

EXHIBIT 2
FRANCHISE AGREEMENT (AND EXHIBITS)

POWELL'S SWEET SHOPPE FRANCHISE AGREEMENT

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DATE OF AGREEMENT

Powell's Sweet Shoppe USA, LLC
2006 FA

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EXHIBITS

A – STORE LOCATION AND PROTECTED AREA

ALTERNATIVE EXHIBIT A

B – GUARANTY AND ASSUMPTION OF OBLIGATIONS

POWELL'S SWEET SHOPPE FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20____, between Powell's Sweet Shoppe USA, LLC, a California limited liability company, with a principal place of business at 762 McClelland Drive, Windsor, California 95492 ("we" or "us"), and _____, a _____, formed and operating under the laws of the State of _____, or _____, an individual, with a principal place of business at _____ ("you").

INTRODUCTION

- A. We develop and own a system (the "System") relating to the development and operation of retail stores selling bulk, gourmet and novelty candies, gelatos and sorbets, assorted gifts, housewares and beverages.
- B. We are the owner of the Powell's Sweet Shoppe™ trademark, and other trademarks and service marks (the "Licensed Marks") used in operating the System.
- C. We grant qualified persons the right to develop, own and operate a Powell's Sweet Shoppe™ store at a specific location.
- D. You desire to obtain the right to develop and operate a Powell's Sweet Shoppe™ store using the System at a specific location.

AGREEMENTS

In consideration of the mutual covenants and agreements stated below, the parties agree as follows:

1. DEFINITIONS

A. "Confidential Information" means the methods, techniques, formats, marketing and promotional techniques and procedures, specifications, information, recipes, systems and knowledge of and experience in the operation and franchising of Powell's Sweet Shoppe™ stores that we communicate to you or that you otherwise acquire in operating the Store under the System. Confidential Information does not include information, processes or techniques that are generally known to the public, other than through disclosure (whether deliberate or inadvertent) by you.

B. "Licensed Marks" means the Powell's Sweet Shoppe™ trademark and service mark and other trademarks, service marks, domain names, logos and commercial symbols that we have designated, or may in the future designate, for use in the System.

C. "Gross Revenues" means the aggregate amount of all sales of goods and services (including service charges in lieu of gratuity), whether for cash, on credit or otherwise, made or provided at or in connection with the Store, including off-premises sales and monies derived at or away from the Store. The term "Gross Revenues" does not include: (1) any federal, state, municipal or other sales, value added or retailer's excise taxes paid or accrued by you; and (2) adjustments for net returns on salable goods and discounts allowed to customers on sales. Gross Revenues will not be adjusted for uncollected accounts. For purposes of the Royalty Fee (as defined in Section 9(B) below), the sale is made at the earlier of delivery of the product or service, or receipt of payment.

D. "Principal Owner" means any person or entity who directly or indirectly owns a ten percent (10%) or greater interest in you. If any corporation or other entity other than a partnership is a Principal Owner, a "Principal Owner" also will mean a shareholder or owner of a ten percent (10%) or greater interest in such corporation or other entity. If a partnership is a Principal Owner, a "Principal Owner" also will mean each general partner of such partnership and, if such general partner is an entity, each owner of a ten percent (10%) or greater interest in such general partner. If the franchisee is one or more individuals, each individual will be deemed a Principal Owner.

E. "Protected Area" means the geographic area, identified in Exhibit A, which is within a two and one-half (2.5) mile radius surrounding the location of the Store.

F. "Store" means the Powell's Sweet Shoppe™ store developed and operated under this Agreement which offers a full line of candies and other products, as designated by us.

G. "System" means the Powell's Sweet Shoppe™ system which includes the sale of candies and other products for the individual retail consumer under the Licensed Marks, using certain distinctive types of retail facilities, equipment (including the Computer System (as defined in Section 4(C) below)), supplies, Confidential Information, business techniques, methods and procedures, and sales promotion programs, as we periodically may modify and further improve.

2. GRANT OF FRANCHISE

A. Grant Of Franchise, Store Location And Protected Area. Subject to the provisions contained in this Agreement, we grant you a franchise (the "Franchise") to own and operate a Powell's Sweet Shoppe™ Store at a site we approve and to use the Licensed Marks in operating the Store. The location of the Store and your Protected Area are identified in Exhibit A, or alternatively, we and you will complete and sign Alternative Exhibit A, in which we and you agree upon a geographic area in which the location of the Store will be established, subject to our acceptance, within ninety (90) days after the date of this Agreement. The designation of the geographic area in Alternative Exhibit A does not confer any territorial rights upon you, and we and our affiliates have the right to operate and franchise other Stores within the designated area. Once we consent to a location for the Store within the geographic area established in Alternative Exhibit A, however, we and you will sign Exhibit A and identify the Protected Area.

B. Nature of Your Protected Area. During the term of this Agreement (as described in Section 3), if you are in compliance, we will not directly operate or franchise another to operate any other full-service Powell's Sweet Shoppe™ store within the Protected Area. The license granted to you under this Agreement is personal in nature, may not be used at any location other than the Store, does not include the right to sell products or services identified by the Licensed Marks at any location other than at the Store, does not include the right to advertise outside your Protected Area, and does not include the right to sell products or services identified by the Licensed Marks through any other channels of distribution, including the Internet (or any other existing or future form of electronic commerce). You will not open any other Powell's Sweet Shoppe™ store in the Protected Area. You will not have the right to subfranchise or sublicense any of your rights under this Agreement. You will not use the Store for any purposes other than the operation of a Powell's Sweet Shoppe™ store.

C. Rights Reserved To Us. We (for ourself and our affiliates) retain the right:

1. to ourself operate, or to grant other persons the right to operate, Powell's Sweet Shoppe™ stores at locations outside the Protected Area (except to the extent we may be restricted under a separate Powell's Sweet Shoppe™ Franchise Agreement to which you are a party);

2. to sell the products and services authorized for sale at Powell's Sweet Shoppe™ stores under trademarks and service marks other than the Licensed Marks through similar or dissimilar channels of distribution, including competing franchise systems and other businesses;

3. to sell the products and services authorized for sale at Powell's Sweet Shoppe™ stores under the Licensed Marks through dissimilar channels of distribution (i.e., other than the operation of full-service retail Powell's Sweet Shoppe™ stores), including by electronic means such as the Internet and by websites established by us, and pursuant to conditions we deem appropriate within and outside the Protected Area; and

4. to advertise the System on the Internet (or any other existing or future form of electronic commerce) and to create, operate, maintain and modify, or discontinue the use of a website using the Licensed Marks.

3. TERM OF FRANCHISE; RENEWAL RIGHTS

A. Term. The term of this Agreement will be for ten (10) years commencing on the date of this Agreement (the "Effective Date").

B. Renewal. You will have the right to renew the Franchise for the Store for two (2) additional five (5) year terms, provided you meet the following conditions:

1. You have given us written notice at least one hundred eighty (180) days before the end of the term of this Agreement of your intention to renew;

2. You have complied with all of the material provisions of this Agreement, including the payment of all monetary obligations owed by you to us or our affiliates, and have complied with our material operating and quality standards and procedures;

3. You maintain possession of the Store premises and have at your expense made such reasonable capital expenditures necessary to remodel, modernize and redecorate the Store premises and to replace and modernize the supplies, fixtures, signs, and equipment used in your business so that your business reflects the then-current physical appearance of new Powell's Sweet Shoppe™ stores, or are able to secure a new location within the Protected Area which has been accepted by us (such acceptance not to be unreasonably withheld) and agree to construct all required improvements to the Store premises and install all required fixtures and equipment in compliance with our then-current standards and specifications for new Powell's Sweet Shoppe™ stores;

4. You (or if you are an entity, a Principal Owner who has been approved by us) and the Certified Managers (as defined in Section 10(I)) complete, to our satisfaction, any new training and refresher programs as we may reasonably require. You are responsible for travel, living and compensation costs of attendees;

5. You have paid a Renewal Fee of Two Thousand Five Hundred Dollars (\$2,500) to us at least thirty (30) days before the term of this Agreement expires;

6. You sign the standard Franchise Agreement then being used by us; provided that you will be required to pay the Renewal Fee in lieu of the Initial Franchise Fee stated in the then-current Franchise Agreement; and

7. You and each Principal Owner signs a general release, in form acceptable to us, of all claims against us and our affiliates, officers, directors, employees, and agents.

4. DEVELOPMENT AND OPENING OF THE STORE

A. Lease for Store Premises. If you enter into a lease for the Store premises, you must provide the proposed lease to us and receive our prior written approval of the proposed lease (which will not be unreasonably withheld) before you sign it. Your lease must contain provisions requiring that: (1) so long as this Agreement remains in effect, the premises will be used only for a Powell's Sweet Shoppe™ store and you may only offer for sale at the premises only the candies and other products we approve; (2) you construct the premises and display the Licensed Marks under our standards and specifications; (3) we will be granted the right (but not the duty) to take possession of the Store premises and assume the lease in the event of a termination of this Agreement or a threatened termination of the lease as a result of a breach by you; (4) the landlord will provide us written notice of your default and give us the right, but not the obligation to cure the default within thirty (30) days; and (5) upon vacating the Store premises or termination of this Agreement or the lease for the Store premises, you must remove all signs and materials bearing the name "Powell's Sweet Shoppe" and other Licensed Marks. In addition, you cannot sign a lease which contains a radius restriction prohibiting us or our franchisees from operating another Powell's Sweet Shoppe™ store or related business.

B. Your Development of Store. Promptly after you sign a lease or acquire the premises for the Store, and receive from us the prototype plans and specifications for the Store, you will:

1. prepare and submit to us a plan including a footprint of the proposed site which we will use to prepare a recommended space plan (the "Store Plan") for our then-current Store Plan fee;

2. contract with a qualified architect or engineer to prepare final design plans based on our Store Plan that include modifications based on applicable ordinances, building codes, permit requirements or lease restrictions;

3. contract with a qualified, licensed, insured and bonded general contractor to supervise the construction of the Store;

4. obtain all required building, utility, sign, health, sanitation and business permits and licenses, and any other required permits and licenses;

5. construct all required improvements to the Store premises, purchase and install all required fixtures and equipment and decorate the premises in compliance with the plans and specifications approved by us and all applicable ordinances, building codes, permit requirements and lease or deed requirements and restrictions; and

6. establish filing, accounting and inventory control systems complying with our requirements.

C. Fixtures, Equipment, Furniture And Signs. You will use in constructing and operating the Store only those types of construction and decorating materials, fixtures, equipment (including computer hardware and software), furniture, and signs that we have approved for Powell's Sweet Shoppe™ stores as meeting our specifications and standards for appearance, function and performance. You may purchase approved types of construction and decorating materials, fixtures, equipment, furniture and signs from any supplier approved or designated by us (which may include us and/or our affiliates). If

you propose to purchase any material, fixture, equipment, furniture or sign not then approved by us, or any items from any supplier not then approved by us, you must first notify us in writing and will provide to us (upon our request) sufficient specifications, photographs, drawings and other information or samples for us to determine whether the material, fixture, equipment, furniture or sign complies with our specifications and standards, or the supplier meets our approved supplier criteria, which determination we will make and communicate in writing to you within a reasonable time.

D. Point-of-Sale System. You will use in the Store the point-of-sale system and inventory management system, including all existing or future communication or data storage systems, components thereof and associated service, which we develop and/or select for the System (the "Computer System"). The Computer System developed for use in your business may include one or more proprietary software programs developed for us. We may require you to enter into certain software license agreements to access all or components of the Computer System. If the Computer System includes proprietary software, we or our designee may require you to enter into a computer software access or license agreement and pay a monthly license fee. You must pay us an annual technology fee to reimburse us for the costs of certain license fees and software updates, technology support and server hosting services in connection with your use of the Computer System. We also may access financial information and customer data produced by or otherwise located on your Computer System (collectively the "Computer Data"). We own the Computer Data that is stored on the Computer System and you assign all rights you have in the Computer Data to us. We periodically will establish policies respecting the use of the Computer Data. You will have at the Store Internet access with a form of high-speed connection as we require. You will use an e-mail address we designate for communication with us. The computer hardware component of the Computer System must comply with specifications we develop. We have the right to designate a single source from whom you must purchase the Computer System, any software or hardware components thereof or associated service, and we or our affiliates may be that single source. You will be required to use and, at our discretion, pay for all future updates, supplements and modifications to the Computer System.

E. Store Opening. You will not open the Store for business without our prior written approval. In addition, you must comply with the following obligations:

1. You have complied with your obligations under this Section 4;
2. You have completed the initial training program described in Section 5;
3. You have paid all amounts due to us or our affiliates;
4. You provided us with certificates of insurance and are in compliance with Section 10(J); and
5. You have obtained all necessary licenses and permits.

You agree to complete the development and open the Store for business (the "Store Opening") within the earlier of two hundred and seventy (270) days from the Effective Date or one hundred and eighty (180) days after we approve your site for your Store.

F. Grand Opening Campaign. Within sixty (60) days of the Store Opening, you agree to conduct a grand opening campaign, and will spend a minimum of Seven Thousand Five Hundred Dollars (\$7,500) for advertising, public relations and marketing activities in connection with the grand opening campaign. In certain metropolitan areas, we may require that you spend a greater minimum amount on the grand opening campaign. We reserve the right to require you to pay us or a designated supplier the required grand opening expenses. We will send a representative to your Store to assist with the grand opening campaign for a period of time we determine but not to exceed three (3) days. On or before the

last day of each month during the first year of Store operations, you must provide us with an accurate accounting of grand opening campaign (advertising, marketing and public relations) expenses.

G. Relocation Of Store. You will not relocate the Store from the approved site of the Store without our prior written consent. If you relocate the Store under this Section, the “new” franchised location of the Store, including the real estate and building, must comply with all applicable provisions of this Agreement and with our then-current specifications and standards for Powell’s Sweet Shoppe™ Stores. If you must relocate the Store because the Store was destroyed, condemned or otherwise became untenable by fire, flood or other casualty, you must reopen the Store at the new franchised location in the Protected Area within six (6) months after you discontinue operation at the existing Store site. We will not unreasonably withhold our consent to the proposed relocation, provided we have received at least ninety (90) days’ written notice prior to the closing of the Store at the existing franchised location of the Store, you have obtained a site acceptable to us, and we agree to open the “new” location for the Store within five (5) days after you close the Store at the “prior” franchised location and otherwise comply with any other conditions that we may require. In addition, you must pay us a relocation fee equal to one-third (1/3) of our then-current initial franchise fee for services we will provide in connection with the relocation of the Store before we will review a proposed new site for the Store. There is no guarantee that an acceptable location will be available for relocation, and if you are unable to relocate your Store within the Protected Area and reopen your Store within the time periods described in this Section 4(G), this Agreement will terminate.

5. TRAINING AND OPERATING ASSISTANCE

A. Development Of Store. We will provide you with reasonable consulting services in connection with the selection and evaluation of the proposed Store site and development of the Store. You acknowledge that our assistance in site location and acceptance of the premises does not represent a representation or guaranty by us that the location will be a successful location for your Powell’s Sweet Shoppe™ Store.

B. Business Planning. After this Agreement is signed by the parties, we will review and comment upon your proposed business plan. Although we will review and comment on your business plan, you are responsible for your business plan and we do not guarantee that you will achieve your business plan objectives.

C. Training. Before the opening of the Store, we will provide an initial training program on Store operations for you, or if you are an entity, a Principal Owner we approve, and up to two additional individuals who will be active in the day-to-day operation of the Store and who we approve (the “Trainees”). The initial training program will be provided at a place and time we designate. You are solely responsible for the compensation, travel, lodging and living expenses you and your Trainees incur in attending the initial training program or any supplemental or refresher training programs. If you want additional individuals to attend training, you must pay us our then-current training fee.

The initial training program will take place over a period of five (5) days. The training program includes instruction relating to Store management and operations, understanding the equipment and product usage, customer service, marketing and sales programs, sales and marketing, employee scheduling, methods of controlling operating costs, and technology. If, during any training program, we determine that any Trainee is not qualified to manage the Store, we will notify you and you must select and enroll a substitute Trainee in the training program.

After the Store opens, we may require that you (or a Principal Owner) and any manager(s) attend all supplemental and refresher training programs that we designate. We may charge you a reasonable fee for the supplemental and refresher training programs.

D. On-Site Training. If you request or if we determine that additional on-site training is appropriate, we will provide you with on-site training. You must pay us our then-current fee for the additional training along with the travel, lodging and living expenses of our employees or representatives.

E. Opening Assistance. We will provide you with the services of one of our employees for approximately five (5) days to assist you in the opening and initial operations of the Store. We may determine the time at which the employee is available to you.

F. Operating Assistance. We will advise you on operational issues and provide assistance in operating the Store as we deem appropriate. Operating assistance may include advice regarding the following:

1. additional products and services authorized for sale at Powell's Sweet Shoppe™ stores;
2. selecting, purchasing and marketing candies, and other approved products, materials and supplies;
3. employee relations, marketing assistance and sales promotion programs and accountability of employees;
4. establishing and operating administrative, bookkeeping, accounting, inventory control, sales and general operating procedures for the proper operation of a Powell's Sweet Shoppe™ store;
5. operating a help desk to provide information and operational assistance; and
6. conducting field visits to provide assistance in the development and operation of your Store.

We will provide such guidance, in our discretion, through our Operations Manual bulletins or other written materials, telephone conversations and/or meetings at our office or at the Store in conjunction with an inspection of the Store. We will provide additional assistance for a fee. We will continue to research, develop and test new candies and other products, as well as techniques and operations.

G. Operations Manual. We will provide on loan to you, during the term of this Agreement, a copy of our electronic (internet) access to an Operations Manual and other handbooks, manuals and written materials (collectively, the "Operations Manual") for Powell's Sweet Shoppe™ stores. The Operations Manual will contain mandatory and suggested specifications, standards and operating procedures that we develop for Powell's Sweet Shoppe™ stores and information relating to your other obligations. We may add to, and otherwise modify, the Operations Manual to reflect changes in authorized products and services, and specifications, standards and operating procedures of a Powell's Sweet Shoppe™ store. The master copy of the Operations Manual that we maintain at our principal office or on our website and make available to you by electronic access or otherwise will control if there is a dispute involving the contents of the Operations Manual.

6. LICENSED MARKS

A. Ownership And Goodwill Of Licensed Marks. You acknowledge that you have no interest in or to the Licensed Marks and that your right to use the Licensed Marks is derived solely from this Agreement and is limited to the conduct of business in compliance with this Agreement and all

applicable specifications, standards and operating procedures that we require during the term of the Franchise. You agree that your use of the Licensed Marks and any goodwill established exclusively benefits us, and that you receive no interest in any goodwill related to your use of the Licensed Marks or the System. You must not, at any time during the term of this Agreement or after your termination or expiration, contest or assist any other person in contesting the validity or ownership of any of the Licensed Marks.

B. Limitations On Your Use Of Licensed Marks. You agree to use the Licensed Marks as the sole identification of the Store, but you must identify yourself as the independent owner in the manner we direct. You must not use any Licensed Mark as part of any corporate or trade name or in any modified form, nor may you use any Licensed Mark in selling any unauthorized product or service or in any other manner not expressly authorized in writing by us. You agree to display the Licensed Marks prominently and in the manner we direct on all signs and forms. Subject to our rights described in this Agreement, you agree to obtain fictitious or assumed name registrations as may be required under applicable law.

C. Restrictions On Internet And Website Use. We retain the sole right to advertise the System on the Internet and to create, operate, maintain and modify, or discontinue the use of, a website using the Licensed Marks. You have the right to access our website. Except as we may authorize in writing, however, you will not: (1) link or frame our website; (2) conduct any business or offer to sell or advertise any products or services on the Internet (or any other existing or future form of electronic communication); (3) create or register any Internet domain name in any connection with your franchise; and (4) use any e-mail address which we have not authorized for use in operating the Store. You will not register, as Internet domain names, any of the Licensed Marks now or hereafter owned by us or any abbreviation, acronym or variation of the Licensed Marks, or any other name that could be deemed confusingly similar.

D. Notification Of Infringements And Claims. You must notify us immediately in writing of any apparent infringement of or challenge to your use of any Licensed Mark, or any claim by any person of any rights in any Licensed Mark or any similar trade name, trademark or service mark of which you become aware. You must not communicate with any person other than us and our counsel regarding any infringement, challenge or claim. We may take any action we deem appropriate and have the right to exclusively control any litigation or other proceeding arising out of any infringement, challenge or claim relating to any Licensed Mark. You will sign all documents, provide assistance and take all action as we may reasonably request to protect and maintain our interests in any litigation or other proceeding or to otherwise protect and maintain our interests in the Licensed Marks.

E. Litigation. You will have no obligation to and will not, without our prior written consent, defend or enforce any of the Licensed Marks in any court or other proceedings for or against imitation, infringement, any claim of prior use, or for any other allegation. You will, however, immediately notify us of any claims or complaints made against you respecting the Licensed Marks and will, at your expense, cooperate in all respects with us in any court or other proceedings involving the Licensed Marks. We will pay the cost and expense of all litigation we incur, including attorneys' fees, specifically relating to the Licensed Marks. We and our legal counsel will have the right to control and conduct any litigation relating to the Licensed Marks.

F. Changes. You cannot make any changes or substitutions to the Licensed Marks unless we so direct in writing. We reserve the right, in our discretion, to modify or discontinue use of any Licensed Mark, or to use one or more additional or substitute trademarks or service marks. In such event, you will, at your expense, comply with such modification or substitution within a reasonable time after notice by us.

7. CONFIDENTIAL INFORMATION/IMPROVEMENTS

A. Confidential Information. You acknowledge and agree that you do not acquire any interest in the Confidential Information, other than the right to use it in developing and operating the Store pursuant to this Agreement, and that the use or duplication of the Confidential Information in any other business constitutes an unfair method of competition. You acknowledge and agree that the Confidential Information is proprietary and is a trade secret of us and is disclosed to you solely on the condition that you agree that you: (1) will not use the Confidential Information in any other business or capacity; (2) will maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement; (3) will not make unauthorized copies of any Confidential Information disclosed in written form; (4) will adopt and implement all reasonable procedures we direct to prevent unauthorized use or disclosure of the Confidential Information, including restrictions on disclosure to Store employees; and (5) will sign a Confidentiality Agreement and will require that all Certified Managers and any employee with access to Confidential Information sign such an agreement in a form approved by us.

The restrictions on your disclosure and use of the Confidential Information will not apply to disclosure of Confidential Information in judicial or administrative proceedings to the extent you are legally compelled to disclose this information, if you use your best efforts to maintain the confidential treatment of the Confidential Information, and provide us the opportunity to obtain an appropriate protective order or other assurance satisfactory to us of confidential treatment for the information required to be so disclosed.

B. Improvements. You must fully and promptly disclose to us all ideas, concepts, methods, techniques, improvement, additions and Computer Data relating to the development and/or operation of a Powell's Sweet Shoppe™ Store or the System, or any new trade names, service marks or other commercial symbols, or associated logos relating to the operation of the Store, or any advertising or promotion ideas related to the Store (collectively the "Improvements") conceived or developed by you and/or your employees during the term of this Agreement. You agree that we have the perpetual right to use and authorize others to use the Improvements without any obligation to you for royalties or other fees.

8. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION

A. Relationship Of The Parties. We and you are independent contractors. Neither party is the agent, legal representative, partner, subsidiary, joint venture or employee of the other. Neither party will independently obligate the other to any third parties or represent any right to do so. This Agreement does not reflect or create a fiduciary relationship or a relationship of special trust or confidence. You must conspicuously identify yourself at the premises of the Store and in all dealings with customers, lessors, contractors, suppliers, public officials and others as the owner of the Store under a franchise agreement from us, and must place other notices of independent ownership on signs, forms, stationery, advertising and other materials as we require.

B. Your Indemnification Obligations. You agree to indemnify and hold us and our subsidiaries, affiliates, stockholders, members, directors, officers, employees and agents harmless against, and to reimburse them for, any loss, liability or damages arising out of or relating to your ownership or operation of the Store, and all reasonable costs of defending any claim brought against any of them or any action in which any of them is named as a party (including reasonable attorneys' fees) unless the loss, liability, damage or cost is solely due to our negligence.

C. Our Indemnification Obligations. We agree to indemnify and hold you and your officers, directors and agents harmless against, and to reimburse them for, any loss, liability or damage solely arising from or relating to our negligence or attributable to agreements, representations or warranties of

us, and all reasonable costs of defending any claim brought against it or any action in which it is named as a party (including reasonable attorneys' fees).

D. Survival. The indemnities and assumptions of liabilities and obligations continue in full force and effect after the expiration or termination of this Agreement.

9. FRANCHISE FEES

A. Initial Franchise Fee. You will pay us an initial franchise fee of Thirty Thousand Dollars (\$30,000). The initial franchise fee is payable when you sign this Agreement. If this Agreement terminates because you are unable to secure a site we approve as described in Section 2(A), we will refund fifty percent (50%) of the initial franchise fee. In all other circumstances, the initial franchise fee is fully earned by us when you sign this Agreement and is nonrefundable.

B. Royalty Fee. You will pay us a non-refundable "Royalty Fee" in an amount equal to six percent (6%) of your Gross Revenues. The Royalty Fee is due and payable weekly on Friday of each week based on the Gross Revenues for the previous week (Friday through Thursday).

C. Electronic Transfer of Funds. We may require you to sign electronic transfer of funds authorizations and other documents as we periodically designate to authorize your bank to transfer, either electronically or through some other method of payment designated by us, directly to our account and to charge your account for all amounts due to us from you. Your authorization will permit us to designate the amount to be transferred from your account. If we require payment through electronic transfer of funds or a similar method of payment, you will maintain a balance in your accounts sufficient to allow us to collect the amounts owed to us when due. You will be responsible for any penalties, fines or similar expenses associated with the transfer of funds described herein.

D. Interest On Late Payments. All Royalty Fees, national marketing fees (NMF Fees), and other amounts which you owe to us or our affiliates will bear interest after the due date at the lesser of: (1) one and one-half percent (1½%) per month; or (2) the maximum contract rate of interest permitted by law in the state in which the Store is located.

E. Application Of Payments. We have discretion to apply against amounts due to us or any of our affiliates any payments received from you or any indebtedness of us to you.

F. Withholding Payments Unlawful. You agree that you will not withhold payment of any Royalty Fees, NMF Fees or any other amount due us, and that the alleged non-performance or breach of any of our obligations under the Franchise Agreement or any related agreement does not establish a right at law or in equity to withhold payments due us for Royalty Fees, NMF Fees or any other amounts due.

G. Tax Indemnification. You will indemnify us and reimburse us for all income, capital, gross receipts, sales, and other taxes that the state in which the Store is located imposes as a result of your operation of the Store or the license of any of our intangible property in the jurisdiction in which the Store is located. If more than one Powell's Sweet Shoppe™ franchisee is located in such jurisdiction, they will share the liability in proportion to their Gross Revenues from the franchised business, except in the case of sales taxes and gross receipts taxes, which will be divided in proportion to taxable sales to the franchisees. If applicable, this payment is in addition to the Royalty Fee payments described above.

10. STORE IMAGE AND OPERATING STANDARDS

A. Condition And Appearance Of Store/Rebuilding Of Store. You agree to maintain the condition and appearance of the Store, and refurbish and modify its layout, decor and general theme, as

we may require to maintain the condition, appearance, efficient operation, ambience and overall image of Powell's Sweet Shoppe™ stores (as we may modify). You will replace worn out or obsolete fixtures, equipment, furniture, or signs, repair the interior and exterior of the Store and adjacent parking areas, and periodic clean and redecorate the Store. If at any time in our reasonable judgment, the general state of repair, appearance or cleanliness of the Store premises (including parking areas) or its fixtures, equipment, furniture or signs does not meet our then-current standards, we will so notify you, specifying the action to be taken by you to correct the deficiency. If you fail, within ten (10) days after receipt of notice, to commence action and continue in good faith and with due diligence, to undertake and complete any required maintenance or refurbishing, we may (in addition to our rights under Section 16 below) enter the Store premises and correct the deficiencies on your behalf, and at your expense.

You will, at your expense, make such reasonable capital expenditures necessary to remodel, modernize and redecorate the Store premises and to replace and modernize the supplies, fixtures, signs, and equipment used in your business so that your business reflects the then-current physical appearance of new Powell's Sweet Shoppe™ stores. We may require you to take such action: (i) as a condition to the transfer of any interest as further described in Section 15(c); (ii) as a condition of renewal; and (iii) otherwise during the term of the Agreement but no more often than once every five (5) years. You acknowledge and agree that the requirements of this Section 10(A) are both reasonable and necessary to insure continued public acceptance and patronage of Powell's Sweet Shoppe™ stores and to avoid deterioration or obsolescence in connection with the operation of the Store.

If the Store is damaged or destroyed by fire or any other casualty, you will, within thirty (30) days, initiate repairs or reconstruction, and thereafter in good faith and with due diligence continue (until completion) repairs or reconstruction, to restore the Store premises to its original condition before the casualty. If, in our reasonable judgment, the damage or destruction is of a nature or to an extent that you can repair or reconstruct the premises of the Store consistent with the then-current decor and specifications of a new Powell's Sweet Shoppe™ store without incurring substantial additional costs, we may require that you, by giving written notice, repair or reconstruct the Store premises in compliance with the then-current decor and specifications.

B. Store Alterations. You cannot alter the premises or appearance of the Store, or make any unapproved replacements of or alterations to the fixtures, equipment, furniture or signs of the Store without our prior written approval. We may, in our discretion and at your sole expense, correct any alterations to the Store not previously approved by us.

C. Restriction On Use Of Premises. You agree that you will not, without our prior written approval, offer at the Store any products or services not then authorized by us for Powell's Sweet Shoppe™ stores, nor will the Store or the premises which it occupies be used for any purpose other than the operation of a Powell's Sweet Shoppe™ store in compliance with this Agreement.

D. Your Hiring And Training Of Employees. You will hire all employees of the Store, be exclusively responsible for the terms of their employment and compensation, and implement a training program for Store employees in compliance with our requirements. You will maintain at all times a staff of trained employees sufficient to operate the Store in compliance with our standards.

E. Products, Supplies And Materials. You agree that the Store will only offer for sale candies and other products which we have approved as being suitable for sale and meeting the standards of quality and uniformity for the System and are purchased from suppliers approved by us (which may include us and/or our affiliates). We also periodically may modify the lists of approved brands and suppliers, and you will comply with such modified lists of approved brands and suppliers. You may not offer for sale or sell any alcoholic beverages at the Store or in connection with the Licensed Marks. You may not pre-package or sell pre-packaged candies or other products using the Licensed Marks unless we

approve. If you propose to offer for sale any candies or products which we have not approved, you must first notify us in writing and provide sufficient information, specifications and samples concerning the brand and/or supplier to permit us to determine whether the brand complies with our specifications and standards and/or the supplier meets our approved supplier criteria. We will notify you within a reasonable time whether or not the proposed brand and/or supplier is approved. We may develop procedures for the submission of requests for approved brands or suppliers and obligations that approved suppliers must assume (which may be incorporated in a written agreement to be signed by approved suppliers). We will have the right to charge each proposed supplier a reasonable fee in reviewing a proposed brand or supplier. We may impose limits on the number of suppliers and/or brands for any candies to be used in the Store. You agree that certain products, materials, and other items and supplies may only be available from one source, and we or our affiliates may be that source. You must at all times maintain an inventory of candies and other approved products sufficient in quantity and variety to realize the full potential of the Store. WE AND OUR AFFILIATES MAKE NO WARRANTY AND EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, RESPECTING PRODUCTS, EQUIPMENT (INCLUDING ANY REQUIRED COMPUTER SYSTEMS), SUPPLIES, FIXTURES, FURNISHINGS OR OTHER ITEMS THAT ARE MANUFACTURED OR DISTRIBUTED BY THIRD PARTIES AND THAT WE APPROVE FOR USE IN THE SYSTEM.

We may conduct market research and testing to determine consumer trends and the market for new candies and related products. You agree to participate in our market research programs, test market new products and services in the Store and provide us with timely reports and other relevant information regarding market research. In connection with any test marketing, you must purchase a reasonable quantity of the tested products and effectively promote and make a reasonable effort to sell those products and/or services.

F. Standards Of Service. You must at all times give prompt, courteous and efficient service to your customers. You must, in all dealings with your customers and suppliers and the public, adhere to the highest standards of honesty, integrity and fair dealing.

G. Specifications, Standards And Procedures. You acknowledge and agree that each and every detail of the appearance and operation of the Store is important to us and other Powell's Sweet Shoppe™ stores. You agree to maintain the highest standards of quality and service in the Store and agree to comply with all mandatory specifications, standards and operating procedures (whether contained in the Operations Manual or any other written or oral communication to you) relating to the appearance or operation of a Powell's Sweet Shoppe™ store, including:

1. type, quality and uniformity of sales of all candies and other products at the Store;
2. methods and procedures relating to marketing, customer service, and order processing;
3. the hours and days during which the Store is open for business;
5. the safety, maintenance, cleanliness, function and appearance of the Store premises and its fixtures, equipment, furniture, décor and signs;
6. qualifications, dress, general appearance and demeanor of Store employees;
7. the style, make and/or type of equipment (including computer equipment) used in operating the Store;

8. use and illumination of exterior and interior signs, posters, displays, standard formats and similar items; and

9. Store advertising and promotion.

H. Compliance With Laws And Good Business Practices. You must secure and maintain in force all required licenses, permits and certificates relating to the operation of the Store and must operate the Store in full compliance with all applicable laws, ordinances and regulations. You must notify us in writing within five (5) days of the commencement of any action, suit, proceeding or investigation, and of the issuance of any order, injunction, award of decree, by any court, agency, or other governmental instrumentality that may adversely affect the operation or financial condition of you or the Store. You will not conduct any business or advertising practice which injures our business, the System or the goodwill associated with the Licensed Marks and other Powell's Sweet Shoppe™ stores.

I. Management Of The Store/Conflicting Interests. The Store must at all times be under the direct supervision of two individuals who have successfully completed our training program and otherwise meet our certification guidelines (the "Certified Managers"). One of the Certified Managers may be you (or if you are an entity, one of your Principal Owners). If a Certified Manager other than a Principal Owner supervises the Store, you (or the Principal Owner) must remain active in overseeing Store operations. You must at all times faithfully, honestly and diligently perform your obligations and continuously use your best efforts to promote and enhance the business of the Store. The Certified Managers must assume responsibilities on a full-time basis and must not engage in any other business or other activity, directly or indirectly, that requires any significant management responsibility, time commitments, or otherwise may conflict with your obligations.

If one of Certified Managers leaves the Store, you must propose a new Certified Manager within thirty (30) days. We must approve the proposed new Certified Manager and the proposed manager must attend and successfully complete our required training program and otherwise meet our certification guidelines. The training program will be offered at a location we designate and you must pay us our then-current management training fee. Alternatively, we may allow you to train proposed Certified Managers with our prior written approval, provided you meet our "Certified Trainer Guidelines." We will describe our Certified Trainer Guidelines in the Operations Manual, which will include successful completion of the initial training program and any supplemental training programs we require, and full compliance with this Agreement and with any other requirements we deem appropriate. We may revoke such certification at any time. If we certify you as a trainer, you must train new managers by covering the curriculum and content we prescribe.

If at any time the Certified Managers are not managing the Store for five (5) consecutive days, we immediately may appoint a manager to maintain Store operations on your behalf. Our appointment of a manager of the Store does not relieve you of your obligations or represent a waiver of our right to terminate the Franchise under Section 16 below. We are not liable for any debts, losses, costs or expenses incurred in the operation of the Store or to any of your creditors for any products, materials, supplies or services purchased by the Store while it is managed by our appointed manager. We may charge a reasonable fee for management services and cease to provide management services at any time.

J. Insurance. You agree to purchase and maintain in force, at your expense, the following insurance:

1. Comprehensive general liability insurance, including products liability, property damage, and personal injury coverage;

2. Worker's compensation, employer's liability and other insurance to meet statutory requirements;
3. Fire, vandalism, theft, burglary and extended coverage insurance; and
4. Automobile liability insurance for owned and non-owned business vehicles including personal injury, wrongful death and property damage.

You will maintain the preceding insurance in the amounts and coverage described in the Operations Manual. All insurance policies will: (1) be issued by an insurance carrier(s) acceptable to us; (2) will name us and our affiliates as an additional insured; (3) contain a waiver of the insurance company's right of subrogation against us; (4) contain the above-mentioned insurance coverage for each Powell's Sweet Shoppe™ store that you operate; and (5) provide that we will receive thirty (30) days' prior written notice of a material change in or termination, expiration or cancellation of any policy. We periodically may, with prior written notice to you, increase the minimum liability protection requirements, and require different or additional kinds of insurance to reflect inflation or changes in standards of liability. If you at any time fail to maintain in effect any insurance coverage required by us, or to furnish satisfactory evidence thereof, we, at our option, may obtain insurance coverage for you. You agree to promptly sign any applications or other forms or instruments required to obtain any insurance and pay to us, on demand, any costs and premiums incurred by us. You will provide us with a copy of the certificate of insurance in compliance with these requirements within two (2) weeks before you take possession and commence development of the Store premises. In addition, you will provide us with a copy of the certificate of or other evidence of the renewal or extension of each insurance policy.

K. Credit Cards. You must accept all credit cards and debit cards that we designate and comply with our related policies as described in the Operations Manual. You must subscribe to an approved credit card verification service.

L. Participation in Internet Website. You will participate in a Powell's Sweet Shoppe™ website listed on the Internet or other online communications and participate in our controlled intranet system. We will, at our discretion, determine the content and use of a Powell's Sweet Shoppe™ website and intranet system and will establish rules under which franchisees may or will participate. We will retain all rights relating to the Powell's Sweet Shoppe™ website and intranet system and may alter or terminate the website or intranet system upon thirty (30) days' notice to you. Your general conduct on the Internet and the Powell's Sweet Shoppe™ intranet system, and specifically your use of the Licensed Marks or any advertising on the Internet (including the domain name and any other Licensed Marks we may develop as a result of participation in the Internet), will be subject to the provisions of this Agreement. You acknowledge that certain information obtained through your online participation in the website or intranet system is considered Confidential Information (as defined in Section 7 above), including access codes and identification codes. Your right to participate in the Powell's Sweet Shoppe™ website or intranet system or otherwise use the Licensed Marks or the System on the Internet will terminate when this Agreement expires or terminates.

M. Telephone Numbers. You must maintain the minimum number of telephone numbers and lines described in the Operations Manual. You must employ sufficient staff to answer telephone calls during normal business hours.

N. E-Commerce Programs. We reserve the right to establish e-commerce programs designed to expand the market for Powell's Sweet Shoppe™ products and services through sales of product on a centralized Internet website. You agree to participate in such programs, provided you satisfy our then-current qualifications, and understands that we will establish the rules under which you will participate.

O. Advisory Council. We reserve the right to create an advisory council that will consist of Powell's Sweet Shoppe™ franchisees who will advise us regarding various aspects of the System. An advisory council will serve only in an advisory capacity and we retain the authority to establish the System's policies and procedures. The advisory council will operate under bylaws that we establish and periodically amend. We may charge you a fee to participate in the advisory council, provided that such a fee would not exceed Two Hundred Dollars (\$200) per year.

11. ADVERTISING

A. National Marketing and Promotional Fund. During the term of this Agreement, you will pay us for deposit in a national marketing and promotional fund (the "NMF Fund") a national marketing fee (the "NMF Fee") of up to two percent (2%) of your Gross Revenues. We will place all NMF Fees we receive in the NMF Fund and will manage such Fund. We also will contribute to the NMF Fund for each Powell's Sweet Shoppe™ store that we operate in the United States at the same percentage rate as a majority of Powell's Sweet Shoppe™ franchisees must pay to the NMF Fund. Reasonable disbursements from the NMF Fund will be made solely for the payment of expenses we incur in connection with the general promotion of the Licensed Marks and the System, including the cost of formulating, developing and implementing advertising, marketing, promotional and public relations campaigns; and the reasonable costs of administering the NMF Fund, including the cost of employing advertising, public relations and other third party agencies to assist us and providing promotional brochures and advertising materials to Powell's Sweet Shoppe™ stores and to regional and local advertising cooperatives, as well as accounting expenses and the actual costs of salaries and fringe benefits paid to our employees engaged in administration of the NMF Fund. The NMF Fund is not a trust or escrow account, and we have no fiduciary obligations regarding the NMF Fund. We cannot insure that any individual franchisee will benefit directly or on a pro rata basis from the future placement of any such advertising in its local market. We may spend in any fiscal year an amount greater or less than the aggregate contributions of Powell's Sweet Shoppe™ stores to the NMF Fund in that year. We may, through the NMF Fund, furnish you with approved local marketing plans and materials on the same terms and conditions as plans and materials we furnish to other Powell's Sweet Shoppe™ franchisees. We will determine the methods of advertising, media employed and scope, contents, terms and conditions of advertising, marketing, promotional and public relations campaigns and programs. Upon written request, we will provide you an annual unaudited statement of the receipts and disbursements of the NMF Fund for the most recent calendar year.

B. Local Advertising and Store Promotion. In addition to the NMF Fee due under Section 11(A) above, you will spend at least one percent (1%) of Gross Revenues during each calendar quarter on "approved" Store advertising and promotional activities in your local geographic area. Within thirty (30) days following the end of each calendar quarter, or more frequently as we require, you will provide us with an accounting of the funds that you have spent for local advertising for the preceding calendar quarter. If you fail to spend the minimum amount required under this Section for the calendar quarter for approved local advertising, you will deposit with us the difference between what you should have spent for approved advertising during the calendar quarter and what you actually spent for approved advertising during the calendar quarter. We will deposit that amount in the NMF Fund. For purposes of this Section, Store advertising and promotional activities are "approved" if they are included in our recommended media plan for the Store (if applicable) and otherwise comply with Section 11(E) below.

C. Cooperative Advertising. You will participate in, support and contribute a proportionate share, but no more than an amount equal to one percent (1%) of the Gross Revenues for the Store, of the cost of regional cooperative advertising programs designated by us. We reserve the right to designate regional and local advertising markets, to establish regional advertising councils and to establish the bylaws and other rules under which such councils will operate.

D. Telephone Directory Advertising. You will, at your expense, list and advertise the Store in the principal regular (white pages) and classified (yellow pages) telephone directories distributed within your primary trading area, in directory categories we specify, using our standard forms of listing and classified directory advertisements. Classified directory advertisements will list other Powell's Sweet Shoppe™ stores operating within the distribution area of classified directories and the cost of advertisements will be reasonably apportioned among all Powell's Sweet Shoppe™ stores listed. You will not publish or use any toll-free number in operating the Store, other than toll free telephone numbers designated by us. The cost of advertising will be credited towards your local advertising obligations described in Section 11(B) above.

E. Approved Advertising, Media Plans and Store Promotion Materials. We may develop, and make available to you, local store media planning assistance. If we do so, you must use our recommended media plan in promoting the Store or otherwise develop, and obtain our advance written approval to, an alternative media/promotion plan. In addition, you will use only our approved advertising and promotional materials in promoting the Store. If you desire to use any advertising or promotional materials in promoting the Store which we previously have not approved, you must obtain written approval from us before using any such materials, which approval will not be unreasonably withheld. If we do not respond within five (5) days from the date we receive your proposed materials, you may use such materials provided they otherwise comply with this Agreement. If we later determine that such advertising materials do not satisfy our then-current advertising and promotional standards, you will immediately cease using such materials upon written notice from us. We may require you to include the phrase "Powell's Sweet Shoppe Franchise Opportunities Available" in any advertising materials.

F. Participation in Certain Programs and Promotions. You will use your best efforts to promote and advertise the Store and will participate in all advertising and promotional programs we establish in the manner we direct. You will have the right to advertise and sell your products at whatever prices you determine.

12. RECORDS AND REPORTS

A. Accounting And Records. During the term of this Agreement, you will, at your expense, maintain at the Store premises and retain for a minimum of six (6) years from the date of their preparation, complete and accurate books, records and accounts (using such methods of bookkeeping and accounting as we may require) relating to the Store (the "Records"), in the form and manner we direct in the Operations Manual or otherwise in writing. The Records will include the following: (i) daily cash reports; (ii) cash receipts journal and general ledger; (iii) cash disbursements journal and weekly payroll register; (iv) monthly bank statements and daily deposit slips and canceled checks; (v) all tax returns relating to the Store and of each of the Principal Owners; (vi) suppliers' invoices (paid and unpaid); (vii) dated cash registered tapes (detailed and summary); (viii) semi-annual balance sheets and monthly profit and loss statements; (ix) records of promotion and coupon redemption; and (x) such other records and information as we periodically may request. You may preserve the Records and submit reports electronically, consistent with our requirements. We may require you to use a particular accounting system in operating the Store and you must pay all costs associated with implementing and running such system.

B. Reports And Tax Returns. You will deliver or provide access to us the following: (1) by the fifteenth (15th) day each month, a monthly profit and loss statement and such other information we require in the form we require; (2) within sixty (60) days after the end of each calendar year, an annual profit and loss statement and source and use of funds statement for the Store for the year and a balance sheet for the Store as of the end of the year; and (3) at our request, all tax returns relating to the Store and of each of the Principal Owners. You also will provide to us copies of all Records and other information

and supporting documents as we designate. All financial statements, reports and information must be on forms we approve and sign and verified by you.

13. INSPECTION AND AUDITS

A. Our Right To Inspect The Store. To determine whether you are complying with this Agreement, we may, at any time during business hours and without prior notice to you, inspect the Store. You will fully cooperate with our representatives making any inspection and will permit our representatives to take photographs or videotapes of the Store and to interview employees and customers of the Store.

B. Our Right To Examine Books And Records. We may, at all reasonable times and without prior notice to you, examine, audit, or request copies of the Records, including the books, records and state and/or federal income tax records and returns of any Principal Owner. You must maintain all Records and supporting documents at all times at the Store premises. You will make financial and other information available at a location we reasonably request, and will allow us (and our agents) full and free access to any such information at the Store. You otherwise will fully cooperate with our representative and independent accountants hired to conduct any examination or audit.

C. Result of Audit: Unreported Gross Revenues. If any examination or audit discloses an understatement of Gross Revenues, you will pay to us, within fifteen (15) days after receipt of the examination or audit report, the Royalty Fees and any NMF Fees due on the amount of the understatement, plus interest (at the rate provided in Section 9(D) above) from the date originally due until the date of payment. You must reimburse us for the cost of the audit or examination, including the charges of any independent accountants and the travel expenses, room and board and compensation of employees of us, if: (1) an examination or audit is necessary because you failed to timely provide required information; (2) any examination or audit results in a determination that Gross Revenues for any month are understated by greater than two percent (2%); or (3) you fail to spend the minimum amount required for local store promotion under Section 11(B) above. The foregoing remedies are in addition to all other remedies and rights of us under applicable law.

14. COVENANTS

A. Non-Solicitation Of Customers/Employees. You covenant that, during the term of this Agreement, and for a period of two (2) years thereafter, you will not, directly or indirectly: (1) divert or attempt to divert any business, account or customer of the Store or any other Powell's Sweet Shoppe™ stores or the System to any competing business; and (2) employ or seek to employ any person employed by us, or any other person who is at that time operating or employed by or at any other Powell's Sweet Shoppe™ store, or otherwise directly or indirectly induce such persons to leave their employment.

B. Covenant Not To Compete During Term. You (and each Principal Owner) will not, during the term of this Agreement, directly or as an employee, agent, consultant, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, having any interest in, or assist any person or entity engaged in any business (including any e-commerce or internet-based business) that distributes, sells or otherwise deals in, at wholesale or retail, any candies, or any other related business that is competitive with or similar to a Powell's Sweet Shoppe™ store, except: (i) with our prior written consent; or (ii) the ownership of securities listed on a stock exchange or traded on the over-the-counter market that represent one percent (1%) or less of that class of securities.

C. Post-Term Covenant Not To Compete. You (and each Principal Owner) will not, for a period of two (2) years after this Agreement expires or is terminated or the date on which you cease to

conduct the business franchised under this Agreement, whichever is later, directly or as an employee, agent, consultant, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, having any interest in, or assist any person or entity engaged in any business that distributes, sells or otherwise deals in, at wholesale or retail, any candies, gelatos and sorbets, assorted gifts, housewares and beverages or any other related business that is competitive with or similar to a Powell's Sweet Shoppe™ store that is located at the Store or within a ten (10) mile radius of the former site of the Store or any other then-existing Powell's Sweet Shoppe™ store; provided, however, that this Section 14(C) will not apply to: (i) other Powell's Sweet Shoppe™ stores that you operate under Powell's Sweet Shoppe™ franchise agreements; or (ii) the ownership of securities listed on a stock exchange or traded on the over-the-counter market that represent one percent (1%) or less of that class of securities. For purposes of this Section, any form of e-commerce business or website that distributes, sells or otherwise deals in, at wholesale or retail, any candies, or any other related business that is competitive with or similar to a Powell's Sweet Shoppe™ store will be in violation of this provision if such e-commerce business or website offers, sells or otherwise makes its products or services available to individuals residing within or businesses located within a ten (10) mile radius of the former site of the Store or any other then-existing Powell's Sweet Shoppe™ Store.

D. Injunctive Relief. You agree that damages alone cannot adequately compensate us if there is a violation of any covenant in this Section in that injunctive relief is essential for the protection of us. You therefore agree that we may seek injunctive relief without posting any bond or security, in addition to the remedies that may be available to us at equity or law, if you or anyone acting on your behalf violates any covenant in this Section. The covenants stated in this Section will survive the termination or expiration of this Agreement.

15. ASSIGNMENT

A. By Us. This Agreement is fully assignable by us and benefits our successors and assigns. Any such assignment will require the assignee to fulfill our obligations under this Agreement.

B. Your Assignment To Corporation Or Limited Liability Company. This Agreement may be assigned by you to a corporation or a limited liability company that conducts no business other than the Store (or other Powell's Sweet Shoppe™ stores under franchise agreements with us), which is actively managed by you and in which you own at least seventy percent (70%) of the ownership interest in the corporation or limited liability company provided: (1) you or a Certified Manager actively manages the corporation or limited liability company; (2) you and all Principal Owners of the assignee entity sign the Personal Guaranty attached hereto as Exhibit B; (3) you provide us fifteen (15) days' written notice before the proposed date of assignment of this Agreement to the corporation or limited liability company; (4) you provide to us a certified copy of the articles of incorporation, operation agreement, organizational documents, a list of all shareholders or members having beneficial ownership, reflecting their respective interest in the assignee entity; (5) the organizational documents and all issued and outstanding stock or membership certificates will bear a legend, in form acceptable to us, reflecting or referring to the assignment restrictions stated in Section 15(C) below; and (6) you do not use the name "Powell's Sweet Shoppe" or any derivative of it in the corporate name. You will not pay a transfer fee for an assignment under Section 15(B).

C. Your Assignment Or Sale of Substantially All Of Your Assets. You understand that we have granted the Franchise under this Agreement in reliance upon your individual or collective character, aptitude, attitude, business ability and financial capacity. You (and your Principal Owners) will not transfer (whether voluntary or involuntary), assign or otherwise dispose of, in one or more transactions, your business, the Store, substantially all or all of the assets of your business, this Agreement or any controlling interest in you ("controlling interest") to include a proposed transfer of fifty percent (50%) or

more of the common (voting) stock of a corporate Franchisee or of the ownership interest in a limited liability company or partnership) unless you obtain our prior written consent (except as provided in Section 15(B) above). We will not unreasonably withhold our consent to an assignment, provided you comply with any or all of the following conditions which we may, in our discretion, deem necessary:

1. All of your accrued monetary obligations to us and our affiliates have been satisfied, and you otherwise are in good standing under this Agreement;
2. The transferee-franchisee (or the Principal Owners, if applicable) is approved by us and demonstrates to our satisfaction that he/she meets our managerial, financial and business standards for new franchisees, possesses a good business reputation and credit rating, and has the aptitude and ability to conduct the franchised business. You understand that we may communicate directly with the transferee-franchisee during the transfer process to respond to inquiries, as well as to insure that the transferee-franchisee meets our qualifications;
3. The transferee-franchisee enters into a written agreement, in form satisfactory to us, assuming and agreeing to discharge all of your obligations and covenants under this Agreement for the remainder of your term or, at our option, signs our then-current standard form of franchise agreement (which will provide for the same Royalty Fees and NMF Fees required for a term equal to the remaining term of this Agreement, although such agreement may provide other rights and obligations from those provided in this Agreement);
4. The transferee-franchisee successfully completes the initial training program required of new franchisees;
5. If required, the lessor of the Store premises consents to your assignment or sublease of the premises to the transferee-franchisee;
6. You pay us an assignment fee equal to thirty percent (30%) of the then-current initial franchise fee. If the transferee-franchisee is an existing Powell's Sweet Shoppe™ franchisee or one of your Certified Managers, the assignment fee will be twenty percent (20%) of the then-current initial franchise fee. There is not an assignment fee due upon transfer to heirs or immediate family members;
7. You (and each Principal Owner, if applicable) sign a general release, in form and substance satisfactory to us, of any and all claims against us and our affiliates, officers, directors, employees and agents, except to the extent limited or prohibited by applicable law;
8. We approve the material provisions of the assignment or sale of assets which assignment or sale cannot permit you to retain a security interest in this Agreement or any other intangible asset; and
9. You (and each Principal Owners, if applicable) sign an agreement, in form satisfactory to us, in which you and each Principal Owner covenants to observe the post-termination covenant not to compete and all other applicable post-termination obligations.

D. Death Or Disability Of You. If you (or the Principal Owner we have trained) die or are permanently disabled, your executor, administrator or other personal representative, or the remaining Principal Owners, must appoint a competent manager acceptable to us within a reasonable time, not to exceed thirty (30) days, from the date of death or permanent disability. The appointed manager must satisfactorily complete our designated training program and if you (or the Principal Owner we have trained) are one of the Store's Certified Managers, the appointed manager must attend a management

training program and otherwise satisfy our certification guidelines for Certified Managers. If a manager approved by us is not appointed within thirty (30) days after your death or permanent disability, we may, but are not required to, immediately appoint a manager to maintain Store operations on your behalf until an approved assignee can assume the management and operation of the Store. Our appointment of a Store manager does not relieve you of your obligations, and we will not be liable for any debts, losses, costs or expenses incurred in operating the Store or to any creditor of yours for any products, materials, supplies or services purchased by the Store while it is managed by our appointed manager. We may charge a reasonable fee for management services and may cease to provide management services at any time.

If you (or the Principal Owner we have trained) die or are permanently disabled, your executor, administrator, or other personal representative must transfer his interest within a reasonable time, not to exceed twelve (12) months from the date of death or permanent disability, to a person approved by us. Such transfers, including transfers by devise or inheritance will be subject to conditions contained in Section 15(C) above.

E. Public Or Private Offerings. Subject to Section 15(C) above, if you (or any of your Principal Owners) desire to raise or secure funds by the sale of securities (including common or preferred stock, bonds, debentures or general or limited partnership interests) in you or any affiliate of you, you agree to submit any written information to us before our inclusion in any registration statement, prospectus or similar offering circular or memorandum and must obtain the written consent of us to the method of financing before any offering or sale of securities. Our written consent will not imply or represent our approval respecting the method of financing, the offering literature submitted to us or any other aspect of the offering. No information respecting us or any of our affiliates will be included in any securities disclosure document, unless we furnish the information in writing in response to your written request, which request will state the specific purpose for which the information is to be used. Should we, in our discretion, object to any reference to us or any of our affiliates in the offering literature or prospectus, the literature or prospectus will not be used unless and until our objections are withdrawn. We assume no responsibility for the offering.

The prospectus or other literature utilized in any offering must contain the following language in boldface type on the first textual page:

“NEITHER POWELL’S SWEET SHOPPE USA, LLC NOR ANY OF ITS AFFILIATES IS DIRECTLY OR INDIRECTLY THE ISSUER OF THE SECURITIES OFFERED. NEITHER POWELL’S SWEET SHOPPE USA, LLC NOR ANY OF ITS AFFILIATES ASSUMES ANY RESPONSIBILITY RESPECTING THIS OFFERING AND/OR THE ADEQUACY OR ACCURACY OF THE INFORMATION CONTAINED HEREIN. NEITHER POWELL’S SWEET SHOPPE USA, LLC NOR ANY OF ITS AFFILIATES ENDORSES OR MAKES ANY RECOMMENDATION RESPECTING THE INVESTMENT CONTEMPLATED BY THIS OFFERING.”

F. Our Right Of First Refusal. If you or your Principal Owners at any time desire to sell or assign for consideration the Franchise, the Store, an ownership interest representing (in the aggregate) fifty percent (50%) or more of the ownership in you or all or substantially all of your assets, you or your Principal Owners must obtain a bona fide, executed written offer from a responsible and fully disclosed purchaser and must deliver a copy of the offer to us. We have the right, exercisable by written notice delivered to you or your Principal Owners within thirty (30) days following receipt of the proposed offer, to purchase the interest in the Store or ownership interest in you for the price and on terms contained in the offer. We may substitute cash for any non-cash form of payment proposed in the offer and will have a minimum of sixty (60) days to prepare for closing. If we do not exercise our right of first refusal, you or your Principal Owners may complete the sale to the proposed purchaser under the terms of the offer, provided you and the Principal Owners otherwise comply with this Section 15. If the sale to the proposed

purchaser is not completed within one hundred twenty (120) days after delivery of the offer to us, or if there is a material change in the terms of the sale, we again have the right of first refusal.

G. Guaranty. If you are a corporation, partnership or other entity, all Principal Owners will sign the Guaranty and Assumption Agreement in the form attached to this Agreement as Exhibit B (the "Guaranty Agreement"). Any person or entity that at any time after the date of this Agreement becomes a Principal Owner of you under the provisions of this Section 15 or otherwise will, as a condition of becoming a Principal Owner, sign the Guaranty Agreement. You will furnish to us at any time upon reasonable request a certified copy of the Articles of Incorporation or Articles of Organization and a list, in a form we reasonably require, of all shareholders or members of record and all persons having a beneficial interest in any corporation or other entity that is or becomes a Franchisee.

16. OUR TERMINATION RIGHTS

A. Termination of Franchise Agreement - Grounds. You will be in default, and we may, at our option, terminate this Agreement, as provided herein, if: (1) you (or a Principal Owner) fail to satisfactorily complete the initial training program or fail to open and commence operations of the Store at such time as provided in this Agreement; (2) you violate any material provision or obligation of this Agreement; (3) you or any of your managers, directors, officers or any Principal Owner make a material misrepresentation or omission in the application for the Franchise; (4) you or any of your managers, directors, officers or any Principal Owner is convicted of, or pleads guilty to or no contest to a felony, a crime involving children or otherwise involving moral turpitude, or any other crime or offense that we believe will injure the System, the Licensed Marks or the goodwill associated therewith, or if we have proof that you have committed such a felony, crime or offense; (5) you fail to conform to the material requirements of the System or the material standards of uniformity and quality for the products and services as described in the Operations Manual or as we have established in connection with the System; (6) you fail to timely pay Royalty Fees or NMF Fees or any other obligations or liabilities due and owing to us or our affiliates or suppliers approved by us as a source for required items or fail to timely pay any advertising cooperative obligations; (7) you are insolvent within the meaning of any applicable state or federal law; (8) you make an assignment for the benefit of creditors or enter into any similar arrangement for the disposition of your assets for the benefit of creditors; (9) you voluntarily or otherwise "abandon" (as defined below) the Store; (10) you are involved in any act or conduct which materially impairs or otherwise is prejudicial to the goodwill associated with the name "Powell's Sweet Shoppe" or any of the Licensed Marks or the System; (11) you or a Principal Owner make an unauthorized assignment or transfer of this Agreement, the Store or an ownership interest in you; (12) you develop or use an unapproved website in connection with the Store or otherwise conduct any unauthorized activity on the Internet in violation of Section 6(C) above; or (13) your lease for the Store premises expires or is terminated for any reason (unless, through no fault of you, the lessor of the premises in which the Store is located refuses to renew your lease and you relocate within the Protected Area to a site approved by us within sixty (60) days thereafter). The term "abandon" means your failure to operate the Store during regular business hours for a period of five (5) consecutive days without our prior written consent unless such failure is due to an event of "*force majeure*" as further described in Section 20(J) below.

B. Procedure. Except as described below, you will have thirty (30) days, or such longer period as applicable law may require, after your receipt from us of a written Notice of Termination within which to remedy any default hereunder, and to provide evidence thereof to us. If you fail to correct the alleged default within that time (or such longer period of time as applicable law may require), this Agreement will terminate without further notice to you effective immediately when the thirty (30) day period (or such longer period as applicable law may require) expires. We may terminate this Agreement immediately upon delivery of written notice to you, with no opportunity to cure, if the termination results from any of the following: (1) you fail to comply with one or more material requirements of this Agreement on three (3) separate occasions within any twelve (12) month period; (2) the nature of your breach makes it not curable; (3) you willfully and repeatedly deceive customers relative to the source, nature or quality of goods sold; (4)

any default under items (3), (4), (7), (8), (9), (10), (11) or (12) in Section 16(A) above; or (5) you willfully and materially falsify any report, statement, or other written data furnished to us either during the franchise application process or after you are awarded a franchise. Any report submitted under Section 12(B) will be conclusively deemed to be materially false if it understates Gross Sales by more than four percent (4%).

C. Applicable Law. If the provisions of this Section 16 are inconsistent with applicable law, the applicable law will apply.

17. YOUR TERMINATION RIGHTS

You may terminate this Agreement if we violate any material obligation of us to you and fail to cure such violation within sixty (60) days after our receipt of written notice from you; provided, however, that you are in substantial compliance with the Agreement at the time of giving such notice of termination. Your written notice will identify the violation and demand that it be cured.

18. YOUR OBLIGATIONS UPON TERMINATION

A. Post-Term Duties. If this Agreement expires or is terminated for any reason other than a termination as a result of a breach by us, you will:

1. within ten (10) days after termination, pay all amounts due and owing to us or our affiliates, including all Royalty Fees, NMF fees and accrued interest due under this Agreement;
2. discontinue using, and return to us by first class prepaid United States mail any hard copies of, the Operations Manuals and any other manuals, advertising materials, and all other printed materials relating to the operation of the Franchise;
3. assign to us or, at our discretion, disconnect the telephone number for the Store. You acknowledge that we have the sole right to and interest in all telephone numbers and directory listings associated with the Licensed Marks, and you authorize us, and appoint us as your attorney-in-fact, to direct the telephone company and all listing agencies to transfer such numbers and listings to us;
4. remove from the Store premises all signs, posters, fixtures, decals, wall coverings and other materials that are distinctive of a Store or bear the name "Powell's Sweet Shoppe" or other Licensed Marks;
5. take all necessary action to cancel all fictitious or assumed name or equivalent registrations relating to your use of any of the Licensed Marks;
6. immediately cease using Confidential Information and return to us all documents in your possession that contain Confidential Information; and
7. comply with all other applicable provisions of this Agreement, including the non-compete provisions.

Upon termination of this Franchise Agreement for any reason, your right to use the name "Powell's Sweet Shoppe" and the other Licensed Marks and the System will immediately terminate and you (and the Principal Owners) will not in any way associate yourself/themselves as being associated with us. If you fail to remove all signs and other materials bearing the Licensed Marks, we may do so at your expense.

B. Redecoration. If this Agreement is terminated for any reason, and you either remain in possession of the premises of the former Store to operate a separate business not in violation of Section 13 above or enter into an agreement with a third party to allow such third party to directly operate a business at the premises of the former Store, you will, at your expense, modify both the exterior and interior appearance of the business premises so that they will be easily distinguished from the standard appearance of Powell's Sweet Shoppe™ stores. At a minimum, such changes and modifications to the premises will include: (1) repainting the premises with totally different colors; (2) removing all signs and other materials bearing the name "Powell's Sweet Shoppe" and other Licensed Marks; (3) removing from the premises all fixtures which are indicative of Powell's Sweet Shoppe™ stores; (4) discontinuing use of the approved employee uniforms and refraining from using any uniforms which are confusingly similar; (5) discontinuing use of all packaging and Confidential Information regarding the operation of the Store; and (6) taking such other action, at your expense, as we may reasonably require. If you fail to immediately initiate modifications to the premises of the former Store or complete such modifications with any period of time we deem appropriate, you agree that we or our designated agents may enter the premises of the former Store to make such modifications, at your risk and expense, without responsibility for any actual or consequential damages to your property or others, and without liability for trespass or other tort or criminal act.

C. Our Option To Purchase Store. If this Agreement expires or is terminated for any reason (other than our fault), we have the option, upon thirty (30) days' written notice from the date of expiration or termination, to purchase from you all the tangible and intangible assets relating to the Store (excluding any unsalable inventory, cash, short-term investments and accounts receivable) (collectively, the "Purchased Assets") and to an assignment of your lease for (1) the Store premises (or, if an assignment is prohibited, a sublease for the full remaining term under the same provisions as your lease) and (2) any other tangible leased assets used in operating the Store. We may assign this option to purchase and assignment of leases separate and apart from the remainder of this Agreement.

The purchase price for the Store will be the "Book Value" (as defined below) of the Purchased Assets. "Book Value" means the net book value of the Purchased Assets, as disclosed in the last quarterly statement of the Store provided to us under Section 12(B) before termination or expiration, provided, however, that: (1) each depreciable asset will be valued on a "straight-line" basis without provision for salvage value; (2) we may exclude from the Purchased Assets any products or other items that were not acquired in compliance with this Agreement; and (3) we may exclude from Book Value any provision for goodwill or similar value attributable to intangible property. If we are not satisfied with the accuracy or fairness of any financial statements, or none has been submitted, our regularly employed firm of certified public accountants will determine (by audit) the Book Value. We and you will equally bear the cost of the audit. The results of the audit will be final and binding on both parties.

The purchase price, as determined above, will be paid in cash at the closing of the purchase, which will occur no later than sixty (60) days after we deliver notice of our election to purchase the Store, unless Book Value is determined by audit, in which case the closing will occur within a reasonable time, not to exceed sixty (60) days, after the results of the audit are made available. At the closing, you will deliver documents transferring good and merchantable title to the assets purchased, free and clear of all liens, encumbrances and liabilities to us or our designee and such other documents we may reasonably request to permit it to operate the Store without interruption. We may set off against and reduce the purchase price by all amounts you owe to us or any of our affiliates. If we exercise our option to purchase the Store, we may, pending the closing, appoint a manager to maintain Store operations.

D. Option to Purchase Proprietary Products. If this Agreement expires or is terminated for any reason (other than our fault) and we do not exercise our option under 18(C), we have the option, upon thirty (30) days written notice from the date of expiration or termination, to purchase any items bearing the Licensed Marks, including signs, advertising materials, supplies and inventory. The purchase price for such items will be the lesser of the cost to you for the items or the Book Value of these items. The

purchase price will be paid in cash at the closing of the purchase, which will occur no later than sixty (60) days after we deliver notice of our election to purchase items bearing the Licensed Marks.

E. Continuing Obligations. All obligations of us and you which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect following its expiration or termination and until they are satisfied or expire.

19. DISPUTE RESOLUTION

A. Mediation. Except as otherwise stated in this Section 19(A), the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement (and attachments) or the relationship created by this Agreement to non-binding mediation before bringing such claim, controversy or dispute to arbitration or to a court. The mediation will be conducted either through an individual mediator or a mediator appointed by a mediation services organization, experienced in the mediation of disputes between franchisors and franchisees, agreed upon by the parties. If the parties do not agree upon a mediator or mediation services organization within fifteen (15) days after either party has notified the other of its desire to seek mediation, the dispute will be mediated by the American Arbitration Association pursuant to its rules governing mediation, at our corporate headquarters in Windsor, California. The costs and expenses of mediation, including compensation of the mediator, will be borne equally by the parties. If the parties cannot resolve the claim, controversy or dispute within ninety (90) days after conferring with the mediator, either party may submit such claim, controversy or dispute to arbitration under Section 19(B) below. Either party may bring an action under the applicable provisions of this Section 19 without first submitting the action to mediation under this Section 19(A): (i) for monies owed, (ii) for injunctive relief, or (iii) involving the possession or disposition of, or other relief relating to, real property.

B. Arbitration. Except to the extent we elect to enforce the provisions of this Agreement by injunction as provided in Section 19(C) below, all disputes, claims and controversies between the parties arising under or in connection with this Agreement or the making, performance or interpretation thereof (including claims of fraud in the inducement and other claims of fraud in the arbitrability of any matter) that have not been settled by or are not otherwise subject to mediation as described in Section 19(A) above will be settled by arbitration under the authority of the Federal Arbitration Act in San Francisco, California. The arbitrator(s) will have a minimum of five (5) years' experience in franchising or distribution law and will have the right to award specific performance of this Agreement. The proceedings will be conducted under the commercial arbitration rules of the American Arbitration Association, to the extent such rules are not inconsistent with the provisions of this arbitration provision. The decision of the arbitrator(s) will be final and binding on all parties; provided, however, the arbitrator(s) may not under any circumstances: (i) stay the effectiveness of any pending termination of this Agreement; (ii) assess punitive or exemplary damages; or (iii) make any award which extends, modifies or suspends any lawful term of this Agreement or any reasonable standard of business performance set by us. This Section 19 will survive termination or nonrenewal of this Agreement under any circumstances. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction thereof. During any arbitration proceeding, we and you will fully perform our respective obligations under this Agreement.

C. Injunctive Relief. Notwithstanding Sections 19(A) and (B) above, you recognize that a single franchisee's failure to comply with the terms of its agreement could cause irreparable damage to us and/or to some or all other Powell's Sweet Shoppe™ franchisees. Therefore, if you breach or threaten to breach any of the terms of this Agreement, we will be entitled to an injunction restraining such breach and/or a decree of specific performance, without showing or proving any actual damage, together with recovery of reasonable attorneys' fees and other costs incurred in obtaining such equitable relief, until such time as a final and binding determination is made by the arbitrators.

D. Attorneys' Fees. The nonprevailing party will pay all costs and expenses, including reasonable attorneys' fees, the prevailing party incurs in any action brought to enforce any provision of this Agreement or to enjoin any violation of this Agreement.

20. ENFORCEMENT

A. Severability. All provisions of this Agreement are severable and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein and partially valid and enforceable provisions will be enforced to the extent valid and enforceable. If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of or non-renewal of this Agreement than is required, or the taking of some other action not required, or if under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice and/or other action required by law or rule will be substituted for the comparable provisions.

B. Waiver of Obligations. Our waiver of any breach by you, or our delay or failure to enforce any provision of this Agreement, will not be deemed to be a waiver of any other or subsequent breach or be deemed an estoppel to enforce our rights respecting that or any other breach.

C. Rights of Parties are Cumulative. The rights of us and you are cumulative and no exercise or enforcement by either party of any right or remedy precludes the exercise or enforcement by such party of any other right or remedy to which such party is entitled by law or equity to enforce.

D. Venue. Any claims, controversies or disputes arising out of or related to this Agreement that are not subject to arbitration as provided above, will be brought in a Federal District Court in San Francisco, California, or in San Francisco County District Court in San Francisco, California. We and you irrevocably consent to the jurisdiction of such courts. The provisions of this Section 20(D) will survive the termination of this Agreement.

E. Governing Law. Subject to our rights under federal trademark laws and the parties' rights under the Federal Arbitration Act respecting Section 19 above, this Agreement will be governed by and construed under the laws of the state in which the Store is located, without regard to any conflict of laws principles of such state. You waive, to the fullest extent permitted by law, the rights and protections that might be provided through any state franchise or business opportunity laws, other than those of the state in which the Store is located.

F. Binding Effect. This Agreement is binding upon the parties and their respective executors, administrators, heirs, assigns, and successors in interest, and will not be modified except by written agreement signed by both you and us. Except as provided above, this Agreement is not intended, and will not be deemed, to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

G. References. If you consist of two or more individuals, such individuals will be jointly and severally liable, and references to you in this Agreement will include all such individuals. Reference to you as neuter or a male will also include a neuter, male or female Franchisee as relevant in the context.

H. Interpretation of Rights and Obligations. The following provisions will apply to and govern the interpretation of this Agreement, the parties' rights under this Agreement and the relationship between the parties:

1. Our Rights. Whenever this Agreement provides that we have a certain right, that right is absolute and the parties intend that our exercise of that right will not be subject to any limitation or review. We have the right to operate, administrate, develop and change the System in any manner that is not specifically precluded by the provisions of this Agreement.

2. Our Reasonable Business Judgment. Whenever we reserve discretion in a particular area or where we agree or are required to exercise our rights reasonably or in good faith, we will satisfy our obligations whenever we exercise "reasonable business judgment" in making our decision or exercising our rights. A decision or action by us will be deemed to be the result of "reasonable business judgment," even if other reasonable or even arguably preferable alternatives are available, if our decision or action is intended to promote or benefit the System generally even if the decision or action also promotes a financial or other individual interest of us. Examples of items that will promote or benefit the System include enhancing the value of the Licensed Marks, improving customer service and satisfaction, improving product quality, improving uniformity, enhancing or encouraging modernization, and improving the competitive position of the System. Neither you nor any third party (including a trier of fact), will substitute its judgment for our reasonable business judgment.

I. Waiver of Punitive Damages. You and we and our affiliates agree to waive, to the fullest extent permitted by law, the right to or a claim for any punitive or exemplary damages against the other and agree that in the event of any dispute between us, each will be limited to the recovery of actual damages sustained by it.

J. Force Majeure. If any party fails to perform any obligation under this Agreement due to a cause beyond the control of and without the negligence of such party, such failure will not be deemed a breach of this Agreement, provided such party uses reasonable best efforts to perform such obligations as soon as possible under the circumstances. Such causes include strikes, wars, riots, civil commotion, and acts of government, except as may be specifically provided for elsewhere in this Agreement.

K. Notice of Our Potential Profit. We advise you that we and/or our affiliates periodically may make available to you goods, products and/or services for use in the Store on the sale of which we and/or our affiliates may make a profit. We further advise you that we and our affiliates periodically may receive consideration from suppliers and manufacturers respecting sales of goods, products or services to you or in consideration for services provided or rights license to such persons. You agree that we and our affiliates will be entitled to such profits and consideration.

L. Entire Agreement. The "Introduction" section, the exhibit(s) to this Agreement, and that certain Disclosure Acknowledgment Agreement signed contemporaneously by you are a part of this Agreement, which represents the entire agreement of the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement.

21. NOTICES

All written notices and reports permitted or required to be delivered by the provisions of this Agreement are deemed so delivered at the time delivered by hand one (1) business day after sent by a recognized overnight delivery service which requires a written receipt, or three (3) business days after placed in the U.S. Mail by registered or certified mail, return receipt requested, postage prepaid and addressed to the party to be notified at the address stated herein or at such other address as may have been designated in writing to the other party.

22. ACKNOWLEDGEMENTS

A. Success of Franchised Business. The success of the business venture you intend to undertake under this Agreement is speculative and depends, to a large extent, upon your (or the Principal Owner's) ability as an independent businessman, and your active participation in the daily affairs of the Store as well as other factors. We do not make any representation or warranty, express or implied, as to the potential success of the business venture.

B. Independent Investigation. You acknowledge that you have entered into this Agreement after making an independent investigation of our operations and not upon any representation as to gross revenues, volume, potential earnings or profits which you might be expected to realize, nor has anyone made any other representation, which is not expressly stated herein, to induce you to accept this Franchise and sign this Agreement.

C. Receipt of Documents. You represent and acknowledge that you have received our Uniform Franchise Offering Circular at least ten (10) business days before the date of the execution of this Agreement, and that a copy of this Agreement with all blanks filled was received from us at least five (5) business days before the date of execution of this Agreement. You represent that you have read this Agreement in its entirety and that you have been given the opportunity to clarify any provisions that you did not understand and to consult with any attorney or other professional advisor. You further represent that you understand the provisions of this Agreement and agree to be bound.

D. Other Franchises. You acknowledge that other franchisees of us have or will be granted franchises at different times and in different situations, and further acknowledge that the provisions of such franchises may vary substantially from those contained in this Agreement.

The parties have signed this Agreement on the date stated in the first paragraph.

US:

POWELL'S SWEET SHOPPE USA, LLC,
a California limited liability company

By: _____

Title: _____

YOU:

(If you are a corporation)

Name of Corporation

By: _____

Title: _____

(If you are an individual owner,
you must sign below; if a partnership,
all partners must sign below)

Franchisee

Franchisee

Franchisee

Franchisee

(If you are a limited liability company)

Name of Limited Liability Company

By: _____

Title: _____

**EXHIBIT A
TO FRANCHISE AGREEMENT**

STORE LOCATION AND PROTECTED AREA

This Exhibit is attached to and is an integral part of the Powell's Sweet Shoppe™ Franchise Agreement dated _____, 200__ (the "Franchise Agreement"), between us and you.

1. Store Location. We and you agree that the Store will be located at the following premises:

You acknowledge that our acceptance of a proposed location does not represent a warranty or representation of any kind as to the suitability of the proposed location for a Powell's Sweet Shoppe™ Store.

2. Protected Area. The Protected Area will be a radius of two and one-half (2.5) miles from the location of the Store, as described in Section 1 above.

3. Market Area. The Market Area for the Store is described as follows:

4. Store Opening. You understand that you must complete the development and open the Store for business within the earlier of one hundred eighty (180) days after the date you sign this Exhibit or two hundred seventy (270) days after the date of the Franchise Agreement.

5. Defined Terms. All capitalized terms contained in this Exhibit and not defined in this Exhibit will have the same meaning as provided in the Franchise Agreement.

US:

POWELL'S SWEET SHOPPE USA, LLC,
a California limited liability company

YOU:

(If you are a corporation or limited
liability company)

Name of Corporation or limited liability
company

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

(If you are an individual owner, you must sign
below; if a partnership, all partners must sign
below)

Franchisee

Franchisee

Franchisee

Franchisee

**ALTERNATIVE EXHIBIT A
TO FRANCHISE AGREEMENT**

**STORE LOCATION
(ALTERNATIVE)**

This Exhibit is attached to and is an integral part of the Powell's Sweet Shoppe™ Franchise Agreement dated _____, 200__ (the "Franchise Agreement"), between us and you.

1. Area For Store Location. Within ninety (90) days after the date of the Franchise Agreement, you will select and obtain our acceptance of a location with the provisions of this Exhibit within the following described geographical area (the "Area"): _____

2. Acceptance of Location and Store Opening. To obtain our acceptance of the proposed Store premises, you must deliver to us a complete site report (containing information we require) for the location at which you propose to establish and operate the Store and which you reasonably believe will satisfy the standardized site selection criteria established by us. The proposed location is subject to our prior written acceptance, which will not be unreasonably withheld. In evaluating the proposed location, we will consider matters we deem material, including demographic characteristics of the proposed location, traffic patterns, parking, the predominant character of the neighborhood, the proximity to other businesses, including other Powell's Sweet Shoppe™ stores, and other commercial characteristics, the purchase price or rental obligations and other lease terms for the proposed location, and the size of premises, appearance and other physical characteristics. Within thirty (30) days following our receipt of all materials we request to evaluate the site, we will accept or reject (in writing) the location proposed by you for the Store.

YOU ACKNOWLEDGE AND AGREE THAT OUR ACCEPTANCE OF A PROPOSED LOCATION DOES NOT REPRESENT A WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, AS TO THE SUITABILITY OF THE PROPOSED LOCATION FOR A POWELL'S SWEET SHOPPE STORE.

You agree to complete the development and open the Store for business within one hundred and eighty (180) days after we accept the proposed Store premises or two hundred and seventy (270) days after you sign the Franchise Agreement, whichever is earlier.

3. Termination of Franchise Agreement. We have the right to terminate the Franchise Agreement, effective upon delivery of notice of termination to you, if you fail to obtain approval of a location for the Store within ninety (90) days after the date of the Franchise Agreement.

4. Defined Terms. All capitalized terms contained in this Exhibit and not defined in this Exhibit will have the same meaning as provided in the Franchise Agreement.

US:

POWELL'S SWEET SHOPPE USA, LLC,
a California limited liability company

YOU:

(If you are a corporation or limited liability company)

Name of Corporation or limited liability company

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

(If you are an individual owner, you must sign below; if a partnership, all partners must sign below)

Franchisee

Franchisee

Franchisee

Franchisee

EXHIBIT B
TO FRANCHISE AGREEMENT
GUARANTY AND ASSUMPTION OF OBLIGATIONS

EXHIBIT B

GUARANTY AND ASSUMPTION OF OBLIGATIONS

In consideration of the execution of that certain Franchise Agreement of even date (the "Agreement") by Powell's Sweet Shoppe USA, LLC ("we" or "us"), each of the undersigned (a "Guarantor") personally and unconditionally guarantees to us, and our successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement that _____ ("you") will timely pay and perform each and every undertaking, agreement and covenant stated in the Agreement; and agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement.

Each of the undersigned waives: (1) acceptance and notice of acceptance by us of the foregoing undertaking; (2) notice of demand for payment of any indebtedness; (3) protest and notice of default to any party respecting the indebtedness; (4) any right he may have to require that an action be brought against you or any other person as a condition of liability.

Each Guarantor consents and agrees that:

(1) Guarantor's liability under this undertaking will be direct and independent of the liability of, and will be joint and several with, you and the other Guarantors of you;

(2) Guarantor will make any payment or perform any obligation required under the Franchise Agreement upon demand if you fail to do so;

(3) Guarantor's liability hereunder will not be diminished or relieved by bankruptcy, insolvency or reorganization of you or any assignee or successor;

(4) Guarantor's liability will not be diminished, relieved or otherwise affected by any extension of time or credit which we may grant to you, including the acceptance of any partial payment or performance, or the compromise or release of any claims;

(5) We may proceed against Guarantor and you jointly and severally, or we may, at our option, proceed against Guarantor, without having commenced any action, or having obtained any judgment against you or any other Guarantor; and

(6) Guarantor will pay all reasonable attorneys' fees and all costs and other expenses we incur in enforcing this Guaranty against Guarantor or any negotiations relative to the obligations hereby guaranteed.

IN WITNESS WHEREOF, each of the undersigned has signed this Guaranty as of the same day and year as the Agreement was executed.

GUARANTOR(S)

PERCENTAGE OWNERSHIP IN FRANCHISEE
