



HÄAGEN-DAZS SHOP FRANCHISE AGREEMENT

PROJECT / SHOP #

This Häagen-Dazs Shop Franchise 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]
[Name]	[Address]
[Name]	[Address]
[Name]	[Address]
[Name]	[Address]

(individually and collectively "FRANCHISEE").

Franchise Type:	<input type="checkbox"/> NEW HÄAGEN-DAZS® SHOP; NEW FRANCHISEE
	<input type="checkbox"/> NEW HÄAGEN-DAZS® SHOP; EXISTING FRANCHISEE
	<input type="checkbox"/> EXISTING HÄAGEN-DAZS® SHOP, SUCCESSIVE TERM FRANCHISE

FRANCHISEE acknowledges that the information on this page (the "COVER SHEET") is material, and accurately reflects FRANCHISEE's understanding. Whether a particular reference, in this AGREEMENT to "NEW HÄAGEN-DAZS® SHOP" "NEW FRANCHISEE" "EXISTING FRANCHISEE" or "SUCCESSIVE TERM FRANCHISE" is applicable to FRANCHISEE, is determined by the single, specific, "Franchise Type" designation indicated above.



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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 good will 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, 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.

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 20.



2.5 **SHOP.**

"SHOP" means the HÄAGEN-DAZS® SHOP established and operated by FRANCHISEE under the terms of this AGREEMENT. For the purposes of determining compliance with the SYSTEM STANDARDS, "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.

Article 3 **SITE SELECTION, SHOP CONSTRUCTION, AND EXCLUSIVE TERRITORY**

The terms and conditions of Exhibits A, B, C, and D to this AGREEMENT (respectively "EXHIBIT A" "EXHIBIT B" "EXHIBIT C" and "EXHIBIT D") form a part of this AGREEMENT, and are incorporated into this AGREEMENT to the same extent as if fully set forth under this Article 3.

3.1 **Site Selection Process; Designation of SHOP PREMISES.**

If this AGREEMENT was issued in connection with a NEW HÄAGEN-DAZS® SHOP, then the SHOP PREMISES will be designated under the terms of EXHIBIT A. If this AGREEMENT was issued in connection with a SUCCESSIVE TERM FRANCHISE, then the SHOP PREMISES are designated on EXHIBIT D.

3.2 **Shop Design and Construction.**

FRANCHISEE will adhere to SHOPPE COMPANY's procedures and requirements for the design and construction of the SHOP, as more particularly described by EXHIBIT B.

- (a) In the case of a NEW HÄAGEN-DAZS® SHOP, FRANCHISEE will diligently construct the SHOP at the SHOP PREMISES, if and after SHOPPE COMPANY designates the SHOP PREMISES in accordance with EXHIBIT A, time being of the essence.
- (b) In the case of a SUCCESSIVE TERM FRANCHISE, FRANCHISEE shall completely remodel the SHOP, within one year from the COMMENCEMENT DATE identified on EXHIBIT D, time being of the essence.
- (c) FRANCHISEE shall not commence (or recommence) operations at the SHOP unless and until SHOPPE COMPANY determines that the SHOP reasonably conforms to the plans and specifications approved by SHOPPE COMPANY in accordance with EXHIBIT B.

3.3 **EXCLUSIVE TERRITORY.**

The parties acknowledge and agree that the EXCLUSIVE TERRITORY, if any, will be determined by SHOPPE COMPANY in accordance with EXHIBIT C.

- (a) In the case of a NEW HÄAGEN-DAZS® SHOP, SHOPPE COMPANY will provide FRANCHISEE with written information sufficient to determine the EXCLUSIVE TERRITORY, if any, using a document similar to EXHIBIT D, or some other form of written communication SHOPPE COMPANY considers appropriate, when SHOPPE COMPANY designates the SHOP PREMISES in accordance with EXHIBIT A.
- (b) In the case of a SUCCESSIVE TERM FRANCHISE, information sufficient to determine the EXCLUSIVE TERRITORY, if any, is set forth on EXHIBIT D.

Article 4 **GRANT**

4.1 **The "FRANCHISE."**

Subject to the provisions of this AGREEMENT, SHOPPE COMPANY hereby grants FRANCHISEE the personal, limited right and license (the "FRANCHISE") 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 result in any enlargement of the EXCLUSIVE TERRITORY, 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.

Article 5 COMMENCEMENT, TERM AND RENEWAL

5.1 The "TERM."

The term of the FRANCHISE (the "TERM") will commence on the "COMMENCEMENT DATE" determined under this Article 5, and will end on the EXPIRATION DATE determined under this Article 5; unless this AGREEMENT is sooner cancelled or terminated in accordance with its provisions.

5.2 NEW HÄAGEN-DAZS® SHOP.

Each of the provisions of this Section 5.2 applies if, and only if, this AGREEMENT was entered into in contemplation of a NEW HÄAGEN-DAZS® SHOP.

5.2.1 COMMENCEMENT DATE.

The COMMENCEMENT DATE will be the day the SHOP first opens for business.

5.2.2 Commencement of Operations.

FRANCHISEE shall exert its best efforts to open the SHOP on or before the day that is exactly 3 years from the date of this AGREEMENT (appearing on the top of the COVER SHEET) (the "OUTSIDE OPENING DATE").

5.2.3 EXPIRATION DATE.

The EXPIRATION DATE is the day immediately before the tenth anniversary of:

- (a) the COMMENCEMENT DATE; or
- (b) the OUTSIDE OPENING DATE;

whichever is earlier.

5.2.4 Failure to Open by 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, provided however that the EXPIRATION DATE shall remain the same; 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 and return the FRANCHISE FEE paid by FRANCHISEE under Article 7, less \$5,000, which SHOPPE COMPANY shall have an absolute right to retain, in which case SHOPPE COMPANY shall have no further obligations to FRANCHISEE under this AGREEMENT.

5.2.5 Renewal Opportunity.

FRANCHISEE shall have the opportunity to continue the operation of the SHOP during a second 10-year term (the "RENEWAL TERM"), subject to and conditioned upon each and every one of the following provisions:

5.2.5.1 Written Request for Grant of RENEWAL TERM.

If FRANCHISEE desires to continue to operate the SHOP for the RENEWAL TERM, then FRANCHISEE must in writing, at least 180 days before the EXPIRATION DATE, but no more than 270 days before the EXPIRATION DATE, request that SHOPPE COMPANY issue its then current standard form franchise agreement for renewal terms (a "RENEWAL AGREEMENT"), contemplating a single ten-year franchise term for the SHOP, at the SHOP PREMISES. FRANCHISEE acknowledges and agrees that terms of a RENEWAL AGREEMENT, including the amount of the ROYALTY payable during the RENEWAL TERM, may be substantially different from the terms of this AGREEMENT, and may be substantially different from the terms of the standard form franchise agreement that SHOPPE COMPANY is then issuing in connection with a new HÄAGEN-DAZS® SHOP.

5.2.5.2 Operation in Compliance with SHOPPE COMPANY Requirements.

SHOPPE COMPANY shall have no obligation to issue a RENEWAL AGREEMENT to FRANCHISEE, unless FRANCHISEE meets each and every one of the following conditions, each of which FRANCHISEE agrees is reasonable.

- (a) FRANCHISEE shall have continuously been, during the last 2 years of the TERM, current in its financial obligations to SHOPPE COMPANY, SHOPPE COMPANY's affiliates, and SHOPPE COMPANY's designated suppliers, under this AGREEMENT, and under any other agreement existing between SHOPPE COMPANY and FRANCHISEE.
- (b) FRANCHISEE shall have continuously, during the last 2 years of the TERM, operated the SHOP, as well as any other HÄAGEN-DAZS® SHOP in which FRANCHISEE has an interest, in accordance with SHOPPE COMPANY's operational requirements; and, in particular, during such time period shall have received only passing scores during any operational audit or inspection, irrespective of whether a non-passing score resulted in a NOTICE of default, and irrespective of whether deficiencies identified were timely corrected.
- (c) FRANCHISEE shall have, during the last 2 years of the TERM, consistently operated the SHOP in accordance with each of the terms of this AGREEMENT and the SHOP OPERATIONS MANUAL, and, during such period, shall not have been declared to be in default of any of the terms of this AGREEMENT, or any other franchise agreement existing between SHOPPE COMPANY and FRANCHISEE.
- (d) FRANCHISEE shall have, during the last 2 years of the TERM, consistently participated in all marketing promotions conducted by SHOPPE COMPANY.

- (e) FRANCHISEE shall meet SHOPPE COMPANY's then current financial requirements for the grant of a RENEWAL TERM, which may require that FRANCHISEE demonstrate the financial ability to continue to operate the SHOP, and to timely remodel the SHOP to the extent required by SHOPPE COMPANY under Section 5.2.5.2(g), or the RENEWAL AGREEMENT.
- (f) If required by SHOPPE COMPANY, then FRANCHISEE shall have, during the last year of the TERM, caused its DESIGNATED SHOP MANAGER to attend SHOPPE COMPANY's training program, irrespective of any prior training and experience.
- (g) If required by SHOPPE COMPANY, then FRANCHISEE shall have, during the last year of the TERM, completely remodeled the SHOP in accordance with SHOPPE COMPANY's procedures to bring the SHOP into conformity with SHOPPE COMPANY's then current design and operational requirements.

5.2.5.3 RENEWAL AGREEMENT Execution.

If SHOPPE COMPANY issues a RENEWAL AGREEMENT to FRANCHISEE, then FRANCHISEE must timely execute that RENEWAL AGREEMENT in accordance with SHOPPE COMPANY's then current requirements. FRANCHISEE will not be required to pay an initial franchise fee to enter into the RENEWAL AGREEMENT.

5.3 SUCCESSIVE TERM FRANCHISE.

Each of the provisions of this Section 5.3 applies if, and only if, this AGREEMENT is for a SUCCESSIVE TERM FRANCHISE.

5.3.1 COMMENCEMENT DATE.

The COMMENCEMENT DATE is set forth on the EXHIBIT D.

5.3.2 EXPIRATION DATE.

The EXPIRATION DATE is the day immediately before the tenth anniversary of the COMMENCEMENT DATE.

5.3.3 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.

5.4 Limitation on Conditional Renewal Opportunity.

FRANCHISEE understands and agrees that, except as set forth in Section 5.2.5, which Section applies solely in the case of a NEW HÄAGEN-DAZS® SHOP, this AGREEMENT confers no right to continuation, renewal, or a subsequent franchise agreement on or after the EXPIRATION DATE, and SHOPPE COMPANY shall not have any obligation to continue its relationship with FRANCHISEE in connection with the SHOP after the EXPIRATION DATE. If FRANCHISEE enters the LEASE for a tenancy extending beyond the TERM, or enters into an extension of the LEASE, a new lease for the SHOP PREMISES, or any other commitment related to the SHOP, for a period after the TERM, then FRANCHISEE shall be doing so at its own risk.

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 Plans and Specifications.

In connection with the initial construction of the SHOP, or a remodel of the SHOP if required by Sections 3.2(b) or 11.15, SHOPPE COMPANY shall, at no charge, provide FRANCHISEE or FRANCHISEE's architect with standard criteria for the design and configuration of a typical HÄAGEN-DAZS® SHOP, including exterior and interior design and layout, fixtures, furnishings, equipment and signage, which FRANCHISEE shall, at FRANCHISEE's expense, adapt to conform to the characteristics of the SHOP PREMISES in accordance with the terms of EXHIBIT B.

6.2 Training.

Before the initial opening of the SHOP, SHOPPE COMPANY shall, at no charge to FRANCHISEE, provide initial training for the DESIGNATED SHOP MANAGER and up to one additional person in accordance with Section 11.3.1.

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 10.

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 to the plans and specifications approved by SHOPPE COMPANY under the procedures described by EXHIBIT B.

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. If FRANCHISEE is a NEW FRANCHISEE, then the assistance provided by SHOPPE COMPANY under this Section 6.5 will include the physical presence of one or more SHOPPE COMPANY representatives for a total of at least five person-days (based on an 8-hour work day) before, during, and/or just after the SHOP first opens for business.

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 11.7.

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 INITIAL FEES

7.1 The "FRANCHISE FEE."

FRANCHISEE shall pay an initial franchise fee (the "FRANCHISE FEE") to SHOPPE COMPANY, for the right to enter into this AGREEMENT and in consideration of the FRANCHISE, in an amount determined as follows:

- (a) If this AGREEMENT grants the Franchise to a New FRANCHISEE for a New Häagen-Dazs® Shop, then the full amount of the FRANCHISE FEE is \$30,000. The FRANCHISE



FEE is due in two installments. The first installment, in the amount of \$10,000, must be paid upon FRANCHISEE's signing of this AGREEMENT. The second installment, in the amount of \$20,000, must be paid within 15 days following SHOPPE COMPANY's designation of the SHOP PREMISES under the terms of EXHIBIT A.

- (b) If this AGREEMENT grants the Franchise to an Existing FRANCHISEE for a New Häagen-Dazs® Shop, then the full amount of the FRANCHISE FEE is \$15,000. The FRANCHISE FEE is due in two installments. The first installment, in the amount of \$10,000, must be paid upon FRANCHISEE's signing of this AGREEMENT. The second installment, in the amount of \$5,000, must be paid within 15 days following SHOPPE COMPANY's designation of the SHOP PREMISES under the terms of EXHIBIT A.
- (c) If this AGREEMENT grants a Successive Term Franchise, then the full amount of the FRANCHISE FEE shall be \$10,000, which is due and payable upon FRANCHISEE's signing of this AGREEMENT.

7.2 Failure to Timely Pay Second Installment of FRANCHISE FEE.

If FRANCHISEE fails to timely pay the second installment of the FRANCHISE FEE, if required under Section 7.1(a) or 7.1(b), then SHOPPE COMPANY shall have the absolute right to declare this AGREEMENT void, retain the first installment of the FRANCHISE FEE paid by FRANCHISEE, and shall otherwise have no remaining obligations to FRANCHISEE under this AGREEMENT.

7.3 FRANCHISE FEE is Nonrefundable.

The FRANCHISE FEE is nonrefundable except to the extent specifically described in Sections 5.2.4(c), and 7.4, and Sections 4.4(a) and Article 5 of EXHIBIT A.

7.4 Partial Refund Upon Failure To Satisfy Initial Training Requirement.

If the initial DESIGNATED SHOP MANAGER fails to complete training to the satisfaction of SHOPPE COMPANY, in accordance with Section 11.3.1, then SHOPPE COMPANY will give FRANCHISEE an opportunity to designate a different initial DESIGNATED SHOP MANAGER under Section 11.2, who must complete training to the satisfaction of SHOPPE COMPANY before the SHOP first opens for business. If the second initial DESIGNATED SHOP MANAGER also fails to complete training to the satisfaction of SHOPPE COMPANY, or FRANCHISEE declines the opportunity to have a second initial DESIGNATED SHOP MANAGER attend SHOPPE COMPANY's training program, then SHOPPE COMPANY may cancel this AGREEMENT. If SHOPPE COMPANY cancels this AGREEMENT under this Section 7.4, then SHOPPE COMPANY shall refund the FRANCHISE FEE (to the extent already paid by FRANCHISEE), less \$5,000, which amount SHOPPE COMPANY shall have an absolute right to retain, and SHOPPE COMPANY shall have no further obligations to FRANCHISEE under this AGREEMENT.

Article 8 GRAND OPENING PROGRAM

8.1 Optional GRAND OPENING.

FRANCHISEE may, but shall have no obligation to, conduct a grand opening event (the "GRAND OPENING").

8.2 Participation by SHOPPE COMPANY.

If this AGREEMENT contemplates a NEW HÄAGEN-DAZS® SHOP, and the GRAND OPENING satisfies each of the criteria set forth in Section 8.2.1, then SHOPPE COMPANY will financially participate in the GRAND OPENING, by providing FRANCHISEE with goods, services, and/or money, as determined solely by SHOPPE COMPANY, having a combined monetary value equal to ½ of the GRAND OPENING expenditures approved by SHOPPE COMPANY and actually made by FRANCHISEE, up to a maximum financial participation by SHOPPE COMPANY in the amount of \$2,000.



8.2.1 Grand Opening Criteria.

In order for FRANCHISEE to become entitled to SHOPPE COMPANY's financial participation in connection with the GRAND OPENING, FRANCHISEE must:

- (a) at least 30 day prior to the GRAND OPENING, submit a proposed GRAND OPENING plan to SHOPPE COMPANY, detailing the marketing elements being proposed by FRANCHISEE, and the anticipated expenditures for each;
- (b) within 90 days from the COMMENCEMENT DATE, conduct the GRAND OPENING over the course of no more than 3 consecutive days, during the SHOP's normal business hours, consistent with the GRAND OPENING plan approved by SHOPPE COMPANY; and
- (c) spend at least \$3,000 toward GRAND OPENING marketing expenditures approved by SHOPPE COMPANY.

8.2.2 Excluded Items.

Unless SHOPPE COMPANY specifically commits otherwise, in writing, FRANCHISEE's labor costs, food costs, other overhead costs, expenditures required by the LANDLORD, and discounts offered during the GRAND OPENING will not be considered in determining whether FRANCHISEE met the \$3,000 threshold required by Section 8.2.1(b); or in determining SHOPPE COMPANY's financial participation commitment under Section 8.2; even if specifically identified by FRANCHISEE in the GRAND OPENING plan approved by SHOPPE COMPANY.

Article 9 CONTINUING FEES

9.1 "GROSS SALES" Defined.

"GROSS SALES" means:

- (a) all revenue derived from the sale, at regular selling prices before any discounts or allowances, of any food, merchandise, and services, from the SHOP;
- (b) all income of every kind and nature related to the SHOP, FRANCHISE, and/or MARKS, even if derived from sales or activities not permitted by this AGREEMENT;
- (c) the fair value of any non-monetary consideration received by FRANCHISEE for any food, merchandise, and services, from the SHOP, which are bartered, traded or otherwise exchanged by FRANCHISEE for valuable goods or services; and
- (d) all proceeds of any business interruption insurance policies related to the SHOP or FRANCHISE.

Specifically excluded from "GROSS SALES" are:

- (x) the incidental sale of gift cards (or any similar redemption device), if authorized by SHOPPE COMPANY; provided however that goods and services purchased with gift cards (or any similar redemption device) shall be included in GROSS SALES, to the same extent as if paid for with cash;
- (y) sales taxes, excise taxes, or other taxes added to the selling price of any item or service, if actually collected from customers and transmitted to a governmental taxing authority; provided however any tax rebate, allowance, or discount shall be part of GROSS SALES to the extent received, taken, or realized by FRANCHISEE;
- (z) any extraordinary sale of equipment or fixtures used in the SHOP.



9.2 Charge Sales.

Each charge sale or credit sale shall be included in "GROSS SALES" at the time the sale is made, without regard to whether payment is actually collected.

9.3 Sales Away from the SHOP.

This AGREEMENT does not permit FRANCHISEE to sell any food, merchandise or services away from the SHOP. If FRANCHISEE is authorized by SHOPPE COMPANY, or without such authorization, sells food, merchandise or services associated with the MARKS away from the SHOP, then the revenues from those sales will be part of FRANCHISEE's GROSS SALES, and FRANCHISEE shall comply with the procedures established by SHOPPE COMPANY to ensure that any such GROSS SALES are properly captured by the POS SYSTEM, or otherwise reported to SHOPPE COMPANY under Section 9.4.

9.4 Reporting GROSS SALES.

FRANCHISEE shall accurately report its GROSS SALES and such other information as SHOPPE COMPANY requires, on a weekly basis, or some other periodic basis specified from time to time by SHOPPE COMPANY, using a form prescribed by SHOPPE COMPANY, supported by whatever documentation SHOPPE COMPANY reasonable requires. Unless SHOPPE COMPANY specifies otherwise, FRANCHISEE will report its GROSS SALES every Monday, reflecting sales for the preceding week. In lieu of requiring FRANCHISEE to report GROSS SALES, SHOPPE COMPANY may determine FRANCHISEE's GROSS SALES based on data SHOPPE COMPANY obtains from the POS SYSTEM under Section 11.20.2.

9.5 Estimating GROSS SALES.

If FRANCHISEE at any time fails to timely report its GROSS SALES, then in addition to any other remedies that SHOPPE COMPANY may have under this AGREEMENT, SHOPPE COMPANY will have the right to in good faith estimate FRANCHISEE's GROSS SALES, multiply the good faith estimate of GROSS SALES by 125% to arrive at an adjusted estimate of GROSS SALES, and invoice and collect amounts due from FRANCHISEE on the basis of the adjusted estimate of GROSS SALES. If FRANCHISEE, within 30 days following SHOPPE COMPANY's invoicing or otherwise notifying FRANCHISEE that SHOPPE COMPANY has estimated FRANCHISEE's GROSS SALES under this Section 9.5, reports its GROSS SALES for the period that had not been timely reported, then the parties will reconcile any difference between the amount reported and the adjusted estimate of GROSS SALES; otherwise the adjusted estimate of GROSS SALES will become final and binding. FRANCHISEE agrees that this provision is reasonable, and that the adjusted estimate of GROSS SALES shall be deemed liquidated damages, and not a penalty, based on the difficulty of accurately estimating GROSS SALES based on prior reporting periods.

9.6 "ROYALTY."

FRANCHISEE shall pay SHOPPE COMPANY a continuing fee (the "ROYALTY"), equal to four percent (4%) of GROSS SALES, for the continuing right to operate the SHOP in association with the MARKS and the SYSTEM.

9.6.1 Reporting ROYALTY.

FRANCHISEE shall accurately report the total ROYALTY that SHOPPE COMPANY became entitled to receive at the same time that FRANCHISEE must report its GROSS SALES under Section 9.4, and for the same reporting period.

9.6.2 When Due.

Unless SHOPPE COMPANY establishes a different due date under Section 9.6.3, ROYALTY payments are due at the same time FRANCHISEE report its GROSS SALES under Section 9.4.



9.6.3 ROYALTY Payments

SHOPPE COMPANY may from time to time modify the requirements and system for payment and collection of the ROYALTY. By way of example, but not limitation:

- (a) SHOPPE COMPANY may periodically invoice FRANCHISEE for the ROYALTY due, taking into account any prepayment made under Section 9.6.4, in which case the ROYALTY will not be delinquent as long as it is paid in accordance with the terms of the respective invoice; provided however that in the event FRANCHISEE fails to timely pay the ROYALTY invoiced, or fails to timely report GROSS SALES, thus impeding the ROYALTY invoicing process, then FRANCHISEE shall be deemed to have failed to timely pay the ROYALTY as of when FRANCHISEE was required to report its related GROSS SALES.
- (b) SHOPPE COMPANY may direct FRANCHISEE to pay the ROYALTY at the same time that FRANCHISEE must report the ROYALTY payable to SHOPPE COMPANY under Section 9.6.1.
- (c) SHOPPE COMPANY may automatically deduct the ROYALTY from a financial account maintained by FRANCHISEE, using an electronic funds transfer ("EFT") process in accordance with Section 9.9.

9.6.4 Prepayment of ROYALTY.

SHOPPE COMPANY may require FRANCHISEE to prepay the ROYALTY when FRANCHISEE purchases HÄAGEN-DAZS® PRODUCTS, using a formula identical to that used to calculate the royalty paid by other SYSTEM franchisees, or some other formula determined by SHOPPE COMPANY to reasonably approximate the ROYALTY that FRANCHISEE must pay.

9.6.5 Treatment of Overpayments.

SHOPPE COMPANY will periodically, and no less often than quarterly, reconcile amounts it became entitled to receive from FRANCHISEE for the ROYALTY, with the ROYALTY prepayments made by FRANCHISEE under Section 9.6.4. If a reconciliation under this Section 9.6.5 establishes that FRANCHISEE overpaid the ROYALTY due for the period reconciled, then SHOPPE COMPANY will at its option issue a payment or credit to FRANCHISEE in the amount of the overpayment. In the case of a credit, the credit may be used toward amounts due or that become due to SHOPPE COMPANY or its affiliates, as determined by SHOPPE COMPANY. SHOPPE COMPANY shall have the absolute right to delay the reconciliation process to the extent of reporting delays by FRANCHISEE. SHOPPE COMPANY may also delay issuing any payment or credit if SHOPPE COMPANY has issued an Audit NOTICE to FRANCHISEE under Section 9.6.5, and thereafter diligently proceeds to audit FRANCHISEE's books and records. At its option, SHOPPE COMPANY may include amounts payable by FRANCHISEE for LOCAL MARKETING CONTRIBUTIONS under Section 9.8.2 in the reconciliation process.

9.7 "GENERAL MARKETING CONTRIBUTION."

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

9.7.1 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, provided, however, that in no event shall the GENERAL MARKETING CONTRIBUTION be less than \$3,000 per year. The GENERAL MARKETING CONTRIBUTION shall be adjusted each year from an original base of \$1,000, to which \$25 shall be added or subtracted 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. 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. The GENERAL MARKETING CONTRIBUTION shall be prorated for the first and last years of TERM if less than full calendar years.

9.7.2 When Due.

FRANCHISEE shall pay GENERAL MARKETING CONTRIBUTIONS promptly, in accordance with the terms of invoices from SHOPPE COMPANY or its designee. At least 1/12th of the annual GENERAL MARKETING CONTRIBUTION shall be paid each month.

9.7.3 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 to be a fiduciary by virtue of its control over the MARKETING FUND.

9.8 "LOCAL MARKETING CONTRIBUTION."

FRANCHISEE shall pay a continuing fee (the "LOCAL MARKETING CONTRIBUTION"), equal to one percent (1%) of GROSS SALES, to be used by SHOPPE COMPANY as more particularly described below.

9.8.1 Reporting LOCAL MARKETING CONTRIBUTION Due.

FRANCHISEE shall accurately report the total LOCAL MARKETING CONTRIBUTION due, for the period required to be reported, at the same time that FRANCHISEE must report its GROSS SALES under Section 9.4.

9.8.2 LOCAL MARKETING CONTRIBUTION Payments.

LOCAL MARKETING CONTRIBUTION payments shall be paid at the same time ROYALTY payments must be paid under Section 9.6.2, and in accordance with the same procedures instituted by SHOPPE COMPANY under Section 9.6.3.

9.8.3 Use of LOCAL MARKETING CONTRIBUTION.

LOCAL MARKETING CONTRIBUTIONS will be directed toward local marketing activities that SHOPPE COMPANY reasonably believes to be of benefit to FRANCHISEE. Without limitation, SHOPPE COMPANY may spend LOCAL MARKETING CONTRIBUTIONS directly, make them available for cooperative marketing, or make them available to FRANCHISEE on a reimbursement basis for costs incurred by FRANCHISEE in connection with local marketing activities specified in advance by SHOPPE COMPANY, and undertaken directly by FRANCHISEE. If SHOPPE COMPANY makes the LOCAL MARKETING CONTRIBUTIONS collected available to FRANCHISEE on a reimbursement basis, and FRANCHISEE fails to meet the conditions for reimbursement within the time limits established from time to time by SHOPPE COMPANY, then the LOCAL MARKETING CONTRIBUTIONS collected by SHOPPE COMPANY and not otherwise utilized in accordance with this Section shall be considered part of the MARKETING FUND, and subject to any use permitted by Section 9.7.3. SHOPPE COMPANY may use or make available the LOCAL MARKETING CONTRIBUTIONS collected for local marketing activities undertaken within time frames before and after the due date of

FRANCHISEE's LOCAL MARKETING CONTRIBUTION, as determined by SHOPPE COMPANY from time to time, and communicated to FRANCHISEE.

9.9 Electronic Funds Transfer (EFT).

If required by SHOPPE COMPANY at any time during the TERM, then FRANCHISEE shall promptly take all necessary steps, including completing and signing necessary authorization forms, to enable:

- (a) SHOPPE COMPANY or its designee to electronically deduct, from a financial account maintained by FRANCHISEE, any amounts that become payable to SHOPPE COMPANY under this Article 9, or otherwise under this AGREEMENT;
- (b) SHOPPE COMPANY's affiliates, or their respective designee, to electronically deduct, from a financial account maintained by FRANCHISEE, any amounts that become due to such affiliates under this AGREEMENT, in connection with FRANCHISEE's purchases of HÄAGEN-DAZS® PRODUCTS, or otherwise.

FRANCHISEE shall be responsible for any fees and charges assessed by FRANCHISEE's financial institution in connection with transactions within this scope of this Section 9.9.

9.10 No Rights of Set-Off.

FRANCHISEE may not reduce any payment required to be made to SHOPPE COMPANY under this Article 9, on account of any money SHOPPE COMPANY owes FRANCHISEE under this AGREEMENT, or otherwise.

9.11 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 9.11 will apply to FRANCHISEE's purchase of HÄAGEN-DAZS® PRODUCTS from SHOPPE COMPANY's affiliates.

Article 10 CONFIDENTIAL MANUAL AND INFORMATION

10.1 "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.

10.2 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 10.2.

10.3 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.

10.4 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 11 SYSTEM STANDARDS

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

11.1 SHOP OPERATIONS MANUAL.

In order to protect and enhance the reputation and good will 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.

11.2 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 11.3. Unless FRANCHISEE has more than one HÄAGEN-DAZS® SHOP, or is a professional food service operator in the sole judgment of SHOPPE COMPANY, the DESIGNATED SHOP MANAGER must be an individual who, separately, or with others, is the FRANCHISEE under this AGREEMENT, or if the FRANCHISEE consists of no natural persons, then an officer, director, senior level employee of FRANCHISEE, or an individual who has personally guaranteed FRANCHISEE's obligations under this AGREEMENT.



11.3 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.

11.3.1 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 11.4, 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.

11.3.2 Successive Term FRANCHISE Refresher Training.

In the case of a Successive Term FRANCHISE, this AGREEMENT is issued on the additional condition that, if required by SHOPPE COMPANY, then the current DESIGNATED SHOP MANAGER or another person selected by FRANCHISEE and acceptable to SHOPPE COMPANY shall successfully complete training by a date determined by SHOPPE COMPANY, notwithstanding any prior training and experience.

11.3.3 Ongoing Training.

If required by SHOPPE COMPANY, then the DESIGNATED SHOP MANAGER shall attend and complete mid-TERM training, to the satisfaction of SHOPPE COMPANY, at a time after the fifth year of the TERM reasonably determined by SHOPPE COMPANY.

11.3.4 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 to direct FRANCHISEE by NOTICE to have the DESIGNATED SHOP MANAGER attend training directed toward curing specific operational deficiencies. SHOPPE COMPANY shall have no obligation to offer training as an alternative to declaring a default or terminating this AGREEMENT. FRANCHISEE may be required to reimburse SHOPPE COMPANY for the reasonable costs of remedial training provided by SHOPPE COMPANY under this Section 11.3.4.

11.3.5 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.

11.4 Best Efforts.

The DESIGNATED SHOP MANAGER shall furnish personal full time and attention and best efforts to the day to day management and operation of the SHOP in accordance with the requirements of this AGREEMENT. Without limiting the foregoing, the DESIGNATED SHOP MANAGER must maintain a physical presence at the SHOP at least 40 hours each week during hours of operation, provided however that this requirement may be satisfied by the combined time spent at the SHOP during hours of operation by the DESIGNATED SHOP MANAGER and one or more other individuals, satisfactory to SHOPPE COMPANY, who have successfully completed SHOPPE COMPANY's training program.



11.5 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, 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.

11.6 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 the SYSTEM. FRANCHISEE may prepare and sell from the SHOP only the products and services that SHOPPE COMPANY approves periodically for sale by SYSTEM franchisees, 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 11.6, 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 11.6, bringing FRANCHISEE into compliance with this Section 11.6, or the health or safety of the public.

11.7 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.

11.7.1 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.

11.7.2 Other Food and Beverage Products.

FRANCHISEE shall purchase only food and beverage products (other than the HÄAGEN-DAZS® PRODUCTS purchased in accordance with Section 11.7.1) 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.

11.7.3 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.

11.7.4 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.

11.7.5 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 9.7.3, or for any other purpose SHOPPE COMPANY desires, without regard to whether such purpose is of any direct or indirect benefit to FRANCHISEE.

11.8 Mandatory 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 shall participate in those promotions and marketing programs established from time to time by SHOPPE COMPANY that are appropriate to the SHOP, as determined by SHOPPE COMPANY, provided however 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.



11.9 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.

11.10 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.

11.11 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 sample 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.

11.12 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.

11.13 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.

11.14 Repair and Renovation.

FRANCHISEE shall repair, rehabilitate, refurbish, modernize, renovate and upgrade the SHOP periodically to maintain it in a clean, attractive and orderly condition, to provide efficient, high-quality service to the public, and to conform to ongoing SYSTEM STANDARDS and specifications applicable generally to HÄAGEN-DAZS® SHOPS, as periodically revised by SHOPPE COMPANY. FRANCHISEE must obtain the prior written approval of SHOPPE COMPANY if any efforts to be taken under this Section 11.14 will result in a temporary halt of operations, or will at any time result in a change to the equipment layout, finish materials, or any other aspect of the design of the SHOP. FRANCHISEE shall be solely responsible, irrespective of whether FRANCHISEE has obtained any approval from SHOPPE COMPANY, to make certain that the SHOP is accessible to the fullest extent required by the Americans with Disabilities Act, and conforms to any applicable local building codes and other laws and regulations. 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.

11.15 Remodeling.

In addition to the continuing obligations identified in Section 11.14, if required by SHOPPE COMPANY, then FRANCHISEE shall completely remodel the SHOP so as to bring it into substantial compliance with the then current design and other operational requirements of SHOPPE COMPANY, in accordance with EXHIBIT B, provided however that SHOPPE COMPANY will not require FRANCHISEE to remodel the SHOP more than once during any 5-year period.

11.16 Equipment and Technology Upgrades.

During the TERM, FRANCHISEE shall make any equipment upgrades and additions, including upgrades and additions reflecting new technologies adopted by SHOPPE COMPANY, within 90 days of NOTICE from SHOPPE COMPANY. The foregoing obligation is in addition to any requirements to upgrade the POS SYSTEM imposed by or under Section 11.20.3.

11.17 Sales and Product Mix Reporting Requirements.

FRANCHISEE shall upon request periodically provide SHOPPE COMPANY with any and all requested information related to FRANCHISEE's sales, costs, earnings and related items. FRANCHISEE acknowledges that SHOPPE COMPANY may request this information be provided monthly, and occasionally more often, and in some instances FRANCHISEE may be required to track certain information not regularly tracked by FRANCHISEE.

11.18 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 11.18 be deemed to require SHOPPE COMPANY or its designated supplier to sell FRANCHISEE the projected quantities of any particular HÄAGEN-DAZS® PRODUCTS.

11.19 Hours of Operation.

FRANCHISEE shall keep the SHOP open and in normal operation during the days and hours SHOPPE COMPANY from time to time specifies in the SHOP OPERATIONS MANUAL or otherwise approves in writing. FRANCHISEE shall conspicuously post on or within the SHOP PREMISES, at a location visible to consumers during the SHOP's operational and non-operational hours, and acceptable to SHOPPE COMPANY, the SHOP's normal hours of operation; and FRANCHISEE shall keep the SHOP open and in normal operation during the days and hours posted.

11.20 POS SYSTEM.

To ensure the efficient management and operation of the SHOP, and the reporting of data and information to SHOPPE COMPANY, FRANCHISEE shall, at its own expense, install, and during the TERM shall properly maintain in good working order, a computerized point of sale system (the "POS SYSTEM") consisting of 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.

11.20.1 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").

11.20.2 SHOPPE COMPANY 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. FRANCHISEE 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.

11.20.3 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 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.

11.20.4 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 SYSTEM franchisees to associate the POS INFORMATION to the SHOP.

11.20.5 Other Requirements

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

11.21 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.

11.22 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.

11.23 Coupons and Discount Offers.

FRANCHISEE will not issue coupons except those that have been approved by SHOPPE COMPANY in accordance with Section 13.5. 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.

11.24 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.

11.25 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. FRANCHISEE



further acknowledges that SHOPPE COMPANY may from time to time desire to communicate with FRANCHISEE using any of the foregoing medium. Therefore, FRANCHISEE shall at all times, before and during the TERM, have ready access to a computer (at the SHOP, FRANCHISEE's home, or some other convenient location) with internet access and a reasonably current web browser, and:

- (a) maintain an email address to which SHOPPE COMPANY may send electronic communications; keep SHOPPE COMPANY apprised of FRANCHISEE's current email address; regularly check, at a frequency specified by SHOPPE COMPANY, which may be every day, for email communications from SHOPPE COMPANY;
- (b) timely respond to email communications from SHOPPE COMPANY, which, unless a different time-period is specified, will mean within 72 hours from receipt;
- (c) in the event SHOPPE COMPANY establishes an intranet, extranet, or other means of posting information on a web site or similar on-line medium, then regularly check, at a frequency specified by SHOPPE COMPANY, which may be every day, for information communicated by SHOPPE COMPANY.

Except in the case of a NOTICE, FRANCHISEE hereby consents to receiving any communication or information contemplated by AGREEMENT in any manner contemplated by this Section 11.25, which communication or information shall be deemed communicated upon sending electronically to the email address designated by FRANCHISEE for such purpose, or upon posting on any web site or other on-line medium maintained by SHOPPE COMPANY for such purpose.

11.26 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 good will 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, the LANDLORD, and other parties to whom FRANCHISEE incurs obligations in connection with the FRANCHISE.

11.27 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 the 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.
- (e) Any other matters, including those not related to the SHOP, that could impair the good will associated with the MARKS or the SYSTEM.



Article 12 BOOKS AND RECORDS; ACCOUNTING AND AUDITS

12.1 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, and if SHOPPE COMPANY requires, in the form and manner prescribed by SHOPPE COMPANY from time to time in the SHOP OPERATIONS MANUAL or otherwise. 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, the financial documents FRANCHISEE is required to be submitted under this AGREEMENT, and the POS INFORMATION described in Section 11.20.1 shall be deemed a part of FRANCHISEE's books, records and accounts (collectively the "SHOP FINANCIAL RECORDS").

12.2 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.

12.3 Chart of Accounts.

If required by SHOPPE COMPANY, then FRANCHISEE shall use a standard chart of accounts in a format specified by SHOPPE COMPANY. To the extent required by SHOPPE COMPANY, information provided to SHOPPE COMPANY by FRANCHISEE under this AGREEMENT will conform to the chart of accounts required by this Section 12.3.

12.4 Annual Reporting; Reporting Upon Termination.

In addition to any other reports required under this AGREEMENT, FRANCHISEE shall, within ninety days following the end of its fiscal year, and within ninety days following the expiration or earlier termination of this AGREEMENT, provide SHOPPE COMPANY with a report of all sales during that fiscal year, and a profit and loss statement in the form reasonably acceptable to SHOPPE COMPANY, which FRANCHISEE shall certify as being true and correct, and which shall be prepared in accordance with generally accepted accounting principles.

12.5 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.

12.6 Failure to Permit Inspection or Audits.

If FRANCHISEE fails to permit an inspection in accordance with Section 12.5, 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 12.5, 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 12.5, or for any other reason.

12.7 Audit Determination of Understated GROSS SALES.

If at any time an audit or inspection results in a determination that FRANCHISEE has understated its GROSS SALES, then FRANCHISEE shall within ten days of demand pay the amount due and owing to SHOPPE COMPANY, with interest due pursuant to the terms of this AGREEMENT. If the amount of any understatement exceeds two percent of FRANCHISEE's GROSS SALES, then in addition to the foregoing FRANCHISEE shall also pay the costs associated with the audit or inspection, including without limitation, professional fees, travel expenses, and meals and lodging expenses, and shall for a period of two years thereafter pay such expenses in connection with as many additional audits or inspections as SHOPPE COMPANY may reasonably deem necessary to determine continued compliance with the reporting requirements of this AGREEMENT. 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.

Article 13 PROPRIETARY SYSTEM AND MARKS

13.1 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.

13.2 Non-Exclusive License.

FRANCHISEE shall have only a non-exclusive limited right to use the 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.

13.3 Good Will Associated with the SYSTEM and MARKS.

FRANCHISEE acknowledges and agrees that it shall not acquire any ownership or other interest in and to the good will associated with the SYSTEM and MARKS, and any enhancement to the good will 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.

13.4 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 18, 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.

13.5 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.



13.6 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. Among other requirements, SHOPPE COMPANY shall have an absolute right to require that any website related to the SHOP clearly identify the content as being specific to the SHOP; clearly identify the nature of the relationship of the parties, consistent with the requirements of Section 21.2; contain links to any official websites maintained in connection with HÄAGEN-DAZS® PRODUCTS and HÄAGEN-DAZS® SHOP; properly use and identify the ownership of the MARKS; and contain such other content as SHOPPE COMPANY deems appropriate. If SHOPPE COMPANY arranges for the hosting of websites related to HÄAGEN-DAZS® SHOPS, then SHOPPE COMPANY may require that FRANCHISEE's website related to the SHOP be hosted on the server designated by SHOPPE COMPANY. If SHOPPE COMPANY establishes a template for websites related to HÄAGEN-DAZS® SHOPS, then SHOPPE COMPANY may require that FRANCHISEE's website conform to the template. Under no circumstances may FRANCHISEE establish a domain name that incorporates any of the MARKS, any simulation of the MARKS, or any words confusingly similar to the MARKS. FRANCHISEE acknowledges that this AGREEMENT does not grant FRANCHISEE any right to engage in internet sales or any form of e-commerce.

13.7 Use of MARKS as Part of Trade Name.

FRANCHISEE will not use any of the MARKS, a 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 14 TRANSFER OF INTEREST

14.1 "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:

- (a) this AGREEMENT;
- (b) the SHOP;
- (c) the business conducted under this AGREEMENT;
- (d) any assets of the business conducted under this AGREEMENT (except sales of menu and promotional items in the ordinary course of business); or
- (e) if FRANCHISEE is an entity other than a natural person, unless publicly traded, then any change in the ownership or control of FRANCHISEE;

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.

14.2 SHOPPE COMPANY's Right of First Refusal.

If FRANCHISEE proposes to make a TRANSFER in response to a bona fide offer from a third party, then FRANCHISEE shall first offer SHOPPE COMPANY the opportunity to acquire the interest that FRANCHISEE proposes to TRANSFER, on terms identical to those proposed by the third party. The offer shall be made by NOTICE to SHOPPE COMPANY, and shall include a copy of a written document embodying the complete terms of the third-party offer that FRANCHISEE desires to accept, signed by both FRANCHISEE and the third-party. SHOPPE COMPANY shall have 30 days from receipt of the



NOTICE to exercise its right of first refusal. If SHOPPE COMPANY exercises its right of first refusal, then FRANCHISEE shall TRANSFER the subject interest to SHOPPE COMPANY on terms identical to those proposed by the third-party, provided however that SHOPPE COMPANY shall have a right to pay the cash-equivalent of any non-monetary consideration offered by the third-party, and shall also have the right to require the use of the standard form of documents customarily used to effectuate the type of TRANSFER contemplated, complete with those warranties and representations customarily made. If SHOPPE COMPANY does not exercise its right of first refusal, then FRANCHISEE may complete the proposed TRANSFER to the third-party, on the terms presented to SHOPPE COMPANY, subject to the conditions for a TRANSFER described under 14.3.

14.3 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.

14.3.1 FRANCHISEE to Refurbish SHOP Before TRANSFER.

FRANCHISEE shall complete, at its own expense, such reasonable refurbishing, modernization, repair or renovation of the SHOP facility, fixtures, furnishings, equipment, signage or grounds as SHOPPE COMPANY may designate to bring the SHOP into reasonable conformity to SHOPPE COMPANY's then existing requirements.

14.3.2 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.

14.3.3 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.

14.3.4 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 FRANCHISE or a prospective transferee if SHOPPE COMPANY in good faith provides information to a prospective transferee that turns out to be inaccurate or incorrect.

14.3.5 FRANCHISEE Must Pay Transfer Fee.

FRANCHISEE or the transferee shall pay SHOPPE COMPANY a nonrefundable \$10,000 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.

14.3.6 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.

14.3.7 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 comply with the best effort requirements under Section 11.4, and appoint a DESIGNATED SHOP MANAGER under Section 11.2.

14.3.8 Transferee Must Be Able To Assume LEASE.

FRANCHISEE shall provide documentation establishing that the LANDLORD will permit FRANCHISEE to assign the LEASE to the proposed transferee, or is willing to enter into a replacement lease, on terms acceptable to SHOPPE COMPANY, in accordance with Section 17.8.

14.3.9 Transferee Must Sign Current Franchise Agreement.

If required by SHOPPE COMPANY, then the proposed transferee shall enter into a franchise agreement and ancillary documents, in the form then being issued to new SYSTEM franchisees, for the remainder of the TERM, and FRANCHISEE and the transferee shall enter into all other documents required by SHOPPE COMPANY to effect the TRANSFER.

14.4 TRANSFER Upon Death or Mental Incompetence of FRANCHISEE.

If FRANCHISEE is a natural person, then FRANCHISEE may provide for the TRANSFER of this AGREEMENT to take effect upon FRANCHISEE's death, or declared mental incompetence. Any TRANSFER upon FRANCHISEE's death or declared mental incompetence, irrespective of whether provided for in advance by FRANCHISEE, shall be subject to the conditions of TRANSFER under Section 14.3, except as described below.

14.4.1 TRANSFER to Other FRANCHISEE or Immediate Family.

If the TRANSFER is to another natural person who is already a FRANCHISEE under this AGREEMENT, or a member of the transferring FRANCHISEE's immediate family, then SHOPPE COMPANY will not require, as a condition of consenting to the TRANSFER:

- (a) that the SHOP first be refurbished under Section 14.3.1;
- (b) that all outstanding obligations first be paid, as required by Section 14.3.2, if the transferee, in writing, agrees to assume all outstanding obligations related to the FRANCHISE; or
- (c) that the transfer fee be paid under Section 14.3.5.

14.4.2 Continued Operations Pending Training.

SHOPPE COMPANY shall have an absolute right to require the SHOP to be closed until SHOPPE COMPANY is satisfied, in its sole and absolute judgment, that, pending and after the TRANSFER, the SHOP will be operated in full compliance with the SYSTEM STANDARDS and

the other requirements of this AGREEMENT. However, SHOPPE COMPANY may permit the SHOP to remain open under the following conditions:

- (a) the transferee immediately demonstrates to SHOPPE COMPANY that transferee satisfies the qualification requirements described in Section 14.3.6; and
- (b) the transferee already satisfies the training and other requirements described in Section 14.3.7; or

in the sole judgment of SHOPPE COMPANY, the transferee has formulated an appropriate and reasonably executable plan to continue the operation of the SHOP in accordance with the SYSTEM STANDARDS and the other requirements of this AGREEMENT until the requirement of Section 14.3.7 has been satisfied; and the transferee satisfies the training requirements described in Section 14.3.7 by causing the transferee's DESIGNATED SHOP MANAGER to successfully complete the first available training session offered by SHOPPE COMPANY.

14.4.3 Documentation of Ownership.

If requested by SHOPPE COMPANY, then:

- (a) the transferee shall provide a court order or decree establishing that the transferee has received an interest in the FRANCHISE by operation of law;
- (b) the transferee shall sign a document agreeing to be bound by the terms and conditions of this AGREEMENT, and assuming the rights, liabilities and obligations of the FRANCHISEE, under this AGREEMENT, to SHOPPE COMPANY, and to SHOPPE COMPANY's affiliates, and the designated supplier of HÄAGEN-DAZS® PRODUCTS.

14.5 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.

14.6 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 14.6, provide NOTICE of the assignment to FRANCHISEE.

14.7 Parties Affected.

This AGREEMENT shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties hereto; provided however that any TRANSFER by FRANCHISEE shall be subject to SHOPPE COMPANY's consent under this Article 14.

Article 15 DEFAULT AND TERMINATION

15.1 Termination by SHOPPE COMPANY.

Except as provided in Sections 5.2.4, 7.2 and 7.4, and Section 4.4 of EXHIBIT A each of which contemplates cancellation or termination of this AGREEMENT before the TERM, SHOPPE COMPANY may terminate the AGREEMENT only in accordance with the following provisions.

15.1.1 NOTICE of Default and Opportunity to Cure.

Except for those defaults that, pursuant to Section 15.1.2.4, cannot be cured, before terminating this AGREEMENT SHOPPE COMPANY shall provide FRANCHISEE with a NOTICE of default. 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 15.1.2, which FRANCHISEE agrees are reasonable.

15.1.2 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.

15.1.2.1 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 15.1.1:

- (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 11.6, 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 15.
- (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 11.7.
- (c) Any failure to comply with the Section 11.9 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 11.10.
- (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 13.
- (e) Any act or practice by FRANCHISEE that impairs or imminently threatens to impair the goodwill associated with the MARKS or the SYSTEM.

15.1.2.2 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 15.1.1:

- (a) A failure to timely and accurately report GROSS SALES in accordance with Section 9.4.
- (b) A failure to timely pay, or timely prepay, the ROYALTY due under Section 9.6.
- (c) A failure to timely pay the GENERAL MARKETING CONTRIBUTION due under Section 9.7.



- (d) A failure to timely pay the LOCAL MARKETING CONTRIBUTION due under Section 9.8.
- (e) A failure to take those steps required by SHOPPE COMPANY to initially enable, or thereafter continuously enable, SHOPPE COMPANY and its affiliates to deduct amounts that become payable to SHOPPE COMPANY or its affiliates using the EFT process contemplated by Section 9.9.
- (f) A failure to adhere to the requirements of Section 11.5, concerning FRANCHISEE's employees.
- (g) 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 11.6.
- (h) A failure to comply with the reporting requirements of Section 11.17, or the projection requirements of Section 11.18.
- (i) A failure to keep the SHOP open for business during the hours required under Section 11.19.
- (j) A failure to install, maintain, or upgrade all or any part of the POS SYSTEM, or to use the POS SYSTEM for any purpose contemplated by Section 11.20, or continually comply with any of the requirements under Section 11.20 with respect to reporting or enabling SHOPPE COMPANY to obtain the POS INFORMATION.
- (k) 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 11.26.
- (l) A failure to maintain, and retain, the SHOP FINANCIAL RECORDS in the manner required under Article 12, or to timely submit an annual report required under Section 12.4, or to pay SHOPPE COMPANY any amounts owed based on, or in connection with an audit, under Section 12.7, except in the case of particular defaults described elsewhere under this Article 15.
- (m) A failure to comply with the requirements of Section 13.6, with respect to the establishing or maintaining of a website related to the SHOP.
- (n) A failure to comply with the terms and conditions of the LEASE under Section 17.1.
- (o) A failure to maintain and/or furnish proof of insurance coverage required by Article 19.
- (p) The failure to disclose the nature of the relationship between the parties as required by Section 21.2.

15.1.2.3 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 15.1.1:

- (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 11.1, 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 11.2, or the failure of the DESIGNATED SHOP MANAGER to devote attention to the management of the SHOP to the extent required by Section 11.4.
- (c) A failure to satisfy or continue to satisfy any of the training requirements set forth under Section 11.3.
- (d) Any failure to participate in marketing programs in accordance with Section 11.8.
- (e) A failure to keep the SHOP in the condition required by Section 11.14, or to timely remodel the SHOP if required to do so under Section 11.15, or make any upgrade if required to do so under Section 11.16.
- (f) The failure, following a TRANSFER upon death or mental incompetence, to satisfy the qualifications and meet the requirements under Section 14.4.
- (g) The failure to initially construct the SHOP in accordance with Section 2.2 of EXHIBIT B.
- (h) The failure to timely remodel the SHOP in accordance with Section 3.2 and EXHIBIT B, if this AGREEMENT grants a SUCCESSIVE TERM FRANCHISE.
- (i) Any other breach of this AGREEMENT not specifically identified in this Article 15.

15.1.2.4 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 determines, pursuant to Section 3.2, that the SHOP as constructed reasonably conforms to the plans and specifications approved by SHOPPE COMPANY, and/or (ii) before the initial DESIGNATED SHOP MANAGER has completed training in accordance with Section 11.3.1.
- (b) The submission of any report of GROSS SALES, which FRANCHISEE knows, or has reason to know, inaccurately represents, or omits, GROSS SALES, ROYALTY amounts or LOCAL MARKETING CONTRIBUTION amounts, or any other information required to be reported under Sections 9.4 ,9.6.1 and 9.8.1.

- (c) Any use or disclosure of the SHOP OPERATIONS MANUAL not permitted by Section 10.2, or of confidential information not permitted by 10.4.
- (d) A failure of the DESIGNATED SHOP MANAGER to attend training required by SHOPPE COMPANY under Section 11.3.4.
- (e) A failure to permit any SHOP inspection in accordance with Section 11.11.
- (f) A failure to permit an audit or inspection of the SHOP FINANCIAL RECORDS in accordance with Article 12, or the intentional preparation or keeping of knowingly false SHOP FINANCIAL RECORDS.
- (g) Any TRANSFER or attempted TRANSFER without obtaining SHOPPE COMPANY's consent under Article 14.
- (h) Any violation of the covenants against competition contained in Section 18.1.

15.1.2.5 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

15.1.2.5.1 Repetitive or Continuous Breach.

A failure of FRANCHISEE to, 3 times in any 12 month period: (a) comply with the same provision of this AGREEMENT; or (b) the same requirement of the SHOP OPERATIONS MANUAL; or (c) the same aspect of the SYSTEM STANDARDS; or (d) substantially comply with the SYSTEM STANDARDS or the SHOP OPERATIONS MANUAL; shall be good cause for SHOPPE COMPANY to terminate 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 15.1.1, or whether any particular failure, by itself, was material.

15.1.2.5.2 Termination of Another Franchise Agreement.

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

15.1.2.5.3 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.

15.1.2.5.4 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 for 3 consecutive business days, as required under Section 11.19.

15.1.2.5.5 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.

15.1.2.5.6 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.

15.1.2.5.7 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.

15.1.2.5.8 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 specifically authorized by SHOPPE COMPANY in writing, shall constitute good cause for termination of this AGREEMENT by SHOPPE COMPANY.

15.1.3 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 15.1.2.4; or
- (c) upon the existence of circumstances permitting termination under Section 15.1.2.5.

15.1.4 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 15.1.2.1(c), any failure to comply with the health and safety requirements of Section 11.9;
- (b) FRANCHISEE's failure to timely cure, under Section 15.1.2.1(d), any act or practice that impairs or threatens to impair the goodwill associated with the MARKS;
- (c) Any non-curable default under Section 15.1.2.4;
- (d) An abandonment of under Section 15.1.2.5.4;
- (e) Criminal acts under Section 15.1.2.5.6;
- (f) Adulteration or palming-off of products under Section 15.1.2.5.7;
- (g) Any unauthorized transaction under Section 15.1.2.5.8.

15.1.5 SHOPPE COMPANY's Right to Damages Upon Termination.

If SHOPPE COMPANY terminates this AGREEMENT under this Article 15, or FRANCHISEE terminates this AGREEMENT in a manner other than that permitted by Sections 15.2 or 17.2.1, or EXHIBIT A, 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 15.1.5 shall not apply in the event of a termination of this AGREEMENT under Section 15.1.2.5.5 on account of the destruction of the SHOP PREMISES.

15.2 Termination by FRANCHISEE.

FRANCHISEE may terminate this AGREEMENT only 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 15.2. Before terminating this AGREEMENT, FRANCHISEE must give SHOPPE COMPANY a NOTICE of default, specifying the 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.

Article 16 OBLIGATIONS UPON EXPIRATION OR EARLIER TERMINATION

16.1 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.

16.1.1 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.

16.1.2 Cease All Sales of HÄAGEN-DAZS® PRODUCTS.

FRANCHISEE shall cease the sale or distribution in any manner of HÄAGEN-DAZS® PRODUCTS. FRANCHISEE shall properly dispose of any HÄAGEN-DAZS® PRODUCTS remaining in its possession by destruction, donation, or other means not involving their sale.

16.1.3 Assign Telephone Number to SHOPPE COMPANY.

FRANCHISEE shall assign to SHOPPE COMPANY the telephone numbers used in the operation of the SHOP; SHOPPE COMPANY, as FRANCHISEE's agent, may, and is hereby authorized to, arrange with FRANCHISEE's telephone company to intercept calls to that number or numbers.

16.1.4 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.

16.1.5 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 and immediately cease any use of all and any part of the SYSTEM.

16.1.6 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 would be uniquely reflective of the SHOPPE COMPANY trade dress.

16.1.7 Alter Appearance of SHOP.

FRANCHISEE shall, unless SHOPPE COMPANY exercises its first refusal rights under Section 14.2, and/or its lease assignment rights under Article 17, 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.

16.1.8 Right of Entry.

FRANCHISEE hereby grants SHOPPE COMPANY the right, in connection with the termination or expiration of this AGREEMENT, to at any time enter the SHOP PREMISES, and, at FRANCHISEE's expense, take all reasonable actions made necessary by a failure of FRANCHISEE to take the steps contemplated by this Article 16.

16.1.9 Compliance with Post-Termination Covenants.

FRANCHISEE shall comply with the provisions of Section 18.2.

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

Nothing in this Article 16 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 17 LEASE

17.1 Interest of SHOPPE COMPANY in Continued Presence at the SHOP PREMISES.

FRANCHISEE acknowledges that SHOPPE COMPANY has entered into this AGREEMENT in contemplation of, and has an interest in, the operation of the SHOP at the SHOP PREMISES for the entire TERM. To protect the interests of SHOPPE COMPANY, FRANCHISEE shall comply with the terms and conditions of the lease for the SHOP PREMISES (the "LEASE").

17.2 LEASE Expiration Different Than FRANCHISE EXPIRATION DATE.

Subject to SHOPPE COMPANY's right to consent to the terms of the LEASE under Section 17.8, FRANCHISEE may enter into extensions of the LEASE, or a new LEASE for the SHOP PREMISES, enabling FRANCHISEE to continue to occupy the SHOP PREMISES for the full TERM. FRANCHISEE acknowledges and agrees that FRANCHISEE is solely responsible for any liability incurred by FRANCHISEE as a result of having a LEASE that continues beyond the TERM.

17.2.1 LEASE Expiration Before FRANCHISE EXPIRATION DATE.

FRANCHISEE shall not be in breach of this AGREEMENT if, upon the natural expiration of the LEASE, FRANCHISEE discontinues the operation of the SHOP, as long as FRANCHISEE gives NOTICE to SHOPPE COMPANY at least 120 days before the LEASE expires, but not more than 180 days before the LEASE expires, that FRANCHISEE intends to discontinue the operation of the SHOP upon the expiration of the LEASE. Except as permitted by this Section 17.2.1, FRANCHISEE's failure to continue to operate the LEASE at the SHOP PREMISES for the entire TERM shall be a material breach of this AGREEMENT. FRANCHISEE's NOTICE under this Section 17.2.1 shall be irrevocable by FRANCHISEE, and FRANCHISEE acknowledges that after FRANCHISEE gives the NOTICE contemplated by this Section 17.2.1, SHOPPE COMPANY will have an absolute right to grant another person franchise rights for the SHOP PREMISES, or elsewhere, to take effect immediately following the expiration of the LEASE that, but for the termination of this AGREEMENT, would result in a territorial conflict with respect to the SHOP.

17.2.2 No Right to Shorten LEASE Term.

Nothing in this AGREEMENT shall be construed as permitting FRANCHISEE to shorten the term of the LEASE, except to the extent the term of the LEASE exceeds the TERM.

17.3 Conditional Assignment.

FRANCHISEE hereby assigns to SHOPPE COMPANY, all of FRANCHISEE's right, title and interest to the LEASE (whether held directly or indirectly by FRANCHISEE) and FRANCHISEE's right to occupy the SHOP PREMISES, provided however that this assignment shall become effective, at the option of SHOPPE COMPANY, only upon the happening of any of the following events:



- (a) FRANCHISEE's fails or refuses to cure a default under the LEASE within 7 days of notice from the landlord of the SHOP PREMISES (the "LANDLORD") or NOTICE from SHOPPE COMPANY;
- (b) This AGREEMENT has been terminated by SHOPPE COMPANY in accordance with the provisions of Section 15.1;
- (c) FRANCHISEE, in contravention of Section 17.1, fails to extend or renew the LEASE for a period within the TERM (which failure shall also be deemed an abandonment of the FRANCHISE under Section 15.1.2.5.4); or
- (d) FRANCHISEE shall have had an option to extend or renew the LEASE for a period beyond the TERM, but has either not been given the opportunity to continue its relationship with SHOPPE COMPANY with respect to the SHOP, or if given the opportunity to continue its relationship with SHOPPE COMPANY with respect to the SHOP, then declined or failed to timely comply with those conditions necessary for FRANCHISEE to accept such opportunity.

17.4 Right of Entry.

If SHOPPE COMPANY provides FRANCHISEE with NOTICE that SHOPPE COMPANY is exercising its LEASE assignment option under this Article 17, then FRANCHISEE shall, within 5 days from such NOTICE, or such later date as is specified by SHOPPE COMPANY, vacate the SHOP PREMISES in a manner calculated to minimize disruption to operation of the SHOP.

17.5 Curing Defaults Under LEASE.

Irrespective of whether SHOPPE COMPANY exercises its right under Section 17.3, SHOPPE COMPANY shall have the right, at its option, to cure any default of FRANCHISEE under the LEASE, and FRANCHISEE shall forthwith reimburse SHOPPE COMPANY for all payments made to the LANDLORD, and other costs and expenses incurred by SHOPPE COMPANY to effectuate such cure.

17.6 Eviction Constitutes Abandonment of FRANCHISE.

FRANCHISEE acknowledges that FRANCHISEE is solely responsible for complying with the terms and conditions of the LEASE, and that, therefore, if FRANCHISEE is evicted from the SHOP PREMISES, then FRANCHISEE shall be deemed to have voluntarily abandoned the FRANCHISE under Section 15.1.2.5.4.

17.7 Effect of Failure to Exercise Option.

FRANCHISEE acknowledges and agrees that many factors will influence SHOPPE COMPANY's decision whether to exercise its assignment option under Section 17.3, and that SHOPPE COMPANY election to not exercise its option shall in no way be construed as a failure by SHOPPE COMPANY to mitigate its damages flowing from FRANCHISEE abandonment of the FRANCHISE.

17.8 LEASE Shall Be Acceptable To SHOPPE COMPANY.

FRANCHISEE shall not enter into a LEASE before SHOPPE COMPANY designates the SHOP PREMISES. Furthermore, FRANCHISEE shall not enter into a LEASE unless and until SHOPPE COMPANY determines that the LEASE FRANCHISEE proposes to sign meets SHOPPE COMPANY's requirements.

17.8.1 Specific Issues of Import to SHOPPE COMPANY.

FRANCHISEE acknowledges and agrees that SHOPPE COMPANY may withhold its consent to the terms of the proposed LEASE, if SHOPPE COMPANY, in its sole and absolute opinion, does not consider the LEASE to sufficiently protect SHOPPE COMPANY's interests, including with respect to the following issues that SHOPPE COMPANY considers important. The proposed LEASE:

- (a) must require the LANDLORD to provide SHOPPE COMPANY with a copy of any notice of any default, notice of termination, and other extraordinary notice under the terms of the LEASE given by the LANDLORD;
- (b) must contain a use clause that would reasonably allow FRANCHISEE to conduct the business contemplated by this AGREEMENT;
- (c) may not grant the LANDLORD an unreasonable amount of control over the menu items that FRANCHISEE would be permitted to sell from the SHOP, or other rights that if exercised by the LANDLORD would require FRANCHISEE to operate in a manner inconsistent with the SYSTEM STANDARDS;
- (d) must not be inconsistent with FRANCHISEE's obligation to construct, or remodel the SHOP to the extent contemplated by this AGREEMENT, in accordance with SHOPPE COMPANY's design and other requirements, as more particularly set forth on EXHIBIT B;
- (e) must permit its assignment to SHOPPE COMPANY on those terms contemplated by this AGREEMENT;
- (f) must grant SHOPPE COMPANY the right to enter the SHOP PREMISES in those instances contemplated by this AGREEMENT, for the purpose of protecting its interest under this AGREEMENT, and, in particular, taking those actions contemplated by Section 16.1.8 and 17.4; and
- (g) must not contain any radius restriction or other restriction that seeks to bring SHOPPE COMPANY or other HÄAGEN-DAZS® SHOPS in which FRANCHISEE has no interest within its scope.

17.8.2 SHOPPE COMPANY's Review Solely for SHOPPE COMPANY's Benefit.
FRANCHISEE acknowledges that:

- (a) SHOPPE COMPANY's review of FRANCHISEE's proposed LEASE shall be solely for SHOPPE COMPANY's benefit;
- (b) FRANCHISEE may not rely on SHOPPE COMPANY's review as protecting FRANCHISEE's financial or other interests;
- (c) SHOPPE COMPANY encourages FRANCHISEE to consult real estate, financial and legal professionals of FRANCHISEE's choice when evaluating the financial and other terms of the proposed LEASE;
- (d) If SHOPPE COMPANY provides any assistance to FRANCHISEE in connection with the LEASE negotiation process, or identifies any consultants who are retained by FRANCHISEE to provide such assistance, then FRANCHISEE shall remain fully responsible for assessing whether the LEASE is reasonable, appropriate, and otherwise consistent with FRANCHISEE's financial or other interests, and FRANCHISEE shall under no circumstances have any recourse against SHOPPE COMPANY in connection with the LEASE;
- (e) FRANCHISEE's rights under this AGREEMENT will not be modified by virtue of any terms in the proposed LEASE that would permit or require FRANCHISEE to operate the SHOP in a manner not contemplated by, or inconsistent with, this AGREEMENT or the SYSTEM STANDARDS.



17.8.3 Permission to Discuss SHOP Operations with the LANDLORD.

FRANCHISEE hereby grants SHOPPE COMPANY the right to discuss any aspects of the SHOP and SHOP PREMISES with the LANDLORD, including the financial and operational performance of the SHOP, and to share with the LANDLORD any of the SHOP FINANCIAL RECORDS. FRANCHISEE hereby authorizes the LANDLORD to provide SHOPPE COMPANY with any information concerning the SHOP and SHOP PREMISES as SHOPPE COMPANY may request, and agrees that SHOPPE COMPANY may provide the LANDLORD with a copy of this AGREEMENT, and further agrees that the LANDLORD may rely on this Section 17.8.3 as FRANCHISEE's irrevocable permission for the LANDLORD to share and discuss the matters contemplated by this Section 17.8.3.

Article 18 COVENANTS AGAINST COMPETITION

18.1 During TERM.

During the TERM, FRANCHISEE shall not 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 that produces, distributes or sells, in whole or in part:

- (a) hard-pack ice cream in cones and/or disposable dishes; or
- (b) 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.

18.2 Following Termination, Expiration, or TRANSFER.

For two years after the TRANSFER, expiration or earlier termination of this AGREEMENT, FRANCHISEE shall not own any interest in or otherwise work for, engage in or assist, directly or indirectly, any business that produces, distributes or sells, in whole or in part:

- (a) hard-pack ice cream in cones and/or disposable dishes, which is located within two miles of the SHOP PREMISES or any Häagen-Dazs® Shop then in existence, or then actively being developed, directly or indirectly, by SHOPPE COMPANY; or
- (b) 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.

18.3 Exception for Other HÄAGEN-DAZS® SHOPS.

The provisions of this Article 18 do not apply to FRANCHISEE's ownership of another HÄAGEN-DAZS® SHOP.

18.4 Survival of Covenant; Materiality.

The provisions of this Article 18 shall survive expiration, termination, TRANSFER, abandonment or other cancellation of this AGREEMENT. FRANCHISEE agrees that the covenants contained in this Article 18 are reasonable, and understands that FRANCHISEE's agreement to the covenants contained in this Article 18 is an important inducement and consideration for SHOPPE COMPANY to enter into this AGREEMENT with FRANCHISEE.

18.5 Interpretation.

In any jurisdiction where a provision of this Article 18 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 18 serving as guidance as to the intent of FRANCHISEE and SHOPPE COMPANY.



18.6 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 18 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 19 INSURANCE

19.1 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.

19.2 SHOPPE COMPANY as Named Insured.

Each insurance policy that FRANCHISEE obtains under this AGREEMENT 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 LEASE, shall name the LANDLORD as an additional insured.

19.3 Proof of Insurance.

FRANCHISEE shall upon obtaining, renewing and reinstating each insurance policy required by this Article 19, 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 19.

19.4 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 19 cover FRANCHISEE's activities away from the SHOP.

19.5 Increases to Insurance Limits.

During the TERM, SHOPPE COMPANY may reasonably increase the minimum limits which FRANCHISEE must maintain pursuant to Section 19.1. Nothing in this AGREEMENT is intended to preclude FRANCHISEE from purchasing insurance coverage having greater limits, nor should anything in this AGREEMENT be construed as implying that the scope and limits of the insurance coverage required by SHOPPE COMPANY will adequately protect FRANCHISEE's interests.

19.6 Right of SHOPPE COMPANY to Purchase Insurance.

In addition to whatever other remedies may be available to SHOPPE COMPANY under this AGREEMENT, if FRANCHISEE fails to comply with the provisions of this Article 19, then SHOPPE COMPANY may, but need not, purchase the insurance required pursuant to this Article 19, and bill FRANCHISEE for the costs of obtaining such coverage.



Article 20 NOTICE

20.1 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 20, 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 15.1.2.2 or 15.1.2.3 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.

20.2 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.

20.3 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 21 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

21.1 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.

21.2 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.



21.3 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.

21.4 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 21.4 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 21.4, 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 21.4, 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 21.4 on terms inconsistent with FRANCHISEE's rights under this AGREEMENT.

Article 22 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 22 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 22 is unenforceable for any reason, then it shall still be considered to determine the intent of the parties.

22.1 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.

22.2 No Right to Trial by Jury.

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

22.3 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 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.

22.4 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.

22.4.1 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.



22.4.2 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.

22.5 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.

22.6 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.

22.7 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 FRANCHISE 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 FRANCHISE 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.

22.8 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 23 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.

23.1 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.

23.2 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.

23.3 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.

23.4 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.

23.5 Prior Payments.

FRANCHISEE acknowledges and agrees that, except for the initial installment of the FRANCHISE FEE paid by FRANCHISEE upon signing this AGREEMENT, 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.

23.6 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 24 SEVERABILITY AND CONSTRUCTION

24.1 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.

24.2 Waiver.

None of FRANCHISEE's obligations under this AGREEMENT, or SHOPPE COMPANY's rights under this 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 FRANCHISEE's failure or refusal to perform any term, condition or covenant of this AGREEMENT; or
- (b) to exercise any right SHOPPE COMPANY 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 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.

24.3 No Extrinsic Modifications.

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

24.4 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.

24.5 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 25 NOT EFFECTIVE UNTIL FULLY EXECUTED

This AGREEMENT 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).

In the presence of:

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.

Date: _____

By: _____
Title: _____



EXHIBIT A – SITE SELECTION PROCEDURES

Article 1 OVERVIEW

This EXHIBIT A contains the procedures for selecting the location of the SHOP PREMISES. This EXHIBIT A does not apply in the case of the grant of a SUCCESSIVE TERM FRANCHISE. Section references in this EXHIBIT A refer to sections of this EXHIBIT A, unless the reference specifically identifies the body of this AGREEMENT or another exhibit attached to this AGREEMENT.

Article 2 “PROPOSED SITE” DEFINED

“PROPOSED SITE” means a potential location for the SHOP PREMISES proposed by FRANCHISEE under the terms of this EXHIBIT A, and may include a potential location first identified to FRANCHISEE by SHOPPE COMPANY.

Article 3 FRANCHISEE’S PRELIMINARY ACKNOWLEDGMENTS

FRANCHISEE hereby makes the following preliminary acknowledgments.

3.1 No Prior Commitments.

FRANCHISEE acknowledges and agrees that SHOPPE COMPANY did not, before entering into this AGREEMENT, promise, in writing or otherwise, to designate any particular PROPOSED SITE as the SHOP PREMISES.

- (a) FRANCHISEE shall not make any commitments to a landlord, design professional, contractor, or otherwise, in connection with any PROPOSED SITE, unless and until SHOPPE COMPANY has, in writing, consented to FRANCHISEE’s development and operation of the Shop at the PROPOSED SITE, designating all or a portion of the PROPOSED SITE as the SHOP PREMISES under the terms of this EXHIBIT A.
- (b) If FRANCHISEE prematurely enters into any commitments in anticipation of developing the Shop contemplated by this AGREEMENT, then FRANCHISEE will be doing so at FRANCHISEE’s own risk; and SHOPPE COMPANY shall have absolutely no obligation to FRANCHISEE in connection with any commitments prematurely made by FRANCHISEE.

3.2 Consent to Pursue PROPOSED SITE Is Not Exclusive

FRANCHISEE acknowledges and agrees that persons, other than FRANCHISEE, may express interest in establishing and operating a HÄAGEN-DAZS® SHOP at the same PROPOSED SITE as FRANCHISEE, and that SHOPPE COMPANY may identify a single potential location for a HÄAGEN-DAZS® SHOP to several prospective SHOPPE COMPANY franchisees, including FRANCHISEE; and SHOPPE COMPANY shall ultimately have the absolute right to determine to which of several interested persons, if any, to grant the right to establish and operate a HÄAGEN-DAZS® SHOP at the PROPOSED SITE.

3.3 FRANCHISEE Responsible for Due Diligence

Irrespective of whether a PROPOSED SITE is first identified by FRANCHISEE or SHOPPE COMPANY, the parties agree that FRANCHISEE shall be solely responsible for conducting any due diligence reasonably necessary for FRANCHISEE to determine whether developing and operating the SHOP at the PROPOSED SITE would be consistent with FRANCHISEE’s financial and other business objectives.



Article 4 SITE SELECTION PROCEDURES

4.1 FRANCHISEE Will Not Pursue PROPOSED SITE Without Consent.

FRANCHISEE will not engage in discussions with the landlord of any PROPOSED SITE, or otherwise pursue any PROPOSED SITE, unless and until given written consent from SHOPPE COMPANY. If a PROPOSED SITE is identified in Section 4.1(c) of this Exhibit A, then FRANCHISEE has SHOPPE COMPANY's written consent to pursue that PROPOSED SITE, subject to all the terms and conditions of this Article 4.

- (a) SHOPPE COMPANY's consent to pursue any PROPOSED SITE under this Section 4.1 shall only authorize FRANCHISEE to conduct the due diligence contemplated by this EXHIBIT A, including entering into non-binding preliminary negotiations with the landlord of the PROPOSED SITE and shall in no way imply any obligation on the part of SHOPPE COMPANY to designate the PROPOSED SITE as the SHOP PREMISES.
- (b) SHOPPE COMPANY may at any time revoke its consent to FRANCHISEE's pursuit of any PROPOSED SITE for any reason whatsoever, or no reason at all including SHOPPE COMPANY's decision to permit someone other than FRANCHISEE to establish a HÄAGEN-DAZS® SHOP at the PROPOSED SITE, or at another location that would be in territorial conflict with a HÄAGEN-DAZS® SHOP developed at the PROPOSED SITE.
- (c) If a specific PROPOSED SITE is identified below in this Section 4.1(c), then FRANCHISEE may pursue that initial PROPOSED SITE subject to all the terms and conditions of this Article 4, including revocation under Section 4.1(b).

Initial PROPOSED SITE:	To Be Determined
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4.2 Consideration of PROPOSED SITE.

SHOPPE COMPANY will determine whether to designate all or any portion of the PROPOSED SITE as the SHOP PREMISES on the basis of due diligence performed by FRANCHISEE, as reflected in documentation and analyses that FRANCHISEE will submit to SHOPPE COMPANY in accordance with the following provisions.

4.2.1 Responsibility for Site Analysis.

SHOPPE COMPANY will have a significant interest in the continued operation of the SHOP at the SHOP PREMISES for the TERM, and is relying on FRANCHISEE's due diligence in determining whether to designate all or any portion of the PROPOSED SITE as the SHOP PREMISES. FRANCHISEE is solely responsible for identifying, and assessing the viability of the PROPOSED SITE. FRANCHISEE understands that SHOPPE COMPANY does not recommend PROPOSED SITES. If SHOPPE COMPANY makes FRANCHISEE aware of a PROPOSED SITE that may be of interest to FRANCHISEE, then FRANCHISEE will be solely responsible for assessing the viability of that PROPOSED SITE. SHOPPE COMPANY's designation of the SHOP PREMISES will not constitute an assurance, by SHOPPE COMPANY, that the SHOP will be profitable or otherwise consistent with FRANCHISEE's expectations.

4.2.2 Documents Required to be Submitted.

FRANCHISEE must provide SHOPPE COMPANY with all information requested by SHOPPE COMPANY (collectively the "SITE PACKAGE"), in accordance with a timeframe reasonably specified by SHOPPE COMPANY, so that SHOPPE COMPANY can determine whether to designate all or any portion of the PROPOSED SITE as the SHOP PREMISES. SHOPPE COMPANY may refuse to consider the PROPOSED SITE for any reason, including not having in its possession all materials that SHOPPE COMPANY, in its sole discretion, considers necessary for its determination, which may, if required by SHOPPE COMPANY, include:



- (a) business plans showing FRANCHISEE's anticipated realistic, optimistic, and pessimistic projections for a period or periods specified by SHOPPE COMPANY;
- (b) a break-even analysis calculating the revenue necessary to meet operating expenses FRANCHISEE expects to incur during a period or periods specified by SHOPPE COMPANY;
- (c) a proposed LEASE, which, subject to the consent of SHOPPE COMPANY, under Section 17.8 of the body of this AGREEMENT, would be signed by FRANCHISEE and the landlord of the PROPOSED SITE if the PROPOSED SITE is designated as the SHOP PREMISES;
- (d) a site market analysis of the PROPOSED SITE utilizing forms provided by SHOPPE COMPANY; and
- (e) any other information FRANCHISEE deems important with respect to demonstrating FRANCHISEE's due diligence in connection with the PROPOSED SITE.

4.3 Designation by SHOPPE COMPANY will be in Writing.

If SHOPPE COMPANY determines to designate the PROPOSED SITE as the SHOP PREMISES, then SHOPPE COMPANY will inform FRANCHISEE in writing.

4.3.1 Contents of Designation.

The document designating the SHOP PREMISES will include:

- (a) the address of the SHOP PREMISES;
- (b) information sufficient to determine the EXCLUSIVE TERRITORY, if any, applicable to the SHOP, under the terms of EXHIBIT C; and
- (c) such other information as SHOPPE COMPANY considers appropriate.

4.3.2 Preliminary Statements Concerning Consent Not Binding.

FRANCHISEE acknowledges and agrees that any consent to the development of the SHOP at the PROPOSED SITE or any other location, other than that communicated by SHOPPE COMPANY in writing accordance with Section 4.3, shall be deemed preliminary only, and shall under no circumstances be binding on SHOPPE COMPANY.

4.4 Procedure if SHOPPE COMPANY Withholds Consent.

If SHOPPE COMPANY declines to designate the PROPOSED SITE as the SHOP PREMISES, then SHOPPE COMPANY, in its sole and absolute discretion, shall have the option of:

- (a) canceling this AGREEMENT and refunding the all but \$5,000 of the initial payment of the FRANCHISE FEE paid by FRANCHISEE under Article 7 of the body of this AGREEMENT, in which case SHOPPE COMPANY shall have no further obligations to FRANCHISEE under this AGREEMENT; or
- (b) requiring FRANCHISEE to designate and pursue another PROPOSED SITE, subject to and in accordance with the procedures of this EXHIBIT A.

This procedure shall apply repeatedly until SHOPPE COMPANY designates the SHOP PREMISES under the terms of this EXHIBIT A, or elects to cancel this AGREEMENT under this Section 4.4, or this AGREEMENT is otherwise terminated or cancelled in accordance with its terms.

Article 5 CANCELLATION PRIOR TO DESIGNATION OF SHOP PREMISES

FRANCHISEE may, at any time before SHOPPE COMPANY designates the SHOP PREMISES under the terms of this EXHIBIT A, terminate this AGREEMENT by NOTICE to SHOPPE COMPANY, in which case SHOPPE COMPANY will refund all but \$5,000 of the initial payment of the FRANCHISE FEE, within 45 days following SHOPPE COMPANY's receipt of such NOTICE, in which case SHOPPE COMPANY shall have no further obligations to FRANCHISEE under this AGREEMENT.

Article 6 DELAYS BY SHOPPE COMPANY

SHOPPE COMPANY will in good faith endeavor to act in a reasonably prompt manner when deciding whether:

- (a) to permit FRANCHISEE to pursue any PROPOSED SITE under Section 4.1; and
- (b) deciding whether to designate all or any portion of the PROPOSED SITE as the SHOP PREMISES following FRANCHISEE's submission of a complete SITE PACKAGE under Section 4.3;

provided however that under no circumstances will SHOPPE COMPANY have any liability to FRANCHISEE if delays in rendering or communicating any decision result in the loss of any opportunity.

EXHIBIT B – SHOP CONSTRUCTION PROCEDURES

Article 1 OVERVIEW

This EXHIBIT B contains the procedures for constructing the SHOP at the SHOP PREMISES. FRANCHISEE agrees to adhere to the requirements set forth in this EXHIBIT B for:

- (a) Initially constructing the SHOP at the SHOP PREMISES designated under the terms of this AGREEMENT;
- (b) Remodeling the SHOP at the SHOP PREMISES designated under the terms of this AGREEMENT, when required to do so under the terms of this AGREEMENT.

Section references in this EXHIBIT B refer to sections of this EXHIBIT B, unless such reference specifically identifies the body of this AGREEMENT, or another exhibit attached to this AGREEMENT.

Article 2 CONSTRUCTION IN ACCORDANCE WITH SHOPPE COMPANY'S REQUIREMENTS

FRANCHISEE is responsible for retaining, at its own expense, an architect and a contractor reasonably acceptable to SHOPPE COMPANY, and completing the construction or remodeling of the SHOP, at FRANCHISEE's expense, in accordance with the following provisions.

2.1 Designation of Architect.

FRANCHISEE shall retain an architect reasonably acceptable to SHOPPE COMPANY, who, at a minimum, has experience configuring retail spaces in conformity to the requirements of operators or franchisors of quick service restaurant concepts. SHOPPE COMPANY may compile a list of preferred architects (each a "PREFERRED ARCHITECT"), consisting of architects who are familiar with SHOPPE COMPANY's design requirements, have experience configuring retail spaces for quick service restaurant use, and are familiar with SHOPPE COMPANY's design approval procedures. If SHOPPE COMPANY compiles a list of PREFERRED ARCHITECTs, then, SHOPPE COMPANY may require FRANCHISEE to retain a PREFERRED ARCHITECT to perform the design work related to the SHOP. FRANCHISEE acknowledges that SHOPPE COMPANY is not recommending any particular architect, including any PREFERRED ARCHITECT, and that while SHOPPE COMPANY will cooperate with FRANCHISEE in connection with any issues or concerns arising between FRANCHISEE and FRANCHISEE's architect, SHOPPE COMPANY will under no circumstances be responsible for any delays, corrective work, or other issues or concerns arising between FRANCHISEE and FRANCHISEE's architect, irrespective of whether FRANCHISEE's architect is a PREFERRED ARCHITECT.

2.2 Design Requirements.

FRANCHISEE acknowledges that the physical design and configuration of a HÄAGEN-DAZS® SHOP is an important feature relating to the brand identity consumers associate with the MARKS. In constructing or remodeling the SHOP, FRANCHISEE shall adhere to the design and construction criteria specified by SHOPPE COMPANY, as determined solely by SHOPPE COMPANY, and any agents appointed by SHOPPE COMPANY for such purpose. If FRANCHISEE fails to construct or remodel the SHOP in accordance with SHOPPE COMPANY's design and construction criteria, then SHOPPE COMPANY shall have the right to require FRANCHISEE to correct any deficient items as a prerequisite to opening or reopening the SHOP. FRANCHISEE acknowledges and agrees that SHOPPE COMPANY'S design and construction criteria may be modified from time to time by SHOPPE COMPANY.

2.2.1 FRANCHISEE Responsible for Compliance with Laws.

The design and construction criteria specified by SHOPPE COMPANY are primarily aesthetic in nature, and FRANCHISEE shall be responsible for ensuring 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.

2.2.2 Review of Architectural Drawings.

FRANCHISEE will submit its conceptual and architectural plans and other design documents to SHOPPE COMPANY in accordance with the procedures communicated by SHOPPE COMPANY. SHOPPE COMPANY shall have the absolute and final right to determine, whether the documents submitted are consistent with SHOPPE COMPANY's design requirements. If SHOPPE COMPANY reviews any design documents before the SHOP PREMISES have been designated under EXHIBIT A, then such review shall be considered merely a courtesy to FRANCHISEE, and shall not indicate an intention on the part of SHOPPE COMPANY to render any particular decision within the scope of this AGREEMENT, including the decision to designate the PROPOSED SITE as the SHOP PREMISES.

2.2.3 Furniture, Fixtures and Equipment.

FRANCHISEE shall not, except at FRANCHISEE's own risk, enter into any legally binding commitments with equipment vendors prior to SHOPPE COMPANY's approval of FRANCHISEE's architectural drawings.

2.2.4 Liability Insurance.

During construction of the SHOP, 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, or such higher amount as is designated by SHOPPE COMPANY, and to have SHOPPE COMPANY named as an additional insured under such policy of insurance.

2.2.5 Building Permits, Licenses and Contracts.

At all times during the construction of the SHOP, 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.

2.2.6 Indemnification by FRANCHISEE.

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.

EXHIBIT C – EXCLUSIVE TERRITORY

Article 1 OVERVIEW

This EXHIBIT C explains how the EXCLUSIVE TERRITORY associated with the SHOP, if any, shall be determined by SHOPPE COMPANY. FRANCHISEE acknowledges and agrees that FRANCHISEE shall accept SHOPPE COMPANY's determination of the EXCLUSIVE TERRITORY made in accordance with this EXHIBIT C.

Article 2 DETERMINATION OF EXCLUSIVE TERRITORY

2.1 "EXCLUSIVE TERRITORY" Defined.

"EXCLUSIVE TERRITORY" means the area, if any, in which SHOPPE COMPANY shall not itself establish, or license another person to establish a HÄAGEN-DAZS® SHOP.

2.2 Determination of EXCLUSIVE TERRITORY.

FRANCHISEE acknowledges that the EXCLUSIVE TERRITORY granted to FRANCHISEE, if any, shall be determined by the physical characteristics of the SHOP PREMISES (the "LOCATION TYPE"), as determined by SHOPPE COMPANY.

2.2.1 Most Commercial Facilities.

If the SHOP PREMISES are in:

- (a) a Mall having less than 1.5 million square feet of rentable retail space;
- (b) an Entertainment Complex less than 1.5 million square feet in size, excluding any lodging accommodations; or
- (c) any Other Commercial Facility less than 1.5 million square feet in size;

then the EXCLUSIVE TERRITORY shall be the physical limits of the Mall, Entertainment Complex, or Other Commercial Facility.

2.2.2 Airport or Very Large Commercial Facility.

If the SHOP PREMISES are within:

- (a) a Mall having at least 1.5 million square feet of rentable retail space;
- (b) an Entertainment Complex at least 1.5 million square feet in size, excluding any lodging accommodations;
- (c) any Other Commercial Facility at least 1.5 million square feet in size; or
- (d) an Airport irrespective of size;

then the EXCLUSIVE TERRITORY shall be only the "Discrete Portion," of the Mall, Entertainment Complex, Other Commercial Facility or Airport designated by SHOPPE COMPANY. SHOPPE COMPANY shall otherwise be entitled to establish or license another person to establish a HÄAGEN-DAZS® SHOP within the same Mall, Entertainment Complex, Other Commercial Facility or Airport.



2.2.3 Neighborhood Shop.

If the SHOP is on a street or within a small strip center fronting a street, as determined solely by SHOPPE COMPANY, then the EXCLUSIVE TERRITORY, if any, shall be determined as follows.

2.2.3.1 On Street or In Small Shopping Center.

Unless the SHOP is in a Densely Populated Urban Location, FRANCHISEE's EXCLUSIVE TERRITORY shall be 1/2 mile along the street in either direction from the SHOP, subject to the following limitations and qualifications:

- (a) If the SHOP is at an intersection, then the EXCLUSIVE TERRITORY shall apply only to the street identified in writing when the SHOP PREMISES are designated in accordance with Section 4.3 of EXHIBIT A, or in EXHIBIT D if this AGREEMENT was issued in connection with a SUCCESSIVE TERM FRANCHISE; the address of the SHOP PREMISES shall not be determinative.
- (b) The distance from the SHOP's primary entrance to the nearest point of the street with respect to which this AGREEMENT grants EXCLUSIVE TERRITORY will be included in determining the 1/2 mile distance from the SHOP contemplated by this Section 2.2.3.1.
- (c) The EXCLUSIVE TERRITORY granted by this Section 2.2.3 does not encompass, nor preclude the establishment or licensing of another person to establish a HÄAGEN-DAZS® SHOP within a mall or commercial facility bordering the street, even if the mall or commercial facility is within 1/2 mile of the SHOP. The terms "mall" and "commercial facility," as used in this Section 2.2.3.1(c), shall include, but not be limited to enclosed malls, open air malls, airports, zoos, theme parks, amusement facilities, casinos, hospitals, universities, and military bases.

2.2.3.2 Densely Populated Urban Location.

If the SHOP is in a Densely Populated Urban Location, as determined solely by SHOPPE COMPANY, then FRANCHISEE shall have absolutely no EXCLUSIVE TERRITORY.

Article 3 RIGHTS RESERVED TO SHOPPE COMPANY AND THE OWNER OF THE MARKS.

FRANCHISEE acknowledges and agrees that the grant of any EXCLUSIVE TERRITORY by this AGREEMENT, if any, 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 another HÄAGEN-DAZS® SHOP within the EXCLUSIVE TERRITORY. Nothing in this AGREEMENT grants FRANCHISEE the right to be the only retailer of HÄAGEN-DAZS® PRODUCTS within the EXCLUSIVE TERRITORY. 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, ice cream shops other than a another HÄAGEN-DAZS® SHOP, within the EXCLUSIVE TERRITORY. 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 EXCLUSIVE TERRITORY, including without limitation (a) sales at special events, catered events, and places not open to the general public, and (b) sales to persons or businesses located within the EXCLUSIVE TERRITORY.



