arising out of any breach of default by Franchisee of any of the terms, provisions or covenants hereof, affect or impair Franchisor's right to execute the same; nor shall such constitute a waiver by Franchisor of any right hereunder, or of the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

22. NOTICES

Any and all notices that are required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified mail or sent by other means which affords the sender evidence of delivery or rejected delivery, to the respective parties at the addresses designated on the signature page of this Agreement, unless and until a different

address has been designated by written notice to the other party. Any notice by means which affords the sender evidence of delivery or rejected delivery shall be deemed to have been given and or rejected delivery shall be deemed to have been given and received at the date and time of receipt or rejected delivery.

23. ENTIRE AGREEMENT

23.1 This Agreement, the attachments hereto and the documents referred to herein constitute the entire Agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersedes any prior agreements (whether oral or written), and no other representations have induced Franchisee to execute this Agreement. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

23.2 This Agreement supersedes all prior agreements, promises, arrangements or obligations by and between Franchisee and Franchisor.

24. SEVERABILITY AND CONSTRUCTION

24.1 If, for any reason, any section, part, term, provision and/or covenant herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, provisions and/or covenants of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, provisions and/ or covenants shall be deemed to be a part of this Agreement.

24.2 Any provision or covenant in this Agreement which expressly or by its nature imposes obligations beyond the expiration, termination or assignment of this Agreement (regardless of cause for termination) shall survive such expiration, termination or assignment.

24.3 Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than

Franchisee, Franchisor, Franchisor's officer, directors, shareholders, agents and employees, any rights or remedies under or by reason of this Agreement.

24.4 Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed 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 any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed 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 or agency order.

25. APPLICABLE LAW

25.1 This Agreement shall be interpreted and construed exclusively under the laws of the Commonwealth of Kentucky. In the event of any conflict of law, the laws of Kentucky shall prevail without regard to the application of Kentucky conflict-of-law rules; except that all issues relating to arbitrability or the enforcement of the agreement to arbitrate herein contained shall be governed by the U.S. Arbitration Act, 9 U.S.C. 1, et seq., and the federal common law of arbitration.

25.2 Except as otherwise provided in this Agreement, such as the arbitration described below, any claim or controversy arising out of or related to this Agreement, or the making, performance, breach, interpretation, or termination thereof, except for any actions brought with respect to i) issues concerning the alleged violations of any applicable trade or franchise regulation law; ii) the right to indemnification or the manner in which it is exercised; iii) the Proprietary Marks or other intellectual property of Franchisor; or iv) for any actions of collection of an uncontested balance due from Franchisee, shall first be subject to one (1) day of non-binding meaningful mediation in Paducah, Kentucky. Any claim brought under any provision of this Agreement, whether Mediation, Arbitration, or litigation, by Franchisee, shall be brought within two (2) years of the claim arising.

25.2.1 No litigation shall be commenced on any claim which is the subject to mediation under section 25.2 above, except those excluded in that Section, prior to the Mediation Termination Date, as defined in subsection 25.2.4 below, whether



or not the mediation has been commenced. Mediation is not intended to alter or suspend the rights or obligations of the parties under this Agreement or to determine the validity or effect of any provision of this Agreement, but is intended to furnish the parties an opportunity to resolve disputes amicably, expeditiously, and in a cost-effective manner on mutually acceptable terms.

25.2.2 Either party desiring mediation shall commence mediation by contacting the other party at the address contained herein. The request shall specify with reasonable particularity the matters for which mediation is sought and propose a date for the mediation, which shall be at least ten (10) business days after notice is given to the other party.

25.2.3 Mediation shall be conducted by a mediator or mediation program designated by the Franchisor in writing. The Franchisor shall identify a mediator and a street address for the mediation. The party receiving the request for mediation shall respond to the notice within five (5) business days.

25.2.4 Mediation shall be concluded within thirty (30) days of the issuance of the request, or such longer period as may be agreed upon by the parties in writing ("Mediation Termination Date"). All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatsoever. The parties shall bear their own costs of mediation, and shall share equally in the cost of the mediator and/or mediation service.

25.3 If any dispute, claim or controversy should arise out of, or related to, this Agreement, or the offer, making, breach, performance or interpretation thereof, the parties will attempt to settle such dispute or controversy by mutual agreement; however, if a settlement cannot be concluded, then any such dispute or controversy shall be finally settled by arbitration in accordance with the terms hereof, pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA").

25.3.1 Such arbitration shall be initiated by either Party by serving upon the other notice at the address contained herein. The request shall specify with reasonable particularity the matters for which arbitration is sought and propose a date for the arbitration, which shall be at least ten (10) business days after notice is given to the other party. Arbitration shall

be by one arbitrator appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). All arbitration proceedings shall take place in Paducah, Kentucky and the laws applicable to the arbitration procedure shall be the laws of the Commonwealth of Kentucky.

25.3.2 The award of the arbitrator shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrator; shall be made and shall promptly be payable free of any tax, deduction or offset; and any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement.

25.3.3 Judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award or an order of enforcement. Any right to either party to judicial action on any matter subject to arbitration hereunder is waived, except for suit to enforce the arbitration award. No claim submitted to arbitration is heard by a jury and no claim may be brought as a class action or as a private attorney general. You do not have the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. This Arbitration section applies to all claims not in existence or that may arise in the future. This Arbitration section shall survive the termination of your Franchise Agreement as well as any voluntary payment of the debt in full by you, any bankruptcy by you or sale of the debt by us.

25.3.4 In proceeding with the arbitration provided for herein, and in making determinations thereunder, the arbitrator shall not extend, modify or suspend any of the terms of the Agreement or the reasonable standards of business performance and operations established by the Franchisor in good faith. A notice or request or demand for arbitration will not operate to stay, postpone, or rescind the effectiveness of any termination.

25.4 Franchisor and Franchisee irrevocably waive trial by jury in any action, proceeding or counterclaim, whether at law or in equity, brought by either of them against the other, or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and Franchisor or of

Franchisee's operation of the Franchised Business, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the fact giving rise to such claim or action, or such claim or action shall be barred.

25.5 Nothing herein contained (including, without limitation, to Section 25.2 above regarding mediation and 25.3 regarding arbitration) shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damage, under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders and preliminary injunctions.

25.6 Franchisee shall pay to Franchisor all damages, costs and expenses, including all court costs, arbitration costs and reasonable attorney's fees, incurred by Franchisor in successfully enforcing any provision of this Agreement, including, but not limited to the obtaining of injunctive relief.

25.7 In the event of any dispute between the parties to this Agreement, the parties agree that neither party shall seek nor be liable to the other party for punitive damages.

25.8 With respect to class action suits, both parties agree that they will not participate in any class action against the other party.

## 26. ACKNOWLEDGEMENTS

26.1 Franchisee acknowledges that Franchisee has conducted an independent investigation of the business franchised hereunder, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon the ability of Franchisee (or, if Franchisee is a corporation or partnership, the ability of its principals) as an independent businessperson. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

26.2 Franchisee acknowledges that Franchisee received a complete copy of this Agreement, the attachments hereto and agreements relating thereto, if any, at least ten (10) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that Franchisee received the disclosure document, the Uniform Franchise Offering Circular (the

"UFOC"), required by the Trade Regulation Rule of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" at least ten (10) business days prior to the date on which this Agreement was executed.

26.3 Franchisee acknowledges that Franchisee has read and understood this Agreement, the attachments hereto and agreements relating thereto, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

27. DDF FRANCHISEE COUNCIL, INC.

27.1 The DDF Franchisee Council, Inc. (the "Council") was formed to serve as an advisory board to Franchisor on advertising, marketing, operations, new product and service suggestions and other matters concerning the System. Franchisor will seek the advice of the Council, its officers and committees.

27.2 While the Franchised Business remains in operation in accordance with this Agreement, Franchisee is required to be a member with full privileges of the Council. All other franchisees of the System and Franchisor will also be members of the Council. All members of the Council will be entitled to one (1) vote on all matters that members are authorized to vote on under this Agreement and the By-Laws of the Council.

27.3 Membership dues for the Council are \$100 annually per franchisee. Membership dues may be increased or decreased by the Council as needed to meet the requirements of the annual budget. Franchisee agrees to execute an authorization for DDF to debit the membership dues from Franchisee's bank account by Automated Clearing House (ACH) for the benefit of the Council.

28. ACKNOWLEDGEMENT OF RISK

28.1 Franchisee agrees to the following:

28.1.1 **FRANCHISEE'S SUCCESS IN OWNING AND OPERATING THE DIPPIN' DOTS® FRANCHISED BUSINESS IS SPECULATIVE AND DEPENDS ON MANY FACTORS INCLUDING, TO A LARGE EXTENT, FRANCHISEE'S INDEPENDENT BUSINESS ABILITY. NO REPRESENTATIONS, PROMISES OR OTHER STATEMENTS, EXPRESS OR IMPLIED, HAVE BEEN MADE BY**

FRANCHISOR OR ANY OF FRANCHISOR'S EMPLOYEES, BROKERS OR REPRESENTATIVES, TO INDUCE FRANCHISEE TO ENTER INTO THIS AGREEMENT EXCEPT AS SPECIFICALLY INCLUDED IN THIS AGREEMENT OR THE DISCLOSURE DOCUMENT REFERENCED IN SECTION 26.2 HEREOF. NO OFFICER, DIRECTOR, EMPLOYEE, BROKER OR REPRESENTATIVE HAS BEEN AUTHORIZED TO DO OTHERWISE OR, IF ANY STATEMENT WERE MADE, FRANCHISEE HAS NOT RELIED ON ANY OF THEM.

28.1.2 FRANCHISEE AGREES THAT IN ALL OF HIS OR HER DEALINGS WITH FRANCHISOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, WORKERS (IF ANY) AND OTHER REPRESENTATIVES ACT ONLY IN A REPRESENTATIVE CAPACITY AND NOT IN AN INDIVIDUAL CAPACITY. FRANCHISEE AGREES THAT THIS AGREEMENT, AND ALL BUSINESS DEALINGS BETWEEN FRANCHISEE AND ANY INDIVIDUALS AS A RESULT OF THIS AGREEMENT, ARE ONLY BETWEEN FRANCHISEE AND FRANCHISOR.

28.1.3 IN ADDITION, FRANCHISOR MAKES NO WARRANTY AS TO FRANCHISEE'S ABILITY TO OPERATE THE DIPPIN' DOTS® FRANCHISED BUSINESS, OR IN THE MANNER IN WHICH IT IS TO BE OPERATED. IF LEGISLATION ENACTED BY, OR REGULATION OF, ANY GOVERNMENTAL BODY PREVENTS FRANCHISEE FROM, OR RESTRICTS FRANCHISEE IN, OPERATING THE DIPPIN' DOTS® FRANCHISEE, FRANCHISOR IS NOT LIABLE FOR DAMAGES NOR REQUIRED TO INDEMNIFY FRANCHISEE OR TO RETURN ANY MONIES RECEIVED FROM FRANCHISEE.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives, in duplicate, on the date first written above.

\_\_\_\_\_  
FRANCHISEE

Dippin' Dots Franchising, Inc.  
FRANCHISOR

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notice to Franchisee:

Address for Franchisor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dippin' Dots Franchising, Inc.  
1640 McCracken Blvd., Suite 100  
Paducah, Kentucky 42001  
Fax: (270) 575-6997

Fax: \_\_\_\_\_