

EXHIBIT C

TO

THE HÄAGEN-DAZS SHOPPE COMPANY, INC.

UNIFORM FRANCHISE OFFERING CIRCULAR

HÄAGEN-DAZS SATELLITE AGREEMENT



HÄAGEN-DAZS SATELLITE AGREEMENT

SHOP #

This "SATELLITE AGREEMENT" is dated this [Day] day of [Month], [Year], and is entered into by and between The Häagen-Dazs Shoppe Company, Inc., a New Jersey corporation, with offices at 500 Washington Avenue South, Suite 2040, Minneapolis, Minnesota 55415 (hereinafter referred to as "Shoppe Company"), and:

_____ of: _____

(hereinafter referred to individually and collectively as "Franchisee").

<u>SHOP PREMISES</u>	<u>FACILITY IN WHICH THE SHOP IS LOCATED, AND IN WHICH FRANCHISEE PROPOSES TO ESTABLISH THE SATELLITE</u>
	(the "FACILITY")

Article 1. INTRODUCTION

FRANCHISEE desires to sell HÄAGEN-DAZS® PRODUCTS from an additional selling point (the "SATELLITE") in connection with the HÄAGEN-DAZS® SHOP (the "SHOP") already located at the SHOP PREMISES identified above, and SHOPPE COMPANY is willing to grant FRANCHISEE a limited right to do so in strict accordance with the terms and conditions of this SATELLITE AGREEMENT, and in strict accordance with the terms, as modified herein, of the operative franchise agreement for the SHOP (the "FRANCHISE AGREEMENT"), and only under the MARKS.

in consideration of the mutual promises, covenants and agreements hereinafter contained, the parties agree as follows:

Article 2. DEVELOPMENT PROCEDURES

FRANCHISEE shall comply with the following procedures applicable to the establishment of the SATELLITE:

2.1. Identification of Specific Space.

FRANCHISEE shall, within 90 days after the date of this SATELLITE AGREEMENT, notify SHOPPE COMPANY, in writing, of the specific space within the FACILITY where FRANCHISEE proposes to establish the SATELLITE (the "SATELLITE PREMISES" and together with the SHOP PREMISES, the "BUSINESS PREMISES").

2.2. Negotiation of Terms; Lease Execution

FRANCHISEE shall, within 120 days after the date of this SATELLITE AGREEMENT, provide SHOPPE COMPANY with a proposed lease for the SATELLITE PREMISES. SHOPPE COMPANY will, in writing, tell FRANCHISEE whether the proposed lease is acceptable, or requires modifications before it would be acceptable to SHOPPE COMPANY. FRANCHISEE shall, within a reasonable time negotiate any modification necessary to make the proposed lease acceptable to SHOPPE COMPANY.

2.3. Lease Requirements

To be acceptable to SHOPPE COMPANY, among other things, the proposed lease must: (A) give FRANCHISEE the right to conduct the business normally conducted from a HÄAGEN-DAZS® SHOP from the SATELLITE PREMISES; (B) acknowledge that the design and construction of the SATELLITE, must satisfy SHOPPE COMPANY's requirements; (C) affirmatively permit SHOPPE COMPANY to enter the SATELLITE PREMISES to remove the MARKS and proprietary materials if the business conducted at the SATELLITE PREMISES is discontinued for any reason whatsoever; and (D) permit SHOPPE COMPANY to take an assignment of the proposed lease if SHOPPE COMPANY ever exercises the lease assignment rights contained in ARTICLE 11 of this SATELLITE AGREEMENT.

2.3.1. Scope of Lease Review

FRANCHISEE acknowledges that SHOPPE COMPANY's review of the proposed lease is for SHOPPE COMPANY's benefit, and that SHOPPE COMPANY is not determining whether the proposed lease is economically favorable or consistent with FRANCHISEE's business plans and objectives.

2.3.2. Lease Execution

FRANCHISEE agrees not to sign the proposed lease unless and until SHOPPE COMPANY notifies FRANCHISEE, in writing, that SHOPPE COMPANY consents to the establishment of the SATELLITE at the SATELLITE PREMISES. FRANCHISEE agrees that SHOPPE COMPANY shall have no liability to FRANCHISEE whatsoever, in the event FRANCHISEE's opportunity to execute the proposed lease ceases to exist before SHOPPE COMPANY consents to the establishment of the SATELLITE at the SATELLITE PREMISES.

2.4. Site Package

FRANCHISEE warrants and represents that it is familiar with the FACILITY, and shall perform any due diligence reasonably necessary for FRANCHISEE to determine whether the establishment of the SATELLITE at the SATELLITE PREMISES is reasonably consistent with FRANCHISEE's business goals and objectives. FRANCHISEE shall provide SHOPPE COMPANY with any information reasonably requested by SHOPPE COMPANY, detailing FRANCHISEE's due diligence research, findings, and conclusions.

2.5. Design and Construction of SATELLITE

If SHOPPE COMPANY, in writing, notifies FRANCHISEE that SHOPPE COMPANY consents to the establishment of the SATELLITE at the SATELLITE PREMISES, then FRANCHISEE shall comply with the following requirements.

2.5.1. Design Procedures

FRANCHISEE shall comply with SHOPPE COMPANY's design procedures, which require FRANCHISEE to submit preliminary drawings for SHOPPE COMPANY's approval, and then construction plans and specifications for SHOPPE COMPANY's approval, all of which must conform to SHOPPE COMPANY's then-current design requirements. FRANCHISEE acknowledges that SHOPPE COMPANY's review of design and construction documents is for the purpose of determining aesthetic adherence to SHOPPE COMPANY's design requirements. FRANCHISEE shall at all times be responsible for determining compliance with building code and other local building requirements, and the Americans with Disabilities Act.

2.5.2. Construction Procedures

FRANCHISEE shall comply with SHOPPE COMPANY's construction procedures. FRANCHISEE is responsible for retaining a contractor, reasonably acceptable to SHOPPE COMPANY, who will construct the SATELLITE in accordance with the constructions plans and specifications approved by SHOPPE COMPANY. During construction of the SATELLITE, FRANCHISEE shall require the contractor it has retained to maintain in effect liability insurance in the minimum amounts of \$1,000,000/\$1,000,000, and shall have SHOPPE COMPANY named as an additional insured under such policy of insurance. At all times during the construction of the SATELLITE, FRANCHISEE shall obtain permits, licenses, and enter into contracts in the name of FRANCHISEE, and shall not in any way purport to bind, or contract on behalf of SHOPPE COMPANY. FRANCHISEE shall defend, indemnify, and hold SHOPPE COMPANY harmless from all claims, demands, and causes of action arising out of or in relation to the development and construction of the SATELLITE.

Article 3. GRANT OF LICENSE; LOCATION.

Subject to the provisions of this SATELLITE AGREEMENT, SHOPPE COMPANY grants FRANCHISEE the limited license to establish and operate the SATELLITE, further subject to the same limitations and restrictions in the FRANCHISE AGREEMENT, as modified herein. It is understood and agreed that, except to the extent modified herein, the terms and conditions set forth in the FRANCHISE AGREEMENT shall govern the operation of the SATELLITE, and the rights and obligations of the parties, including but not limited to FRANCHISEE's obligations to adhere to the SYSTEM STANDARDS, comply with the SHOP OPERATIONS MANUAL, and pay a ROYALTY, as if the operations conducted at the SATELLITE were conducted at the SHOP.

Article 4. TERM.

The single, nonrenewable term of this limited license to prepare and sell HÄAGEN-DAZS® PRODUCTS from the SATELLITE shall commence upon the timely opening of the SATELLITE, and shall continue until "SATELLITE EXPIRATION DATE" determined in accordance with this SATELLITE AGREEMENT. FRANCHISEE understands and agrees that, except under the procedures contemplated by Section 4.3, this SATELLITE AGREEMENT confers no right to continuation, renewal, or a subsequent agreement following the expiration or earlier termination of this SATELLITE AGREEMENT and/or the FRANCHISE AGREEMENT.

4.1. Commencement.

FRANCHISEE agrees to exert its best commercially reasonable efforts to open the SATELLITE for business within 9 months from the date of this SATELLITE AGREEMENT, time being of the essence. Irrespective of the cause of any delay, if FRANCHISEE fails to timely open for business, then SHOPPE COMPANY may cancel this SATELLITE AGREEMENT, in which case SHOPPE COMPANY shall retain the SATELLITE FEE paid by FRANCHISEE hereunder, and shall have no further obligations to FRANCHISEE in connection with this SATELLITE AGREEMENT.

4.2. SATELLITE EXPIRATION DATE.

FRANCHISEE acknowledges that the SATELLITE EXPIRATION DATE will be determined as the earlier of (i) the date the FRANCHISE AGREEMENT expires, or (ii) the date the lease for the SATELLITE PREMISES, in that form determined to be acceptable to SHOPPE COMPANY under Section 2.2 (the "LEASE") expires. SHOPPE COMPANY will establish the SATELLITE EXPIRATION DATE when the SATELLITE first opens for business in accordance with the formula set forth in this Section, and will advise FRANCHISEE of the SATELLITE EXPIRATION DATE by letter sent by regular mail.

4.3. SATELLITE EXPIRATION DATE Extensions.

FRANCHISEE may enter into extensions of the LEASE, or a new lease for the SATELLITE PREMISES, in each case subject to SHOPPE COMPANY's prior written consent which will not be unreasonably withheld if FRANCHISEE is in good standing with SHOPPE COMPANY and has negotiated lease terms meeting SHOPPE COMPANY's requirements, so long as the term of the LEASE, as extended, or the new

lease, does not expire any later than the FRANCHISE AGREEMENT. The SATELLITE EXPIRATION DATE will be modified to correspond to the expiration date of the LEASE, as extended, or the new lease, entered into under the terms of this Section. FRANCHISEE acknowledges that the terms of this Section shall in no way be perceived as modifying any restrictions concerning lease modifications contained in the FRANCHISE AGREEMENT, which restrictions shall continue in full force and effect with respect to the FRANCHISE AGREEMENT, and with respect to this SATELLITE AGREEMENT except as specifically set forth herein.

Article 5. SATELLITE FEE.

FRANCHISEE shall pay SHOPPE COMPANY a \$500 SATELLITE FEE, upon timely signing and submission of this SATELLITE AGREEMENT to SHOPPE COMPANY. The SATELLITE FEE is not refundable under any circumstances whatsoever, including where FRANCHISEE fails to establish the SATELLITE.

Article 6. MARKETING CONTRIBUTIONS.

FRANCHISEE shall pay marketing contributions to SHOPPE COMPANY in accordance with each of the following applicable provisions, which marketing contributions shall be deemed to be in addition to the marketing contribution that FRANCHISEE is required to pay SHOPPE COMPANY under the FRANCHISE AGREEMENT for the Shop.

6.1. General Marketing Contribution.

From the opening of the SATELLITE through the end of the term of this SATELLITE AGREEMENT, in addition to the General Marketing Contribution (or "Adjusted Marketing Contribution" or "Adjusted Advertising Contribution," as the case may be) that FRANCHISEE is required to pay SHOPPE COMPANY under the FRANCHISE AGREEMENT, FRANCHISEE shall at the same time pay SHOPPE COMPANY an additional 50% of said contribution in connection with the SATELLITE.

6.2. Local Marketing Contributions.

If the FRANCHISE AGREEMENT requires the payment of a LOCAL MARKETING CONTRIBUTION calculated as a percentage of FRANCHISEE's GROSS SALES, then when calculating the LOCAL MARKETING CONTRIBUTION required to be paid to SHOPPE COMPANY, FRANCHISEE shall take into account its GROSS SALES from the SATELLITE.

Article 7. TERRITORY.

FRANCHISEE acknowledges and agrees that this Agreement shall in no way modify the exclusive territory, if any, granted to FRANCHISEE by the FRANCHISE AGREEMENT.

Article 8. REPORTING OF SALES AND COSTS; PROJECTING SALES, COSTS AND PRODUCT NEEDS.

8.1. This Article to Supersede and Amend the FRANCHISE AGREEMENT.

This Article 8 shall supersede and amend any inconsistent provision in the FRANCHISE AGREEMENT. By executing this AGREEMENT, FRANCHISEE agrees to such amendment, and acknowledges that such amendment is reasonable, and that FRANCHISEE's willingness to agree to such amendment was a material consideration for SHOPPE COMPANY's willingness to enter into this SATELLITE AGREEMENT. This amendment shall survive any discontinuance of operations at the SATELLITE, and shall survive the termination or cancellation of this SATELLITE AGREEMENT.

8.2. Reporting Requirements

In order that SHOPPE COMPANY may better understand the nature of the business to be conducted pursuant to this SATELLITE AGREEMENT, consumers' reactions to the product mix and menu items which FRANCHISEE will offer for sale, seasonal fluctuations experienced at the BUSINESS PREMISES, and other variables affecting sales at the SHOP and SATELLITE (collectively the "STORES"), FRANCHISEE shall at the request of SHOPPE COMPANY periodically provide SHOPPE COMPANY with

any and all requested information related to FRANCHISEE's sales, costs, profits and related items. FRANCHISEE acknowledges that the information to be provided hereunder, if requested by SHOPPE COMPANY, may be requested to be provided monthly or even more frequently in certain circumstances, and in some instances may require FRANCHISEE to track certain information not regularly being tracked by FRANCHISEE.

8.3. Projection Requirements.

At the request of SHOPPE COMPANY, FRANCHISEE shall periodically project sales, costs, and product requirements. FRANCHISEE shall endeavor to project quantities of products needed, including flavor, quantity, and anticipated timing of such need. FRANCHISEE acknowledges that this information is important to SHOPPE COMPANY so that it may assist its designated supplier in projecting quantities of product to manufacture. Notwithstanding the purpose for requiring this information from FRANCHISEE, or the accuracy of FRANCHISEE's projections, under no circumstances shall FRANCHISEE's compliance with this Section be deemed to require SHOPPE COMPANY or its designated supplier to sell FRANCHISEE the projected quantities of any particular product.

8.4. Point of Sale System.

To ensure the efficient management and operation of the STORES, and the reporting of data and information to SHOPPE COMPANY, FRANCHISEE shall, within 60 days of signing this SATELLITE AGREEMENT, at its own expense, install at the SHOP, and upon opening of the SATELLITE will have in place, and during the term of the FRANCHISE AGREEMENT shall properly maintain in good working order, a computerized point of sale system (the "POS SYSTEM") consisting of, at each of the STORES, one or more cash registers, a modem, software, cables, a dedicated telephone line (or alternative communications line designated by, or permitted by SHOPPE COMPANY), and other accessories and peripheral equipment, all of which must be approved by SHOPPE COMPANY in the SHOP OPERATIONS MANUAL or otherwise in writing. Unless SHOPPE COMPANY in writing permits otherwise, the equipment making-up the POS SYSTEM shall be purchased only from a source designated by SHOPPE COMPANY; and initially programmed and from time to time reprogrammed only by someone designated by SHOPPE COMPANY, which requirements FRANCHISEE agrees are reasonable in order to reasonably maintain POS SYSTEM uniformity among various HÄAGEN-DAZS® SHOPS.

8.4.1. Collecting POS INFORMATION.

FRANCHISEE shall at all times use the POS SYSTEM to accurately, consistently, and completely capture, record, and structure, all data and information that SHOPPE COMPANY prescribes in the SHOP OPERATIONS MANUAL or otherwise (the "POS INFORMATION").

8.4.2. Franchisor Access to POS INFORMATION.

FRANCHISEE agrees that SHOPPE COMPANY will have the absolute right to retrieve, electronically and manually, any or all of the POS INFORMATION that SHOPPE COMPANY deems necessary or appropriate, or desires. SHOPPE COMPANY may retrieve the POS INFORMATION at intervals and times SHOPPE COMPANY determines, and without any advance notice to FRANCHISEE. FRANCHISEE shall assist SHOPPE COMPANY in initially establishing electronic access to the POS INFORMATION, and shall thereafter, as required by SHOPPE COMPANY, from time to time provide further assistance in connection with the retrieval of the POS INFORMATION.

8.4.3. Updates, Modifications, and Replacements.

FRANCHISEE shall update or replace software used by the POS SYSTEM, as directed by SHOPPE COMPANY. FRANCHISEE shall make, or at the SHOPPE COMPANY's direction shall permit someone else to make, any programming changes required from time to time by SHOPPE COMPANY. SHOPPE COMPANY may, at any time, but not more frequently than once every three years, require FRANCHISEE to update or replace the entire POS SYSTEM to bring it into conformity with SHOPPE COMPANY's then current approved POS SYSTEM. FRANCHISEE will accomplish the required updates, replacements changes and other modifications within the time-frames SHOPPE COMPANY specifies.

8.4.4. SHOPPE COMPANY's Ownership and Use of POS Information.

FRANCHISEE agrees that all POS INFORMATION provided to SHOPPE COMPANY, whether electronically retrieved or otherwise received, will become SHOPPE COMPANY's property and may be used by SHOPPE COMPANY in any manner SHOPPE COMPANY considers appropriate, provided however that SHOPPE COMPANY will not share POS INFORMATION with other SYSTEM FRANCHISEEs without FRANCHISEE's permission, unless presented in a manner that would not reasonably enable the other FRANCHISEEs to associate the POS INFORMATION to the STORES.

8.4.5. Other Requirements.

If required by SHOPPE COMPANY, then in connection with software for the POS SYSTEM, FRANCHISEE will enter into, and abide by, any software licensing agreements with Franchisor or a third-party software publisher or vendor. If required by SHOPPE COMPANY, then FRANCHISEE will subscribe to a regular maintenance program for the POS SYSTEM.

8.4.6. Acceptance of Credit and Debit Cards

The POS SYSTEM shall include equipment, software, and anything else necessary to make the POS SYSTEM capable of accepting, and FRANCHISEE shall accept, credit cards and debit cards specified by SHOPPE COMPANY, and similar redemption devices specified by SHOPPE COMPANY, that enable purchases to be made without the physical exchange of currency; and FRANCHISEE shall, at its own expense, subscribe to any related processing services designated by SHOPPE COMPANY.

8.4.7. Gift Card Program

FRANCHISEE shall at its own expense participate in any gift card program (or similar gift redemption device program) established by SHOPPE COMPANY, which may involve the issuance and acceptance of gift cards (or other gift redemption devices) through the POS SYSTEM, and may require FRANCHISEE to obtain additional equipment as part of its POS SYSTEM.

Article 9. INSURANCE.

9.1. This Article to Supersede and Amend the FRANCHISE AGREEMENT.

This Article 9 shall supersede and amend any inconsistent provision in the FRANCHISE AGREEMENT. By executing this SATELLITE AGREEMENT, FRANCHISEE agrees to such amendment, acknowledges that such amendment is reasonable, and that FRANCHISEE's willingness to agree to such amendment was a material consideration for SHOPPE COMPANY's willingness to enter into this SATELLITE AGREEMENT. This amendment shall survive any discontinuance of operations at the SATELLITE.

9.2. Coverage Type and Amounts.

FRANCHISEE shall obtain, and during the TERM shall maintain, at FRANCHISEE's expense, Commercial General Liability Insurance, with Products/Completed Operations Insurance coverage, and Blanket Contractual Liability coverage, covering FRANCHISEE's business activities under this AGREEMENT, having minimum limits of \$1,000,000/\$1,000,000, with companies reasonably satisfactory to SHOPPE COMPANY. Each insurance policy that FRANCHISEE obtains under this requirement shall be issued in the name of FRANCHISEE, and shall name "The Häagen-Dazs Shoppe Company, Inc." as an additional insured, and if required by the terms of its Leases for the BUSINESS PREMISES, shall name the Landlord as an additional insured.

FRANCHISEE shall defend and hold SHOPPE COMPANY free and harmless during and after the term of this Agreement from any and all claims, causes of action, damages, losses, penalties, or costs with respect to any person or governmental authority arising from, or relating to the operation of the SHOP and SATELLITE. During the term of the FRANCHISE AGREEMENT, SHOPPE COMPANY may periodically increase the minimum limits which FRANCHISEE must maintain pursuant to this Section.

If at any time SHOPPE COMPANY is not in possession of a current certificate of insurance, or receives a notice of cancellation of insurance, FRANCHISEE shall furnish written proof of insurance within five days following SHOPPE COMPANY's demand therefor; if such proof of insurance is not so furnished,

SHOPPE COMPANY may treat such failure as a material breach of the FRANCHISE AGREEMENT. In addition to whatever other remedies may be available to SHOPPE COMPANY under the FRANCHISE AGREEMENT, SHOPPE COMPANY may, but need not, purchase the insurance required hereunder, and bill FRANCHISEE for the costs of obtaining such coverage.

Article 10. TERMINATION.

This SATELLITE AGREEMENT shall be deemed terminated, upon the termination of the FRANCHISE AGREEMENT, including by way of expiration, cancellation, or abandonment. Any act, omission, occurrence or event that is cause for termination of the FRANCHISE AGREEMENT, shall be cause for termination of the entire FRANCHISE AGREEMENT, irrespective of whether such act, omission, or occurrence or event occurred at the SHOP or the SATELLITE. Any cause for termination of the FRANCHISE AGREEMENT by SHOPPE COMPANY, occurring upon the premises of the SATELLITE, or in relation to the SATELLITE, shall entitle SHOPPE COMPANY to terminate this SATELLITE AGREEMENT in accordance with the procedures for terminating the FRANCHISE AGREEMENT.

FRANCHISEE may, without being in default of the terms of this SATELLITE AGREEMENT or the FRANCHISE AGREEMENT, at any time prior to the SATELLITE EXPIRATION DATE, permanently cease FRANCHISEE's operation of the SATELLITE upon 60 days advance written notice to SHOPPE COMPANY, as long doing so will not result in a breach of FRANCHISEE's lease for the SHOP. Upon such discontinuance of operations, the rights granted to FRANCHISEE under this SATELLITE AGREEMENT shall cease to exist, and FRANCHISEE shall promptly remove any trade dress, items bearing the MARKS, and SHOPPE COMPANY's proprietary materials from the SATELLITE PREMISES.

Modification to the terms of the FRANCHISE AGREEMENT made by this SATELLITE AGREEMENT shall take effect upon the execution of this SATELLITE AGREEMENT, shall be effective irrespective of whether the SATELLITE is ever established, and shall remain effective for the remaining term of the FRANCHISE AGREEMENT, irrespective of any sooner expiration, cancellation, or other termination of this SATELLITE AGREEMENT.

Article 11. TRANSFER.

11.1. "TRANSFER" defined.

For purposes of this Agreement, a "TRANSFER" shall have the meaning accorded that term by the FRANCHISE AGREEMENT.

11.2. No Right to Transfer Apart from the FRANCHISE AGREEMENT.

FRANCHISEE has absolutely no right to TRANSFER any rights or entitlements existing under this SATELLITE AGREEMENT separate and apart from a transfer of the FRANCHISE in accordance with the FRANCHISE AGREEMENT.

Article 12. LEASE ASSIGNMENT OPTION.

FRANCHISEE acknowledges that SHOPPE COMPANY has an interest in the continued operation of the SATELLITE for the entire term of the LEASE, and during any and all option terms, renewal terms, or other extensions of the LEASE.

12.1. Conditional Assignment.

FRANCHISEE hereby assigns, transfers and conveys, to SHOPPE COMPANY all right, title and interest of the tenant under the LEASE; provided, however, that this Lease Assignment Option may be exercised solely by SHOPPE COMPANY, only upon the happening of one of the following events:

- (a) If FRANCHISEE fails or refuses to cure any breach of the Lease, within 5 business days after written notice of such breach, given by either Landlord or SHOPPE COMPANY.

- (b) If this SATELLITE AGREEMENT shall have been terminated on account of FRANCHISEE's breach of this SATELLITE AGREEMENT or the FRANCHISE AGREEMENT.
- (c) If FRANCHISEE has an opportunity to extend the term of the LEASE, through the exercise of an option, renewal or otherwise, but shall have declined or failed to take advantage of such opportunity.
- (d) If SHOPPE COMPANY offers FRANCHISEE the opportunity to enter into a successive term franchise agreement for a term to take effect on or after the expiration of the FRANCHISE AGREEMENT, and FRANCHISEE elects to decline such offer, or fails to timely accept such offer.

12.2. Exercise of Option.

If SHOPPE COMPANY elects to exercise this Lease Assignment Option, then SHOPPE COMPANY shall do so by giving written notice to FRANCHISEE and the landlord under the LEASE (the "Landlord"), sent by certified or registered mail, and by delivering to the Landlord, together with such notice, an assumption of the terms, conditions and covenants of the Tenant under the Lease to be performed, but not for accrued obligations; except that with respect to a transfer made with SHOPPE COMPANY's consent in accordance with the terms of the FRANCHISE AGREEMENT, the assumption of the terms, conditions and covenants of the Lease on the part of Tenant thereunder to be performed shall be that of the purchaser of the business to whom the Lease is to be conveyed.

12.3. Possession of Premises.

Upon the exercise of this Lease Assignment Option it shall be conclusively presumed that FRANCHISEE is no longer entitled to use or occupancy of the SATELLITE PREMISES and that all of FRANCHISEE's rights in and to the said LEASE have in all respects terminated and are by the terms of this Agreement assigned to SHOPPE COMPANY, and within 5 days thereafter FRANCHISEE shall vacate the SATELLITE PREMISES.

Article 13. CLAIMS AND DISPUTES.

13.1. This Article to Supersede and Amend the FRANCHISE AGREEMENT.

This ARTICLE 13 shall supersede and amend any inconsistent provision in the FRANCHISE AGREEMENT. By executing this SATELLITE AGREEMENT, FRANCHISEE agrees to such amendment, acknowledges that such amendment is reasonable, and that FRANCHISEE's willingness to agree to such amendment was a material consideration for SHOPPE COMPANY's willingness to enter into this SATELLITE AGREEMENT. This amendment shall survive any discontinuance of operations at the SATELLITE.

13.2. Provisions to be Valid to the Fullest Extent Permitted by the Laws of the Jurisdiction Where the BUSINESS PREMISES is Situated.

Unless invalidated by the laws of the jurisdiction in which the SHOP PREMISES are situated, the following provisions shall govern the resolution of any controversy between FRANCHISEE and SHOPPE COMPANY, in any way related to this FRANCHISE AGREEMENT, or the FRANCHISE to which this FRANCHISE AGREEMENT relates, including any controversy relating to matters leading to the issuance of this FRANCHISE AGREEMENT by SHOPPE COMPANY. In the event any of these provisions is unenforceable for any reason, said provision shall still be considered to determine the intent of the parties.

13.2.1. Limitation of Actions.

Neither party shall bring against the other any claim arising out of or in connection with this FRANCHISE AGREEMENT or the relationship between the parties after three years from the occurrence of the acts or events giving rise to such claim or after any shorter period set forth in any applicable statute of limitations.

13.2.2. No Right to Trial by Jury.
THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY.

13.2.3. Jurisdiction and Venue.

FRANCHISEE 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. FRANCHISEE hereby waives any objection to venue in the State and Federal Courts of Minnesota, including any objection based upon the convenience of such forum. Any legal action commenced by FRANCHISEE 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. FRANCHISEE acknowledges that SHOPPE COMPANY has its principal place of business in Minneapolis, and agrees that this provision is reasonable.

13.2.4. Choice of Law.

The following provisions shall control the choice of law to be applied to the interpretation of the FRANCHISE AGREEMENT, this SATELLITE AGREEMENT, and any controversy arising in relation to either.

13.2.4.1. Law to be Applied to the Interpretation of AGREEMENT.

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

13.2.4.2. Law to be Applied to Resolution of Issues Concerning the Unique Relationship Between FRANCHISEE and SHOPPE COMPANY.

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

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

The prevailing party in any action between the parties to this AGREEMENT shall be awarded attorneys' fees and costs.

13.2.6. Notice of Claim as Condition Precedent to Suit.

Under no circumstances shall FRANCHISEE institute any court action in connection with this AGREEMENT, unless at least ninety days prior to such initiation of litigation, FRANCHISEE has provided written notice by certified mail, return receipt requested, to SHOPPE COMPANY, explaining in complete detail what acts, or omissions, FRANCHISEE contends give rise to FRANCHISEE's claim.

FRANCHISEE agrees that the notice required by this provision is a condition precedent to FRANCHISEE's right to initiate litigation. FRANCHISEE agrees that the covenant made herein is a material provision of this Agreement.

Article 14. NOTICE.

14.1. This Article to Supersede and Amend the FRANCHISE AGREEMENT.

This Article 14 shall supersede and amend any inconsistent provision in the FRANCHISE AGREEMENT. By executing this SATELLITE AGREEMENT, FRANCHISEE acknowledges that it agrees to such amendment, that such amendment is reasonable, and that FRANCHISEE's willingness to agree to such amendment was a material consideration for SHOPPE COMPANY's willingness to enter into this

SATELLITE AGREEMENT. This amendment shall survive any discontinuance of operations of the SATELLITE.

14.2. Form of NOTICE.

Unless otherwise required by a specific provision of this AGREEMENT, each NOTICE required or permitted hereunder shall be in writing, addressed in accordance with this Article, and sent by United States Postal Service registered or certified mail, return receipt requested; 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; provided however that any NOTICE of default requiring a cure in 7 or fewer days, will not be effective until such time as it should reasonably have been received by FRANCHISEE, which in no case shall be more than 3 days after being sent if by registered or certified mail, unless a copy of such NOTICE is also sent by confirmed facsimile transmission.

14.3. 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 FRANCHISEE, sent by regular mail, confirmed facsimile transmission, or in any other manner permitted for written communications under this AGREEMENT.

14.4. To FRANCHISEE.

A NOTICE to FRANCHISEE shall be effective if sent to either the SHOP, or the last known mailing address of FRANCHISEE, or if there is more than one individual or entity collectively identified as FRANCHISEE, then the last known mailing address of any one of them. FRANCHISEE, or if there is more than one individual or entity collectively identified as FRANCHISEE, 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 NOTICE to SHOPPE COMPANY, sent by regular mail.

Article 15. NO REPRESENTATIONS BY SHOPPE COMPANY.

FRANCHISEE acknowledges and represents that in deciding to execute this AGREEMENT, FRANCHISEE has not relied upon any representations by any representative of SHOPPE COMPANY, except such representations as are contained in the Häagen-Dazs Uniform Franchise Offering Circular which was provided to FRANCHISEE prior to FRANCHISEE's execution of this AGREEMENT.

Article 16. PRIOR PAYMENTS.

FRANCHISEE acknowledges and agrees that, prior to the execution of this AGREEMENT, FRANCHISEE did not pay any money or other consideration to SHOPPE COMPANY or a representative of SHOPPE COMPANY in connection with this AGREEMENT or the SATELLITE.

Article 17. NO EXTRINSIC MODIFICATIONS.

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

Article 18. ALL MODIFICATIONS TO BE IN WRITING AND SIGNED.

None of SHOPPE COMPANY's obligations hereunder may be modified or waived, except in a writing signed by a duly authorized SHOPPE COMPANY representative. No SHOPPE COMPANY representative of has the authority to waive or modify the requirement imposed by the preceding sentence.

Article 19. NO CLAIMS.

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

Article 20. NO DEFAULTS BY FRANCHISEE.

FRANCHISEE represents that to the best of FRANCHISEE's knowledge, FRANCHISEE is not presently in default of any obligations owed to SHOPPE COMPANY under the FRANCHISE AGREEMENT or any other existing agreement, or other contract in relation to which FRANCHISEE is a party.

Article 21. NOT EFFECTIVE UNTIL FULLY EXECUTED.

This SATELLITE AGREEMENT shall not be effective until fully executed by SHOPPE COMPANY.

FRANCHISEE

Witnessed By

Franchisee: (Date)

Witnessed By

Franchisee: (Date)

Witnessed By

Franchisee: (Date)

Witnessed By

Franchisee: (Date)

THE HÄAGEN-DAZS SHOPPE COMPANY, INC.

Witnessed By

By:
Title: (Date)

EXHIBIT D

TO

THE HÄAGEN-DAZS SHOPPE COMPANY, INC.

UNIFORM FRANCHISE OFFERING CIRCULAR

**FRANCHISE AGREEMENT ADDENDUM FOR CERTAIN ELIGIBLE
FRANCHISEES ENTERING INTO A SUCCESSIVE TERM FRANCHISE
AGREEMENT**



HÄAGEN-DAZS SHOP FRANCHISE AGREEMENT ADDENDUM

SHOP #[Number]

This Häagen-Dazs Shop Franchise Agreement Addendum (this "ADDENDUM") is dated this [Day] day of [Month], [Year], and is entered into by and between The Häagen-Dazs Shoppe Company, Inc., a New Jersey corporation, with offices at 500 Washington Avenue South, Minneapolis, Minnesota 55415 ("SHOPPE COMPANY"), and:

[Name]	[Address]
[Name]	[Address]
[Name]	[Address]
[Name]	[Address]
[Name]	[Address]

(hereinafter referred to individually and collectively as "FRANCHISEE").

SHOP PREMISES:	<hr/> <hr/> <hr/> <hr/>
EXPIRATION DATE:	<hr/> <hr/>

Article 1. INTRODUCTION.

FRANCHISEE and SHOPPE COMPANY, contemporaneously with this ADDENDUM, are entering into a Häagen-Dazs Shop Franchise Agreement (the "AGREEMENT") granting FRANCHISEE a Successive Term FRANCHISE to operate the SHOP at the SHOP PREMISES.

Because FRANCHISEE meets certain eligibility requirements established by SHOPPE COMPANY, SHOPPE COMPANY is willing to enter into this ADDENDUM at the election of FRANCHISEE, to permit FRANCHISEE to continue to operate the SHOP under certain financial terms (the "OLD TERMS") consistent with those financial terms that FRANCHISEE has become accustomed to under the previous franchise agreement for the SHOP (the "PRIOR AGREEMENT").

Consistent with these introductory statements, and in consideration of the mutual promises and covenants in this ADDENDUM and the AGREEMENT, SHOPPE COMPANY and FRANCHISEE agree to be bound by the terms of this ADDENDUM and the AGREEMENT as modified by this ADDENDUM.

Article 2. DEFINITIONS.

Terms in this ADDENDUM appearing in all capital letters have the same meaning as they do in the AGREEMENT, unless specifically defined in or modified by this ADDENDUM.

Article 3. ELIGIBILITY REQUIREMENTS.

The parties agree that FRANCHISEE meets each of the following eligibility requirements.

3.1. PRIOR AGREEMENT Issuance Date.

SHOPPE COMPANY issued the PRIOR AGREEMENT, as indicated by its date, before September 1, 1998.

3.2. Shop Continuously Operating at the Authorized Location.

The SHOP, since before September 1, 1998, has been operated continuously at the SHOP PREMISES.

3.3. PRIOR AGREEMENT Not Subject to Modification by Test Agreement.

The PRIOR AGREEMENT was not modified by a Test Agreement, or other document, by which FRANCHISEE was permitted to sell items that were not approved for sale by all SHOPPE COMPANY franchisees, or which required the payment of a ROYALTY on a percentage of sales basis.

Article 4. FRANCHISEE'S ELECTION.

FRANCHISEE acknowledges that by entering into this ADDENDUM, the parties are agreeing to the AGREEMENT modifications made by this ADDENDUM. FRANCHISEE acknowledges that under certain circumstances the OLD TERMS might result in economic or other terms less favorable than those that would have existed if FRANCHISEE did not enter into this ADDENDUM, and that SHOPPE COMPANY has no obligation to rescind this ADDENDUM if FRANCHISEE later determines that the OLD TERMS are not in FRANCHISEE's best interest.

Article 5. RIGHT TO TREAT FRANCHISEE DIFFERENTLY IN CERTAIN RESPECTS.

FRANCHISEE acknowledges that, because the AGREEMENT, as modified by this ADDENDUM, contemplates a ROYALTY based on the volume of HÄAGEN-DAZS® PRODUCTS FRANCHISEE purchases, SHOPPE COMPANY will not receive revenue in connection with some of FRANCHISEE's sales. FRANCHISEE agrees that it shall be fair and reasonable for SHOPPE COMPANY to treat FRANCHISEE differently in certain respects, as compared to other SHOPPE COMPANY franchisees who do not, or cannot elect the OLD TERMS.

5.1. Introduction of any New Products or Services.

FRANCHISEE acknowledges and agrees that to the extent, if any, the SHOPPE COMPANY authorizes SHOPPE COMPANY franchisees to sell products or services (hereinafter "NEW ITEMS") that were not approved for sale by all SHOPPE COMPANY franchisees as of September 1, 1998, then SHOPPE

COMPANY may distinguish between FRANCHISEE and other franchisees who do not elect, or cannot elect the OLD TERMS, either by precluding FRANCHISEE's sale of the NEW ITEMS, or as a condition precedent to permitting FRANCHISEE to sell the New Items (i) requiring FRANCHISEE to convert to the terms of the AGREEMENT without the modifications made by this ADDENDUM, (ii) requiring FRANCHISEE's execution of and conversion to the then current form of franchise agreement being issued by SHOPPE COMPANY, (iii) requiring FRANCHISEE's execution of a subsequent modification of the AGREEMENT and this ADDENDUM, to enable SHOPPE COMPANY to receive some financial benefit in connection with the NEW ITEMS, (iv) requiring FRANCHISEE to purchase, at reasonable cost, point of purchase materials related to the NEW ITEMS, while at the same time making those same point of purchase materials available to other franchisees without additional cost, (v) requiring FRANCHISEE to pay for all or part of the costs of capital improvements necessary to sell the NEW ITEMS while paying for some or all of the same costs of such capital improvement in connection with HÅAGEN-DAZS® SHOP being operated by other franchisees, or (vi) any other differentiation reasonably related to FRANCHISEE's election of the OLD TERMS.

As used herein, "NEW ITEMS" does not include new flavors, or other minor variations of those frozen dessert products which FRANCHISEE is currently permitted to sell, some of which would be subject to the royalty structure set forth within this ADDENDUM.

5.2. No Right to Extend AGREEMENT.

The parties agree that the OLD TERMS, shall only be applicable to the operation of the SHOP for the TERM. If SHOPPE COMPANY offers FRANCHISEE the opportunity to enter into another successive term franchise agreement to take effect upon the expiration of the FRANCHISE AGREEMENT, then the terms of that successive term franchise agreement will be those terms then currently being offered by SHOPPE COMPANY in connection with a successive term franchise.

5.3. Enlarging Operations.

FRANCHISEE acknowledges that the AGREEMENT only grants FRANCHISEE a limited license to sell certain products at the SHOP PREMISES. FRANCHISEE also acknowledges that SHOPPE COMPANY from time to time may announce policies which would enable FRANCHISEE to expand its operation, such as through the grant of the right to operate a "Satellite" under certain circumstances. FRANCHISEE acknowledges and agrees that because the revenue to be derived by SHOPPE COMPANY in connection with the enlargement of FRANCHISEE's selling rights may be less than that revenue which would have been derived by SHOPPE COMPANY but for FRANCHISEE's election of the OLD TERMS, SHOPPE COMPANY may formulate policies or provide opportunities to some franchisees which would not be available to FRANCHISEE, or which would be offered to FRANCHISEE on different terms.

5.4. Any Other Differentiation Reasonably Related to FRANCHISEE's Election.

Without limitation, SHOPPE COMPANY may in any way distinguish between FRANCHISEE and other SHOPPE COMPANY franchisees who have not or cannot elect the OLD TERMS, so long as such differentiation is reasonably related to FRANCHISEE's election of the OLD TERMS.

Article 6. SPECIFIC MODIFICATIONS

6.1. Modification of FRANCHISE AGREEMENT Section 5.3.2.

Section 5.3.2 of the FRANCHISE AGREEMENT is hereby amended to read as follows:

The EXPIRATION DATE is set forth on the first page of this ADDENDUM.

6.2. Modification of FRANCHISE AGREEMENT Section 7.1(c)

Subparagraph (c) of Section 7.1 of the FRANCHISE AGREEMENT is hereby amended to read as follows:

(c) If this AGREEMENT grants a Successive Term FRANCHISE, then the full amount of the FRANCHISE FEE is \$2,550 per year; there is no discount in the case of a partial year. At

FRANCHISEE's election, the FRANCHISE FEE may be paid in annual installments of \$2,550, of which only the first installment shall be due upon execution of this AGREEMENT. Subsequent annual installments must be paid at least ninety days prior to the beginning of each one-year annual period to which such payment relates. FRANCHISEE's failure to timely pay any payment due hereunder shall be good cause for termination of this AGREEMENT.

6.3. Modification of FRANCHISE AGREEMENT Section 9.6

Section 9.6 of the FRANCHISE AGREEMENT, is deleted in its entirety, including the subparagraphs thereof, and replaced in its entirety as follows:

9.6. "ROYALTY."

FRANCHISEE shall pay to SHOPPE COMPANY royalty fees (the "ROYALTY") in an amount equal to a 1967 base of \$.40 per gallon (adjusted as set forth herein) of HÄAGEN-DAZS® PRODUCTS purchased for, or employed in, the preparation or sale of products from the Shop. For each calendar year after 1967, the ROYALTY rate shall be adjusted in accordance with the following formula: \$.01 shall be added to or subtracted from the ROYALTY rate for each full 3.0 change during the previous calendar year in the U.S. Bureau of Labor Statistics Consumer Price Index, For All Urban Consumers, U.S. City Average ("1967" equals 100), from a base of 196.7; provided, however, that in no event shall the ROYALTY rate be less than \$.40 per gallon. If publication of the Index referred to above is terminated, SHOPPE COMPANY shall be entitled to designate and use another Index to calculate fluctuations in royalties payable hereunder.

FRANCHISEE agrees to pay the ROYALTY promptly upon presentation of invoices and pursuant to the terms thereof.

6.4. Deletion of LOCAL MARKETING CONTRIBUTION obligation.

Section 9.8 of the FRANCHISE AGREEMENT, including its sub provisions, is hereby deleted in its entirety, and replaced as follows:

9.8. "LOCAL MARKETING CONTRIBUTION."

[Deleted]

6.5. Modification of FRANCHISE AGREEMENT, Section 14.3.9.

Paragraph 14.3.9 of the FRANCHISE AGREEMENT is hereby deleted.

Article 7. NO REPRESENTATIONS BY SHOPPE COMPANY.

FRANCHISEE acknowledges and represents that in deciding to elect the OLD TERMS, FRANCHISEE has not relied upon any representations by any representative of SHOPPE COMPANY, except such representations as are contained in the Häagen-Dazs Uniform Franchise Offering Circular provided to FRANCHISEE before FRANCHISEE signed this ADDENDUM. FRANCHISEE acknowledges and represents that in electing the OLD TERMS, FRANCHISEE has independently determined that OLD TERMS were more favorable to FRANCHISEE than the unmodified terms of the AGREEMENT.

Article 8. SUBSEQUENT SUCCESSIVE TERM FRANCHISE AGREEMENTS.

FRANCHISEE acknowledges that SHOPPE COMPANY has not committed to issuing a successive term franchise agreement to FRANCHISEE in connection with the SHOPPE PREMISES upon the expiration of the AGREEMENT. FRANCHISEE acknowledges that if SHOPPE COMPANY offers FRANCHISEE the opportunity to enter into a successive term franchise agreement upon the expiration of the AGREEMENT, then FRANCHISEE will not have an additional opportunity to elect the OLD TERMS.

Article 9. EXTENT OF MODIFICATIONS.

This ADDENDUM is being executed in modification of the AGREEMENT. Each modification to the AGREEMENT is set forth explicitly herein, and to the extent not explicitly modified, each provision of the AGREEMENT shall remain in full force and effect.

Article 10. NOT EFFECTIVE UNTIL FULLY EXECUTED.

This ADDENDUM shall not be effective until fully executed by SHOPPE COMPANY and FRANCHISEE.

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

FRANCHISEE

Witness
Date: _____

Franchisee: [Name]

Witness
Date: _____

Franchisee: [Name]

Witness
Date: _____

Franchisee: [Name]

Witness
Date: _____

Franchisee: [Name]

Witness
Date: _____

Franchisee: [Name]

In the Presence of:

THE HÄAGEN-DAZS SHOPPE COMPANY, INC.

Witness
Date: _____

By: _____
Title: _____

EXHIBIT E

TO

**THE HÄAGEN-DAZS SHOPPE COMPANY, INC.
UNIFORM FRANCHISE OFFERING CIRCULAR**

HÄAGEN-DAZS SHOP DEVELOPMENT INCENTIVE AGREEMENT



HÄAGEN-DAZS SHOP DEVELOPMENT INCENTIVE AGREEMENT

This Häagen-Dazs Shop Development Incentive Agreement (this "INCENTIVE AGREEMENT") is entered into this [Day] day of [Month], [Year] (the "AGREEMENT DATE"), by and between The Häagen-Dazs Shoppe Company, Inc., a New Jersey corporation, with offices at 500 Washington Avenue South, Minneapolis, Minnesota 55415 (hereinafter referred to as "SHOPPE COMPANY"), and:

[Name]	[Address]
[Name]	[Address]
[Name]	[Address]
[Name]	[Address]
[Name]	[Address]

(hereinafter referred to individually and collectively as "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 (each a "SHOP") operated in association with the Häagen-Dazs name, trademarks, service marks, logos, trade dress, and other commercial symbols (the "MARKS") prominently featuring the sale of Häagen-Dazs® products (the "PRODUCTS") and menu items prepared with the PRODUCTS (the "SYSTEM"). 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 PRODUCTS in a manner that will enhance the good will associated with the MARKS and the SYSTEM.

1.2 DEVELOPER.

DEVELOPER desires to develop, own and operate a number of SHOPS pursuant to and in accordance with Häagen-Dazs Franchise Agreements (each a "FRANCHISE AGREEMENT") to be entered into individually and separately from this INCENTIVE AGREEMENT.

1.3 Incentives.

SHOPPE COMPANY desires to provide, and DEVELOPER desires to obtain, financial incentives, in the form of a reduction to the initial franchise fee otherwise payable under a FRANCHISE AGREEMENT for a SHOP, as more particularly described by Article 6, based upon DEVELOPER's opening of a number QUALIFYING SHOPS.

1.4 Agreement.

Pursuant to the above introductory provisions, and in consideration of the mutual promises and covenants set forth in this INCENTIVE AGREEMENT, SHOPPE COMPANY and DEVELOPER agree as follows:

Article 2. TERM.

The term of this INCENTIVE AGREEMENT (the "TERM") will begin on the AGREEMENT DATE, and will end on the earlier of:

- (a) 3 years from the date the first QUALIFYING SHOP opens for business under the terms of the respective FRANCHISE AGREEMENT; or
- (b) 4 years from the AGREEMENT DATE.

The TERM may not be extended or renewed.

Article 3. QUALIFYING SHOPS.

For the purposes of this INCENTIVE AGREEMENT, "QUALIFYING SHOP" means a newly developed SHOP, which DEVELOPER opens for business during the TERM, under a FRANCHISE AGREEMENT entered into on or after the AGREEMENT DATE; except in the case of a SHOP opened under the terms of any other agreement that requires the development of more than one SHOP.

Article 4. DEVELOPMENT REQUIREMENT.

This INCENTIVE AGREEMENT does not obligate DEVELOPER to open a particular number of QUALIFYING SHOPS, nor does it obligate SHOPPE COMPANY to grant any particular number of franchises to DEVELOPER. However, to the extent that DEVELOPER opens QUALIFYING SHOPS, this INCENTIVE AGREEMENT will modify the initial franchise fee otherwise payable under the respective FRANCHISE AGREEMENT, as more particular described in Article 6.

Article 5. INCENTIVE AGREEMENT FEE.

DEVELOPER shall pay SHOPPE COMPANY a fee for the opportunity to receive the benefits contemplated by this INCENTIVE AGREEMENT (the "INCENTIVE FEE"), in the total amount of \$30,000, as more particularly described below.

5.1 INCENTIVE FEE Payments

DEVELOPER shall pay the INCENTIVE FEE to SHOPPE COMPANY, as follows:

- (a) DEVELOPER shall pay SHOPPE COMPANY \$15,000.00 upon the signing of this INCENTIVE AGREEMENT;
- (b) DEVELOPER shall pay SHOPPE COMPANY \$7,500.00 on or before the first anniversary of the AGREEMENT DATE; and
- (c) DEVELOPER shall pay SHOPPE COMPANY \$7,500.00 on or before the second anniversary AGREEMENT DATE.

5.2 Entire INCENTIVE FEE Payable

Notwithstanding the payment schedule specified above, DEVELOPER acknowledges and agrees that the entire INCENTIVE FEE shall be earned by SHOPPE COMPANY upon the execution of this INCENTIVE AGREEMENT, without regard to the number of QUALIFYING SHOPS opened by DEVELOPER.

Article 6. NO FRANCHISE FEE FOR QUALIFYING SHOPS; FRANCHISE AGREEMENTS.

Except as set forth below, DEVELOPER shall not be required to pay the initial franchise fee contemplated by the FRANCHISE AGREEMENT for a QUALIFYING SHOP.

6.1 Franchise Fee Wavier Incentives.

For each QUALIFYING SHOP opened after the fifth QUALIFYING SHOP, DEVELOPER shall pay SHOPPE COMPANY an initial franchise fee in the amount of \$5,000.00, within 30 days after the respective QUALIFYING SHOP first opens for business.

6.2 Shop Incorrectly Anticipated to be a QUALIFYING SHOP.

If, for any reason, a SHOP does not open in compliance with the terms of the related FRANCHISE AGREEMENT, or within the TERM, including by reason of a termination of this INCENTIVE AGREEMENT by SHOPPE COMPANY under Section 7.2, then, within 30 days after a request from SHOPPE COMPANY, DEVELOPER will pay SHOPPE COMPANY the Franchise Fee due under the respective FRANCHISE AGREEMENT without modification by this INCENTIVE AGREEMENT.

6.3 Form of FRANCHISE AGREEMENT.

In connection with each anticipated QUALIFYING SHOP, DEVELOPER will enter into the then current form of FRANCHISE AGREEMENT, in accordance with the same procedures, and at the same time, as would otherwise apply if DEVELOPER was not operating under this INCENTIVE AGREEMENT. The terms of the FRANCHISE AGREEMENTS entered into by DEVELOPER will not be modified by this INCENTIVE AGREEMENT, except to the extent specifically stated in this Article 6.

6.4 Identity of Franchisee.

The composition of each "franchisee" under each FRANCHISE AGREEMENT for a QUALIFYING SHOP must be identical to the composition of the DEVELOPER.

Article 7. TERMINATION.

This INCENTIVE AGREEMENT may only be terminated in accordance with the following provisions:

7.1 Termination by DEVELOPER for Cause.

DEVELOPER may terminate this INCENTIVE AGREEMENT for a material default by SHOPPE COMPANY under this INCENTIVE AGREEMENT, unless cured by SHOPPE COMPANY within 30 days after receiving a written NOTICE from DEVELOPER specifying the default. Termination will not be effective unless a separate NOTICE of termination is sent following the failure of SHOPPE COMPANY to timely cure the default identified in the NOTICE of default.

7.2 Termination by SHOPPE COMPANY for Cause.

SHOPPE COMPANY may immediately terminate this INCENTIVE AGREEMENT for good cause by sending NOTICE to DEVELOPER. Good cause for termination includes, but is not limited to:

- (a) The failure of DEVELOPER to continue to meet the financial, managerial and other standards and requirements which SHOPPE COMPANY reasonably considers necessary for the grant of a franchise;
- (b) A default by DEVELOPER under the terms of any FRANCHISE AGREEMENT that is not timely cured, regardless of whether SHOPPE COMPANY terminates such FRANCHISE AGREEMENT;

- (c) A repetitive or continuous default under the terms of any FRANCHISE AGREEMENT, regardless of whether cured or whether SHOPPE COMPANY terminates such FRANCHISE AGREEMENT;
- (c) The termination of any FRANCHISE AGREEMENT between the parties, unless by operation of law upon expiration;
- (d) The failure of DEVELOPER to pay any portion of the INCENTIVE FEE when due, provided however that SHOPPE COMPANY will give DEVELOPER a seven-day cure opportunity, during which time DEVELOPER may overcome the termination by paying, in good funds, all delinquent portions of the INCENTIVE FEE; provided further that termination pursuant to this provision shall not relieve DEVELOPER of the obligation to pay SHOPPE COMPANY the entire INCENTIVE FEE; or
- (e) A determination that DEVELOPER made any of the representations contained in Article 17 of this INCENTIVE AGREEMENT, when DEVELOPER knew or should have known that such representation was false.

7.3 Acceleration of INCENTIVE FEE Payment Upon Termination by SHOPPE COMPANY.

If SHOPPE COMPANY terminates this INCENTIVE AGREEMENT under section 7.2, then any portion of the INCENTIVE FEE not yet paid by DEVELOPER shall immediately become due, and shall immediately be paid by DEVELOPER to SHOPPE COMPANY.

Article 8. TRANSFER; PERSONAL TO DEVELOPER.

DEVELOPER acknowledges that this INCENTIVE AGREEMENT is personal to DEVELOPER and that SHOPPE COMPANY entered into this INCENTIVE AGREEMENT in part due to its confidence in DEVELOPER's abilities to develop SHOPS. Accordingly, DEVELOPER may not assign or otherwise transfer this INCENTIVE AGREEMENT. Without limiting the foregoing, the composition of the "Franchisee" under any FRANCHISE AGREEMENT for a QUALIFYING SHOP must be identical to the composition of DEVELOPER.

Article 9. NO REPRESENTATIONS BY SHOPPE COMPANY.

In deciding to enter into this INCENTIVE AGREEMENT, DEVELOPER has not relied upon any representations by or on behalf of SHOPPE COMPANY, except such representations as are contained in the Häagen-Dazs Uniform Franchise Offering Circular that was provided to DEVELOPER most recently before DEVELOPER signed this INCENTIVE AGREEMENT, and such representations as are set forth explicitly in this INCENTIVE AGREEMENT.

Article 10. NO ADDITIONAL RIGHTS GRANTED BY THIS INCENTIVE AGREEMENT.

This INCENTIVE AGREEMENT does not grant DEVELOPER any interest in or right to use any of the MARKS, any franchise or development rights, or any area, territory or other form of geographical, location, product or sales exclusivity. This INCENTIVE AGREEMENT is not issued in place of any FRANCHISE AGREEMENT, or other document customarily issued by SHOPPE COMPANY in connection with the grant of a franchise. Any such rights, if any, will be granted to DEVELOPER by the FRANCHISE AGREEMENTS and other agreements entered into by the parties in connection with the development of a specific QUALIFYING SHOP under this INCENTIVE AGREEMENT. SHOPPE COMPANY, by entering into this INCENTIVE AGREEMENT, is not agreeing to grant any specific number of franchises to DEVELOPER, and may refuse to grant franchises to DEVELOPER for any reason, including the failure of DEVELOPER to continue to satisfy the reasonable operational, financial, managerial and other standards and requirements of SHOPPE COMPANY. Without limiting the foregoing, it is understood and agreed that SHOPPE COMPANY shall have an absolute right to refrain from entering into a FRANCHISE AGREEMENT with DEVELOPER, for any reason whatsoever, including, but not limited to:

- (a) any reason which would permit SHOPPE COMPANY to terminate this INCENTIVE AGREEMENT under Section 7.2;
- (b) any concerns of SHOPPE COMPANY with respect to any SHOP development project that DEVELOPER is pursuing, or with respect to the number of SHOP development projects that DEVELOPER is simultaneously pursuing.

Article 11. ENTIRE AGREEMENT.

This INCENTIVE AGREEMENT contains the entire agreement of the parties, and there are no other oral or written understandings or agreements between the parties relating to the subject matter of this INCENTIVE AGREEMENT. No evidence extrinsic to this INCENTIVE AGREEMENT may be admitted to vary the parties' understanding of this INCENTIVE AGREEMENT.

Article 12. UNENFORCEABLE PROVISIONS.

If any term of this INCENTIVE AGREEMENT is held unenforceable for any reason, then the remainder will be enforced to the greatest extent possible, provided that such enforcement is consistent with the intent of the parties as evidenced by the terms of this INCENTIVE AGREEMENT.

Article 13. MODIFICATIONS.

None of DEVELOPER's obligations under this INCENTIVE AGREEMENT may be waived or modified, except in a written document signed by a duly authorized representative of SHOPPE COMPANY. No representative of SHOPPE COMPANY has the authority to waive the requirement of the preceding sentence.

Article 14. NOTICE.

The following provisions shall apply to any "NOTICE" required or permitted under the terms of this INCENTIVE AGREEMENT.

14.1 Form of NOTICE.

Unless otherwise required by a specific provision of this INCENTIVE 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 manner permitted for the sending of a NOTICE under this Article 14.

14.3 To DEVELOPER.

A NOTICE to DEVELOPER shall be effective if sent to 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 NOTICE to SHOPPE COMPANY, sent by regular mail, confirmed facsimile transmission, or in any manner permitted for the sending of a NOTICE under this Section Article 14.

Article 15. INDEPENDENT CONTRACTOR AND INDEMNIFICATION.

15.1 Relationship of the Parties.

DEVELOPER and SHOPPE COMPANY are independent contractors. This INCENTIVE AGREEMENT shall not be construed as making 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 INCENTIVE 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 the failure of DEVELOPER to adhere to any of its obligations under this INCENTIVE AGREEMENT. This obligation shall survive the expiration or earlier termination of this INCENTIVE AGREEMENT.

Article 16. INTERPRETATION, CLAIMS AND DISPUTES.

Except to the extent invalidated by valid, enforceable, applicable laws, this Article 16 shall govern the interpretation of this INCENTIVE AGREEMENT, and the resolution of any legal action in any way related to this INCENTIVE 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. In the event of any controversy between DEVELOPER and SHOPPE COMPANY that is within the scope of both this Article 16 and the corresponding provisions of a FRANCHISE AGREEMENT for a QUALIFYING SHOP, then the provisions of such FRANCHISE AGREEMENT shall apply to the extent inconsistent this Article 16.

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 INCENTIVE AGREEMENT and a determination of the rights of the parties under this INCENTIVE AGREEMENT.

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

The terms of this INCENTIVE AGREEMENT 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 any jurisdiction, shall govern any obligations between DEVELOPER and SHOPPE COMPANY, to the extent those franchise laws supplement, displace, or modify the provisions of this INCENTIVE AGREEMENT. In construing this provision, it is the intent of the parties that to the extent of a conflict between this INCENTIVE 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 INCENTIVE 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 INCENTIVE AGREEMENT. DEVELOPER agrees that this covenant made by DEVELOPER is a material provision of this INCENTIVE AGREEMENT, and will survive any expiration, cancellation or other termination of this INCENTIVE AGREEMENT.

16.7 Election of Remedies.

Unless a specific provision of this INCENTIVE AGREEMENT expressly restricts SHOPPE COMPANY to a particular remedy on account of a particular failure of DEVELOPER to comply with the terms of this INCENTIVE AGREEMENT, no remedy contemplated by this INCENTIVE AGREEMENT on account of a particular failure of DEVELOPER to comply with the terms of this INCENTIVE 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.

Article 17. DEVELOPER's ACKNOWLEDGEMENTS AND REPRESENTATIONS.

DEVELOPER agrees and acknowledges that SHOPPE COMPANY, in entering into this INCENTIVE 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 INCENTIVE 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 INCENTIVE AGREEMENT, or in the Häagen-Dazs Uniform Franchise Offering Circular that was most recently provided to DEVELOPER before DEVELOPER signed this INCENTIVE 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 a QUALIFYING SHOP.

17.2 Review of INCENTIVE AGREEMENT and System.

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

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

17.3 No Claims.

DEVELOPER acknowledges that at the time of executing this INCENTIVE 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 or any of its affiliates or agents under any currently existing agreement between the parties.

17.5 Prior Payments.

DEVELOPER acknowledges and agrees that, except for the initial installment of the INCENTIVE FEE paid by DEVELOPER upon signing this INCENTIVE AGREEMENT, DEVELOPER has not, in connection with this INCENTIVE AGREEMENT, paid any money, or given anything else of value, to SHOPPE COMPANY or a representative of SHOPPE COMPANY in any way relating to the subject matter of this INCENTIVE AGREEMENT.

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 INCENTIVE AGREEMENT.

Article 18. SEVERABILITY AND CONSTRUCTION

18.1 Severability.

If any term of this INCENTIVE 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 INCENTIVE AGREEMENT.

18.2 Waiver.

None of DEVELOPER's obligations under this INCENTIVE AGREEMENT, or SHOPPE COMPANY's rights under this INCENTIVE 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 INCENTIVE AGREEMENT; or
- (b) to exercise any right SHOPPE COMPANY has under this INCENTIVE AGREEMENT;

shall not constitute a waiver of any subsequent breach, affect the validity of all or any part of this INCENTIVE 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 INCENTIVE AGREEMENT contains all terms that are material to this INCENTIVE AGREEMENT, up to and including the point of DEVELOPER's execution of this INCENTIVE AGREEMENT. DEVELOPER agrees that no evidence extrinsic to this INCENTIVE AGREEMENT may be used or admitted to vary DEVELOPER's understanding of this INCENTIVE 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 INCENTIVE AGREEMENT.

18.5 Section Titles.

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

Article 19. NOT EFFECTIVE UNTIL FULLY EXECUTED

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

(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: _____

[Name]

Witness
Date: _____

[Name]

Witness
Date: _____

[Name]

Witness
Date: _____

[Name]

Witness
Date: _____

[Name]

In the Presence of:

THE HÄAGEN-DAZS SHOPPE COMPANY, INC.

Date: _____

By: _____
Title: _____

EXHIBIT F

TO

**THE HÄAGEN-DAZS SHOPPE COMPANY, INC.
UNIFORM FRANCHISE OFFERING CIRCULAR**

HÄAGEN-DAZS SELECT AGREEMENT



HÄAGEN-DAZS SELECT AGREEMENT

SELECT PROJECT / SHOP #

This Häagen-Dazs Select Agreement (this "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:

[Name]	[Address]

("FRANCHISEE").

Subject to the terms and conditions set forth in this AGREEMENT, FRANCHISEE will develop a SELECT SHOP at the following location:

[Specific Location]	(the "SHOP PREMISES")
[Facility]	(the "FACILITY")

[Address for Notices]	("FRANCHISEE'S ADDRESS FOR NOTICES")
Facsimile Number: [Facsimile Number for Notices]	

FRANCHISEE acknowledges that the information on this page (the "COVER SHEET") is material, and accurately reflects FRANCHISEE's understanding.



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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 goodwill associated with the MARKS and the SYSTEM.

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

FRANCHISEE desires to be part of the SYSTEM and to establish, own and operate a HÄAGEN-DAZS® SHOP at the SHOP PREMISES, located at or within the FACILITY, subject to and in accordance with all of the terms and conditions of this AGREEMENT, and in adherence and conformity to the SYSTEM STANDARDS.

1.3 SHOPPE COMPANY's Desire to Grant FRANCHISE.

SHOPPE COMPANY desires to grant FRANCHISEE a franchise to establish and operate a HÄAGEN-DAZS® SHOP at the SHOP PREMISES, subject to the terms and conditions of this AGREEMENT, and conditioned upon FRANCHISEE's continual adherence and conformity to the SYSTEM STANDARDS.

1.4 Agreement of the Parties.

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

Article 2 CERTAIN DEFINITIONS

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

2.1 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.

2.2 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 written franchise agreement granted by SHOPPE COMPANY, and includes a SELECT SHOP.

2.3 MARKS.

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

2.4 NOTICE.

"NOTICE" means a communication satisfying the requirements of Article 17.



2.5 **SHOP.**

The "SHOP" means the SELECT SHOP established and operated by FRANCHISEE under the terms of this AGREEMENT. For the purposes of determining compliance with the SYSTEM STANDARDS, the "SHOP" also includes any facility, whether or not a part of the SHOP PREMISES, where SHOPPE COMPANY permits FRANCHISEE to store, handle or display food, or other items, which are sold or used at the SHOP.

2.6 **SELECT SHOP.**

A "SELECT SHOP" means a HÄAGEN-DAZS® SHOP, offering a limited selection of HÄAGEN-DAZS® PRODUCTS, and menu items, typically located in a commercial environment where the development of a full-scale HÄAGEN-DAZS® SHOP would be unusual.

2.7 **SYSTEM STANDARDS.**

References in this AGREEMENT to "SYSTEM STANDARDS" shall be understood to refer to those specific SYSTEM STANDARDS that SHOPPE COMPANY has determined to be applicable to the SHOP as a SELECT SHOP.

Article 3 SHOP CONSTRUCTION

FRANCHISEE will adhere to SHOPPE COMPANY's procedures and requirements for the design and construction of the SHOP at the SHOP PREMISES, and, in particular:

- (a) FRANCHISEE will at its own expense, using qualified construction tradespersons, construct the SHOP in conformity to the design criteria that SHOPPE COMPANY specifies for a SELECT SHOP, which will include certain specified equipment, signage, and display of the MARKS.
- (b) FRANCHISEE will ensure that that the SHOP is constructed in full compliance with any applicable national, state, and local requirements, including those imposed by building codes, safety codes, health and sanitary codes, and the Americans with Disabilities Act. FRANCHISEE acknowledges that SHOPPE COMPANY's review of design and construction documents is solely for the purpose of determining aesthetic adherence to SHOPPE COMPANY's design requirements, and shall not be construed as an assessment as to whether the design or construction documents comply with any of the foregoing legal requirements.
- (c) During construction of the SHOP, FRANCHISEE: (i) shall require any contractor it hires to construct the SHOP to have liability insurance of at least \$1,000,000/\$1,000,000, and shall have SHOPPE COMPANY named as an additional insured under such policy; (ii) shall obtain permits, licenses, and enter into contracts in FRANCHISEE's own name, and shall not in any way purport to bind, or contract on behalf of SHOPPE COMPANY. FRANCHISEE shall defend, indemnify, and hold SHOPPE COMPANY harmless from all claims, demands, and causes of action arising out of or in relation to the development and construction of the SHOP.

Article 4 GRANT

4.1 **The "FRANCHISEE."**

Subject to the provisions of this AGREEMENT, SHOPPE COMPANY hereby grants FRANCHISEE the personal, limited right and license (the "FRANCHISEE") to, during the TERM, operate the SHOP, at the SHOP PREMISES, in association with the MARKS, and in compliance with the SYSTEM STANDARDS.



4.2 No Right to Relocate, or Conduct Sales Away from the SHOP.

This AGREEMENT does not grant FRANCHISEE any right to relocate the SHOP. This AGREEMENT does not grant FRANCHISEE any right to sell any goods or services associated with the MARKS or the SYSTEM, except on a retail basis from the SHOP. Without limiting the foregoing, this AGREEMENT does not grant FRANCHISEE any right to engage in wholesale sales, mail order sales, catalog sales, special events sales, catering, internet-based sales (e-Commerce), or any other sale to a customer who is not physically present in the SHOP at the time of purchase. If SHOPPE COMPANY from time to time permits FRANCHISEE to engage in any sales away from the SHOP, then those sales shall not alter the non-exclusive nature of this AGREEMENT, and FRANCHISEE shall fully adhere to SHOPPE COMPANY's requirements and policies pertaining to those sales away from the SHOP, which shall be deemed to be a part of the SYSTEM STANDARDS to which FRANCHISEE shall adhere.

4.3 Exclusive Territory.

During the TERM, SHOPPE COMPANY will not establish or license a third-party to establish another HÄAGEN-DAZS® SHOP within the FACILITY, subject to the following limitations and reservations:

- (a) The exclusive territory contemplated by this Section 4.3 shall be based on, and extend only to, the physical limits of the FACILITY as of the date of this AGREEMENT.
- (b) FRANCHISEE acknowledges and agrees that this Section 4.3, entitles FRANCHISEE only to the reasonable expectation that, during the TERM, so long as FRANCHISEE is in compliance with all the terms of this AGREEMENT, SHOPPE COMPANY will not establish, or license a third-party to establish another HÄAGEN-DAZS® SHOP within the FACILITY.
- (c) Nothing in this AGREEMENT grants FRANCHISEE the right to be the only retailer of HÄAGEN-DAZS® PRODUCTS within the FACILITY. SHOPPE COMPANY, for itself, the owner of the MARKS, and their respective direct and indirect licensees, 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 shops other than a another HÄAGEN-DAZS® SHOP, within the FACILITY. SHOPPE COMPANY also retains the absolute right to engage in, and permit third parties including other SYSTEM franchisees to engage in, certain selling activities, within the FACILITY, including without limitation, sales at special events, catered events, and places not open to the general public, and sales to persons or businesses located within the FACILITY.

Article 5 COMMENCEMENT, TERM AND RENEWAL

5.1 The "TERM."

The term of the FRANCHISE (the "TERM") will start the day the SHOP first opens for business or the OUTSIDE OPENING DATE determined under Section 5.2, whichever is earlier (the "COMMENCEMENT DATE"); and will end on the day immediately before the fifth anniversary of the COMMENCEMENT DATE (the EXPIRATION DATE); unless this AGREEMENT is sooner cancelled or terminated in accordance with its provisions.

5.2 Commencement of Operations.

FRANCHISEE shall exert its best efforts to open the SHOP on or before the day that is exactly 6 months from the date of this AGREEMENT (appearing on the top of the COVER SHEET) (the "OUTSIDE OPENING DATE"). Irrespective of the cause of any delay, if FRANCHISEE fails to open the SHOP for business by the OUTSIDE OPENING DATE, then, SHOPPE COMPANY shall have the absolute right to elect to:



- (a) permit FRANCHISEE additional time to open SHOP under this AGREEMENT, in which case SHOPPE COMPANY may, but shall not be obligated to, postpone the COMMENCEMENT DATE; or
- (b) require FRANCHISEE to enter into SHOPPE COMPANY's most current form of franchise agreement in replacement of this AGREEMENT, and permit FRANCHISEE additional time to open SHOP, in which case SHOPPE COMPANY may at its election require that the EXPIRATION DATE remain the same, or may extend the EXPIRATION DATE; or
- (c) cancel this AGREEMENT, in which case SHOPPE COMPANY shall have no further obligations to FRANCHISEE under this AGREEMENT.

5.3 No Opportunity to Renew.

FRANCHISEE acknowledges and agrees that this AGREEMENT confers no right to continuation, renewal, or a subsequent franchise agreement on or after the EXPIRATION DATE.

Article 6 SHOPPE COMPANY'S OBLIGATIONS

Except as explicitly set forth in this Article 6, or explicitly contemplated by a particular provision of this AGREEMENT, SHOPPE COMPANY has no obligations to FRANCHISEE under this AGREEMENT.

6.1 Design Requirements.

In connection with the initial construction of the SHOP, SHOPPE COMPANY shall, at no charge to FRANCHISEE, provide FRANCHISEE with SHOPPE COMPANY standard criteria for the design and configuration of a typical SELECT SHOP.

6.2 Training.

Before the initial opening of the SHOP, SHOPPE COMPANY shall, at no charge to FRANCHISEE, provide FRANCHISEE with initial training for the DESIGNATED SHOP MANAGER and up to one additional person in accordance with Section 9.3.1.

6.3 SHOP OPERATIONS MANUAL.

During the TERM, SHOPPE COMPANY shall at no charge loan one copy of the SHOP OPERATIONS MANUAL to FRANCHISEE in accordance with Article 8.

6.4 Final Inspection.

At a mutually convenient time agreed upon sufficiently in advance of the initial opening of the SHOP, SHOPPE COMPANY shall, at no charge to FRANCHISEE, inspect the SHOP to determine that it reasonably conforms SHOPPE COMPANY's design criteria.

6.5 Opening Assistance.

Before and in connection with the initial opening of the SHOP, SHOPPE COMPANY shall, at no charge, provide FRANCHISEE with such pre-opening and opening assistance and guidance as SHOPPE COMPANY deems appropriate.

6.6 Ongoing Source of HÄAGEN-DAZS® PRODUCTS and Other Products.

During the TERM, SHOPPE COMPANY will designate a source from which FRANCHISEE shall purchase HÄAGEN-DAZS® PRODUCTS, and will designate or approve sources for other items purchased by FRANCHISEE in connection with the operation of the SHOP, as more particularly described under Section 9.7.



6.7 Ongoing Advice and Assistance.

During the TERM, SHOPPE COMPANY shall, at no charge, from time to time provide FRANCHISEE with such advisory assistance, information, techniques, data, and instructional materials concerning the sale of items from the SHOP, operation of the SHOP, marketing programs applicable to the SYSTEM, local marketing of the SHOP, and adherence to the SYSTEM STANDARDS as SHOPPE COMPANY deems advisable.

Article 7 FEES

7.1 "CONTINUING FRANCHISE FEE."

FRANCHISEE acknowledges that it is common for franchise agreements to require the payment of an initial franchise at time of signing, in connection with the initial establishment of the franchised business. In lieu of an initial franchise fee, FRANCHISEE shall pay SHOPPE COMPANY a continuing franchise fee (the "CONTINUING FRANCHISE FEE") in the amount of \$1.00 per each gallon of HÄAGEN-DAZS® PRODUCTS purchased for use at or sale from, or otherwise utilized in connection with the SHOP.

7.2 "ROYALTY."

In addition to the CONTINUING FRANCHISE FEE, FRANCHISEE shall pay SHOPPE COMPANY a continuing royalty fee (the "ROYALTY"), for the continuing right to operate the SHOP in association with the MARKS and the SYSTEM. The ROYALTY shall be an amount equal to a 1967 base of \$.40 per gallon (adjusted as set forth herein) of HÄAGEN-DAZS® PRODUCTS purchased for, or employed in, the preparation or sale of products from the SHOP. For each calendar year after 1967, such royalty rate shall be adjusted in accordance with the following formula: \$.01 shall be added to or subtracted from such royalty for each full 3.0 change during the previous calendar year in the U.S. Bureau of Labor Statistics Consumer Price Index, For All Urban Consumers, U.S. City Average ("1967" equals 100), from a base of 196.7; provided, however, that in no event shall the said royalty be less than \$.40 per gallon. If publication of the Index referred to above is terminated, SHOPPE COMPANY shall be entitled to designate and use another Index to calculate fluctuations in royalties payable hereunder.

7.3 PRODUCT BASED PAYMENTS; When Due.

Unless SHOPPE COMPANY establishes a different due date, CONTINUING FRANCHISE FEE payments and ROYALTY payments (collectively the "PRODUCT BASED PAYMENTS") are due at the same time as payment for the underlying HÄAGEN-DAZS® PRODUCTS, and SHOPPE COMPANY may separately invoice FRANCHISEE for the PRODUCT BASED PAYMENTS, or may arrange for the PRODUCT BASED PAYMENTS to be invoiced as part of the invoice for the underlying HÄAGEN-DAZS® PRODUCTS. Franchisee agrees to pay PRODUCT BASED PAYMENTS promptly upon presentation of invoices and pursuant to the terms thereof.

7.4 "GENERAL MARKETING CONTRIBUTION."

FRANCHISEE shall pay a continuing fee (the "GENERAL MARKETING CONTRIBUTION") to be used by SHOPPE COMPANY as more particularly described below.

7.4.1 Amount of GENERAL MARKETING CONTRIBUTION.

For each year of the TERM, FRANCHISEE shall pay a GENERAL MARKETING CONTRIBUTION determined in accordance with the following formula.

- (a) 25% multiplied by,
- (b) A 1967 base of \$1,000.00, to which \$25 shall be added or subtracted for each full 3.0 change during the previous calendar year(s) in the U.S. Bureau of Labor Statistics Consumer Price Index, For All Urban Consumers, U.S. City Average ("1967" equals 100) from a base of 196.7 (the "CPI").



If publication of the Index referred to above is terminated, then SHOPPE COMPANY shall be entitled to designate and use another Index to calculate fluctuations in the GENERAL MARKETING CONTRIBUTION. For avoidance of doubt, the parties acknowledge that, as of November, 2006, the GENERAL MARKETING CONTRIBUTION payable under the foregoing formula is 25% of \$4,250.00, based on the CPI as of December 2005.

7.4.2 When Due.

FRANCHISEE shall pay GENERAL MARKETING CONTRIBUTIONS promptly, in accordance with the terms of invoices from SHOPPE COMPANY or its designee. FRANCHISEE shall pay the GENERAL MARKETING CONTRIBUTION for the first year of the TERM upon FRANCHISEE's execution of this AGREEMENT. Subsequent GENERAL MARKETING CONTRIBUTIONS are due and payable on the first day of the one-year period of the TERM to which they relate.

7.4.3 Use of GENERAL MARKETING CONTRIBUTION.

The GENERAL MARKETING CONTRIBUTION together with amounts collected from other SYSTEM franchisees, will be added to a fund (the "MARKETING FUND") used, as determined solely by SHOPPE COMPANY, for advertising, sales promotions, research and public relations related to the SYSTEM. SHOPPE COMPANY may select advertising and promotional materials, programs, media, and advertising and other agencies for and to which expenditures from the MARKETING FUND are made. Expenditures or benefits derived by FRANCHISEE from the MARKETING FUND may not and need not be in proportion to FRANCHISEE's contributions. SHOPPE COMPANY may compensate itself and/or its affiliates out of the MARKETING FUND for the reasonable expense of administering and promoting advertising and sales promotion programs. SHOPPE COMPANY is not obligated to maintain the MARKETING FUND in a segregated financial account, shall not be deemed a trustee of the MARKETING FUND, and shall not be deemed a fiduciary by virtue of its control over the MARKETING FUND. FRANCHISEE further acknowledges that there may be marketing programs and elements of marketing programs created with the MARKETING FUND that will not be of use to FRANCHISEE due to the nature of the SHOP being a SELECT SHOP.

7.5 No Rights of Set-Off.

FRANCHISEE may not reduce any payment required to be made to SHOPPE COMPANY under this Article 7, on account of any money SHOPPE COMPANY owes FRANCHISEE under this AGREEMENT, or otherwise.

7.6 Late Payment.

To compensate SHOPPE COMPANY (or its affiliates) for the loss of use of funds that FRANCHISEE must pay SHOPPE COMPANY (or its affiliates) under this AGREEMENT, the principal portion of any payment that FRANCHISEE does not make to SHOPPE COMPANY (or its affiliates), when due, shall bear interest from the due date until paid at, the lesser of eighteen percent (18%) per annum or the highest contract rate of interest allowed by the law of the state where the SHOP is located. To compensate SHOPPE COMPANY (or its affiliates) for the administrative expenses incurred in connection with delinquent obligations (unless prohibited by law), SHOPPE COMPANY may also require FRANCHISEE to pay a late charge equal to ten percent (10%) of each payment that is late. SHOPPE COMPANY (and its affiliates) shall also be entitled to recover the costs and expenses, including reasonable attorneys' fees, incurred in collection of past due amounts. FRANCHISEE shall also be responsible for payment of any bank charges, late fees, penalties, or similar charges incurred by SHOPPE COMPANY (or its affiliates) as a result of any dishonored bank check, stop payment order, electronic funds debit rejection, or similar occurrence in connection with any amount payable under this AGREEMENT. Without limiting the foregoing, the provisions of this Section 7.6 will apply to FRANCHISEE's purchase of HÄAGEN-DAZS® PRODUCTS from SHOPPE COMPANY's affiliates.



Article 8 CONFIDENTIAL MANUAL AND INFORMATION

8.1 "SHOP OPERATIONS MANUAL" Defined.

The "SHOP OPERATIONS MANUAL" is a copyrighted manual of procedures, business information, confidential and proprietary information, and trade secrets pertaining to the SYSTEM, and forming a substantial portion of the SYSTEM STANDARDS.

8.2 Ownership, Possession and Control of SHOP OPERATIONS MANUAL.

The SHOP OPERATIONS MANUAL shall at all times remain the property of SHOPPE COMPANY. One copy of the SHOP OPERATIONS MANUAL will be loaned to FRANCHISEE for use only in connection with the SHOP. The SHOP OPERATIONS MANUAL must be kept in a secure place in the SHOP at all times. FRANCHISEE may not disclose the contents of the SHOP OPERATIONS MANUAL, in whole or in part, to any person other than FRANCHISEE's employees as may be necessary to discharge FRANCHISEE's obligations under this AGREEMENT. FRANCHISEE may not use the SHOP OPERATIONS MANUAL or its contents, in whole or in part, for any purpose other than to discharge its obligations under this AGREEMENT. Except as expressly permitted by SHOPPE COMPANY, FRANCHISEE may not copy or disseminate the SHOP OPERATIONS MANUAL, in whole or in part, and must implement reasonable security measures directed to accomplishing the requirements of this Section 8.2.

8.3 Revisions to SHOP OPERATIONS MANUAL.

SHOPPE COMPANY reserves the right to add to, revise or rescind various portions of the SHOP OPERATIONS MANUAL periodically, and FRANCHISEE shall implement such changes when made, even if additional investment or expenditures are required. FRANCHISEE shall keep FRANCHISEE's copy of the SHOP OPERATIONS MANUAL current, and shall destroy superseded provisions of the SHOP OPERATIONS MANUAL. If there is a conflict between FRANCHISEE's copy of the SHOP OPERATIONS MANUAL and the master copy of the SHOP OPERATIONS MANUAL maintained by SHOPPE COMPANY, then the master copy maintained by SHOPPE COMPANY shall control.

8.4 Applicability to SELECT SHOP.

FRANCHISEE acknowledges that the SHOP OPERATIONS MANUAL includes information that will not be applicable to the SHOP, due to the limited nature of its operations as a SELECT SHOP. FRANCHISEE will not, by virtue of the SHOP OPERATIONS MANUAL, be entitled to offer any items from the SHOP that are not within the scope of the SELECT SHOP program, as same may be modified from time to time by SHOPPE COMPANY. SHOPPE COMPANY may, but shall have no obligation to, issue an abbreviated SHOP OPERATIONS MANUAL applicable specifically to SELECT SHOPS, in which case references in this AGREEMENT to the SHOP OPERATIONS MANUAL shall mean the abbreviated SHOP OPERATIONS MANUAL.

8.5 Confidential Information.

FRANCHISEE acknowledges that SHOPPE COMPANY will from time to time provide FRANCHISEE with information that is confidential in nature, and that if disclosed to third parties might adversely impact the ability of SHOPPE COMPANY or SYSTEM franchisees to remain competitive. FRANCHISEE agrees that, unless otherwise determined by SHOPPE COMPANY, the marketing strategies and programs developed by SHOPPE COMPANY shall be treated as confidential until publicly disseminated in accordance with the instructions of SHOPPE COMPANY. FRANCHISEE shall not disclose any confidential information to any person other than FRANCHISEE's employees as may be necessary to discharge FRANCHISEE's obligations hereunder, and FRANCHISEE agrees not to use any such confidential information for any purpose other than to discharge its obligations under this AGREEMENT.

Article 9 SYSTEM STANDARDS

FRANCHISEE shall, at all times during the TERM, continuously and faithfully operate the SHOP in full compliance with the SYSTEM STANDARDS.



9.1 SHOP OPERATIONS MANUAL.

In order to protect and enhance the reputation and goodwill associated with the MARKS and the SYSTEM, and to maintain SYSTEM uniformity and the SYSTEM STANDARDS, FRANCHISEE shall at all times conduct the operations of the SHOP in accordance with the SHOP OPERATIONS MANUAL.

9.2 DESIGNATED SHOP MANAGER.

FRANCHISEE shall at all times have a person designated as having primary responsibility for the day to day operation of the SHOP (the "DESIGNATED SHOP MANAGER") in accordance with this AGREEMENT and the SYSTEM STANDARDS, who shall be reasonably acceptable to SHOPPE COMPANY (including, but not limited to, the requirement that such individual possess sufficient experience in the management of a retail business, as determined by SHOPPE COMPANY in its sole discretion), and who has successfully completed the SHOPPE COMPANY training program and continues to satisfy the training requirements under Section 9.3.

9.3 Training.

In order to safeguard the MARKS and the SYSTEM STANDARDS, FRANCHISEE shall at all times employ an adequately trained staff to properly operate the SHOP in accordance with the SYSTEM STANDARDS.

9.3.1 Initial Training

SHOPPE COMPANY shall at the same time provide training for the first DESIGNATED SHOP MANAGER and, if desired by FRANCHISEE, or necessary in order for FRANCHISEE to satisfy the best efforts requirements under Section 9.4, one other person selected by FRANCHISEE and reasonably acceptable to SHOPPE COMPANY, in the principal aspects of establishing and operating a HÄAGEN-DAZS® SHOP, the handling of HÄAGEN-DAZS® PRODUCTS, and the preparation and sale of HÄAGEN-DAZS® SHOP menu items. Specific training procedures and requirements are set forth in the SHOP OPERATIONS MANUAL. This AGREEMENT is issued on the condition that the initial DESIGNATED SHOP MANAGER, and any person FRANCHISEE later desires to make the DESIGNATED SHOP MANAGER, completes training to the satisfaction of SHOPPE COMPANY.

9.3.2 Remedial Training.

In lieu of declaring a default under this AGREEMENT, or terminating this AGREEMENT for material breach, or at the same time as declaring a default under this AGREEMENT, SHOPPE COMPANY shall have the absolute right, but not the obligation, to direct FRANCHISEE by NOTICE to have the DESIGNATED SHOP MANAGER attend training directed toward curing specific operational deficiencies; and may require FRANCHISEE to reimburse SHOPPE COMPANY for the reasonable costs of that remedial training.

9.3.3 Expenses of Attendance at Training.

FRANCHISEE is solely responsible for travel and living expenses in connection with any training provided by SHOPPE COMPANY under this AGREEMENT, as well as any wages and salaries payable to FRANCHISEE's employees while attending training.

9.4 Best Efforts.

The DESIGNATED SHOP MANAGER shall have successfully completed SHOPPE COMPANY's training program, shall be responsible for overseeing the day to day management and operation of the SHOP, and, unless otherwise agreed upon in writing by SHOPPE COMPANY, shall be employed by FRANCHISEE, on a full time (40 hour per week) basis, at the FACILITY.

9.5 SHOP Employees.

The SHOP shall be staffed with qualified, competent employees trained by the DESIGNATED SHOP MANAGER, and who are employed solely by FRANCHISEE and not by SHOPPE COMPANY.



FRANCHISEE is solely responsible for hiring and discharging employees of the SHOP, and setting their wages and terms of employment. FRANCHISEE shall comply with all applicable laws and regulations, including, but not limited to, workers' compensation laws. FRANCHISEE shall require employees to wear such uniforms or attire as SHOPPE COMPANY prescribes periodically in the case of a SELECT SHOP, or otherwise permits in the case of the SHOP, in writing; and otherwise comply with the ongoing SYSTEM STANDARDS. All employment related documents, including, without limitation, employment applications, schedules, job descriptions, and pay checks, must clearly identify FRANCHISEE, and not SHOPPE COMPANY, as the employer, and shall not contain any of the MARKS.

9.6 Operations and Product Standards.

Unless SHOPPE COMPANY specifically permits otherwise, in writing, FRANCHISEE shall offer for sale from the SHOP the entire menu prescribed periodically by SHOPPE COMPANY for a SELECT SHOP. FRANCHISEE may prepare and sell from the SHOP only the products and services that SHOPPE COMPANY approves periodically for sale from a SELECT SHOP, and no other products, services, or business may be offered or conducted at or from the SHOP. FRANCHISEE will at all times maintain an inventory of food and drink products and other supplies adequate to satisfy customer demand for products and services required to be sold at the SHOP. FRANCHISEE will employ only such supplies, ingredients, recipes, formulas and products, and shall offer products for sale only in such portions, appearance and packaging, as SHOPPE COMPANY periodically designates. FRANCHISEE will adhere to the requirements for food storage, handling, preparation, merchandising, presentation, display and sale, and daily SHOP operations, described in the SHOP OPERATIONS MANUAL or otherwise communicated by SHOPPE COMPANY. If FRANCHISEE fails to conduct its business in accordance with the requirements of this Section 9.6, then, without limiting the rights of SHOPPE COMPANY under this AGREEMENT, SHOPPE COMPANY may, without terminating this AGREEMENT, temporarily suspend FRANCHISEE's right to operate under this AGREEMENT, or temporarily or permanently suspend FRANCHISEE's right to sell certain products under this AGREEMENT, so long as such suspension is reasonably related to FRANCHISEE's failure to comply with the requirements of this Section 9.6, bringing FRANCHISEE into compliance with this Section 9.6, or the health or safety of the public.

9.7 Sources of Supply.

In order to safeguard the integrity of the MARKS, and to maintain the uniformity and quality of items associated with the SYSTEM, FRANCHISEE shall only purchase food, supplies, fixtures, equipment, furnishing, signs and other items for use in the SHOP in accordance with the following provisions.

9.7.1 HÄAGEN-DAZS® PRODUCTS.

FRANCHISEE acknowledges that the HÄAGEN-DAZS® PRODUCTS used in, and offered and sold from the SHOP, as authorized by SHOPPE COMPANY from time to time, are manufactured using proprietary recipes and processes, and are an inseparable and essential element of the FRANCHISE. In order to protect the interests of SHOPPE COMPANY, the owner of the MARKS, and their respective licensees, and to ensure the quality, uniformity, and distinctiveness of the HÄAGEN-DAZS® PRODUCTS, FRANCHISEE agrees to purchase its entire requirements of HÄAGEN-DAZS® PRODUCTS from SHOPPE COMPANY or the supplier designated by SHOPPE COMPANY, at prices, determined by SHOPPE COMPANY or its designated supplier, and which may result in revenues and profits, directly or indirectly, to SHOPPE COMPANY, the designated supplier, and the owner of the MARKS, all of whom FRANCHISEE agrees are entitled to receive such revenues and profits.

9.7.2 Other Food and Beverage Products.

FRANCHISEE shall purchase only food and beverage products (other than the HÄAGEN-DAZS® PRODUCTS purchased in accordance with Section 9.7.1) that have been approved in advance by SHOPPE COMPANY, in writing, in the SHOP OPERATIONS MANUAL or otherwise, originating from sources that have demonstrated to the reasonable continuing satisfaction of SHOPPE COMPANY that they are able to manufacture the products to the standards and specifications of SHOPPE COMPANY. Unless SHOPPE COMPANY requires FRANCHISEE to



purchase any approved product from a particular distributor, FRANCHISEE may purchase approved products from any reputable distributor.

9.7.3 Supplies and Equipment.

FRANCHISEE shall only purchase paper goods, packaging, fixtures, equipment, signs, uniforms, and other supplies for use in the SHOP that have been approved in advance by SHOPPE COMPANY, from sources that have been approved in advance by SHOPPE COMPANY. SHOPPE COMPANY will, when appropriate, as determined solely by SHOPPE COMPANY grant a manufacturer of certain approved items a license to print specified text and the MARKS on those items, in the manner and format established periodically by SHOPPE COMPANY. FRANCHISEE shall not use paper goods, packaging, fixtures, equipment, signs, uniforms, and other supplies at the SHOP, which do not bear the text and the MARKS required by SHOPPE COMPANY, in the manner and format required and approved in advance by SHOPPE COMPANY.

9.7.4 Procedures for Seeking Approval of Suppliers and Products.

Other than with respect to the HÄAGEN-DAZS® PRODUCTS, and any other branded food and beverage items sold or used in the SHOP, if FRANCHISEE desires to purchase a product that is not approved, but which FRANCHISEE believes to conform to SHOPPE COMPANY's specifications, then FRANCHISEE shall submit a written request for approval to SHOPPE COMPANY with any documentation that SHOPPE COMPANY may reasonably require to determine conformity to the relevant specifications. SHOPPE COMPANY shall have the right to require that its representatives be permitted to inspect the proposed supplier's facilities, and that samples from the supplier be delivered to SHOPPE COMPANY or its designee for evaluation and testing. The reasonable costs of evaluation and testing shall be paid by FRANCHISEE. Within 90 days after receipt of the request, and the completion of any evaluation and testing required by SHOPPE COMPANY, SHOPPE COMPANY will notify FRANCHISEE of its decision in writing. Approval shall not be unreasonably withheld, but SHOPPE COMPANY may withhold its approval for any good reason, including that, in the opinion of SHOPPE COMPANY, a sufficient number of products conforming to the same specification have already been approved.

9.7.5 Vendor Rebates.

SHOPPE COMPANY shall have the right to periodically enter into agreements with vendors, suppliers and distributors, who provide products and services to FRANCHISEE, contemplating the payment of a rebate or other consideration to SHOPPE COMPANY on account of FRANCHISEE's purchases. SHOPPE COMPANY will have the right to use rebates, and other monetary consideration received, for any purpose for which it may use the GENERAL MARKETING CONTRIBUTION under Section 7.4.3, or for any other purpose SHOPPE COMPANY desires, without regard to whether such purpose is of any direct or indirect benefit to FRANCHISEE.

9.8 Participation in Marketing Programs.

FRANCHISEE acknowledges that FRANCHISEE's participation in promotions and marketing programs established by SHOPPE COMPANY is important to enhance the value, recognition, and reputation of the MARKS and the SYSTEM. FRANCHISEE covenants and agrees that FRANCHISEE will in good faith consider participating in any promotions and marketing promotions that are appropriate to the SHOP; provided that FRANCHISEE shall have the right and obligation to decline to participate in all or any part of any promotion or marketing program, which, due to the laws applicable to the SHOP, would render FRANCHISEE's participation unlawful.

9.9 Compliance with Laws, Health & Safety Requirements.

FRANCHISEE shall fully, strictly and faithfully comply with all laws (including, but not limited to, statutes, ordinances, regulations, and governmental orders) affecting FRANCHISEE's operation of the SHOP; in particular, FRANCHISEE shall operate and maintain the SHOP and its premises in strict compliance with



all applicable health, sanitation, fire and safety codes and requirements. If any law affecting FRANCHISEE's operation of the SHOP sets a standard that is different than the SYSTEM STANDARDS, then FRANCHISEE shall satisfy the higher standard; if FRANCHISEE perceives any law affecting FRANCHISEE's operation of the SHOP to conflict with the SYSTEM STANDARDS, then FRANCHISEE shall notify SHOPPE COMPANY in writing, identifying the specific law and SYSTEM STANDARDS requirement, so that SHOPPE COMPANY may determine how to resolve the perceived conflict.

9.10 Remedying Food Safety Concerns.

If any food item dispensed at the SHOP is adulterated, or does not comply with applicable law or regulations, or fails to be maintained in accordance with the requirements described in this AGREEMENT or in the SHOP OPERATIONS MANUAL, then, FRANCHISEE shall immediately close and suspend operations at the SHOP, destroy all contaminated or adulterated products and eliminate the source of contamination, remedy all unsanitary conditions at the SHOP, and reopen for business only after an inspection by SHOPPE COMPANY and laboratory analysis from samples obtained for that purpose by SHOPPE COMPANY evidence compliance with all applicable governmental requirements and the SYSTEM STANDARDS. This remedy is in addition to, and not in lieu of, other rights or remedies that SHOPPE COMPANY has for FRANCHISEE's breach of this AGREEMENT.

9.11 SHOP Inspections.

In order to safeguard the MARKS and determine compliance with the SYSTEM STANDARDS, SHOPPE COMPANY representatives shall have the absolute right to enter, remain in, and inspect the SHOP whenever SHOPPE COMPANY deems it appropriate. SHOPPE COMPANY representatives may, without prior notice to FRANCHISEE, interview FRANCHISEE's employees and customers, take photographs, video, and similar recordings, examine, evaluate and take representative samples of the foods, beverages, and other products stored, sold or used at the SHOP. SHOPPE COMPANY shall have the right to use all interviews, photographs, video, and other recordings for any reason SHOPPE COMPANY deems appropriate, including in advertising, marketing and other promotional materials. FRANCHISEE will not be entitled to, and hereby expressly waives, any right that it might otherwise have to be compensated for the use of interviews, photographs, video, and other recordings by SHOPPE COMPANY, its advertising agencies, or other SYSTEM franchisees.

9.12 Correcting Deficiencies.

FRANCHISEE shall at its own expense promptly, and within any period reasonably specified by SHOPPE COMPANY, correct any violation of the SYSTEM STANDARDS. If, during an inspection, SHOPPE COMPANY identifies a violation of the SYSTEM STANDARDS that:

- (a) is a reoccurrence of a previously identified violation of the System Standards, occurring at the Shop within the preceding 12 months; or
- (b) is a continuation of a previously identified violation of the System Standards, which FRANCHISEE failed to correct within the period specified by SHOPPE COMPANY; or
- (c) is the same as a violation of the System Standards that, within the preceding 12 months, was identified by SHOPPE COMPANY at another Häagen-Dazs® Shop in which FRANCHISEE has an interest, and in relation to which the corrective period specified by SHOPPE COMPANY ended before the inspection of the Shop;

then SHOPPE COMPANY may require FRANCHISEE to reimburse SHOPPE COMPANY for the costs of a subsequent inspection of the SHOP, conducted to determine whether the reoccurring or continuing violation of the SYSTEM STANDARDS has been cured, at the rate of \$100.00 per hour of the SHOPPE COMPANY representative's time (including travel time) plus travel and related expenses. This remedy is in addition to, and not in lieu of, other rights or remedies that SHOPPE COMPANY has for FRANCHISEE's breach of this AGREEMENT.



9.13 Immediate Removal of Non-Conforming Items.

SHOPPE COMPANY shall have the absolute right to direct the immediate removal of any item present in the SHOP that does not conform to the SYSTEM STANDARDS. Without compensating FRANCHISEE, SHOPPE COMPANY shall have the absolute right to confiscate, discard, or destroy any food, beverages, equipment, supplies, advertising, marketing, point of sale materials, signage, and any other items that do not conform to the SYSTEM STANDARDS. This remedy is in addition to, and not in lieu of, other rights or remedies that SHOPPE COMPANY has for FRANCHISEE's breach of this AGREEMENT.

9.14 Maintenance and Repair.

FRANCHISEE shall maintain and repair the SHOP so as to keep it in a clean, attractive and orderly condition, to provide efficient, high-quality service to the public, and to conform to ongoing SYSTEM STANDARDS. Without limiting the foregoing, FRANCHISEE shall, unless required to do so more quickly by SHOPPE COMPANY in any particular instance, repair any improper condition of the SHOP PREMISES, or the equipment or furnishings in the SHOP PREMISES, within 30 days after first being identified by FRANCHISEE or SHOPPE COMPANY.

9.15 Sales and Product Mix Reporting Requirements.

FRANCHISEE shall on a monthly basis provide SHOPPE COMPANY with any and all requested information related to FRANCHISEE's sales, costs, earnings and related items.

9.16 Projecting Requirements of HÄAGEN-DAZS® PRODUCTS & Other Products.

At the request of SHOPPE COMPANY, FRANCHISEE shall periodically project sales, costs, and product requirements. FRANCHISEE shall endeavor to project quantities of products needed, including quantity of each of the HÄAGEN-DAZS® PRODUCTS, and the anticipated timing of such need. FRANCHISEE acknowledges that this information is important to SHOPPE COMPANY so that it or its designated supplier may project quantities of HÄAGEN-DAZS® PRODUCTS to manufacture. Notwithstanding the purpose for requiring this information from FRANCHISEE, or the accuracy of FRANCHISEE's projections, under no circumstances shall FRANCHISEE's compliance with this Section 9.16 be deemed to require SHOPPE COMPANY or its designated supplier to sell FRANCHISEE the projected quantities of any particular HÄAGEN-DAZS® PRODUCTS.

9.17 Hours of Operation.

FRANCHISEE shall keep the SHOP open and in normal operation during those days and hours during which it would reasonably be anticipated by consumers that the SHOP would be open, taking into account the nature of the SHOP, the nature of the FACILITY, and the operational hours of other foodservice businesses within the FACILITY.

9.18 Coupons and Discount Offers.

FRANCHISEE will not issue coupons except those that have been approved by SHOPPE COMPANY in accordance with Section 11.5. Coupons issued by FRANCHISEE will clearly identify the SHOP, and any other HÄAGEN-DAZS® SHOP, if any, where they are redeemable, and will state that they are not redeemable at any other HÄAGEN-DAZS® SHOP. If FRANCHISEE elects to accept any coupons issued by SHOPPE COMPANY, which are redeemable at participating HÄAGEN-DAZS® SHOPS, then FRANCHISEE will honor the redemption policies established from time to time by SHOPPE COMPANY. FRANCHISEE is solely responsible for determining whether any discounts or other terms of sale offered by FRANCHISEE, coupons issued by FRANCHISEE, and coupons accepted by FRANCHISEE, including those issued by SHOPPE COMPANY, comply with applicable laws, including local dairy laws.

9.19 Promotional Materials.

FRANCHISEE acknowledges that FRANCHISEE and other SYSTEM franchisees may benefit from the promotion of HÄAGEN-DAZS® PRODUCTS, HÄAGEN-DAZS® SHOPS and the SYSTEM. FRANCHISEE acknowledges that certain supplies used in the SHOP (e.g. ice cream cone wrappers; napkins; sundae and beverage cups; etc.) and point of sale communication materials displayed or used in the SHOP (e.g. brochures, posters; etc.), in addition to displaying the MARKS, may, at the determination



of SHOPPE COMPANY, display information about HÄAGEN-DAZS® PRODUCTS, HÄAGEN-DAZS® SHOPS and the SYSTEM that may be of interest to consumers, including information relating to HÄAGEN-DAZS® SHOP franchise opportunities. If requested by SHOPPE COMPANY, then FRANCHISEE will post, display, or make available to consumers, in a manner reasonably determined by SHOPPE COMPANY information relating to HÄAGEN-DAZS® PRODUCTS, the SYSTEM, including if requested by SHOPPE COMPANY, the addresses of other HÄAGEN-DAZS® SHOPS, and HÄAGEN-DAZS® SHOP franchise opportunities.

9.20 Access to Email & Internet; Consent to Communication Medium.

FRANCHISEE acknowledges that the world wide web, internet, intranet, extranet, email, and similar medium are becoming an increasingly accepted and normal way of communicating. Therefore, FRANCHISEE shall, at all times during the TERM, have ready access to a computer, maintain an email address to which SHOPPE COMPANY may send electronic communications; keep SHOPPE COMPANY apprised of FRANCHISEE's current email address; and timely respond to email communications from SHOPPE COMPANY, which, unless a different time-period is specified, will mean within 72 hours from receipt. Except in the case of a NOTICE, FRANCHISEE hereby consents to receiving any communication or information contemplated by AGREEMENT through any medium contemplated by this Section 9.20.

9.21 Prompt Payment of Obligations.

FRANCHISEE acknowledges that FRANCHISEE's payment practices can impact the willingness of third parties to do business with, and extend credit to, other SYSTEM franchisees; the goodwill associated with the MARKS; and FRANCHISEE's ability to operate the SHOP in accordance with the SYSTEM STANDARDS. Therefore FRANCHISEE shall timely pay all obligations and liabilities due and payable to vendors, suppliers, distributors, and other parties to whom FRANCHISEE incurs obligations in connection with the FRANCHISE.

9.22 Significant Event Notifications.

FRANCHISEE will keep SHOPPE COMPANY informed of any fact, matter or circumstance that has a significant bearing on FRANCHISEE's ability to continue to operate the SHOP in accordance with this AGREEMENT and the SYSTEM STANDARDS. Without limiting the preceding requirement, FRANCHISEE shall promptly, and in no event more than 7 days after FRANCHISEE becomes aware of any of the following situations related to the SHOP, provide NOTICE to SHOPPE COMPANY of the circumstances, and provide SHOPPE COMPANY with copies of pertinent documents, and any other information SHOPPE COMPANY requires:

- (a) Any notice of default received with respect to the SHOP PREMISES from a landlord, a rental agent, mortgagee, or lender;
- (b) Any claims, lawsuits, or other legal proceedings, asserted or brought by any consumer, employee, governmental agency, or anyone else;
- (c) Any governmental inspections, notices, claims, reports, warnings, or citations;
- (d) Any fires, robberies, injuries, or similar events occurring on or at the SHOP PREMISES; or
- (e) Any other matters, including those not related to the SHOP, which could impair the goodwill associated with the MARKS or the SYSTEM.

Article 10 BOOKS AND RECORDS; ACCOUNTING AND AUDITS

10.1 Accounting Procedures.

In order to prevent dilution, infringement or misrepresentation of the MARKS, and to facilitate the full and faithful performance of all the terms and conditions of this AGREEMENT, FRANCHISEE shall keep full



and complete records of the conduct of the business at the SHOP, including accurate and complete books, records and accounts in accordance with generally accepted accounting principles. Without limiting the scope of this Section, FRANCHISEE's cash register receipts, daily sales logs, profit and loss statements, balance sheets, bank deposit records, bank statements, sales tax records, income tax records pertaining to the business conducted hereunder, and the financial documents FRANCHISEE is required to be submitted under this AGREEMENT shall be deemed a part of FRANCHISEE's books, records and accounts (collectively the "SHOP FINANCIAL RECORDS").

10.2 Record Retention.

FRANCHISEE shall retain the SHOP FINANCIAL RECORDS for a period of not less than three years from the date of preparation. This obligation shall continue past expiration or any earlier termination, or transfer, of this AGREEMENT.

10.3 Inspections and Audits by SHOPPE COMPANY.

Five days after NOTICE to FRANCHISEE, SHOPPE COMPANY or its representatives shall be entitled to examine the SHOP FINANCIAL RECORDS at the SHOP during business hours and to make copies and extracts of all or any portion of the SHOP FINANCIAL RECORDS that SHOPPE COMPANY in its sole discretion deems necessary or appropriate from time to time. If any portion of the SHOP FINANCIAL RECORDS are maintained in an electronic medium, then FRANCHISEE shall cooperate with SHOPPE COMPANY or its representative by extracting, printing, or otherwise providing access to the electronically maintained SHOP FINANCIAL RECORDS, in the manner SHOPPE COMPANY requests.

10.4 Failure to Permit Inspection or Audits.

If FRANCHISEE fails to permit an inspection in accordance with Section 10.3, then FRANCHISEE shall pay any and all costs and expenses, including, but not limited to, reasonable attorneys' fees incurred by SHOPPE COMPANY to enforce the provisions of Section 10.3, and the cost of examining the SHOP FINANCIAL RECORDS. This remedy is in addition to, and not in lieu of, other rights or remedies that SHOPPE COMPANY has for FRANCHISEE's breach of this AGREEMENT, and this remedy will survive the termination of this AGREEMENT on account of a breach of Section 10.3, or for any other reason.

Article 11 PROPRIETARY SYSTEM AND MARKS

11.1 Right to License MARKS.

SHOPPE COMPANY warrants that, subject to the limitations set forth in this AGREEMENT, SHOPPE COMPANY has the right to grant FRANCHISEE the FRANCHISE to use the SYSTEM and MARKS in connection with the SHOP.

11.2 Non-Exclusive License.

FRANCHISEE shall have a only a non-exclusive limited right to use SYSTEM and the MARKS designated periodically in the SHOP OPERATIONS MANUAL, or otherwise communicated by SHOPPE COMPANY. Any and all other rights in, and to the SYSTEM and MARKS are reserved by, and for the benefit of, SHOPPE COMPANY, its affiliates, and the owner of the MARKS.

11.3 Goodwill Associated with the SYSTEM and MARKS.

FRANCHISEE acknowledges and agrees that it shall not acquire any ownership or other interest in and to the goodwill associated with the SYSTEM and MARKS, and any enhancement to the goodwill associated with the SYSTEM and MARKS resulting from the actions of FRANCHISEE shall be deemed the property of, and is hereby assigned to SHOPPE COMPANY, its affiliates, or the owner of the MARKS, as determined by SHOPPE COMPANY consistent with any licensing arrangements that now or in the future exist with respect to the SYSTEM and MARKS.



11.4 Use of SYSTEM and MARKS.

Except to the extent specifically permitted by SHOPPE COMPANY in writing, FRANCHISEE shall not use the SYSTEM or the MARKS (or any simulation of either), directly or indirectly, at any location other than at the SHOP. Except to the extent permitted by Article 15, any preparation, sale, distribution or dealings in ice cream, directly or indirectly, by FRANCHISEE or its officers, directors, employees, agents, partners, joint ventures or designees during the TERM at a place other than the SHOP shall constitute and be irrefutably deemed to be a wrongful use, exploitation and disclosure of the SYSTEM.

11.5 SHOPPE COMPANY Approval of Marketing Materials and Offers.

FRANCHISEE shall only use and display the point of sale materials, advertisements, and other marketing materials in accordance with the SYSTEM STANDARDS as set forth in the SHOP OPERATIONS MANUAL, or otherwise communicated to FRANCHISEE from time to time. If SHOPPE COMPANY permits FRANCHISEE to produce, directly or indirectly, any marketing materials, then FRANCHISEE shall not use any item of those marketing materials unless and until it is approved by SHOPPE COMPANY in accordance with procedures established by SHOPPE COMPANY for that purpose. SHOPPE COMPANY's approval of FRANCHISEE's marketing materials will not be a determination that they comply with all applicable laws; FRANCHISEE is at all time responsible for determining whether marketing materials produced by FRANCHISEE, as well as those produced or customized by SHOPPE COMPANY for FRANCHISEE, comply with applicable laws, including but not limited to local dairy laws.

11.6 FRANCHISEE Website.

FRANCHISEE shall not directly or indirectly establish or maintain a website related to the SHOP, unless the content of the website, including the content of any revisions made from time to time, has been approved by SHOPPE COMPANY, in accordance with the procedures established by SHOPPE COMPANY.

11.7 Use of MARKS as Part of Trade Name.

FRANCHISEE will not use any of the MARKS, any derivative of the MARKS, or anything confusingly similar to any of the MARKS, when adopting a corporate, partnership, or trade name. If required or permitted by the laws of the jurisdiction in which the SHOP is located, FRANCHISEE shall file an assumed name certificate to notify the public that FRANCHISEE is an independent business owner operating the SHOP under a license granted by SHOPPE COMPANY.

Article 12 TRANSFER OF INTEREST

12.1 "TRANSFER" by FRANCHISEE defined.

For purposes of this AGREEMENT, a "TRANSFER" by FRANCHISEE is any change in ownership or control of FRANCHISEE's interest in this AGREEMENT, the SHOP the business conducted under this AGREEMENT, or any assets of the business conducted under this AGREEMENT (except sales of menu and promotional items in the ordinary course of business); in any of the foregoing instances whether in whole or in part, by any means or device, directly or indirectly, including by pledge, delegation, will or management agreement, voluntarily, involuntarily or by operation of law.

12.2 Voluntary TRANSFER by FRANCHISEE.

FRANCHISEE may voluntarily TRANSFER an interest in this AGREEMENT and the FRANCHISE only in accordance with the following provisions, provided however that under no circumstances will FRANCHISEE have a right to effect a TRANSFER before the SHOP has commenced operations.

12.2.1 Satisfaction of Obligations Before TRANSFER.

All outstanding obligations owed by FRANCHISEE with respect to the SHOP and the business operated under this AGREEMENT shall be paid in full before the TRANSFER. FRANCHISEE acknowledges that SHOPPE COMPANY, its affiliates, and approved suppliers in accordance with their own credit policies, may, after notice of an intended TRANSFER, require FRANCHISEE to



pay for any additional items purchased by FRANCHISEE prior to the TRANSFER in advance, or at time of delivery.

12.2.2 FRANCHISEE Must Execute TRANSFER Documents.

FRANCHISEE shall be required to execute TRANSFER documents in the form required by SHOPPE COMPANY, which will among other things include (a) a general release in favor of SHOPPE COMPANY, provided however that FRANCHISEE will not be compelled to release any claims or rights to the extent such release would be prohibited by applicable franchise law; (b) a representation by FRANCHISEE that FRANCHISEE has provided the proposed transferee with the SHOP FINANCIAL RECORDS; (c) an acknowledgement by the proposed transferee that SHOPPE COMPANY has not been a party to the TRANSFER; and (d) an indemnity obligation whereby FRANCHISEE will indemnify SHOPPE COMPANY from and against any claims alleging misconduct by FRANCHISEE in connection with the TRANSFER, or otherwise related to the TRANSFER.

12.2.3 SHOPPE COMPANY May Provide Information.

FRANCHISEE acknowledges and agrees that SHOPPE COMPANY may, but shall have no obligation to, provide a prospective transferee with copies of any of the SHOP FINANCIAL RECORDS and any other documents submitted to SHOPPE COMPANY by FRANCHISEE, and any other information possessed by SHOPPE COMPANY that may be relevant to the prospective transferee's assessment of the FRANCHISE or SHOP. SHOPPE COMPANY shall have no obligations or liability to FRANCHISEE or a prospective transferee if SHOPPE COMPANY in good faith provides information to a prospective transferee that turns out to be inaccurate or incorrect.

12.2.4 FRANCHISEE Must Pay Transfer Fee.

FRANCHISEE or the transferee shall pay SHOPPE COMPANY a nonrefundable \$1,000 transfer fee as a condition precedent to the effectiveness of the TRANSFER, to cover the costs incurred by SHOPPE COMPANY in connection with the proposed TRANSFER, including the preparation of documents, out-of-pocket expenses including obtaining credit reports, long distance telephone calls, administrative costs, the time of its officers and employees, and the costs of training the transferee's DESIGNATED SHOP MANAGER and up to one other person designated by the transferee, each of whom must be acceptable to SHOPPE COMPANY.

12.2.5 Transferee Must Be Qualified to Operate SHOP.

The proposed transferee shall be personally and financially qualified to operate the SHOP, and shall meet all of then-current qualification criteria for new SYSTEM franchisees, in the sole and exclusive judgment of SHOPPE COMPANY.

12.2.6 Transferee Must Successfully Complete Training.

The proposed transferee shall have, in the sole and exclusive judgment of SHOPPE COMPANY, successfully completed training required by SHOPPE COMPANY, so that the transferee, immediately upon completion of the contemplated TRANSFER, would be able to operate the SHOP in accordance with the SYSTEM STANDARDS, which, among other things, will require the proposed transferee to appoint a DESIGNATED SHOP MANAGER under Section 9.2, and comply with the best efforts requirements under Section 9.4.

12.3 TRANSFER to an Affiliate of FRANCHISEE

Notwithstanding the provisions of Section 12.2, FRANCHISEE may simultaneously effect a TRANSFER of this AGREEMENT, the SHOP and the business conducted under this AGREEMENT to any affiliate of FRANCHISEE (which for purposes of this AGREEMENT means an entity controlled by, controlling, or under common control with FRANCHISEE); provided however that upon any such TRANSFER the original FRANCHISEE shall remain primarily and jointly liable with the new FRANCHISEE for the performance of all FRANCHISEE's obligations under this AGREEMENT; and provided further that for any



TRANSFER under this Section 12.3 to be effective, FRANCHISEE shall provide SHOPPE COMPANY with NOTICE of the TRANSFER within 7 days after the TRANSFER.

12.4 Pledge of AGREEMENT or FRANCHISE Prohibited.

Neither this AGREEMENT nor the FRANCHISE may be used as collateral or be the subject of a security interest, lien, levy, attachment or execution by FRANCHISEE's creditors or any financial institution.

12.5 Assignment by SHOPPE COMPANY.

SHOPPE COMPANY may assign this AGREEMENT, without the consent of FRANCHISEE, to a person or entity that will be required to fully perform all of the obligations of SHOPPE COMPANY under this AGREEMENT. SHOPPE COMPANY will, within a reasonable time after any assignment under this Section 12.5, provide NOTICE of the assignment to FRANCHISEE.

12.6 Parties Affected.

This AGREEMENT shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided however that any TRANSFER by FRANCHISEE shall be subject to SHOPPE COMPANY's consent when under this Article 12.

Article 13 DEFAULT AND TERMINATION

13.1 Termination by SHOPPE COMPANY.

Except as provided in Section 5.2, SHOPPE COMPANY may terminate the AGREEMENT only in accordance with the following provisions.

13.1.1 NOTICE of Default and Opportunity to Cure.

Except in the case of defaults that, under Section 13.1.2.4, cannot be cured, or the existence of good cause for termination under Section 13.1.2.5, SHOPPE COMPANY shall provide FRANCHISEE with a NOTICE of default before terminating this AGREEMENT. FRANCHISEE shall have a reasonable opportunity to cure the default to the reasonable satisfaction of SHOPPE COMPANY. Unless applicable law requires a longer cure period, the cure must be accomplished within the time periods specified under Section 13.1.2, which FRANCHISEE agrees are reasonable.

13.1.2 Good Cause for Termination.

SHOPPE COMPANY may only terminate this AGREEMENT for good cause. Good cause for termination includes the existence of any of the following described circumstances.

13.1.2.1 Defaults Not Cured Within 24 Hours.

The following defaults are material, and shall be good cause for SHOPPE COMPANY to terminate this AGREEMENT, unless cured within 24 hours of a NOTICE of default given in accordance with Section 13.1.1:

- (a) The offering of any product or service not permitted to be sold from the SHOP, the use of any ingredient, supply, formula or recipe not approved by SHOPPE COMPANY, or any other failure to adhere to the requirements of Section 9.6, including, without limitation, those pertaining to the storage, handling, merchandising and sale of products from the SHOP, unless covered more specifically elsewhere in this Article 13.
- (b) The use of, or possession within the SHOP of, any product, ingredient, or supply obtained from a source not designated or approved by SHOPPE COMPANY or otherwise permitted under Section 9.7.



- (c) Any failure to comply with the Section 9.9 resulting in a threat to any person's health or safety, provided however that if any unsafe or unsanitary condition cannot reasonably be cured within 24 hours, then SHOPPE COMPANY will, upon written request, grant FRANCHISEE a reasonable period of time, which shall in no event be more than 7 days, to complete the cure, if and only if FRANCHISEE immediately suspended operation of the SHOP in accordance with Section 9.10.
- (d) Any use of the MARKS or SYSTEM, claim of right to the MARKS or SYSTEM, or simulation of the MARKS or SYSTEM not permitted by Article 11.
- (e) Any act or practice by FRANCHISEE that impairs or imminently threatens to impair the goodwill associated with the MARKS or the SYSTEM.

13.1.2.2 Defaults Not Cured Within 7 Days.

The following defaults are material, and shall be good cause for SHOPPE COMPANY to terminate this AGREEMENT, unless cured within 7 days of a NOTICE of default given in accordance with Section 13.1.1:

- (a) A failure to timely pay, or timely prepay, the ROYALTY due under Section 7.2.
- (b) A failure to timely pay the GENERAL MARKETING CONTRIBUTION due under Section 7.3.
- (c) A failure to adhere to the requirements of Section 9.5, concerning FRANCHISEE's employees.
- (d) A failure to maintain an adequate inventory of food and drink products and other supplies adequate to satisfy customer demand, other than on account of circumstances beyond FRANCHISEE's reasonable control; or the failure to offer any product or service required to be offered under Section 9.6.
- (e) A failure to comply with the reporting requirements of Section 9.15, or the projection requirements of Section 9.16.
- (f) A failure to keep the SHOP open for business during the hours required under Section 9.17.
- (g) The failure to promptly and timely pay for the HÄAGEN-DAZS® PRODUCTS and other supplies, products, items, equipment, and other obligations incurred in connection with the FRANCHISE, as required by Section 9.21.
- (h) A failure to maintain, and retain, the SHOP FINANCIAL RECORDS in the manner required under Article 10.
- (i) A failure to comply with the requirements of Section 11.6, with respect to the establishing or maintaining of a website related to the SHOP.
- (j) A failure to maintain and/or furnish proof of insurance coverage required by Article 16.



- (k) The failure to disclose the nature of the relationship between the parties as required by Section 18.2.

13.1.2.3 Defaults Not Cured Within 30 Days.

The following defaults are material, and shall be good cause for SHOPPE COMPANY to terminate this AGREEMENT, unless cured within 30 days of a NOTICE of default given in accordance with Section 13.1.1:

- (a) A failure to operate the SHOP in substantial compliance with the SYSTEM STANDARDS, or in substantial compliance with the SHOP OPERATIONS MANUAL pursuant to Section 9.1, whether determined by a below-passing inspection score or otherwise, even if each deficiency, viewed separately, would not by itself be material.
- (b) A failure to maintain a DESIGNATED SHOP MANAGER in control of the day to day operations of the SHOP in accordance with Section 9.2, or the failure of the DESIGNATED SHOP MANAGER to devote attention to the management of the SHOP to the extent required by Section 9.4.
- (c) A failure to satisfy or continue to satisfy any of the training requirements set forth under Section 9.3.
- (d) A failure to keep the SHOP in the condition required by Section 9.14.
- (e) The failure to initially construct the SHOP in accordance with Article 3; provided however that nothing in this section shall require SHOPPE COMPANY give FRANCHISEE a cure opportunity in the case of FRANCHISEE's failure to open the SHOP by the OUTSIDE OPENING DATE, nor imply a right of FRANCHISEE to commence SHOP operations before SHOPPE COMPANY determines that the SHOP was constructed in accordance with SHOPPE COMPANY's design requirements.
- (f) Any other breach of this AGREEMENT not specifically identified in this Article 13.

13.1.2.4 Defaults that Cannot be Cured.

FRANCHISEE shall have no right to cure the following defaults, which are material, and shall be good cause for SHOPPE COMPANY to terminate this AGREEMENT.

- (a) Commencing operation of the SHOP (i) before SHOPPE COMPANY, under Section 6.4 determines that the SHOP as constructed reasonably conforms to the design criteria specified by SHOPPE COMPANY, and/or (ii) before the initial DESIGNATED SHOP MANAGER has completed training in accordance with Section 9.3.1.
- (b) Any use or disclosure of the SHOP OPERATIONS MANUAL not permitted by Section 8.2, or of confidential information not permitted by 8.4.
- (c) A failure of the DESIGNATED SHOP MANAGER to attend training required by SHOPPE COMPANY under Section 9.3.2.
- (d) A failure to permit any SHOP inspection in accordance with Section 9.11.



- (e) A failure to or permit an audit or inspection the SHOP FINANCIAL RECORDS in accordance with Article 10, or the intentional preparation or keeping of knowingly false SHOP FINANCIAL RECORDS.
- (f) Any TRANSFER or attempted TRANSFER without obtaining SHOPPE COMPANY's consent when required under Article 12.
- (g) Any violation of the covenants against competition contained in Section 15.1.

13.1.2.5 Other Good Causes for Termination.

The existence of any of the following circumstances shall constitute material defaults under this AGREEMENT, which FRANCHISEE shall have no right to cure, and shall be good cause for SHOPPE COMPANY to terminate this AGREEMENT

13.1.2.5.1 Repetitive or Continuous Breach.

A failure of FRANCHISEE to, 3 times in any 12 month period, comply with the same provision of this AGREEMENT, or the same requirement of the SHOP OPERATIONS MANUAL, or the same aspect of the SYSTEM STANDARDS, or substantially comply with the SYSTEM STANDARDS or the SHOP OPERATIONS MANUAL shall be good cause for SHOPPE COMPANY to this AGREEMENT, so long as each successive failure is documented to have existed after the running of any cure period applicable to the prior compliance failure. The provisions of this Section shall apply without regard to whether each failure was timely cured, resulted in a NOTICE of default being given under Section 13.1.1, or whether any particular failure, by itself, was material.

13.1.2.5.2 Termination of Another Franchise Agreement.

Any breach by FRANCHISEE of any other HAAGEN-DAZS® SHOP franchise agreement resulting in its termination by SHOPPE COMPANY shall be good cause for SHOPPE COMPANY to terminate this AGREEMENT.

13.1.2.5.3 FRANCHISEE's Insolvency.

Except to the extent inconsistent with applicable law, FRANCHISEE's bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or other financial disability shall be good cause for SHOPPE COMPANY to terminate this AGREEMENT.

13.1.2.5.4 FRANCHISEE's Abandonment of the Shop.

FRANCHISEE's abandonment of this AGREEMENT, the FRANCHISE, or the SHOP, shall constitute good cause for termination of this AGREEMENT by SHOPPE COMPANY. Abandonment will be presumed if FRANCHISEE, without first obtaining written consent from SHOPPE COMPANY, fails to operate the SHOP during normal business hours, as required under Section 9.17, for 3 consecutive business days.

13.1.2.5.5 Destruction of the SHOP PREMISES.

If the SHOP PREMISES are destroyed or substantially damaged, by fire, flood, or other natural disaster, or other circumstances beyond the reasonable control of FRANCHISEE, then FRANCHISEE shall have 30 days from the event of destruction or substantial damage to provide SHOPPE COMPANY with a written plan of action, which among other



things, must contemplate reopening the SHOP at the SHOP PREMISES within 120 days from the event of destruction or substantial damage. FRANCHISEE's failure to timely submit a written plan of action, or failure to timely reopen the SHOP at the SHOP PREMISES, shall constitute good cause for termination of this AGREEMENT by SHOPPE COMPANY. Notwithstanding the preceding sentence, SHOPPE COMPANY will in good faith extend the time for reopening the SHOP at the SHOP PREMISES if FRANCHISEE has made significant progress toward the rebuilding of the SHOP, and FRANCHISEE's failure to timely reopen the SHOP is due to circumstances beyond the reasonable control of FRANCHISEE.

13.1.2.5.6 Criminal Acts.

Conviction of FRANCHISEE (or a principal officer or director of FRANCHISEE if FRANCHISEE is a corporation), or plea of guilty or no contest, to any charge or violation of any law relating to the conduct of the business operated hereunder, or of any felony, fraud, crime involving moral turpitude, or any other crime or offense that SHOPPE COMPANY reasonably believes is related to FRANCHISEE's operation of the SHOP, is likely to have an adverse affect on the MARKS or the SYSTEM, or the goodwill associated therewith, shall constitute good cause for termination of this AGREEMENT by SHOPPE COMPANY.

13.1.2.5.7 Adulteration or Palming-Off of Products.

Any instance of adulteration of products at the SHOP, or the misrepresentation or substitution or palming off of non-Häagen-Dazs products as HÄAGEN-DAZS® PRODUCTS, shall constitute good cause for termination of this AGREEMENT by SHOPPE COMPANY.

13.1.2.5.8 Unauthorized Transactions.

Any resale or other conveyance by FRANCHISEE of HÄAGEN-DAZS® PRODUCTS in bulk form with the expectation that such HÄAGEN-DAZS® PRODUCTS will be resold, or any sale or other conveyance by FRANCHISEE of items prepared at the SHOP with the expectation that such items would be made available for retail purchase away from the SHOP, except to the extent expressly authorized by SHOPPE COMPANY in writing, shall constitute good cause for termination of this AGREEMENT by SHOPPE COMPANY.

13.1.3 NOTICE of Termination; When Given.

SHOPPE COMPANY may terminate this AGREEMENT, by giving NOTICE of termination to FRANCHISEE, either:

- (a) upon FRANCHISEE's failure of to timely cure any default;
- (b) upon the existence of a non-curable default under Section 13.1.2.4; or
- (c) upon the existence of circumstances permitting termination under Section 13.1.2.5.

13.1.4 NOTICE of Termination; When Effective.

Unless a longer period is required by applicable law, the NOTICE of termination shall be given at least 30 days before the effective date of termination, except that, if termination is on account of



one of the following circumstances, then the termination may be effective immediately upon the giving of NOTICE of termination:

- (a) FRANCHISEE's failure to timely cure, under Section 13.1.2.1(c), any failure to comply with the health and safety requirements of Section 9.9;
- (b) FRANCHISEE's failure to timely cure, under Section 13.1.2.1(d), any act or practice that impairs or threatens to impair the goodwill associated with the MARKS;
- (c) Any non-curable default under Section 13.1.2.4;
- (d) An abandonment of under Section 13.1.2.5.4;
- (e) Criminal acts under Section 13.1.2.5.6;
- (f) Adulteration or palming-off of products under Section 13.1.2.5.7;
- (g) Any unauthorized transaction under Section 13.1.2.5.8.

13.1.5 SHOPPE COMPANY's Right to Damages Upon Termination.

If SHOPPE COMPANY terminates this AGREEMENT under this Article 13, or FRANCHISEE terminates this AGREEMENT in a manner other than that permitted by Section 13.2, then, in addition to any other damages and remedies, SHOPPE COMPANY shall have a right to recover the future revenues that would have been realized by SHOPPE COMPANY, under this AGREEMENT, if FRANCHISEE had continued to operate the SHOP, in full compliance with the terms of this AGREEMENT, for the entire TERM. SHOPPE COMPANY's right to seek damages under this Section 13.1.5 shall not apply in the event of a termination of this AGREEMENT under Section 13.1.2.5.5 on account of the destruction of the SHOP PREMISES.

13.2 Termination by FRANCHISEE.

FRANCHISEE may terminate this AGREEMENT only in accordance with one of the following provisions.

13.2.1 Termination for Cause.

FRANCHISEE may terminate this AGREEMENT upon SHOPPE COMPANY's failure to timely cure a material breach of a provision of this AGREEMENT, and only by complying with the provisions of this Section 13.2. Before terminating this AGREEMENT, FRANCHISEE must give SHOPPE COMPANY a NOTICE of default, specifying each of the facts claimed by FRANCHISEE to constitute a material breach of this AGREEMENT, and each provision of this AGREEMENT that FRANCHISEE contends SHOPPE COMPANY to have breached. SHOPPE COMPANY shall have 30 days to cure each material breach identified in the NOTICE of default. If SHOPPE COMPANY fails to timely cure any material breach of this AGREEMENT, then FRANCHISEE shall be entitled to terminate this AGREEMENT by giving SHOPPE COMPANY NOTICE of termination at least 60 days before the effective termination date specified in the NOTICE of termination.

13.2.2 Termination for Convenience After 3 Years.

FRANCHISEE may terminate this AGREEMENT for its convenience, by NOTICE to SHOPPE COMPANY, given at least 180 days before, but no more than 1 year before, the effective date of termination; provided however that this limited termination right shall only entitle FRANCHISEE to terminate this AGREEMENT for its convenience if the effective date of termination is after the end of the third full year of the TERM.



Article 14 OBLIGATIONS UPON EXPIRATION OR EARLIER TERMINATION

14.1 Termination Consequences and Obligations on Expiration.

Upon expiration or any earlier termination or of this AGREEMENT, all rights licensed to FRANCHISEE, and FRANCHISEE's interest in this AGREEMENT, shall revert to SHOPPE COMPANY without further act or deed of any party, and FRANCHISEE shall at its expense comply with the following obligations.

14.1.1 Cease Use of the MARKS.

FRANCHISEE shall immediately cease all use of the MARKS and SYSTEM, and any materials containing or depicting the MARKS or SYSTEM, and any other name or commercial symbol confusingly similar to any of the MARKS.

14.1.2 Cease All Sales of HÄAGEN-DAZS® PRODUCTS.

FRANCHISEE shall cease the sale or distribution in any manner of HÄAGEN-DAZS® PRODUCTS, and shall properly dispose of any HÄAGEN-DAZS® PRODUCTS remaining in its possession by destruction, donation, or other means not involving their sale; except that the foregoing will not prevent FRANCHISEE from utilizing remaining HÄAGEN-DAZS® PRODUCTS at FRANCHISEE's other foodservice operations that, during the TERM, without violating this AGREEMENT, were engaged in such sales.

14.1.3 Payment of All Obligations.

FRANCHISEE shall pay all sums due or which become due to SHOPPE COMPANY and its affiliates, and all sums due to FRANCHISEE's business creditors and tax agencies.

14.1.4 Relinquish All Confidential Materials.

FRANCHISEE shall return to SHOPPE COMPANY, intact, the SHOP OPERATIONS MANUAL and all other documents furnished by SHOPPE COMPANY and all confidential or trade secret data, reports, and bulletins.

14.1.5 Return of Trade Items.

FRANCHISEE shall upon termination or expiration of this AGREEMENT, return to SHOPPE COMPANY any items bearing the MARKS, and any items owned by SHOPPE COMPANY. This Section will not require FRANCHISEE to turn over any equipment bearing the MARKS, as long as:

- (a) The item of equipment is not SHOPPE COMPANY's personal property;
- (b) The item of equipment does consist, whole or in part, of any intellectual property owned by, or licensed to SHOPPE COMPANY;
- (c) The MARKS are immediately removed from the item of equipment; and
- (d) In the absence of the MARKS, there is nothing distinctive about the item of equipment that is uniquely reflective of SHOPPE COMPANY's trade dress.

14.1.6 Alter Appearance of SHOP.

FRANCHISEE shall immediately alter the appearance of the SHOP and the SHOP PREMISES clearly to eliminate any similarity in design, structure, signage, trade dress, decor, color or layout to the distinctive appearance of HÄAGEN-DAZS® SHOPS.

14.1.7 Compliance with Post-Termination Covenants.

FRANCHISEE shall comply with the provisions of Section 15.2.



14.2 Other HÄAGEN-DAZS® SHOP Franchises Held by FRANCHISEE.

Nothing in this Article 14 is intended to alter any rights and obligations of the parties pursuant to a separate HÄAGEN-DAZS® SHOP franchise agreement pertaining to FRANCHISEE's interest in another HÄAGEN-DAZS® SHOP.

Article 15 COVENANTS AGAINST COMPETITION

15.1 During TERM.

During the TERM, neither FRANCHISEE nor any affiliate of FRANCHISEE shall own any interest in, lease property to, or otherwise work for, engage in or assist, directly or indirectly, any other restaurant or food service business located within or at the FACILITY, that is engaged in the sale of any frozen dessert products for immediate consumption, irrespective of the form or forms of those frozen dessert products, if those frozen dessert products account for more than 30% of the sales at or from that restaurant or food service businesses sales.

15.2 Following Termination, Expiration, or TRANSFER.

For six months from the TRANSFER, expiration or earlier termination of this AGREEMENT, neither FRANCHISEE nor any affiliate of FRANCHISEE shall own any interest in or otherwise work for, engage in or assist, directly or indirectly, any business located within or at FACILITY, that is engaged in the sale of any frozen dessert products for immediate consumption, irrespective of the form or forms of those frozen dessert products, if those frozen dessert products account for more than 30% of the sales at or from that restaurant or food service businesses sales.

15.3 Survival of Covenant; Materiality.

The provisions of this Article 15 shall survive expiration, termination, TRANSFER, abandonment or other cancellation of this AGREEMENT. FRANCHISEE agrees that the covenants contained in this Article 15 are reasonable, and understands that FRANCHISEE's agreement to the covenants contained in this Article 15 is an important inducement and consideration for SHOPPE COMPANY to enter into this AGREEMENT with FRANCHISEE.

15.4 Interpretation.

In any jurisdiction where a provision of this Article 15 is unenforceable as written, it shall be enforced to the greatest extent permitted by law, with respect to each duration, distance, and scope of business activities, with the provisions of this Article 15 serving as guidance as to the intent of FRANCHISEE and SHOPPE COMPANY.

15.5 Binding Upon Corporate Officers and Directors.

Except to the extent otherwise agreed upon in a written document signed by SHOPPE COMPANY, if FRANCHISEE is a corporation, limited partnership, or similar business entity, then the covenants contained in this Article 15 shall bind the officers and directors, general partners, managing partners, or principals of such corporation, limited partnership, or similar business entity to the same extent as if each had personally signed this AGREEMENT as the FRANCHISEE, and FRANCHISEE warrants that it has the authority to bind such persons.

Article 16 INSURANCE

16.1 Liability Insurance.

At least 7 days before the SHOP is first opened for business, FRANCHISEE shall obtain, and during the TERM shall maintain, at FRANCHISEE's expense, Commercial General Liability Insurance, with Products/Completed Operations Insurance coverage, and Blanket Contractual Liability coverage, covering FRANCHISEE's business activities under this AGREEMENT, having minimum limits of \$1,000,000/\$1,000,000, with companies reasonably satisfactory to SHOPPE COMPANY.



16.2 **SHOPPE COMPANY as Named Insured.**

Each insurance policy that FRANCHISEE obtains and under this AGREEMENT shall be issued in the name of FRANCHISEE, and shall name "The Häagen-Dazs Shoppe Company, Inc." as an additional insured.

16.3 **Proof of Insurance.**

FRANCHISEE shall upon obtaining, renewing and reinstating each insurance policy required by this Article 16, and at anytime upon SHOPPE COMPANY's request, provide SHOPPE COMPANY with a certificate of insurance that clearly identifies the SHOP PREMISES, and clearly shows that the coverage obtained by FRANCHISEE complies with the requirements of this Article 16.

16.4 **Off-Site Sales.**

This AGREEMENT does not permit FRANCHISEE to offer goods or services associated with the FRANCHISE or the MARKS away from the SHOP. If SHOPPE COMPANY authorizes FRANCHISEE to sell goods or services away from the SHOP, which are associated with the FRANCHISE or the MARKS, then FRANCHISEE shall ensure that the insurance policies required by this Article 16 cover FRANCHISEE's activities away from the SHOP.

16.5 **Right of SHOPPE COMPANY to Purchase Insurance.**

In addition to whatever other remedies may be available to SHOPPE COMPANY under this AGREEMENT, upon a failure of FRANCHISEE to comply with the requirements of this Article 16, SHOPPE COMPANY may, but need not, purchase the insurance required pursuant to this Article 16, and bill FRANCHISEE for the costs of obtaining such coverage.

Article 17 NOTICE

17.1 **Form of NOTICE.**

Unless otherwise required by a specific provision of this AGREEMENT, each NOTICE required or permitted hereunder shall be in writing, addressed in accordance with this Article 17, 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; provided however that NOTICE given under Section 13.1.2.2 or 13.1.2.3, unless a copy of such NOTICE is also sent by confirmed facsimile transmission, will not be effective until such time as it should reasonably have been received by FRANCHISEE, which in no case shall be more than 3 days after being sent if by registered or certified mail.

17.2 **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 FRANCHISEE, sent by regular mail, confirmed facsimile transmission, or in any other manner permitted for written communications under this AGREEMENT.

17.3 **To FRANCHISEE.**

A NOTICE to FRANCHISEE shall be effective if sent to FRANCHISEE'S ADDRESS FOR NOTICES (set forth on the COVER SHEET. FRANCHISEE shall amend FRANCHISEE'S ADDRESS FOR NOTICES



(which in the case of a natural person must be such person's principal residential address) within 30 days of any change by NOTICE to SHOPPE COMPANY, sent by regular mail.

Article 18 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

18.1 Relationship of the Parties.

FRANCHISEE and SHOPPE COMPANY stand solely as independent contractors in the relationship of franchisee and franchisor. This AGREEMENT shall not be construed as constituting FRANCHISEE an agent, servant, representative or employee of SHOPPE COMPANY for any purpose whatsoever. FRANCHISEE 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 AGREEMENT does not create a fiduciary relationship or a relationship of special trust and confidence.

18.2 Disclosure of Nature of FRANCHISE Relationship.

If directed by SHOPPE COMPANY, then FRANCHISEE shall, prominently display a sign in the SHOP, indicating to the consuming public that the SHOP is independently owned and operated by a franchisee under a license granted by SHOPPE COMPANY. All business cards, telephone answering devices used at the SHOP, stationery, checks and employment communications used by FRANCHISEE in connection with the SHOP must clearly disclose that the SHOP is independently owned and operated by FRANCHISEE under a license granted by SHOPPE COMPANY. If required by SHOPPE COMPANY, marketing materials used by FRANCHISEE must clearly disclose that the SHOP is independently owned and operated by FRANCHISEE under a license granted by SHOPPE COMPANY.

18.3 Indemnification by FRANCHISEE.

Upon demand by SHOPPE COMPANY, FRANCHISEE 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 the operation of the SHOP, or the failure of FRANCHISEE to adhere to any of its obligations under this AGREEMENT. This obligation shall survive the TRANSFER, expiration or earlier termination of this AGREEMENT.

18.4 Indemnification by SHOPPE COMPANY.

SHOPPE COMPANY shall defend, indemnify and hold FRANCHISEE harmless, during and after the TERM, from any and all claims, demands, and causes of action by any third-party challenging the right of FRANCHISEE to, during the TERM, use and display the MARKS, provided however that the indemnification obligation set forth in this Section 18.4 shall not apply to any claim involving, all or in part, a display or use of the MARKS not permitted by this AGREEMENT. To trigger the obligations under this Section 18.4, FRANCHISEE must provide SHOPPE COMPANY with NOTICE of any matter within the scope of this Section within 30 days after first becoming aware of such matter. SHOPPE COMPANY shall have the right to assume the defense of any matter within the scope of this Section 18.4, and make any decisions concerning its disposition, provided however that SHOPPE COMPANY shall not, without FRANCHISEE's consent, compromise any matter within the scope of this Section 18.4 on terms inconsistent with FRANCHISEE's rights under this AGREEMENT.

Article 19 INTERPRETATION, CLAIMS AND DISPUTES.

Except to the extent invalidated by valid, enforceable, applicable laws of the jurisdiction where the SHOP is located, or where FRANCHISEE resides, the provisions of this Article 19 shall govern the interpretation of this AGREEMENT, and the resolution of any legal action in any way related to the AGREEMENT, the FRANCHISE or the SHOP. If any provision of this Article 19 is unenforceable for any reason, then it shall still be considered to determine the intent of the parties.



19.1 **Limitation of Actions.**

Neither FRANCHISEE 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.

19.2 **No Right to Trial by Jury.**

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

19.3 **Jurisdiction and Venue.**

FRANCHISEE 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. FRANCHISEE 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 FRANCHISEE shall be brought either in State Court sitting in Minneapolis, Hennepin County, Minnesota, or the United States District Court having concurrent jurisdiction with the State Court sitting in Minneapolis, Hennepin County, Minnesota. FRANCHISEE acknowledges that SHOPPE COMPANY has its principal place of business in Minneapolis, and agrees that this provision is reasonable.

19.4 **Choice of Law.**

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

19.4.1 **Law to be Applied to the Interpretation of AGREEMENT.**

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

19.4.2 **Application of State Franchise Law.**

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

19.5 **Prevailing Party to be Awarded Costs and Attorneys' Fees.**

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

19.6 **NOTICE of Claim as Condition Precedent to Action.**

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

19.7 **Election of Remedies.**

Unless a specific provision of this AGREEMENT expressly restricts SHOPPE COMPANY to a particular remedy on account of a particular failure of FRANCHISEE to comply with the terms of this AGREEMENT, including the terms of the SHOP OPERATIONS MANUAL and the SYSTEM STANDARDS, no remedy



contemplated by this AGREEMENT on account of a particular failure of FRANCHISEE to comply with the terms of this 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.

19.8 Injunctive Relief.

FRANCHISEE recognizes that the SHOP is one of a number of HÄAGEN-DAZS® SHOPS selling similar products to the public, and that FRANCHISEE's failure to comply with the terms of this AGREEMENT could cause irreparable damage to the MARKS and the SYSTEM. Therefore, in the event of a breach or threatened breach by FRANCHISEE of any of the covenants or provisions of this 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. If this AGREEMENT or FRANCHISEE's right to operate a HÄAGEN-DAZS® SHOP, is terminated, then FRANCHISEE, in addition to and not in lieu of any other rights and remedies, may be enjoined from any continued operation of the SHOP, or simulation thereof, or other breach of any provision of this AGREEMENT.

Article 20 FRANCHISEE'S ACKNOWLEDGEMENTS AND REPRESENTATIONS

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

20.1 No Representations By SHOPPE COMPANY.

FRANCHISEE acknowledges and represents that in deciding to execute this AGREEMENT, FRANCHISEE has not relied upon any representations by any representative of SHOPPE COMPANY, except those representations, if any, that are explicitly set forth in this AGREEMENT, or in the Häagen-Dazs Uniform Franchise Offering Circular that was most recently provided to FRANCHISEE before FRANCHISEE signed this AGREEMENT. Without limiting the foregoing, FRANCHISEE acknowledges that SHOPPE COMPANY has not made any representation concerning the sales, income, profit, or losses that FRANCHISEE may realize in connection with the FRANCHISE.

20.2 Review of AGREEMENT and SYSTEM.

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

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

20.3 No Claims.

FRANCHISEE acknowledges that at the time of executing this AGREEMENT, FRANCHISEE 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 FRANCHISEE against SHOPPE COMPANY or its affiliates or agents.

20.4 No Defaults by FRANCHISEE.

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



20.5 Prior Payments.

FRANCHISEE acknowledges and agrees that FRANCHISEE has not, in connection with the FRANCHISE, paid any money, or given anything else of value, to SHOPPE COMPANY or a representative of SHOPPE COMPANY in any way relating to the SHOP.

20.6 Character, Reputation and Ability.

FRANCHISEE represents and warrants that FRANCHISEE is of good character and reputation, and physically, mentally, and financially able to accept and fulfill FRANCHISEE's obligations set forth in this AGREEMENT and in the SHOP OPERATIONS MANUAL. FRANCHISEE recognizes that, under this AGREEMENT, FRANCHISEE undertakes obligations to SHOPPE COMPANY, the owner of the MARKS, and the consuming public.

Article 21 SEVERABILITY AND CONSTRUCTION

21.1 Severability.

If any term of this 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 AGREEMENT.

21.2 Waiver.

Neither party's obligations under this AGREEMENT, or rights under this AGREEMENT, may be modified or waived, except in a writing signed by a duly authorized representative of that party. No representative of either party has the authority to waive or modify the requirement imposed by the preceding sentence. Either party's failure:

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

shall not constitute a waiver of any subsequent breach, affect the validity of all or any part of this AGREEMENT, or the right of that party 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.

21.3 No Extrinsic Modifications.

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

21.4 Joint and Several Liability.

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

21.5 Section Titles.

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



Article 22 NOT EFFECTIVE UNTIL FULLY EXECUTED

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

In the presence of:

FRANCHISEE

Witness

[Name]

By:

Title:

Date: _____

In the Presence of:

THE HÄAGEN-DAZS SHOPPE COMPANY, INC.

By: _____

Title:

Date: _____

