



HÄAGEN-DAZS SHOP AREA DEVELOPMENT AGREEMENT

This Häagen-Dazs Shop Area Development Agreement (this "AREA AGREEMENT") is entered into as of the [Day] day of [Month], [Year], by and between The Häagen-Dazs Shoppe Company, Inc., a New Jersey corporation, with its principal place of business at 500 Washington Avenue South, Suite 2040, Minneapolis, MN 55415 ("SHOPPE COMPANY"), and [Developer], residing at [Residential Address] ("DEVELOPER"):

Article 1 INTRODUCTION

1.1 The SYSTEM.

SHOPPE COMPANY has through the investment of considerable time and money developed a unique and distinctive system of high quality ice cream shops (the "SYSTEM") operated in association with the MARKS prominently featuring the sale of HÄAGEN-DAZS® PRODUCTS and menu items prepared with HÄAGEN-DAZS® PRODUCTS. The SYSTEM includes proprietary and distinctive products, product specifications, ingredients, menu items, recipes, techniques, training methods, production methods, operating methods, designs and décor, uniform apparel, color schemes, furnishings, marketing materials, promotional strategies, and customer service requirements (the "SYSTEM STANDARDS"), all of which may be modified from time to time by SHOPPE COMPANY, and which are directed toward promoting HÄAGEN-DAZS® PRODUCTS in a manner that will enhance the good will associated with the MARKS and the SYSTEM.

1.2 DEVELOPER's Desire to be Part of the SYSTEM.

DEVELOPER desires to be part of the SYSTEM and to establish a number of HÄAGEN-DAZS® SHOPS subject to and in accordance with all of the terms and conditions of this AREA AGREEMENT.

1.3 SHOPPE COMPANY's Desire to Grant Franchises.

SHOPPE COMPANY desires to grant DEVELOPER franchises to establish and operate HÄAGEN-DAZS® SHOPS, subject to the terms and conditions of this AREA AGREEMENT, and conditioned upon DEVELOPER's continual adherence and conformity to the SYSTEM STANDARDS.

1.4 Agreement of the Parties.

Consistent with these introductory provisions, and in consideration of the mutual promises and covenants contained in this AREA AGREEMENT, SHOPPE COMPANY and DEVELOPER agree to be bound by the terms of this AREA AGREEMENT.

Article 2 CERTAIN DEFINITIONS

For the purposes of this AREA AGREEMENT, the following terms shall have the following meanings:

2.1 FRANCHISE AGREEMENT.

FRANCHISE AGREEMENT means a formal written agreement by which SHOPPE COMPANY grants a franchise for a particular HÄAGEN-DAZS® SHOP to be operated under the MARKS and as part of the SYSTEM. In the case of a SATELLITE or SELECT SHOP, "FRANCHISE AGREEMENT" shall mean the



form of agreement, irrespective of how titled, that SHOPPE COMPANY uses to grant the right to establish and operate the respective SATELLITE or SELECT SHOP.

2.2 HÄAGEN-DAZS® PRODUCTS.

"HÄAGEN-DAZS® PRODUCTS" means Häagen-Dazs® brand ice cream, sorbet, frozen yogurt, other frozen dessert products and other food items, manufactured under a license from the owner of the MARKS, for distribution and sale in association with the MARKS, as modified, added to, or deleted from time to time by SHOPPE COMPANY or the manufacture of the HÄAGEN-DAZS® PRODUCTS.

2.3 HÄAGEN-DAZS® SHOP.

"HÄAGEN-DAZS® SHOP" means a retail ice cream store operated as part of the SYSTEM, either directly by SHOPPE COMPANY, or under a FRANCHISE AGREEMENT.

2.4 MARKS.

"MARKS" means the Häagen-Dazs name and trademarks, service marks, logos, trade dress, and other commercial symbols.

2.5 NEW SHOP.

"NEW SHOP" means a new HÄAGEN-DAZS® SHOP, other than a SATELLITE or a SELECT SHOP, established by DEVELOPER within the DEVELOPMENT AREA during the TERM, under the terms of this AREA AGREEMENT, and a corresponding FRANCHISE AGREEMENT.

2.6 NOTICE.

"NOTICE" means a communication satisfying the requirements of Article 14.

2.7 SATELLITE.

"SATELLITE" means a HÄAGEN-DAZS® SHOP established in the same commercial facility as an already-existing HÄAGEN-DAZS® SHOP, by the owner of that already-existing HÄAGEN-DAZS® SHOP, and, unless the owner of that already-existing HÄAGEN-DAZS® SHOP is SHOPPE COMPANY, under the terms of a FRANCHISE AGREEMENT.

2.8 SELECT SHOP.

"SELECT SHOP" means a HÄAGEN-DAZS® SHOP:

- (a) Established under the terms of SHOPPE COMPANY's SELECT SHOP program; and
- (b) Offering no more than 16 tub facings of HÄAGEN-DAZS® PRODUCTS; and
- (c) Offering a limited selection of menu items made with those HÄAGEN-DAZS® PRODUCTS, consisting of all or some of the following: cups, cones, shakes, and sundaes; and
- (d) Typically (but not necessarily) located in a commercial environment where the development of a full-scale Häagen-Dazs® Shop would be unusual; and
- (e) Typically (but not necessarily) established and operated by a business enterprise that owns or controls all or a significant portion of that commercial environment.

Article 3 SCOPE

Subject to the terms and conditions of this AREA AGREEMENT, DEVELOPER shall have the right and obligation to, during the TERM defined under Article 4, establish NEW SHOPS within the DEVELOPMENT AREA defined by Article 5.



Article 4 TERM

4.1 The "TERM."

The single, non-renewable term of this AREA AGREEMENT (the "TERM") will commence on [Commencement Date] (the "COMMENCEMENT DATE"), and will end on [Expiration Date] (the "EXPIRATION DATE"); unless this AREA AGREEMENT is sooner cancelled or terminated in accordance with its provisions.

4.2 No Continuation or Extension.

The parties acknowledge that, except as expressly set forth under Section 7.5.4, neither party has any right to extend the TERM, or to otherwise continue the relationship represented by this AREA AGREEMENT beyond the TERM.

Article 5 DEVELOPMENT AREA

5.1 "DEVELOPMENT AREA" Defined.

"DEVELOPMENT AREA" means the geographic area described on Exhibit A to this AREA AGREEMENT. The DEVELOPMENT AREA shall not be modified by any changes to or modifications of any geographic references by which the DEVELOPMENT AREA is defined, including, but not limited to, the renaming of any road, or the annexing of additional land by any governmental body; it being understood that the DEVELOPMENT AREA shall, for the entire TERM, be geographically identical to its make-up as of the COMMENCEMENT DATE.

5.2 Reference Map.

A map depicting the DEVELOPMENT AREA is attached to this AREA AGREEMENT as Exhibit B, solely as a reference tool for the convenience of the parties. If there is any discrepancy between the DEVELOPMENT AREA described by Exhibit A, and the map depicting the DEVELOPMENT AREA on Exhibit B, then the description on Exhibit A shall control, and the map on Exhibit B shall be deemed to be of no legal significance whatsoever.

Article 6 AREA DEVELOPMENT FEE

6.1 AREA DEVELOPMENT FEE.

In exchange for the development rights SHOPPE COMPANY is granting to DEVELOPER under Article 7, DEVELOPER shall pay SHOPPE COMPANY a fee (the "AREA DEVELOPMENT FEE"), in the amount of [To Be Negotiated]; and which DEVELOPER shall pay at the time of signing this AREA AGREEMENT.

6.2 AREA DEVELOPMENT FEE is Non-Refundable.

DEVELOPER acknowledges and agrees that the AREA DEVELOPMENT FEE shall be deemed fully-earned by SHOPPE COMPANY upon the complete execution of this AREA AGREEMENT; it being understood that SHOPPE COMPANY, in entering into this AREA AGREEMENT, is giving up certain rights to, during the TERM, pursue alternative opportunities for development of HÄAGEN-DAZS® SHOPS within the DEVELOPMENT AREA. Under no circumstances shall DEVELOPER become entitled to a refund of any portion of the AREA DEVELOPMENT FEE, except as expressly contemplated by Section 12.2 if DEVELOPER terminates this AREA AGREEMENT on account of SHOPPE COMPANY's failure to timely cure a material breach of the AREA AGREEMENT.

Article 7 EXCLUSIVE NATURE OF DEVELOPMENT RIGHTS

7.1 HÄAGEN-DAZS® SHOPS Within DEVELOPMENT AREA.

Except as expressly permitted under this AREA AGREEMENT, in consideration of DEVELOPER's development obligations under Article 8, SHOPPE COMPANY will not itself establish during the TERM, or



license any third-party to establish during the TERM, any HÄAGEN-DAZS® SHOP within the DEVELOPMENT AREA. It is the intention of the parties that the term "HÄAGEN-DAZS® SHOP," as defined by Section 2.3, be narrowly construed so as not to bring within the ambit of this Section 7.1 any other selling opportunities involving HÄAGEN-DAZS® PRODUCTS.

7.2 Reservations of Right.

DEVELOPER acknowledges and agrees that the exclusive development rights granted by Section 7.1 entitle DEVELOPER only to the reasonable expectation that, during the TERM, subject to those exceptions set forth under Section 7.3, or elsewhere in this AREA AGREEMENT, SHOPPE COMPANY will not itself establish, or grant any third-party the right to establish during the TERM, a HÄAGEN-DAZS® SHOP within the DEVELOPMENT AREA.

7.2.1 Rights Retained by RIGHTS HOLDERS.

SHOPPE COMPANY, for itself, its affiliates, the owner of the MARKS, and their respective direct and indirect licensees (collectively the "RIGHTS HOLDERS" as their interests now or hereafter exist), retain the absolute right to distribute goods and services using the MARKS or other trademarks, service marks, trade names, logos and commercial symbols, through any other distribution methods or channels they choose, including but not limited to restaurants, retail grocery and convenience stores, and ice cream parlors, within and outside of the DEVELOPMENT AREA; with the sole exception of through the establishment of a HÄAGEN-DAZS® SHOP within the DEVELOPMENT AREA, other than as permitted by this AREA AGREEMENT.

7.2.2 Sales by Others within DEVELOPMENT AREA.

Nothing in this AREA AGREEMENT grants DEVELOPER the right to be the only retailer of HÄAGEN-DAZS® PRODUCTS within the DEVELOPMENT AREA. Without limiting the foregoing, DEVELOPER acknowledges that the RIGHTS HOLDERS retain the absolute right to distribute and sell goods and services, including the HÄAGEN-DAZS® PRODUCTS, directly and indirectly, in association with the MARKS or other trademarks, service marks, trade names, logos and commercial symbols:

- (a) through any distribution methods or channels they chose, including but not limited to retail stores, restaurants and other foodservice businesses, grocery and convenience stores within the development area;
- (b) including through ice cream parlors and similar foodservices business, with the exception of through the establishment of a Häagen-Dazs® Shop unless otherwise permitted by this AREA AGREEMENT; and
- (c) may themselves, or may permit third parties including other System franchisees to engage in certain selling activities, within the development area, including without limitation (a) sales at special events, festivals, fairs, catered events, and similar events, irrespective of whether open to the general public; and (b) sales to persons or businesses located within the development area.

7.3 Exceptions to Exclusivity.

DEVELOPER acknowledges and agrees that, in addition to any other opportunity within the scope of Section 7.2, SHOPPE COMPANY and other RIGHTS HOLDERS may, without violating Section 7.1, directly or indirectly exploit any of the following opportunities within the DEVELOPMENT AREA.

- (a) Any opportunity related to the continued operation of any Häagen-Dazs® Shop existing within the development area as of the COMMENCEMENT DATE (the locations of which are identified on Exhibit C), or subsequently established within the development area under the terms of this AREA AGREEMENT;



- (b) Any opportunity to establish a SELECT SHOP;
- (c) Any opportunity to establish a SATELLITE;
- (d) Any non-traditional Häagen-Dazs® Shop opportunity within the scope of Section 7.4;
- (e) Any Häagen-Dazs® Shop opportunity permitted by Section 8.4 on account of a failure of DEVELOPER to timely satisfy any INTERIM QUOTA;
- (f) Any Häagen-Dazs® Shop opportunity with respect to which DEVELOPER does not exercise its first refusal right under the terms of Article 9;
- (g) Any Häagen-Dazs® Shop opportunity resulting in the establishment of a Häagen-Dazs® Shop that commences business operations after the EXPIRATION DATE.

7.4 Non-Traditional HÄAGEN-DAZS® SHOP Opportunities.

DEVELOPER acknowledges and agrees that the exclusive development rights granted by Section 7.1, and DEVELOPER's development obligations under Article 8, contemplate the development of HÄAGEN-DAZS® SHOPS in typical retail settings, such as malls, shopping centers, and non-gated tourist venues. DEVELOPER further acknowledges that there are certain venues, geographically situated within the DEVELOPMENT AREA, which DEVELOPER will most likely not be in a position to pursue, because of unique factors related to those venues. Therefore, while DEVELOPER will not be precluded from pursuing the following opportunities, DEVELOPER acknowledges and agrees that the following venues are excluded from scope of the exclusive development rights granted to DEVELOPER by Section 7.1, even though physically within the geographic boundaries of the DEVELOPMENT AREA:

- (a) A boat, barge, riverboat, or other floating vessel or floating structure, on which licensed gaming is conducted, irrespective of whether present within the development area on a permanent or non-permanent basis;
- (b) Any auto racing, horse racing, dog racing, or other similar facility;
- (c) Any facility belonging directly or indirectly to a federally recognized Native American tribal nation;
- (d) Stadiums, arenas, and similar venues used primarily for purposes of hosting sporting events, concerts, and similar spectator events;
- (e) Museums, zoos, aquariums, botanical gardens, and similar venues;
- (f) Amusement parks, water parks, and similar theme venues;
- (g) National Parks, State Parks, and similar public venues;
- (h) Country clubs, golf course, private sporting clubs, and similar venues;
- (i) On the campus of any college, university, or other institution of higher learning, or within any public or private school.

7.5 Limited Extension in Connection with DIPPING OPERATION.

SHOPPE COMPANY acknowledges that the exploitation of certain potential opportunities within the scope of Section 7.2 might possibly impact the practical ability of DEVELOPER to satisfy the DEVELOPMENT QUOTA and any INTERIM QUOTA. Therefore, under the limited conditions described below, DEVELOPER may become entitled to an extension of the TERM, and may become entitled to an extension of the date by which DEVELOPER must satisfy any INTERIM QUOTA. Except as expressly set forth in this Section 7.5, DEVELOPER acknowledges and agrees that SHOPPE COMPANY shall have absolutely no obligation to DEVELOPER in connection with the exploitation of any opportunity within



the scope of Section 7.2, or in connection with the exploitation of any other opportunity permitted under this AREA AGREEMENT.

7.5.1 "DIPPING" and "BULK PRODUCTS" Defined.

For the purposes of this AREA AGREEMENT, "DIPPING" shall mean the retail sale of individual servings of bulk foodservice packaged HÄAGEN-DAZS® PRODUCTS ("BULK PRODUCTS") where:

- (a) the BULK PRODUCTS are sold in:
 - (1) ice cream cones, irrespective of whether in association with the MARKS, or
 - (2) disposable dishes, irrespective of whether in association with the MARKS, unless: (i) used as an ingredient in a product that is not sold in association with the MARKS, or (ii) used as an accompaniment for another dessert item in the same disposable dish;
- (b) the BULK PRODUCTS are sold from a non-temporary foodservice establishment;
- (c) the BULK PRODUCTS are sold from a quick-service food counter, quick-service restaurant, or quick-service food concession; and
- (d) the establishment is not a HÄAGEN-DAZS® SHOP.

7.5.2 "DIPPING" Definition to be Narrowly Construed.

The parties agree that the definition of "DIPPING" shall be narrowly construed so as not to bring within its scope situations that do not clearly meet its definition. By way of example, but not limitation, the parties agree that "DIPPING" shall not include:

- (a) sales at special events, such as an art festival or concert;
- (b) hosted or sponsored events at which the BULK PRODUCTS are not being purchased by individual consumers, such as a catered event;
- (c) sales by businesses not open to, or frequented by, the general public, such as school and corporate cafeterias;
- (d) sales from a sit-down, non-quick service restaurant which may permit customers to purchase food for delivery or take-away consumption;
- (e) hotel room service sales;
- (f) sales of frozen desserts or frozen beverages incorporating the BULK PRODUCTS, but not being sold in association with the Marks;
- (g) sales of pies and cakes for take-away consumption that are topped with the BULK PRODUCTS, without regard to whether the BULK PRODUCTS topping the pies and cakes are identified with the MARKS;
- (h) sales of Dreyer's, Edy's, Nestlé, or any other non-Häagen-Dazs brand products, in bulk form or otherwise, from any ice cream shop or any other business.

7.5.3 DIPPING OPERATION.

"DIPPING OPERATION" shall mean a business engaged in DIPPING.



7.5.4 DIPPING OPERATION Identification and Response.

If DEVELOPER becomes aware of any DIPPING OPERATION within the DEVELOPMENT AREA, which DEVELOPER in good faith believes may impair DEVELOPER's ability to satisfy the DEVELOPMENT QUOTA or any INTERIM QUOTA, then DEVELOPER may provide SHOPPE COMPANY with NOTICE of the DIPPING OPERATION. SHOPPE COMPANY may, within 30 days from NOTICE of the DIPPING OPERATION, cause the DIPPING OPERATION to be discontinued, in which case the rights and obligations of the parties under this AREA AGREEMENT shall remain unchanged. If SHOPPE COMPANY does not cause the DIPPING OPERATION to be discontinued within 30 days from NOTICE of the DIPPING OPERATION, then DEVELOPER shall have the right, upon written request, to have the TERM extended by 90 days; provided however that under no circumstances will the TERM be extended by more than 90 days in connection with any one DIPPING OPERATION, or a total of 360 days under the terms of this Section 7.5.4. In the event of any extension of the TERM under this Section 7.5.4, the date by which DEVELOPER must satisfy each INTERIM QUOTA will also be extended by 90 days, except in the case of an INTERIM QUOTA that was required to be satisfied before the NOTICE of the DIPPING OPERATION.

Article 8 DEVELOPMENT QUOTA

8.1 DEVELOPMENT QUOTA Over TERM.

DEVELOPER shall, during the TERM, open a minimum of [TO BE NEGOTIATED] NEW SHOPS within the DEVELOPMENT AREA (the "DEVELOPMENT QUOTA").

8.2 INTERIM QUOTA; Momentum Toward Achieving DEVELOPMENT QUOTA.

DEVELOPER shall at all times exert its best commercial efforts to promote and enhance the development of NEW SHOPS within the DEVELOPMENT AREA, so as to achieve the DEVELOPMENT QUOTA. In order to ensure that DEVELOPER is making progress toward achieving the DEVELOPMENT QUOTA, DEVELOPER shall satisfy each of the following requirements (each an "INTERIM QUOTA"):

- (a) Open, and continue to have in operation, at least [TO BE NEGOTIATED] NEW SHOPS by the end of the [TO BE NEGOTIATED] year of the TERM;
- (b) Open, and continue to have in operation, at least [TO BE NEGOTIATED] NEW SHOPS by the end of the [TO BE NEGOTIATED] year of the TERM.

8.3 Failure to Satisfy DEVELOPMENT QUOTA.

The parties agree that it would be difficult to determine SHOPPE COMPANY's actual monetary damages resulting from DEVELOPER's failure to satisfy the DEVELOPMENT QUOTA. Therefore, if DEVELOPER fails to satisfy the DEVELOPMENT QUOTA, then SHOPPE COMPANY will be entitled to liquidated damages, determined in accordance with the following formula: For each NEW SHOP, necessary to satisfy the DEVELOPMENT QUOTA, that DEVELOPER failed to open, DEVELOPER shall pay SHOPPE COMPANY 5 times the average royalty that became payable to SHOPPE COMPANY, during the one year period ending on the last day of the final calendar month before the EXPIRATION DATE, in connection with the operation of the last 10 HÄAGEN-DAZS® SHOPS, other than a SATELLITE or SELECT SHOP, to be established within the SYSTEM, which, as of the EXPIRATION DATE had been in operation for at least 12 full calendar months. The parties agree that the liquidated damages contemplated by this Section 8.3 are reasonable, in view of the respective obligations and expectations of the parties, and shall not be construed as a penalty.

8.4 Failure to Satisfy INTERIM QUOTA.

If DEVELOPER fails to timely satisfy any INTERIM QUOTA, then SHOPPE COMPANY shall have the right to, at any time thereafter, by NOTICE to DEVELOPER, suspend the exclusive HÄAGEN-DAZS® SHOP development rights granted to DEVELOPER by Section 7.1, for the balance of the TERM. Except for a suspension of the exclusive development rights contemplated by Section 7.1, the terms of this

AREA AGREEMENT shall remain unchanged, and, in particular SHOPPE COMPANY shall remain entitled to all amounts otherwise payable by DEVELOPER to SHOPPE COMPANY under this AREA AGREEMENT, and DEVELOPER shall remain obligated to satisfy the DEVELOPMENT QUOTA.

8.5 NEW SHOP Developed in Excess of DEVELOPMENT QUOTA.

During the TERM DEVELOPER may, but shall have no obligation to, open more NEW SHOPS than necessary to satisfy the DEVELOPMENT QUOTA. The procedures for developing each NEW SHOP opened after the DEVELOPMENT QUOTA will be consistent with the procedures for developing other NEW SHOPS under this AREA AGREEMENT, except that DEVELOPER will pay SHOPPE COMPANY a franchise fee in the amount of \$5,000, within 30 days following the opening of each NEW SHOP opened by DEVELOPER in excess of the DEVELOPMENT QUOTA.

8.6 HÄAGEN-DAZS® SHOPS Opened After TERM

If DEVELOPER enters into any FRANCHISE AGREEMENT during the TERM, in contemplation of a NEW SHOP that does not commence operations on or before the EXPIRATION DATE, then DEVELOPER will have the option, notwithstanding anything to the contrary contained in the respective FRANCHISE AGREEMENT, to, within 30 days following the EXPIRATION DATE, either:

- (a) Cancel the particular FRANCHISE AGREEMENT by Notice to SHOPPE COMPANY; or
- (b) Pay SHOPPE COMPANY the franchise fee and other fees that, under the FRANCHISE AGREEMENT, DEVELOPER would otherwise have paid to SHOPPE COMPANY, but for the terms of this AREA AGREEMENT.

If DEVELOPER fails to timely exercise either option contemplated by this Section 8.6 then DEVELOPER shall be deemed to have elected to proceed in accordance with Section 8.6(b), and will within 30 days following a written request from SHOPPE COMPANY, make payment of all amounts contemplated by 8.6(b). If DEVELOPER fails to timely make any payment as contemplated by this Section 8.6, then SHOPPE COMPANY will have the right to declare a non-payment default under the terms of the respective FRANCHISE AGREEMENT, and thereafter proceed in the manner contemplated by that FRANCHISE AGREEMENT.

8.7 Excluded from DEVELOPMENT QUOTA.

Except as set forth under Section 8.8, the establishment of any HÄAGEN-DAZS® SHOP, which is not a "NEW SHOP" as defined by Section 2.5, shall not be counted toward satisfaction of the DEVELOPMENT QUOTA, or any INTERIM QUOTA. The parties agree that none of the following is a "NEW SHOP:"

- (a) The continued operation of any HÄAGEN-DAZS® SHOP, as permitted under the terms of Section 7.3(a).
- (b) The establishment of any HÄAGEN-DAZS® SHOP within the DEVELOPMENT AREA by SHOPPE COMPANY or any third-party, as permitted under Section 7.4.
- (c) The relocation of an existing HÄAGEN-DAZS® SHOP within the same facility in which already existing (e.g. a mall, or other commercial property). A HÄAGEN-DAZS® SHOP shall be deemed to have been relocated if opened in the same commercial facility within 1 year after a previously existing HÄAGEN-DAZS® SHOP has closed, or if a previously existing HÄAGEN-DAZS® SHOP in the same facility closes within 1 year after an otherwise NEW SHOP is opened. Except as provided in this Section 8.7(c), a NEW SHOP that DEVELOPER opens in a facility where an existing HÄAGEN-DAZS® SHOP is already located, will be counted in the same manner as if that NEW SHOP had been developed elsewhere in the DEVELOPMENT AREA. Nothing in this provision shall imply any right to relocate any HÄAGEN-DAZS® SHOP without the express consent of SHOPPE COMPANY.



8.8 Quota Credit for HÄAGEN-DAZS® SHOPS Other than NEW SHOPS.

DEVELOPER represents that DEVELOPER's ability and commitment to satisfy the DEVELOPMENT QUOTA, and each INTERIM QUOTA, is not dependent upon SHOPPE COMPANY granting DEVELOPER the right to establish any HÄAGEN-DAZS® SHOP that is not a "NEW SHOP" as defined by Section 2.5; or the development, by someone other than DEVELOPER, of a HÄAGEN-DAZS® SHOP following DEVELOPER's election not to exercise DEVELOPER's right of refusal right under Article 9. Notwithstanding the foregoing, DEVELOPER will receive credit toward satisfaction of the DEVELOPMENT QUOTA, and any future INTERIM QUOTA, under the following terms and conditions:

- (a) DEVELOPER will receive credit toward the satisfaction of the DEVELOPMENT QUOTA, and any future INTERIM QUOTA, upon the opening of a HÄAGEN-DAZS® SHOP under the terms of Section 9.5, to the same extent as if a NEW SHOP.
- (b) If SHOPPE COMPANY grants DEVELOPER the right to establish a SELECT SHOP, and DEVELOPER in fact establishes a SELECT SHOP within the DEVELOPMENT AREA during the TERM, then that SELECT SHOP will be counted as ½ a NEW SHOP toward satisfaction of the DEVELOPMENT QUOTA and any future INTERIM QUOTA.
- (c) If SHOPPE COMPANY grants DEVELOPER the right to establish a SATELLITE, and DEVELOPER in fact establishes a SATELLITE within the DEVELOPMENT AREA during the TERM, then that SATELLITE will be counted as ½ a NEW SHOP toward satisfaction of the DEVELOPMENT QUOTA and any future INTERIM QUOTA.

8.9 Discontinued Operations; Limited Scope.

DEVELOPER acknowledges and agrees that objectives of SHOPPE COMPANY, in entering into this AREA AGREEMENT, include the development and continued operation of HÄAGEN-DAZS® SHOPS opened within the DEVELOPMENT AREA; and the sale of HÄAGEN-DAZS® PRODUCTS from those HÄAGEN-DAZS® SHOP. Accordingly, notwithstanding any provision to the contrary contained in this AREA AGREEMENT, DEVELOPER acknowledges and agrees that:

- (a) A NEW SHOP, the operation of which is discontinued during the TERM shall not be counted toward satisfaction of the DEVELOPMENT QUOTA, or any INTERIM QUOTA, unless that NEW SHOP had been operated for at least 5 full years before being closed; and its closure was not a breach the related FRANCHISE AGREEMENT.
- (b) Unless SHOPPE COMPANY agrees otherwise, in writing, a NEW SHOP that has fewer than 24 holes (tub facings) shall not be counted toward satisfaction of the DEVELOPMENT QUOTA, or any future INTERIM QUOTA, and, if SHOPPE COMPANY permits its development, will be treated in the same manner as a NEW SHOP opened in excess of the DEVELOPMENT QUOTA, under Section 8.5.
- (c) A SELECT SHOP established by DEVELOPER under Section 8.8, the operation of which is discontinued during the TERM, shall not be counted toward satisfaction of the DEVELOPMENT QUOTA, or any INTERIM QUOTA, unless that SELECT SHOP had been operated for at least 3 full years before being closed; and its closure was not a breach the related FRANCHISE AGREEMENT.
- (d) A SATELLITE established by DEVELOPER under Section 8.8, the operation of which is discontinued during the TERM, shall not be counted toward satisfaction of the DEVELOPMENT QUOTA, or any INTERIM QUOTA, unless that SATELLITE had been operated for at least 3 full years before being closed; and its closure was not a breach the related FRANCHISE AGREEMENT.



Article 9 FIRST REFUSAL RIGHT

DEVELOPER agrees that an objective of SHOPPE COMPANY under this AREA AGREEMENT is to maximize the number of HÄAGEN-DAZS® SHOPS opened within the DEVELOPMENT AREA during the TERM. From time to time during the TERM, SHOPPE COMPANY may become aware of a potential opportunity to establish a HÄAGEN-DAZS® SHOP within the DEVELOPMENT AREA, under circumstances that would violate the exclusive development rights granted to DEVELOPER by Section 7.1 (each a "THIRD PARTY SHOP OPPORTUNITY"), if pursued by SHOPPE COMPANY other than as permitted by this Article 9.

9.1 Identification of THIRD PARTY SHOP OPPORTUNITY.

If SHOPPE COMPANY desires to pursue the THIRD PARTY SHOP OPPORTUNITY, then SHOPPE COMPANY will provide DEVELOPER with NOTICE of the THIRD PARTY SHOP OPPORTUNITY, which will include information concerning the location of the potential HÄAGEN-DAZS® SHOP (the "TARGET LOCATION"), as well as reasonably appropriate contact information for the landlord, developer, or leasing agent of the TARGET LOCATION.

9.2 DEVELOPER's Decision to Exercise First Refusal Right.

DEVELOPER will have 15 days from the NOTICE of the THIRD PARTY SHOP OPPORTUNITY to provide NOTICE to SHOPPE COMPANY of whether DEVELOPER would like to pursue the THIRD PARTY SHOP OPPORTUNITY.

9.3 DEVELOPER's Exercise of its First Refusal Right.

If DEVELOPER timely notifies SHOPPE COMPANY that DEVELOPER would like to pursue the THIRD PARTY SHOP OPPORTUNITY, then:

- (a) DEVELOPER shall thereafter exert commercially reasonable efforts to pursue the THIRD PARTY SHOP OPPORTUNITY for the purpose establishing a NEW SHOP at the TARGET LOCATION, and shall comply with the terms of this AREA AGREEMENT to the same extent as if the THIRD PARTY SHOP OPPORTUNITY had been first identified by DEVELOPER;
- (b) DEVELOPER shall enter into a FRANCHISE AGREEMENT in contemplation of the establishment of a NEW SHOP at the TARGET LOCATION, within 30 days from DEVELOPER's NOTICE to SHOPPE COMPANY under Section 9.2, unless extended by SHOPPE COMPANY;
- (c) DEVELOPER shall within 60 days from DEVELOPER's NOTICE to SHOPPE COMPANY under Section 9.2: (i) complete the due diligence contemplated by the FRANCHISE AGREEMENT entered into in contemplation of the establishment of a NEW SHOP at the TARGET LOCATION (or contemplated by the alternative procedures then currently established by SHOPPE COMPANY), (ii) present the results thereof to SHOPPE COMPANY; and (iii) based on the results thereof inform SHOPPE COMPANY, in writing, of whether DEVELOPER would like to proceed with the development of a NEW SHOP at the TARGET LOCATION;
- (d) If DEVELOPER, based on its due diligence contemplated by Section 9.3(c) determines to discontinue its development of a NEW SHOP at the TARGET LOCATION, then SHOPPE COMPANY will have the right to pursue the THIRD PARTY SHOP OPPORTUNITY under the terms of Section 9.4, as if DEVELOPER had initially elected to not pursue the THIRD PARTY SHOP OPPORTUNITY;
- (e) If DEVELOPER, based on its due diligence contemplated by Section 9.3(c) determines to continue its the development of a NEW SHOP at the TARGET LOCATION, then DEVELOPER shall exert commercially reasonable efforts, and take all remaining steps



reasonably necessary to establish a NEW SHOP at the TARGET LOCATION in accordance with the provisions of this AREA AGREEMENT.

9.4 DEVELOPER's Election to Not Exercise of its First Refusal Right.

If DEVELOPER does not timely notify SHOPPE COMPANY that DEVELOPER would like to pursue the THIRD PARTY SHOP OPPORTUNITY, then SHOPPE COMPANY shall have the right to pursue the THIRD PARTY SHOP OPPORTUNITY, and in particular may itself establish or grant a third-party the right to establish, a HÄAGEN-DAZS® SHOP at the TARGET LOCATION.

9.5 DEVELOPER's Right to Compensation.

If SHOPPE COMPANY or any third-party, as result of pursuing a THIRD PARTY SHOP OPPORTUNITY, establishes a HÄAGEN-DAZS® SHOP at the TARGET LOCATION during the TERM, then SHOPPE COMPANY will, within 60 days following the opening of that HÄAGEN-DAZS® SHOP, pay DEVELOPER \$5,000.

Article 10 GRANT OF FRANCHISES TO DEVELOPER

SHOPPE COMPANY will grant DEVELOPER franchises for the operation of NEW SHOPS within the DEVELOPMENT AREA, subject to the following terms, and the other terms of this AREA AGREEMENT:

10.1 DEVELOPER Solely Responsible for Due Diligence.

DEVELOPER acknowledges and agrees that DEVELOPER is solely responsible for assessing the viability of any proposed NEW SHOP. Without limiting the foregoing, DEVELOPER acknowledges and agrees that:

- (a) DEVELOPER will conduct its own independent investigation and will make its own independent judgment with respect to the suitability of any potential site for a NEW SHOP and will not rely in any manner whatsoever upon SHOPPE COMPANY;
- (b) In consenting to DEVELOPER's establishment of any NEW SHOP, SHOPPE COMPANY shall be deemed not to have made any representations, express or implied, as to the suitability of a site for a NEW SHOP; and
- (c) SHOPPE COMPANY shall have no liability to DEVELOPER whatsoever, in any way related to or arising out of SHOPPE COMPANY's consent to DEVELOPER's establishment of any NEW SHOP.

10.2 FRANCHISE AGREEMENT.

SHOPPE COMPANY and DEVELOPER will enter into a FRANCHISE AGREEMENT for each NEW SHOP, subject to the following terms.

10.2.1 Form of FRANCHISE AGREEMENT.

DEVELOPER and SHOPPE COMPANY will enter into the form of FRANCHISE AGREEMENT then customarily being used by SHOPPE COMPANY to grant franchises for HÄAGEN-DAZS® SHOPS. Except as described below, the terms of the FRANCHISE AGREEMENT shall in no way be modified by the terms of this AREA AGREEMENT, or the relationship represented by this AREA AGREEMENT.

- (a) Except in the case of a NEW SHOP within the scope of Section 8.5, or a HÄAGEN-DAZS® SHOP within the scope of Section 8.6, DEVELOPER shall not be required to pay any initial franchise fee contemplated by the FRANCHISE AGREEMENT.



- (b) DEVELOPER shall not be required to adhere to any procedure for the development of a HÄAGEN-DAZS® SHOP that significantly conflicts with the development procedures contemplated by this AREA AGREEMENT, unless such conflicting development procedures are required under applicable law.
- (c) DEVELOPER shall not be required to sign any FRANCHISE AGREEMENT that contemplates a royalty payment exceeding 5% of a NEW SHOP's gross sales.

10.2.2 Otherwise Obligated to Comply with FRANCHISE AGREEMENTs.

With the exception of those modifications and adjustments specified by Section 10.2.1, DEVELOPER, as the "franchisee" under any particular FRANCHISE AGREEMENT shall be required to adhere to the terms of the that FRANCHISE AGREEMENT, including financial terms relating to the payment of royalties, advertising contributions and other things.

10.2.3 Timing.

In connection with each anticipated NEW SHOP, DEVELOPER will enter into a FRANCHISE AGREEMENT at a point in time, relative to the development of a particular NEW SHOP, which is consistent with SHOPPE COMPANY's then usual HÄAGEN-DAZS® SHOP development procedures.

10.3 SELECT SHOP or SATELLITE.

If SHOPPE COMPANY permits DEVELOPER to pursue a SELECT SHOP opportunity or SATELLITE opportunity under Section 8.8, then DEVELOPER shall comply with the then-applicable procedures for the development of that SELECT SHOP or SATELLITE, including, but not limited to, entering into the form of FRANCHISE AGREEMENT then customarily being used by SHOPPE COMPANY for that purpose, and payment of any applicable fees, including any initial franchise fee (or similar fee then applicable to the respective program).

10.4 Disclosure Compliance.

From time to time SHOPPE COMPANY may present DEVELOPER with SHOPPE COMPANY's then current uniform franchise offering circular. DEVELOPER will cooperate with SHOPPE COMPANY with respect to timely acknowledging receipt of such offering circular, and otherwise documenting SHOPPE COMPANY's compliance with applicable law relating to the grant of a franchise.

10.5 DEVELOPER Must Continue to Satisfy SHOPPE COMPANY's Requirements.

DEVELOPER will from time to time, upon SHOPPE COMPANY's request, furnish SHOPPE COMPANY with such financial statements and other financial information regarding DEVELOPER and any proposed NEW SHOP (including, without limitation, investment and financing plans for the proposed NEW SHOP) as SHOPPE COMPANY may reasonably require. SHOPPE COMPANY may refuse to grant DEVELOPER a franchise for a NEW SHOP if DEVELOPER:

- (a) has not reasonably complied with SHOPPE COMPANY's most recent reasonable request for information under this Section 10.3;
- (b) is in default under this AREA AGREEMENT, beyond any applicable cure period;
- (c) is in default under any FRANCHISE AGREEMENT or any other agreement relating to any HÄAGEN-DAZS® SHOP, beyond any applicable cure period;
- (d) fails to qualify for expansion under SHOPPE COMPANY's then current requirements; provided however that if SHOPPE COMPANY's the then current expansion requirements are significantly more onerous than those in-place as of the execution of this AREA AGREEMENT, then SHOPPE COMPANY will not refrain from granting DEVELOPER a franchise for a NEW SHOP, under this subparagraph (d), as long as SHOPPE COMPANY does not, in good faith, question the ability of DEVELOPER to properly



operate a NEW SHOP in accordance with SHOPPE COMPANY's then current operational requirements; or

- (e) does not meet SHOPPE COMPANY's the then current financial requirements; provided however that if SHOPPE COMPANY's the then current financial requirements are significantly more onerous than those in-place as of the execution of this AREA AGREEMENT, then SHOPPE COMPANY will not refrain from granting DEVELOPER a franchise for a NEW SHOP, under this subparagraph (e), as long as (1) DEVELOPER, any affiliated or related partnership, entity or business association has for the preceding 6 month period remained current in its obligations to SHOPPE COMPANY and its affiliates, and (2) SHOPPE COMPANY has no other reason to in good faith question DEVELOPER's financial ability to establish a NEW SHOP.

Article 11 MARKS

11.1 DEVELOPER Shall Not Acquire any Interest in the MARKS.

DEVELOPER acknowledges that DEVELOPER has no interest whatsoever in or to the MARKS and that DEVELOPER's right to use the MARKS will derive solely from the respective FRANCHISE AGREEMENT. DEVELOPER also acknowledges that SHOPPE COMPANY may, from time to time, modify, alter or change the MARKS which are the subject of the FRANCHISE AGREEMENTs and this AREA AGREEMENT and DEVELOPER will abide by all of SHOPPE COMPANY's requirements with respect to the usage of such MARKS. DEVELOPER agrees that all usage of the MARKS by DEVELOPER and any goodwill established thereby shall inure to the exclusive benefit of SHOPPE COMPANY and its direct and indirect licensors. DEVELOPER further agrees that after the termination or expiration of this AREA AGREEMENT, DEVELOPER will not, except with respect to any HÄAGEN-DAZS® SHOP operated by DEVELOPER pursuant to a FRANCHISE AGREEMENT, directly or indirectly, at any time or in any manner identify itself as a franchisee of, or otherwise associated with SHOPPE COMPANY or the MARKS; or use in any manner or for any purpose any of the MARKS or other indicia of a HÄAGEN-DAZS® SHOP or any colorable imitation thereof.

11.2 DEVELOPER Shall Not Use Any of the MARKS as Part of Its Name.

DEVELOPER shall not use any of the MARKS as part of any corporate trade name or with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form, nor may DEVELOPER use any MARKS in connection with any business or activity, other than the business conducted by DEVELOPER under and in accordance with FRANCHISE AGREEMENT's entered into between DEVELOPER and SHOPPE COMPANY, or in any other manner not explicitly authorized in writing by SHOPPE COMPANY.

11.3 DEVELOPER Shall Notify SHOPPE COMPANY of Infringing Use of MARKS.

DEVELOPER shall immediately notify SHOPPE COMPANY in writing of any apparent infringement of or challenge to DEVELOPER 's use of any of the MARKS, or claim by any person of any rights in any MARKS or similar trade name, trademark, service mark, logo or other symbol of which DEVELOPER becomes aware. DEVELOPER shall not communicate with any person other than SHOPPE COMPANY and its counsel in connection with any such infringement, challenge or claim. SHOPPE COMPANY shall have sole discretion to take such action as it deems appropriate and the right to exclusively control any litigation, U.S. Patent and Trademark Office proceeding or other administrative proceeding arising out of any such infringement, challenge, or claim or otherwise relating to any of the MARKS.

Article 12 TERMINATION

This AREA AGREEMENT may only be terminated in accordance with the provisions of this Article 12.



12.1 TERMINATION BY SHOPPE COMPANY

SHOPPE COMPANY shall have the right to terminate this AREA AGREEMENT, immediately by NOTICE of termination, upon any breach of this AREA AGREEMENT by DEVELOPER that cannot be cured, or, in the case of a breach that can be cured, upon DEVELOPER's failure to cure that breach within 30 days of NOTICE of breach given by SHOPPE COMPANY. Upon the termination of this AREA AGREEMENT under this Section 12.1, SHOPPE COMPANY shall have a right to liquidated damages calculated in accordance with Section 8.3, based on the number of NEW SHOPS that, as of the termination date, DEVELOPER had yet to establish in satisfaction of the DEVELOPMENT QUOTA. The parties agree that each of the following circumstances shall be deemed a material, non-curable breach of this AREA AGREEMENT:

- (a) DEVELOPER transfers or attempts to transfer any interest in this AREA AGREEMENT without SHOPPE COMPANY's prior written consent, which SHOPPE COMPANY shall have an absolute right to withhold;
- (b) Any change in control, restructuring, or dissolution of DEVELOPER, without SHOPPE COMPANY's prior written consent, which SHOPPE COMPANY shall have an absolute right to withhold;
- (c) DEVELOPER's having made any material misrepresentation or omission in its application for the development rights conferred by this AREA AGREEMENT;
- (d) DEVELOPER's (or an officer, director, general partner, or principal shareholder of DEVELOPER) is convicted of or pleads no contest to a felony or other crime or offense that may adversely affect the goodwill associated with the MARKS, or DEVELOPER becomes involved in any situation which degrades it in society or subjects either it, SHOPPE COMPANY, the MARKS or the system of HÄAGEN-DAZS® SHOPS to public disrepute, contempt or scandal;
- (e) DEVELOPER makes or permits any unauthorized use of the MARKS or unauthorized use or disclosure of confidential information in violation of any FRANCHISE AGREEMENT;
- (f) DEVELOPER fails on three or more separate occasions within any twelve consecutive month period to comply with this AREA AGREEMENT, whether or not such failures to comply are corrected after NOTICE to DEVELOPER; provided however that this provisions shall only apply if, with respect to each of the first two separate occasions, SHOPPE COMPANY provided DEVELOPER with actual NOTICE of non-compliance; and
- (g) DEVELOPER's breach of any FRANCHISE AGREEMENT, resulting in SHOPPE COMPANY terminating that FRANCHISE AGREEMENT.

12.2 Termination by DEVELOPER.

DEVELOPER shall have the right to terminate this AREA AGREEMENT, immediately by NOTICE of termination, if SHOPPE COMPANY fails to cure any breach of this AREA AGREEMENT within thirty days of NOTICE of breach given by DEVELOPER. If DEVELOPER terminates this AREA AGREEMENT under the terms of this Section 12.2, then DEVELOPER shall be entitled to a pro rata return of the AREA DEVELOPMENT FEE, based on the unexpired TERM, as of the effective date of termination, as compared to the full original TERM of this AREA AGREEMENT. DEVELOPER acknowledges and agrees that the remedy contemplated by this Section 12.2 shall be DEVELOPER's sole and exclusive remedy on account of a breach of this AREA AGREEMENT by SHOPPE COMPANY.



Article 13 ASSIGNMENT

13.1 By SHOPPE COMPANY.

This AREA AGREEMENT is fully assignable by SHOPPE COMPANY and shall inure to the benefit of any assignee or successor in interest to SHOPPE COMPANY.

13.2 DEVELOPER May not Assign Without Approval of SHOPPE COMPANY.

DEVELOPER understands and acknowledges that the rights and duties created by this AREA AGREEMENT are personal to DEVELOPER and that SHOPPE COMPANY has granted this AREA AGREEMENT in reliance upon the individual or collective character, skill, aptitude, attitude, business ability, and financial capacity of DEVELOPER (or its shareholders or partners, if DEVELOPER is a corporation or partnership). Therefore:

- (a) Neither this AREA AGREEMENT (or any interest therein), nor any part or all of the ownership of DEVELOPER may be voluntarily, involuntarily, directly or indirectly, assigned, sold, subdivided, subfranchised, or otherwise transferred by DEVELOPER or its owners (including without limitation, by consolidation or merger, by issuance of securities representing an ownership interest in DEVELOPER, by conversion of a general partnership to a limited partnership, by transfer or creation of an interest as a general partner of a limited partnership, by transfer of an interest in DEVELOPER or in this AREA AGREEMENT in a divorce proceeding, or in the event of the death of DEVELOPER or an owner of DEVELOPER, by will, declaration of or transfer in trust of the laws of intestate succession), without the prior written approval of SHOPPE COMPANY.
- (b) Any such assignment or transfer without such approval shall constitute a non-curable material breach hereof and shall convey no rights to or interest in this AREA AGREEMENT to such assignee.

Article 14 NOTICE

14.1 Form of NOTICE.

Unless otherwise required by a specific provision of this AREA AGREEMENT, each NOTICE required or permitted hereunder shall be in writing, addressed in accordance with this Article 14, and sent by United States Postal Service registered or certified mail, return receipt requested; or by nationally recognized overnight delivery service, requiring a receipt; or served personally. Each NOTICE shall be deemed to be given, delivered or served, upon the mailing or personal service thereof.

14.2 To SHOPPE COMPANY.

A NOTICE to SHOPPE COMPANY shall be sent to or served personally at the following address:

The Häagen-Dazs Shoppe Company, Inc.
500 Washington Avenue South; Suite 2040
Minneapolis, MN 55415

Attention: Legal Notices Recipient

SHOPPE COMPANY may from time to time amend its address for NOTICE, by written communication to DEVELOPER, sent by regular mail, confirmed facsimile transmission, or in any other manner permitted for written communications under this AREA AGREEMENT.

14.3 To DEVELOPER.

A NOTICE to DEVELOPER shall be effective if sent to either the NEW SHOP, or the last known mailing address of DEVELOPER, or if there is more than one individual or entity collectively identified as DEVELOPER, then the last known mailing address of any one of them. DEVELOPER, or if there is more than one individual or entity collectively identified as DEVELOPER, then each of them, shall amend its



mailing address (which in the case of a natural person must be such person's principal residential address) within 30 days of any change by written communication to SHOPPE COMPANY, sent by regular mail, confirmed facsimile transmission, or in any other manner permitted for written communications under this AREA AGREEMENT.

Article 15 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

15.1 Relationship of the Parties.

DEVELOPER and SHOPPE COMPANY are independent contractors. This AREA AGREEMENT shall not be construed as constituting DEVELOPER an agent, servant, representative or employee of SHOPPE COMPANY for any purpose whatsoever. DEVELOPER is not granted any right or authority to assume or create any obligations or responsibility, express or implied, on behalf of or in the name of SHOPPE COMPANY, in any matter or thing whatsoever. This AREA AGREEMENT does not create a fiduciary relationship or a relationship of special trust and confidence.

15.2 Indemnification by DEVELOPER.

Upon demand by SHOPPE COMPANY, DEVELOPER shall defend, indemnify and hold SHOPPE COMPANY harmless during and after the TERM from any and all claims, demands, and causes of action by any third-party arising from, or relating to DEVELOPER's performance under, or the failure of DEVELOPER to adhere to any of DEVELOPER's obligations under this AREA AGREEMENT. This obligation shall survive the expiration or earlier termination of this AREA AGREEMENT.

Article 16 INTERPRETATION, CLAIMS AND DISPUTES.

Except to the extent invalidated by valid, enforceable, applicable laws of the jurisdiction where the DEVELOPMENT AREA is located, or where DEVELOPER resides, the provisions of this Article 16 shall govern the interpretation of this AREA AGREEMENT, and the resolution of any legal action in any way related to the AREA AGREEMENT. If any provision of this Article 16 is unenforceable for any reason, then it shall still be considered to determine the intent of the parties.

16.1 Limitation of Actions.

Neither DEVELOPER nor SHOPPE COMPANY may commence any legal action against the other, more than 3 years from the occurrence, act, or event giving rise to that legal action, or after any shorter applicable statute of limitations.

16.2 No Right to Trial by Jury.

THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY.

16.3 Jurisdiction and Venue.

DEVELOPER hereby agrees to submit to the jurisdiction of the state and federal courts within the state of Minnesota, and consents to personal jurisdiction in Minnesota. DEVELOPER hereby waives any objection to venue in the State and Federal Courts of Minnesota, including any objection based upon the convenience of the forum. Any legal action commenced by DEVELOPER shall be brought either in state court sitting in Hennepin County, Minneapolis, Minnesota, or the United States District Court having concurrent jurisdiction with the state court sitting in Hennepin County, Minneapolis, Minnesota. DEVELOPER acknowledges that SHOPPE COMPANY has its principal place of business in Minneapolis, and agrees that this provision is reasonable.

16.4 Choice of Law.

The following provisions shall control the choice of law to be applied to the interpretation of this AREA AGREEMENT and a determination of the rights of the parties under this AREA AGREEMENT.



16.4.1 Law to be Applied to the Interpretation of AREA AGREEMENT.

The terms of this AREA AGREEMENT and its related documents shall be construed in accordance with the common law of the State of Minnesota.

16.4.2 Application of State Franchise Law.

The applicable franchise laws, if any, of the jurisdiction where the DEVELOPMENT AREA is located, or where DEVELOPER resides, shall govern any obligations between SHOPPE COMPANY and DEVELOPER, to the extent those franchise laws supplement, displace, or modify the provisions of this AREA AGREEMENT. In construing this provision, it is the intent of the parties that to the extent of a conflict between this AREA AGREEMENT and applicable franchise laws, the applicable franchise laws will be deemed waived to the fullest extent permitted by state or federal law.

16.5 Prevailing Party to be Awarded Costs and Attorneys' Fees.

The prevailing party in any legal action brought to enforce the terms of this AREA AGREEMENT shall be awarded attorneys' fees and costs.

16.6 NOTICE of Claim as Condition Precedent to Action.

DEVELOPER shall not, under any circumstances, institute any legal action, unless at least 90 days before instituting that legal action, DEVELOPER gives NOTICE, to SHOPPE COMPANY, explaining in complete detail what acts, or omissions, DEVELOPER contends give rise to DEVELOPER's legal action. DEVELOPER agrees that the NOTICE required by this provision is a condition precedent to DEVELOPER's right to initiate a legal action, against SHOPPE COMPANY, that is in any way related to this AREA AGREEMENT. DEVELOPER agrees that this covenant made by DEVELOPER is a material provision of this AREA AGREEMENT, and will survive any expiration, cancellation or other termination of this AREA AGREEMENT.

16.7 Election of Remedies.

Unless a specific provision of this AREA AGREEMENT expressly restricts SHOPPE COMPANY to a particular remedy on account of a particular failure of DEVELOPER to comply with the terms of this AREA AGREEMENT, no remedy contemplated by this AREA AGREEMENT on account of a particular failure of DEVELOPER to comply with the terms of this AREA AGREEMENT shall be deemed an exclusive remedy, and SHOPPE COMPANY shall at all times have an absolute right to pursue any other legal and equitable remedies available to it on account of such failure.

16.8 Injunctive Relief.

DEVELOPER recognizes that DEVELOPER's failure to comply with the terms of this AREA AGREEMENT could cause irreparable damage to the MARKS and the SYSTEM. Therefore, in the event of a breach or threatened breach by DEVELOPER of any of the covenants or provisions of this AREA AGREEMENT, SHOPPE COMPANY, in addition to, but not in lieu of any other rights and remedies, shall have the immediate right to secure an order enjoining the breach or threatened breach.

Article 17 DEVELOPER's ACKNOWLEDGMENTS AND REPRESENTATIONS

DEVELOPER agrees and acknowledges that SHOPPE COMPANY, in entering into this AREA AGREEMENT, has the right to rely on, and is in fact relying on, each of the following representations and acknowledgements.

17.1 No Representations By SHOPPE COMPANY.

DEVELOPER acknowledges and represents that in deciding to execute this AREA AGREEMENT, DEVELOPER has not relied upon any representations by any representative of SHOPPE COMPANY, except those representations, if any, that are explicitly set forth in this AREA AGREEMENT, or in the Häagen-Dazs Uniform Franchise Offering Circular that was most recently provided to DEVELOPER



before DEVELOPER signed this AREA AGREEMENT. Without limiting the foregoing, DEVELOPER acknowledges that SHOPPE COMPANY has not made any representation concerning the sales, income, profit, or losses that DEVELOPER may realize in connection with this AREA AGREEMENT or any NEW SHOP.

17.2 Review of AREA AGREEMENT and SYSTEM.

DEVELOPER acknowledges receiving a true and accurate copy of this AREA AGREEMENT at least five business days before signing it, and acknowledges that, before signing this AREA AGREEMENT, DEVELOPER had a full and adequate opportunity to:

- (a) read and review this AREA AGREEMENT;
- (b) be advised by DEVELOPER's business advisors and legal counsel concerning this AREA AGREEMENT; and
- (c) evaluate and investigate the SYSTEM, including the operational and financial aspects related to the establishment and operation of the NEW SHOP.

17.3 No Claims.

DEVELOPER acknowledges that at the time of executing this AREA AGREEMENT, DEVELOPER is not aware of any acts or omissions of SHOPPE COMPANY, or its affiliates or agents, which would in any way give rise to any claims by DEVELOPER against SHOPPE COMPANY or its affiliates or agents.

17.4 No Defaults by DEVELOPER.

DEVELOPER represents that, to the best of DEVELOPER's knowledge, DEVELOPER is not presently in default of any obligations owed to SHOPPE COMPANY under any currently existing agreement between the parties.

17.5 Prior Payments.

DEVELOPER acknowledges and agrees that, except for the AREA DEVELOPMENT FEE, DEVELOPER has not, in connection with this AREA AGREEMENT or the rights contemplated by this AREA AGREEMENT, paid any money, or given anything else of value, to SHOPPE COMPANY or a representative of SHOPPE COMPANY.

17.6 Character, Reputation and Ability.

DEVELOPER represents and warrants that DEVELOPER is of good character and reputation, and physically, mentally, and financially able to accept and fulfill DEVELOPER's obligations set forth in this AREA AGREEMENT.

Article 18 SEVERABILITY AND CONSTRUCTION

18.1 Severability.

If any term of this AREA AGREEMENT is held to be unenforceable for any reason, then the remaining terms shall be enforced to the greatest extent possible, consistent with the intent of the parties as evidenced by all of the terms of this AREA AGREEMENT.

18.2 Waiver.

None of DEVELOPER's obligations under this AREA AGREEMENT, or SHOPPE COMPANY's rights under this AREA AGREEMENT, may be modified or waived, except in a writing signed by a duly authorized representative of SHOPPE COMPANY. No representative of SHOPPE COMPANY has the authority to waive or modify the requirement imposed by the preceding sentence. SHOPPE COMPANY's failure:

- (a) to at any time enforce, require the performance of, or object to DEVELOPER's failure or refusal to perform any term, condition or covenant of this AREA AGREEMENT; or
- (b) to exercise any right SHOPPE COMPANY has under this AREA AGREEMENT;

shall not constitute a waiver of any subsequent breach, affect the validity of all or any part of this AREA AGREEMENT, or the right of SHOPPE COMPANY to subsequently enforce the same term, condition, or covenant, but shall apply only to the specific instance to which the waiver is directed. No delay in enforcement shall be deemed a waiver of the right to later enforce any term, condition or covenant.

18.3 No Extrinsic Modifications.

DEVELOPER acknowledges and agrees that this AREA AGREEMENT contains all terms that are material to this AREA AGREEMENT, up to and including the point of DEVELOPER's execution of this AREA AGREEMENT. DEVELOPER agrees that no evidence extrinsic to this AREA AGREEMENT may be used or admitted to vary DEVELOPER's understanding of this AREA AGREEMENT.

18.4 Joint and Several Liability.

Each person and entity, individually and collectively, being the DEVELOPER, shall be jointly and severally liable for all of DEVELOPER's obligations, performances, and liabilities under this AREA AGREEMENT.

18.5 Section Titles.

Section titles in this AREA AGREEMENT are for the convenience of the parties, and shall not be considered in construing the meaning of any of this AREA AGREEMENT's provisions.

Article 19 NOT EFFECTIVE UNTIL FULLY EXECUTED

This AREA AGREEMENT shall not be effective until fully executed by SHOPPE COMPANY and DEVELOPER.

(DEVELOPER: Please have a witness to each signature sign and date this agreement in the space provided for that purpose next to each signature line).

In the presence of:

DEVELOPER

 Witness
 Date: _____

 Franchisee: [Developer]

In the Presence of:

THE HÄAGEN-DAZS SHOPPE COMPANY, INC.

 Date: _____

By: _____
 Title: _____



Area Agreement – Exhibit A

DEVELOPMENT AREA



Area Agreement – Exhibit B

Reference Map

DEVELOPER acknowledges that, as of the Commencement Date, the following HÄAGEN-DAZS® SHOPS already existed within the DEVELOPMENT AREA:

(a) None ---

--- End of List