

EXHIBIT E

FRANCHISE AGREEMENT

YOGURTLAND FRANCHISING, INC.

FRANCHISE AGREEMENT

This Franchise Agreement is entered into and effective on the day of _____ 200__ by and between Yogurtland Franchising, Inc., a California corporation, with its principal business address at 10612 Shoemaker Avenue, Unit C, Santa Fe Springs, California 90670 ("Franchisor") and _____, whose principal address is _____ ("Franchisee"), with reference to the following facts:

RECITALS

A. Franchisor through considerable time and effort, has developed distinctive business formats, systems, methods, procedures, designs, layouts and specifications for the operation of quick service store specializing in yogurt and related beverage and food items.

B. Franchisor operates and licenses others to operate quick service stores under the name "Yogurtland" using valuable trade names, trademarks and service marks belonging to Franchisor and the distinctive business formats, systems, methods, procedures, designs, layouts and specifications developed by Franchisor (the "Yogurtland System").

C. Franchisee desires to establish and operate a quick service yogurt store using the "Yogurtland" trademark and the Yogurtland System at a location to be specified, on the terms in this Agreement (the "Store").

Accordingly, the parties now agree as follows:

Article 1. GRANT OF FRANCHISE LICENSE

1.1. **License Rights.** Franchisor grants Franchisee the right, during the term of this Agreement, to use the Yogurtland System in operating a franchised business under the Yogurtland trademark and other trademarks, service marks, trade names, logotypes, commercial symbols and copyrights that Franchisor designates from time to time (collectively, the "Marks").

1.2. **Single Site and Relocation.** Franchisor grants Franchisee the right to operate only at a single, approved location. Franchisee shall conduct the business only from the approved location. Franchisee shall not delegate, franchise or subfranchise the right to use the Marks or authorize independent contractors or any third party with whom Franchisee conducts business to use the Marks. The approved location for the Store shall be stated in Exhibit "A." If when signing this Agreement the approved location is not selected, Franchisor shall designate the general geographic area specifying the area within which Franchisee may seek a location for the Store. When the approved location is selected, the approved location shall be stated in Exhibit "A." Franchisee shall not relocate the Store without first obtaining Franchisor's prior written consent, which may be conditioned on: (i) the new location meeting Franchisor's then-current criteria for new locations; (ii) Franchisor is satisfied, in Franchisor's reasonable discretion, that the proposed relocation will not have an adverse competitive impact on the Yogurtland System;

(iii) all accrued obligations of Franchisee to Franchisor under this Agreement shall have been satisfied in full; (iv) Franchisee shall have executed a general release of Franchisor and Franchisor's shareholders, directors, officers and employees in a form satisfactory to Franchisor of all claims that are known or reasonably could have been known; and (v) Franchisor's right to elect whether the Exclusive Territory, if any, (as defined below) shall be retained as the radius from the original franchise location or modified to be a new radius from the new location.

1.3. **Use of Marks.** Franchisee shall use the Marks in signage, business cards, stationery, promotion materials and advertising only in the form and as required or permitted by this Agreement or in the Manual (as defined in Section 4.1) or by Franchisor.

1.4. **Trade Practices.** Franchisee agrees that Franchisor has sole rights to the Yogurtland System and that goodwill associated with any of the trademarks and trade practices shall be deemed to inure only to Franchisor and not to Franchisee. The parties acknowledge that the elements of Franchisor's trade practice which are confidential constitute trade secrets of Franchisor. These are revealed to Franchisee in confidence and Franchisee must not, at any time during the term of this Agreement or any time afterward, use or attempt to use the trade practices in connection with any other entity or business, nor shall Franchisee disclose, duplicate, reveal, sell or sublicense the trade practices or any part of them, or in any way purport to transfer any rights in the trade practices, except as authorized by Franchisor.

1.5. **Reservation of all Rights.** Franchisor reserves all rights, except as expressly stated in this Agreement, including but not limited to the right to offer or open additional stores and franchises.

Article 2. EXCLUSIVE AREA OR TERRITORY

2.1. **Exclusive Territory.** The territory granted to Franchisee is exclusive in that, so long as Franchisee is in full compliance with this Agreement, Franchisor will not authorize a franchise or establish a company-owned location to be located within the territory stated in Exhibit A (the "Exclusive Territory"). The parties acknowledge that for Non-Shopping Mall locations, the Exclusive Territory is intended to comprise an area of roughly approximating one driving mile more or less, from the Store, but that the specific definition of the Exclusive Territory is the description or map attached as Exhibit A. For Shopping Mall Locations, Franchisee acknowledges there is no Exclusive Territory. However, Franchisor shall not operate or grant franchises to others to operate Yogurtland stores within the same Shopping Mall where the Store is located.

2.2. **Exceptions.** The Exclusive Territory does not include any Shopping Mall whether or not located within the territory granted to Franchisee. Franchisor shall have the right to establish and to grant franchises to others to establish Yogurtland stores in Shopping Malls without geographic restriction. For this Agreement, a Shopping Mall means any retail shopping center containing two or more anchor retail department stores. Current examples of anchor retail department stores include Sears, Macy's, JCPenny, Mervyn's, Nordstrom, Neiman Marcus, Bloomingdales, Saks Fifth Avenue, Dillard's, K-Mart, Kohls, Ross Stores, Best Buy, Circuit City, Wal-Mart, Home Depot, Orchard Supply & Hardware, Office Max, Office Depot, 99 Cents Only Stores, or other similarly large retail stores. The parties acknowledge that this list of examples is not

complete, that some of these stores will go out of business, some will merge, and new stores will be established. Franchisor shall have the right to determine the nature of stores comprising anchor retail department stores. Franchisor shall have the right to operate, sell and franchise and license others to sell Yogurtland products and other items and services under the Marks and other trademarks and service marks through Yogurtland stores located anywhere outside Franchisee's territory. Additionally, Franchisor reserves the rights to sell, market and distribute and to arrange for others to sell, market and distribute pre-packaged products identified as Yogurtland or by any other brand names, whether or not such brands are authorized for use by Franchisee, as well as other products or services under the Marks and other trademarks and service marks through different distribution channels, such as super markets, wholesale markets and convenience stores even within Franchisee's Exclusive Territory.

Article 3. TRADEMARKS AND COPYRIGHTS.

3.1. **Use Permission.** Franchisor grants to Franchisee the right to use the Marks at the Store.

3.2 **Ownership of Marks.** Franchisee acknowledges that Franchisor owns the Marks; that Franchisee's right to use the Marks is derived solely from this Agreement and is limited to operating the Store in compliance with this Agreement and all Franchisor's standards, specifications and operating procedures; that all goodwill developed from Franchisee's use of the Marks shall be for Franchisor's exclusive benefit; and that this Agreement does not confer any goodwill or other interest in the Marks on Franchisee except the limited right to use them in operating a Yogurtland store in compliance with this Agreement. All provisions of this Agreement concerning the Marks will also apply to additional trade and service marks and commercial symbols that Franchisor may authorize for Franchisee's use in the future. Franchisee shall not directly or indirectly contest Franchisor's right to the trademarks, service marks, trade secrets or business techniques that are part of Franchisor's business.

3.3. **Restriction on Use.** Franchisee shall not use any Marks as part of any corporate or trade name or with any prefix, suffix or in any modified form or with other modifying words, terms, designs or symbols, unless specifically approved by Franchisor in writing. Franchisee shall be permitted to identify Franchisee's business using a fictitious business name of Franchisee's store in a format as the law permits and Franchisor designates from time to time, such as "Yogurtland" of [geographic designation]. Franchisee shall file all fictitious name affidavits required by law in the state and county where Franchisee is located. Franchisee shall not use the Marks in any manner not expressly authorized in writing by Franchisor. Franchisee shall use and display all Marks in the manner Franchisor specifies. Franchisee shall use the encircled R registration symbol "®" with Marks that are registered in the U.S. Trademark Office and shall give additional notices of trade and service mark registrations as Franchisor specifies. Franchisee shall refrain from any business or marketing practice that may injure Franchisor or the business and goodwill associated with the Marks or the Yogurtland System.

3.4. **Trademark Protection.** Franchisor shall have no obligation to protect Franchisee against claims of infringement or unfair competition arising out of the use of the Marks or to defend Franchisee in any legal action. However, Franchisor will take such action that Franchisor considers appropriate under the circumstances, provided Franchisee has promptly notified Franchisor in writing of the facts of the claim or challenge and provided further that Franchisee

has used the Marks or logos in strict accordance with this Agreement and all Franchisor's rules, regulations, requests and procedures. Franchisor may assume the defense of the action at any time if Franchisor initially declined to take over the defense. If Franchisor chooses to defend Franchisee, then Franchisee shall fully cooperate with Franchisor in that defense.

3.5. Control of Actions and Trademark Usage. Franchisor shall have the sole right to control any legal actions or proceedings including settlements involving claimed trademark infringement or unfair competition against Franchisee or against others using the Marks. Franchisor may, at Franchisor's sole discretion, prosecute or defend any infringement or unfair competition claim involving the Marks or any other actions or proceedings which Franchisor deems necessary or desirable to protect the Marks.

3.6 Notification of Claims. Franchisee shall immediately notify Franchisor of any apparent infringement of or challenge to Franchisee's use of any Marks or claim by any person of any rights in any mark. Franchisee shall not communicate with any person other than Franchisor or Franchisor's legal counsel concerning the infringement, challenge or claim. Franchisee shall execute any instruments and documents, provide assistance and do those things (including being named as a party) that, in the opinion of Franchisor's legal counsel, may be necessary or advisable to protect and maintain Franchisor's interests in any litigation or U.S. Trademark Office or other proceeding or otherwise protect and maintain Franchisor's interests in the Marks.

3.7. Stopping or Changing Use of Marks. If it becomes advisable at any time in Franchisor's sole discretion for Franchisor or Franchisee to modify or stop using any Marks or to use one or more additional or substitute trade or service marks, Franchisee shall comply with Franchisor's directions to modify or stop using the Marks or use one or more additional or substitute trade or service marks within a reasonable time after notice from Franchisor. Franchisor shall have no obligation to pay for or reimburse Franchisee for the expenses to modify or stop using or substituting different trade or service marks.

3.8. Copyrights. Franchisor claims copyright rights in the Manual, construction plans, advertising and promotion materials and in other materials used in the Yogurtland System. Franchisee acknowledges that Franchisor owns such copyright rights regardless of whether the copyrights are at any particular time registered in the Copyright Office of the Library of Congress.

Article 4. CONFIDENTIAL OPERATION MANUAL

4.1. Confidential Business Operation Manual. Franchisor has created a Confidential Business Operation Manual (the "Manual") which contains policies, specifications, procedures, and instructions developed by Franchisor pertaining to the operation of a Yogurtland store. During the term of this Agreement, Franchisor will loan Franchisee a copy of the Manual.

4.2. Ownership. The loaned copy of the Manual and its contents are solely Franchisor's property. Franchisee shall return the Manual to Franchisor promptly on expiration or termination of this Agreement.

4.3. Confidentiality. Franchisee acknowledges that the contents of the Manual are confidential and proprietary to Franchisor. Franchisee shall keep the contents of the Manual

confidential and shall take any additional steps that Franchisor requests from time to time to protect the confidentiality of the Manual.

4.4. **Additions and Modifications.** Franchisor may from time to time add to, delete from, supplement or otherwise modify the contents of the Manual. Franchisee shall promptly insert any revised pages or other forms of supplements into the loaned copy of the Manual. In any dispute about the contents of the Manual, any master copy maintained by Franchisor shall be deemed to be controlling.

4.5. **Compliance.** Franchisee shall operate the Store in compliance with all the contents of the Manual, as modified from time to time by Franchisor.

Article 5. TRAINING

5.1. **Training Programs.** Franchisor will provide initial, and may provide other mandatory and optional training programs. All training programs will be conducted at locations and times that Franchisor designates.

5.2. **Initial Training.** During the thirty (30) days prior to Franchisee's scheduled opening, Franchisor shall provide Franchisee and Franchisee's initial store manager, with Franchisor's initial training program. The parties acknowledge that the initial training program is anticipated to require approximately forty hours over five days. Training shall take place at a Yogurtland location designated by Franchisor and at Franchisee's store location. Franchisee shall pay Franchisor the training fee described in Section 5.7.

5.3. **Failure to Complete Initial Training.** If Franchisee or initial store manager fails to complete the initial training program to Franchisor's sole subjective satisfaction, then Franchisor will have the right to terminate this Agreement effective on delivery of notice of termination to Franchisee. On termination under this Section, Franchisor shall refund the initial franchise fee paid less all reasonable costs incurred by Franchisor in preparing the Franchise Agreement and related documents, the grant of the franchise, and other services and efforts provided. In no event, however, shall the total refund exceed 50% of the initial franchise fee paid. Franchisor shall make the refund to Franchisee after Franchisee signs all documents Franchisor requests, including a general release, indemnification, and confidentiality agreement.

5.4. **Additional Mandatory and Optional Training.** Franchisor, at Franchisor's discretion, may provide from time to time mandatory and optional training programs on new products, operating procedures, selling techniques, services, preferred suppliers, management skills and other aspects of business operations that Franchisor believes may be beneficial. Franchisor shall have the right to determine the duration, location, composition, subject matter, whether or not there will be an additional charge for a particular program, the amount of the charge, and all other aspects of these training programs. Franchisee shall attend and complete, and cause designated personnel to attend and complete all training programs that Franchisor specifies are mandatory.

5.5. **Training Requested by Franchisee.** If Franchisee requests and Franchisor agrees to provide training or assistance at the Store additional to the initial training, then Franchisee shall pay Franchisor's then standard rates for each day of such additional training or assistance.

5.6. **Franchise Specific Additional Training.** Special or additional training programs may be implemented by Franchisor at Franchisor's sole discretion, when Franchisor believes such programs may provide particular value to Franchisee or that Franchisee is in particular need for such training. Franchisee shall pay or reimburse Franchisor's expenses for these special or additional training programs, including but not limited to compensation of instructors, payment for facilities and training manuals.

5.7. **Training Expenses.** Franchisee is solely responsible for all expenses incurred by Franchisee, Franchisee's designated manager and other employees for all training programs including, without limitation, training fees, costs of travel, lodging, meals and compensation. There will be no compensation of any kind from Franchisor for work performed or participation in any training program, even if the training involves customer service, preparation or other work at or beneficial to a Yogurtland store owned or operated by Franchisor or other franchisees.

5.8. **Conventions.** From time to time, Franchisor may, but is not obligated to, arrange for meetings or conventions of franchisees to provide additional exchange of information and ideas and to recognize accomplishments of franchisees. Franchisee shall, at Franchisee's expense, attend and participate in all meetings and conventions that Franchisor designates as mandatory.

Article 6. MARKETING

6.1. Marketing Fund.

A. **Establishment.** Franchisor has established a marketing fund to advertise and promote the Yogurtland System (the "Marketing Fund").

B. **Uses.** The Marketing Fund shall be used for advertising, marketing, public relations and related purposes that Franchisor deems appropriate. By way of illustration and not limitation the Marketing Fund may be used to pay costs of marketing surveys and research; employing public relations firms; developing and maintaining Internet website communications; preparing and producing video, audio and written marketing materials; buying Internet, TV, radio, magazine, billboard, newspaper and other media advertising; employing advertising agencies; providing or selling marketing materials to Yogurtland stores; holding conventions and meetings for personnel of Yogurtland Stores; and paying costs to account for and report on contributions, expenditures and related activities of the Marketing Fund.

C. **Promotion Materials.** Franchisor may cause the Marketing Fund to develop and market promotional items from time to time. If and when developed, those items will be made available to Franchisee for purchase at Franchisee's cost and expense. Franchisee shall maintain a representative inventory of promotional items in accordance with requirements established by Franchisor.

D. **Coupons.** The Marketing Fund may develop programs that include special offers and discount coupons. Franchisee shall honor all such special offers and discount coupons. Franchisor has no obligation to reimburse Franchisee for any cost or discount related to acceptance of coupons or special offers. At any time when it is lawful to do so, and with the prior

consent of either (i) Franchisee, or in the alternative (ii) a majority of Franchisees in the geographic region where the special offer or discount coupons are anticipated to be distributed, special offers or discount coupon may establish specific product pricing, or maximum or minimum pricing.

E. **Franchisee's Contributions.** Franchisee shall contribute the amounts stated in Section 7.5 to the Marketing Fund. Franchisee's contributions to the Marketing Fund are non-refundable.

F. **Franchisor Contributions.** For each Yogurtland store operated by Franchisor, Franchisor shall contribute to the Marketing Fund on substantially the same basis as Franchisor requires of franchisees. Recognizing there may be different contribution levels or formulas for different franchisees, Franchisor's contributions are not required to be the same amounts or formula as contributions by Franchisee.

G. **Contributions from Other Sources.** Franchisor shall have the right, but is not obligated, to collect and contribute to the Marketing Fund any advertising or other rebates from suppliers or others.

H. **Maintenance.** Contributions to the Marketing Fund may, but need not be maintained in accounts separate from Franchisor's other funds. The Marketing Fund will not be used to defray Franchisor's general operating expenses, except for administrative costs and overhead reasonably allocable to administering the Marketing Fund.

I. **Administration.** Franchisor shall oversee all programs financed by the Marketing Fund, with sole discretion over their creative concepts, materials, timing, placement, allocation and other aspects. Franchisor has no obligation to cause Marketing Fund expenditures to benefit Franchisee equivalently or proportionately to Franchisee's contributions, or at all, or to ensure that Franchisee or any one or more particular franchisees benefit directly or pro rata from uses of the Marketing Fund.

J. **Timing.** Franchisor will give consideration to spending contributions to the Marketing Fund during approximately Franchisor's fiscal year when the contributions were made. Franchisor shall have the right to spend in any fiscal year, more or less than the amount of contributions to the Marketing Fund made in that year. Funds not spent in a fiscal year when contributed may be applied and used for Marketing Fund expenses in other years, which could also include payment of expenses from prior years. The Marketing Fund may borrow from Franchisor or others to finance operations and to cover deficits.

K. **Accounting.** An accounting of Marketing Fund contributions and expenditures shall be prepared annually and shall be made available to Franchisee on written request. Franchisor shall have the right but no obligation to cause accountings to include an independent certified public accountant's audit of Marketing Fund contributions and expenditures. Franchisor shall have the right to cause the Marketing Fund to pay for the preparation of such accounting.

L. **Termination.** Franchisor shall have the right to terminate or suspend operation of the Marketing Fund at any time, either temporarily or permanently, effective when

arrangements have been made for the use or expenditure of monies in the Marketing Fund. Franchisor shall have the right to restart the Marketing Fund after termination or suspension.

6.2. Advertising and Promotion Activities by Franchisee. In addition to any contributions by Franchisee to the Marketing Fund, Franchisee shall advertise and market the Store in Franchisee's territory in amounts described in Section 7.6. Franchisee shall provide Franchisor written verification of Franchisee's local advertising expenditures as Franchisor requires. Franchisee shall be responsible to assure that all advertising, promotion and marketing by Franchisee are clear, truthful and not misleading, and conform to the highest standards of ethical marketing and promotion policies which may be prescribed by Franchisor.

6.3. Advertising Submissions. Franchisee shall submit to Franchisor for Franchisor's prior written consent, samples of all advertising and marketing materials not prepared or previously consented to by Franchisor. If Franchisor does not provide a written consent to any advertising or other promotion materials within 10 days from receipt by Franchisor, Franchisor shall be deemed to have withheld consent. Franchisee shall not use any advertising or marketing related material that Franchisor has not consented to.

6.4. Telephone Directory. Franchisee shall list the Store's phone numbers in the principal telephone directories distributed in the metropolitan area and communities where the Store is located.

6.5. Franchisor's Advertising. Franchisor shall provide and Franchisee shall be required from time to time to purchase proprietary marketing materials from Franchisor that Franchisor considers suitable for use at local Yogurtland stores. Franchisor may charge Franchisee at Franchisor's cost to produce these materials, including reasonable allocation of overhead and any shipping, handling and storage charges, payable when the materials are ordered. These payments are not refundable.

Article 7. FEES.

7.1. Initial Franchise Fee. On signing this Agreement, Franchisee shall pay Franchisor an initial franchise fee of thirty thousand dollars (\$30,000). Franchisor acknowledges prior receipt from Franchisee of a two hundred dollar (\$200) application fee. This amount shall be applied as a credit against the initial franchise fee.

7.2. Construction Supervising Fee. If Franchisee elects not to purchase a turnkey store, Franchisee shall pay Franchisor a construction supervision fee at Franchisor's then standard rates.

7.3. Continuing Royalty. Franchisee shall pay Franchisor a monthly continuing Royalty Fee equal to three percent (3%) of Franchisee's Gross Sales each month or seven hundred dollars (\$700) which ever is greater. The Royalty Fee is due and payable by the 15th calendar day of each month based on Gross Sales for the prior month. If Franchisee fails to pay the royalty by the 15th calendar day of the month, the royalty fee shall be and Franchisee shall pay three and one half percent (3.5%) of Franchisee's Gross Sales for the prior month, or eight hundred dollars (\$800), whichever is higher. Royalty payments shall be accompanied by such reports requested by Franchisor. Franchisee shall execute such bank authorizations as Franchisor requests to

enable Franchisor to automatically debit Franchisee's bank account or credit card account for fees due under this Section.

7.4. **Gross Sales Defined.** "Gross Sales" is defined to include all sums or things of value received by Franchisee in and from Franchisee's business from all sales or other transactions for goods and services whether for cash, check, credit, barter or otherwise, including, without limitation, sales where orders originated at or were accepted by Franchisee at one location but delivered or performance made from or at any other location. Gross Sales do not include refunds to customers or the amount of any sales taxes separately itemized, collected from customers for payment to a federal, state or local taxing authority and actually paid to that authority.

7.5. **Franchise Marketing Fee.** Franchisee shall contribute monthly an amount equal to two percent (2%) of Franchisee's Gross Sales each month to the Marketing Fund or five hundred dollars (\$500) which ever is greater. The Marketing Fund fee is due and payable by the 15th calendar day of each month based on Gross Sales for the prior month. If Franchisee fails to pay the Marketing Fund Fee by the 15th calendar day of the month, the Marketing Fund fee shall be and Franchisee shall pay two and one-half percent (2.5%) of Franchisee's Gross Sales for the prior month, or six hundred dollars (\$600), whichever is higher. Franchisor shall have the right from time to time to modify the percentage of gross sales that Franchisee shall contribute to the Marketing Fund, provided that Franchisor shall not establish a contribution rate greater than five percent (5%) of Franchisee's Gross Sales. The Marketing Fund payments shall be accompanied by such reports requested by Franchisor. Franchisee shall execute such bank authorizations as Franchisor requests to enable Franchisor to automatically debit Franchisee's bank account or credit card account for fees due under this Section.

7.6. **Local Advertising; Grand Opening Advertising.** Franchisee shall spend the greater of two percent (2%) of Gross Sales or five hundred dollars (\$500) each month on local advertising to enhance the reputation of Franchisee's Store on a local level. All local advertising must first be submitted to and consented to by Franchisor before use. Franchisee shall furnish Franchisor a monthly written report together with copies of receipts showing the expenditures made for local advertising in the prior month. For the first six months of operations, Franchisee shall spend at least two thousand dollars (\$2,000) per month on grand opening advertising.

7.7. **Cooperatives.** Franchisor shall have the right to establish geographic areas of local or regional cooperative advertising and to require franchisees in the applicable geographic area to actively participate in and contribute such amounts determined by a majority vote of the cooperative members. Franchisee's contributions to any such cooperative shall in no event be less than two percent (2%) or more than five percent (5%) of Franchisee's monthly Gross Sales. Contributions to a cooperative established by Franchisor shall apply as a credit against the amounts that Franchisee is required to spend for local advertising pursuant to Section 7.6.

7.8. **Product Purchase Deposit.** Franchisee shall pay Franchisor a ten thousand dollar (\$10,000) Product Purchase deposit upon signing the Franchise Agreement. Franchisor shall have the right to apply the deposit to any invoices which remain due and owing to Franchisor for more than 30 days. Franchisee shall replenish the deposit whenever the deposit on account with Franchisor is less than ten thousand dollars (\$10,000). Franchisor shall return any amounts remaining on deposit at the termination or expiration of the Franchise Agreement to Franchisee.

7.9. **Transfer Fee.** As a condition to transferring or assigning this agreement, Franchisee shall pay Franchisor a non-refundable transfer fee equal to five thousand dollars (\$5,000). The transfer fee may be increased by Franchisor from time to time to reflect increases in pricing and price levels based on increases in a Consumer Price Index reasonably designated by Franchisor.

7.10. **Renewal Fee.** As a condition to entering into a renewal franchise agreement, Franchisee shall pay Franchisor a renewal fee of five thousand dollars (\$5,000) for an additional term.

7.11. **Initial Training Fee:** Franchisor shall provide an initial training to Franchisee. Franchisee shall pay Franchisor five thousand dollars (\$5,000) for the first two persons trained; and two thousand dollars (\$2,000) for each additional person trained. Franchisee's payment to Franchisor shall be due before start of training.

7.12. **Inspection and Audit.** At any time during business hours and without prior notice to Franchisee, Franchisor may inspect and audit the business records, bookkeeping and accounting records, sales and income tax records and returns and other records of the Store, as well as Franchisee's books and records. Franchisee shall fully cooperate with Franchisor's representatives and accountants in any inspection or audit.

7.13. **Audit Charges.** If any inspection or audit discloses a deficiency in payments to Franchisor then Franchisee shall immediately pay the deficiency. If the deficiency is three percent (3%) or more for any calendar month or larger period, then Franchisee shall also pay the cost of the audit as well as the travel, lodging, meals, compensation and reasonable professional service fees and other expenses of the inspecting or auditing personnel. If an inspection or audit discloses an overpayment, Franchisor will credit Franchisee for the overpayment, which may apply to amounts due in the future but shall not, under any circumstance, entitle Franchisee to any form of refund.

7.14. **Interest.** Any amount owed to Franchisor but not paid when due shall bear interest at the lesser of one percent (1%) per month (12% per year) or the maximum rate allowed by law. This provision does not authorize or excuse late payment.

7.15. **Liquidated Damage for Certain Breaches.** The parties acknowledge that in view of the nature of the franchise system and the difficulty of precise measurement of damage to Franchisor's trademarks and reputation, determining the precise amount of damage to Franchisor that would result from unauthorized deviation from any of Franchisor's standards or requirements would be particularly difficult. Accordingly, to simplify the process of determining damages, the parties agree that for any breach comprised of unauthorized deviation by Franchisee from any of Franchisor's standards or requirements, including but not limited to use or sale of unauthorized consumable or non-consumable items, beverage materials, or other non-authorized product, Franchisee shall pay Franchisor liquidated damages in the amount of one thousand dollars (\$1,000) per breach and one thousand dollars (\$1,000) for each day that the breach continues. This liquidated damages provision is not an exclusive remedy and does not excuse the breach. Failure to cure the breach after notice shall be grounds for termination of this Agreement. This liquidated damages provision does not apply to breaches other than those described in this Section.

Article 8. OBLIGATIONS OF FRANCHISEE

8.1. **Franchisee Services.** Franchisee shall offer for sale only products that Franchisor approves from time to time for sale at franchised Yogurtland stores. Franchisor may from time to time add to, delete or modify products authorized for sale. Franchisee shall offer all products that Franchisor authorizes Franchisee to sell.

Franchisee shall maintain high professional and ethical standards, observe preferred suppliers program requirements, if any, established by Franchisor, and shall conduct no other business under Franchisor's marks without Franchisor's prior written consent. Franchisee shall only sell finished Yogurtland products that have been approved for sale and only to retail customers. Franchisee shall not sell any Yogurtland products, whether finished or unfinished, to any person or entity for resale.

8.2. **Full Time Effort.** In addition to Franchisee's other obligations in this Agreement, Franchisee shall at all times devote Franchisee's best efforts to operating the Store so as to maximize sales and revenues in compliance with this Agreement and the Manual and applicable law. Franchisee or a manager identified by Franchisee and consented to by Franchisor in writing, shall devote at least thirty (30) hours per week to active management of the franchised business. If Franchisee is an entity, then Franchisee shall designate an individual on whom Franchisor may rely for the personal active management of the franchised business pursuant to this Section 8.2. Franchisee shall ensure that at least one fully trained employee shall operate the Store during operating hours.

8.3. **Hours of Operation.** Franchisee shall operate the Store continuously during hours that Franchisor specifies from time to time, which may require Franchisee to open for business as early as 7 a.m. and require Franchisee to stay open until as late as midnight, and to be open as many as seven (7) days per week, and up to 365 days per year (366 days in a leap year). Franchisee acknowledges that Franchisee may be required to be open more or longer or otherwise different hours than Franchisor requires of other franchisees or company owned stores.

8.4. **Employees.** Franchisee shall assure that Franchisee's personnel are qualified, properly trained and competent to perform the services required of them.

8.5. **Compliance with Law.** Franchisee shall assure that Franchisee and all employees comply with all applicable laws and regulations in operating the Store and providing goods and services to customers.

8.6. **Quality Control.** Franchisee shall operate the Store in accordance with Franchisor's standards of quality, production, appearance, cleanliness and service as prescribed by Franchisor and the Manual.

8.7. **Solving Customer Complaints.** Franchisee shall provide prompt attention and response to any customer complaint. Franchisee shall inform Franchisor of any complaint that Franchisee fails to resolve to the customer's satisfaction within seven (7) days. Franchisor shall have the right, but no obligation, to elect to assist or elect to mandate a resolution to the customer complaint. Franchisee shall, at Franchisee's sole expense, implement any resolution that Franchisor directs.

8.8. **Permits and Licenses.** Franchisee shall obtain and maintain all permits and licenses required for the operation of the franchised business.

8.9. **Financial Statements.** Franchisee shall provide Franchisor an annual income, profit and loss statement to Franchisor. Franchisee shall submit this to Franchisor, no later than the fifteenth (15th) day after the end of a calendar year (that is, no later than January 15th) using any forms that Franchisor prescribes and accurately reflecting all sales during the preceding year. Franchisee shall also provide Franchisor other data and information regarding operation and results of the franchised business that Franchisor specifies from time to time.

8.10. **Records and Reports.** Franchisee shall submit to Franchisor weekly and monthly sales reports, as well as other intervals or periods requested by Franchisor, on such forms prescribed by Franchisor. Franchisee shall maintain copies of all records and reports concerning the franchised business that Franchisee files with federal, state and local government agencies and shall provide copies of those reports to Franchisor when filed.

8.11. **Purchases.** Franchisee shall purchase all food ingredients, materials and equipment from Franchisor or third party sources designated or approved in writing by Franchisor. Franchisee acknowledges that Franchisor may elect to be the sole authorized source for various items. Franchisor reserves the right to require that Franchisee purchase and use specific brand items in operating the Store. Franchisor shall have the right to the benefit of all discounts, volume rebates, administration fees, commissions, advertising allowances or other advantages which Franchisor may obtain from any person supplying products or services to Franchisee or other Yogurtland franchisees.

8.12. **Alternate Supplier Qualifications.** If Franchisee wants to purchase required items, equipment, furniture or materials from a source other than Franchisor or Franchisor's approved suppliers, then Franchisee shall first submit information to Franchisor concerning the proposed supplier. The submitted information shall include a complete description of the history and credit rating of the proposed supplier, description of items Franchisee wants to purchase from the proposed supplier, information relevant to the proposed supplier's ability to satisfy Franchisor's standards, ability to provide reliable service, references, and other information that Franchisor may request or designate from time to time. Franchisee shall arrange for the proposed supplier to cooperate in testing or analysis in a manner that Franchisor designates, and at the expense of Franchisee or the supplier, to enable Franchisor to ascertain whether the supplier and proposed items to be purchased are of satisfactory quality, reliability and other characteristics. Franchisor will endeavor to notify Franchisee in writing whether Franchisor approves or disapproves the proposed supplier and the reasons for any disapproval, all within ten (10) business days after Franchisor's receipt of all information that Franchisor deems necessary to make its decision.

8.13. **Non-Turnkey Construction.** If Franchisee elects not to purchase a turnkey store, Franchisee shall hire an architect and general contractor from a list of Franchisor approved architects and general contractors. If Franchisee wants to hire an architect and/or general contractor that is not on the Franchisor approved list, Franchisee shall first submit information to Franchisor concerning the proposed architect and/or general contractor. The submitted information shall include a comprehensive description of the proposed architect and general contractor contact information, copies of their licenses, a list of the projects that they have been

involved with, and any other information that Franchisor may reasonably request. At Franchisor's request and at Franchisee's expense, Franchisee shall arrange a meeting between Franchisor and the proposed architect and/or general contractor. Franchisor shall endeavor to notify Franchisee in writing whether Franchisor approves or disapproves of the proposed architect and/or general contractor within ten (10) business days after Franchisor's receipt of all information that Franchisor deems necessary to make its decision.

8.14. Point of Sale System, Independent Access. Franchisee shall purchase from Franchisor or other entity designated by Franchisor a point of sale electronic cash register or computer system ("POS System") meeting specifications required by Franchisor. Franchisor shall have the right to require that the POS System connect electronically with and provide electronic access from equipment of Franchisor. Franchisee shall execute any and all necessary agreements and pay reasonable acquisition, service, maintenance, upgrade and other related fees and charges for the installation, set-up, maintenance servicing, use and other aspects of the POS System. Franchisee shall arrange to provide Franchisor with independent, direct access to all information and data in or generated by Franchisee and Franchisee's computerized point of sale and store management system.

8.15. Surveys. Franchisee shall present to customers of the Store, evaluation and survey forms that Franchisor requests from time to time, and shall participate in and ask customers to participate in any evaluations and surveys performed by or on Franchisor's behalf, including providing promotional rewards to customers at Franchisee's expense, in exchange for such participation.

8.16. Insurance.

A. Franchisee shall obtain and maintain in effect: (1) broad form comprehensive general liability coverage, and broad form contractual liability and advertising injury coverage of at least one million dollars (\$1,000,000) aggregate and with any deductible or self-insured retention being no more than ten thousand dollars (\$10,000); (2) worker's compensation and employer's liability insurance for the Store's employees in statutory amounts; (3) unemployment insurance covering Franchisee's employees; (4) fire and extended coverage insurance on the Store and Franchisee's property adequate to replace it in the event of an insured loss; (5) business interruption insurance in sufficient amounts to cover rental of the Store location, previous profit margins, maintenance of competent personnel and other fixed expenses; (6) state disability insurance for Franchisee's employees as required by law; and (7) any other insurance required by law.

B. **Coverage Details.** The coverages in Section 8.16.A. shall (a) be in forms and amounts and with companies satisfactory to Franchisor but not less than the amounts stated; (b) include coverage for Franchisor and Franchisor's principals as additional insureds and provide that coverage applies separately to each additional insured against whom a claim is brought as if a separate policy had been issued to each additional insured; (c) provide indemnity for all obligations assumed by Franchisee in this Agreement and all other matters for which Franchisee is required to indemnify Franchisor under this Agreement; (d) provide that Franchisor is entitled to receive at least thirty (30) days prior written notice of any intent to reduce coverage or policy limits, cancel or otherwise amend the policy.

C. **Revisions.** Franchisor shall have the right from time to time to revise minimum coverages, coverage amounts and covered risks that Franchisee is required to obtain and maintain. Promptly after delivery of written notice to Franchisee of such revisions, Franchisee shall obtain and thereafter maintain insurance conforming to the revised coverage requirements.

D. **Proof.** Franchisee shall promptly provide Franchisor with certificates of insurance evidencing the coverage required by this Agreement no later than ten (10) calendar days before the Store starts operating. Franchisee shall deliver a complete copy of Franchisee's then prevailing policies of insurance within thirty (30) days after delivery of the certificates of insurance. Immediately on renewal or the purchase of replacement insurance Franchisee shall deliver to Franchisor a certificate of insurance for the new or renewal policy. Franchisor shall have the right at any time to require Franchisee to provide Franchisor full copies of any or all Franchisee's insurance policies and certificates of insurance.

E. **Failure to Maintain Insurance.** If Franchisee fails to purchase and maintain insurance required by Sections 8.16.A. through 8.16.D., then Franchisor shall have the right, but no obligation, to obtain the insurance through agents and insurers Franchisor chooses, or such other insurance as Franchisor is able to obtain for such purpose. Franchisee shall, at Franchisor's election, pay all premiums for such insurance or reimburse premium payments made by Franchisor.

F. **Disclaimer.** Franchisor shall have no obligation to obtain or maintain any insurance for or on behalf of Franchisee. Nothing in this Agreement is an undertaking or representation that the insurance Franchisee is required to obtain and maintain will be a sufficient amount or scope of insurance for any purpose.

8.17. **Standards.** Franchisor shall have the right to establish standards, specifications and procedures for any or all aspects of the Store. Franchisee shall comply with all such standards, specifications and procedures imposed by Franchisor. Franchisee shall subscribe to, install and use any equipment and/or services required by Franchisor, including but not limited to a water filtration system and any other products or services required from time to time by Franchisor.

8.18. **Modifications.** Franchisor shall have the right, but no obligation, from time to time to modify selected or all elements of the Yogurtland System. Franchisee acknowledges that modifications may result in additional expenses to Franchisee and may require Franchisee to invest additional capital in the Store. Franchisee shall implement modifications when requested by Franchisor. Such modifications shall be deemed to have taken place pursuant to the terms of this Agreement, and do not constitute modifications of this Agreement.

8.19. **Signage.** Franchisee shall display at the Store interior and exterior only signs, menu boards, point of sale materials and displays that Franchisor has supplied or approved in writing. Franchisee shall display all signs, menu boards, point of sale materials and displays that Franchisor requires from time to time.

8.20. **Construction Permits.** Franchisee shall obtain all permits and licenses required to construct, occupy and operate the Store in compliance with plans and specifications furnished to Franchisee by Franchisor.

8.21. **Equipping.** Franchisee shall purchase and install all fixtures, furnishing, equipment and signs required to operate and shall operate the Store according to the Manual.

8.22. **Inventory.** Franchisee shall purchase an opening inventory of Yogurtland products, other inventory, and supplies according to the requirements in the Manual.

8.23. **Quality.** All goods that Franchisee offers to the public shall satisfy high quality standards that Franchisor establishes in the Manual and elsewhere, which may be updated from time to time.

8.24. **Prices.** Franchisee shall determine all pricing to Franchisee's customers. Franchisor may from time to time suggest prices. There is no representation that adherence to Franchisor's suggested pricing will increase or maximize revenues. When permitted by law, Franchisor may require Franchisee to adhere to reasonable minimum or maximum pricing requirements or restrictions.

8.25. **Vending Machines, Phones, Video Game Equipment.** Franchisee shall not install or operate in the Store any public telephone, jukebox, vending machine, lottery ticket terminal, video game or any other game or machine without Franchisor's prior written consent.

Article 9. OBLIGATIONS OF FRANCHISOR

9.1. **Territorial and Site Assistance.** Franchisee acknowledges and agrees that Franchisee is responsible to select, acquire (by purchase or lease) and develop the premises and the Store. Franchisee shall first obtain Franchisor's written consent to the proposed location. In determining whether to consent, Franchisor may consider any factors that Franchisor considers relevant, which may include, but are not limited to size, appearance and other physical characteristics of the premises, and demographic characteristics, traffic patterns, competition from other businesses in the area and other commercial characteristics. Franchisee acknowledges that consent by Franchisor is not any form of assurance or recommendation regarding suitability or any particular results of the location. If the parties cannot agree on a location for the franchise, either party shall have the right to terminate this Agreement, in which event, Franchisee's sole remedy shall be to obtain a refund of the initial franchise fee paid less all reasonable costs incurred by Franchisor in preparing the franchise agreement and all related documents, the grant of the franchise, and other services and efforts provided. However, in no event shall the total refund exceed 50% of the initial franchise fee paid by Franchisee. Franchisor shall make the refund to Franchisee after Franchisee signs all documents Franchisor requests, including a general release, indemnification, and confidentiality agreement.

9.2. **Maintenance of Location.** Franchisee shall obtain and maintain the right to occupy the premises during the entire term of this Agreement. Franchisee shall provide Franchisor with a copy of the proposed deed, proposed lease and other proposed instruments pertaining to Franchisee's ownership or right to occupy the premises at least 10 calendar days before executing or agreeing to any such instrument. Franchisee shall not execute or agree to any such instrument without first obtaining Franchisor's written consent.

9.3. **Turn Key Operation.** Franchisor shall have the right, but no obligation, to elect to enter into the lease for the location with the property owner or landlord, and to construct and develop

the Store, sublease the location to Franchisee and provide Franchisee with a developed store that is substantially ready to open and operate. Franchisor shall not be responsible for delays during this process.

9.4. **Opening Assistance.** Franchisor shall provide Franchisee with on-site assistance for up to 5 days as determined by Franchisor.

9.5. **Supplies and Supplier Information.** Franchisor shall provide Franchisee information that Franchisor deems appropriate concerning sources of fixtures, furnishings, equipment, signs, inventory and supplies for use in operating the Store. Franchisee shall use only fixtures, furnishings, equipments, signs, inventory and supplies that meet Franchisor's specifications and standards.

9.6. **Equipment Layout and Interior Design Plans.** Franchisor shall provide Franchisee equipment layout and interior design plans for the interior of a Yogurtland store. Franchisee shall pay Franchisor \$7,000 for these plans. Franchisee shall, at Franchisee's expense, employ architects and others as needed to complete or adapt the sample plans and specifications for the Store. Franchisee is solely responsible to construct and develop the Store and to obtain any financing needed to do so. Franchisee shall retain only licensed contractors to perform construction as specified in Section 8.13. Franchisee shall submit to Franchisor a complete set of final plans and specifications before starting construction of the Store. Franchisor shall review and either approve or provide comments on the plans and specifications. Franchisee shall not start construction of the Store until final plans and specifications have been approved in writing by Franchisor. Franchisee shall not modify any plans or specifications approved by Franchisor without first obtaining Franchisor's written consent to the modification.

9.7. **Information Updates.** Franchisor will endeavor to update Franchisee orally or in writing on industry and market condition changes that Franchisor identifies and considers important to Franchisee.

Article 10. TERM AND RENEWAL

10.1. **Initial Term.** The initial term of this Agreement is five (5) years starting on the date stated in the introductory paragraph and lasting until close of business on the fifth (5th) year anniversary of that date.

10.2. **Renewal.** Franchisee shall have the right to renew this Agreement for as many as three (3) additional terms of five (5) years each. Franchisee's renewal right shall be subject to the conditions stated in Section 10.3.

10.3. **Renewal Conditions.** As conditions to renewal, (a) Franchisee shall have fully complied with this Agreement continuously throughout the term; (b) Franchisee shall be in full compliance with this Agreement at the time of requesting renewal and at the end of the term; (c) Franchisee shall deliver written notice of Franchisee's intent to renew at least ninety (90) days but no more than one hundred twenty (120) days before expiration of the applicable initial or renewal term; (d) the notice of intent to renew shall be accompanied by Franchisee's payment of a renewal fee, described in Section 7.10; (e) prior to expiration of the then applicable initial or renewal term, but after waiting until the cooling off periods have passed under applicable federal and state

franchise laws and regulations, Franchisee shall execute Franchisor's then current form of Franchise Agreement, which may include new and different terms, new and higher fees and other differences from this Agreement, and which shall be modified as needed to provide for the remaining number of renewal terms available to Franchisee consistent with Section 10.2; (f) before the start of the renewal term Franchisee shall sign a general release of all known and unknown claims against Franchisor, including a waiver of rights under Section 1542 of the California Civil Code; (g) Franchisee shall agree to remodel, redecorate, renovate and upgrade the Store to meet Franchisor's then current standards for Yogurtland stores, and to complete the foregoing before the start of the renewal term, or within a period of time after the start of the renewal term as is acceptable to Franchisor; and (h) Franchisee shall have paid and shall be current on all amounts due to Franchisor and affiliates of Franchisor and third party creditors. Failure of any of these conditions precedent shall constitute an election by Franchisee not to renew this Agreement.

10.4. Termination by Franchisee. Franchisee shall have the right to terminate this Agreement; (a) with the written consent of Franchisor, which Franchisor has no obligation to provide; (b) if Franchisor materially breaches this Agreement and fails to cure the breach, provided that before any such termination, Franchisee shall have delivered written notice of the breach to Franchisor stating the details of the breach and providing Franchisor thirty (30) days to cure or, for a breach that cannot be cured in that period, thirty (30) days to start efforts to cure and to complete the cure when practical for Franchisor.

10.5. Franchisor's Termination Rights After Failure to Cure. Except as stated in Section 10.6 (where immediate termination shall be appropriate), Franchisor shall have the right to terminate this Agreement effective on Franchisee's failure to cure a breach of this Agreement or of any other agreement with Franchisor, within thirty (30) days after delivery of written notice of the breach; provided, however, that if the nature of Franchisee's default is such that more than thirty (30) days is reasonably required for its cure, then Franchisee shall not be deemed to be in default if Franchisee commences the cure within this time and thereafter diligently prosecutes the cure to completion.

10.6. Franchisor's Termination Rights Without Opportunity to Cure. Franchisor shall have the right to terminate this Agreement immediately, without permitting Franchisee any opportunity to cure, in any of the following events:

- (a) The attachment of an involuntary lien in the amount of \$1,000 or more on any of Franchisee's business assets or property, which lien is not removed promptly and in any event, within 15 days;
- (b) Conduct of the franchised business in a manner that materially and adversely affects the goodwill or reputation of the Yogurtland brand;
- (c) Any purported assignment, transfer, or sublicense of this Agreement or of rights in this Agreement without the prior written consent of Franchisor;
- (d) Franchisee becomes insolvent or makes a general assignment for the benefit of creditors or an admission of Franchisee's inability to pay Franchisee's obligations as they become due, or files a voluntary petition in bankruptcy or initiates any composition, adjustment,

- liquidation, dissolution or similar relief under any law, or admits or fails to contest the material allegations of any pleading filed against Franchisee seeking such relief, or is adjudicated bankrupt or insolvent, or a receiver is appointed for a substantial part of Franchisee's assets or the Store, or a final judgment or involuntary lien remains on record, unsatisfied for sixty (60) days or longer;
- (e) Franchisee abandons the franchise by failing to operate the business for three (3) or more consecutive days when Franchisee is required to operate the business so that it is reasonable for Franchisor to conclude that Franchisee does not intend to continue to operate the business, unless that failure is due to fire, flood, earthquake or other similar causes beyond Franchisee's control;
 - (f) Franchisor and Franchisee agree in writing to terminate the franchise;
 - (g) Franchisee (or if Franchisee is an entity, any officer of Franchisee) makes or is discovered to have made any material misrepresentation relating to the acquisition or operation of the business or engages or is found to have engaged in conduct which reflects materially and unfavorably on the Marks, or on the operation or reputation of the Store or Yogurtland system;
 - (h) Franchisee fails for a period of ten (10) days after notification of noncompliance, to comply with any federal, state or local law or regulation whether or not the conduct or noncompliance is later corrected;
 - (i) Franchisee, after curing any breach, default or other failure, engages in the same conduct or noncompliance or suffers a recurrence of the breach, failure or default, whether or not the conduct, noncompliance or recurrence is corrected after notice;
 - (j) Franchisee fails on three separate occasions within a six (6) month period to comply with one or more requirements of this Agreement, whether or not corrected after notice;
 - (k) The franchise business or Store premises are seized, taken over or foreclosed by a government official exercising his or her duties, or seized, taken over or foreclosed by a creditor, lien holder or lessor, provided that a final judgment against Franchisee remains unsatisfied for thirty (30) days (unless a supersedeas or other appeal bond has been filed); or a levy of execution has been made on the franchise and is not discharged within five (5) days.
 - (l) Franchisee is convicted of a felony or any criminal misconduct which is relevant to the operation of the Store;
 - (m) Franchisee fails to pay fees or other amounts due to Franchisor or Franchisor's affiliate within five (5) days after receiving written notice that the amount is past due;
 - (n) Franchisor reasonably determines that continued operation of the franchise by Franchisee will result in an imminent danger to public health or safety;

- (o) Franchisee commits a fraud on Franchisor by submitting false sales reports that understate Gross Sales by five percent (5%) or more.

10.7. **Obligations After Termination.** Following termination of this Agreement for any reason:

- (a) All renewal rights under Section 10.2 shall be deemed to be void and of no further effect;
- (b) Franchisee shall immediately cease to operate the Store and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a Yogurtland store.
- (c) Franchisee shall immediately stop all use of the Marks, the Manual, and all elements of the Yogurtland System, including all recipes, formulas, methods of operation, methods of preparation and service of yogurt and beverage items, know-how and trade secrets.
- (d) Franchisee shall immediately return to Franchisor all confidential materials, signs, sign-faces, sign-cabinets, marketing materials, forms, invoices and other materials containing any Marks or otherwise identifying or relating to a Yogurtland store that are in Franchisee's possession, custody or control. If Franchisee fails to return any such materials within seven (7) calendar days after demand by Franchisor, then Franchisor shall have the right to enter the premises of the Store to retrieve such materials as are located there.
- (e) Franchisee shall immediately pay all amounts due to Franchisor and its subsidiaries and affiliates. In the event of termination for any default, such sums shall include all damages, costs and expenses, including reasonable attorney's fees incurred by Franchisor as a result of the default, which shall remain until paid in full, a lien in favor of Franchisor against any all of the personal property, fixtures, equipment and inventory of the Store at the time of default;
- (f) Franchisee shall immediately in writing notify all telephone companies and telephone directory publishers that Franchisee's rights under this Agreement have ended and that Franchisee intends to execute, and Franchisee shall execute, all instruments needed to assign and transfer to Franchisor, the right to use the phone numbers and to conduct the directory advertising used and conducted by Franchisee at or concerning the Store. If Franchisee fails to do so within seven (7) calendar days after demand by Franchisor, then Franchisee is deemed to have irrevocably appointed Franchisor as Franchisee's attorney in fact to execute such instruments on Franchisee's behalf;
- (g) If Franchisor does not purchase the Store as provided in Section 10.8, then Franchisee shall immediately remove all signs and designs containing Franchisor's Marks from both the exterior and interior of the Store, change the exterior and interior appearance of the Store sufficiently to deidentify it as a Yogurtland store and in other respects as Franchisor requests;
- (h) Franchisee shall comply with Sections 11.4 and 11.5.

- (i) Franchisee shall cancel any assumed name or equivalent registration which contains the Yogurtland mark or any other service mark or trademark of Franchisor. Franchisee shall provide Franchisor with such evidence as Franchisor requests complying with this obligation within twenty (20) calendar days after termination or expiration of this Agreement.

10.8 Franchisor's Purchase Option Following Termination or Expiration.

- (a) Following termination or expiration of this Agreement other than due to Franchisor's uncured breach, Franchisor or Franchisor's assignee shall have the option, exercisable by delivering written notice to Franchisee within sixty (60) calendar days from the date of the termination or expiration, to acquire from Franchisee, any or all of the Store's equipment, fixtures, inventory, products, materials and supplies as selected by Franchisor (the "Assets")
- (b) Franchisor shall have the unrestricted right to assign the option in Section 10.8(a).
- (c) Franchisor shall be entitled to receive from Franchisee such representations and warranties satisfactory to Franchisor concerning Franchisee's ownership of the Assets, condition of and title to the Assets, and absence of any liens and encumbrances on the Assets.
- (d) The purchase price for the Assets shall be the lowest reasonable fair market or liquidation value of the items Franchisor elects to purchase without any added value for use of the Yogurtland brand. If the parties cannot reach agreement on this value within seven (7) calendar days, then the value shall be determined by an appraiser selected by Franchisor and Franchisee. If the parties cannot agree on an appraiser, Franchisor and Franchisee shall each select an appraiser, each of which shall then select a third appraiser who will determine the value.
- (e) Franchisor shall pay Franchisee the purchase price (or offset the purchase price against amounts owed by Franchisee to Franchisor) at closing of the purchase. The closing shall take place at a time designated by Franchisor within ninety (90) calendar days after Franchisee receives Franchisor's notice of exercise of the purchase option. Franchisor shall have the right to set off from the purchase price all amounts due from Franchisee to Franchisor under this Agreement as well as any other amounts due to Franchisor's affiliates. At closing, Franchisee shall deliver to Franchisor an assignment transferring good and marketable title to the assets selected by Franchisor, free of liens and encumbrances, with all sales and other transfer taxes paid by Franchisee.
- (f) If Franchisor elects, then the parties shall comply with applicable Bulk Sales provisions of the Uniform Commercial Code in the state where the Store is located and Franchisor shall have the right to delay the closing until such compliance is completed.
- (g) At Franchisor's election, as part of the purchase Franchisee shall deliver to Franchisor an assignment of the lease for the premises (or, if assignment is prohibited, subleases for the full remaining term and on the same terms as Franchisee's lease). If Franchisee owns the premises, Franchisee shall lease the premises to Franchisor pursuant to the terms of a

form lease reasonably designated by Franchisor, for a term selected by Franchisor up to 5 years with two successive 5-year renewal options at fair market rental during the initial and renewal terms.

- (h) On closing the purchase of the Assets and satisfaction by Franchisee of all of Franchisee's obligations under this Agreement accruing through the closing, this Agreement will terminate.

10.9. **Interim Management.**

(a) If Franchisor exercises the option to purchase the Store's assets, then pending closing of the purchase, and at any other time when Franchisor is concerned that continued operation by Franchisee may cause harm to the Marks or Yogurtland System or may endanger public health or safety, whether due to illness, death or otherwise, then Franchisor shall have the right, but not the obligation, to elect to appoint a manager to maintain operation of the Store, or, at Franchisor's option, require Franchisee to close the Store without removing any assets.

(b) Franchisor's right in Section 10.9(a) does not establish any obligation to implement that right, whether as a lesser remedy to a breach or threatened breach by Franchisee or for any other reason.

(c) If Franchisor appoints a manager to maintain operation of the Store pending closing of the purchase, or for other period of time or circumstances, then all funds from operation of the Store during the period of management by the appointed manager will be kept in a separate fund, and all expenses of the Store, including compensation, travel and living expenses of the manager, will be charged to that fund. As compensation for the management services, Franchisor shall be entitled to charge the fund and retain ten percent (10%) of Gross Sales during the period of management.

(d) Operation of the Store during the period of management shall be on Franchisee's behalf, with Franchisor having a duty only to use Franchisor's good faith effort to manage the Store and without liability to Franchisee for debts or obligations incurred by the Store or to any of Franchisee's creditors for any goods or services purchased by the Store during the period of management by a manager appointed by Franchisor. During this period of management, Franchisee shall maintain in force for the Store all insurance policies required by this Agreement.

Article 11. Protection of Intangible Property.

11.1. **Acknowledgment.** Franchisor may disclose certain confidential information (as described in Sections 1.4 and 4) to Franchisee in training, the Manual and in guidance furnished to Franchisee. Franchisee acknowledges that the confidential information is proprietary to and includes trade secrets of Franchisor, and that Franchisee acquires no interest in the confidential information, other than the right to use the confidential information in operating the Store.

11.2. **Confidentiality.** Franchisee shall keep strictly confidential Franchisor's marketing and operation plans and programs, suggested pricing, proprietary materials, contents of the Manual, and all other information and materials that Franchisor designates as "Confidential." If requested by Franchisor, Franchisee shall require Franchisee's directors, managers, officers and employees

to execute written agreements for the benefit of Franchisor in which they also agree to protect the confidentiality of the foregoing.

11.3. Concepts Developed by Franchisee. Franchisee shall fully and promptly disclose to Franchisor, all ideas, concepts, formulas, recipes, methods, techniques and other possible improvements relating to the development or operation of a quick service yogurt, snack food and/or drink business conceived or developed by Franchisee or Franchisee's employees during the term of this Agreement. Franchisee may not test, offer, or sell any new products without Franchisor's prior written consent.

11.4. Agreement Not to Compete.

(a) The phrase "Covered Person" shall include Franchisee and, collectively and individually all directors, officers and holders of any direct or indirect beneficial interest of five percent (5%) or more of the securities or other equity interests of Franchisee, or of any corporation, limited liability company, partnership or other form of entity affiliated with or directly or indirectly controlling Franchisee, and the spouses and each relative living in the same household as each such person who is an individual, if Franchisee is a corporation or limited liability company or other form of entity.

(b) The phrase "Competitive Business" means (a) any store or similar business specializing or in any way emphasizing yogurt, drinks, deserts or snacks or similar foods located within 10 miles of the Store or within 10 miles of any Yogurtland store or (b) any entity which is granting franchises or licenses to others to operate stores or store specializing in or emphasizing yogurt, drinks, deserts or snacks or similar foods.

(c) To assist Franchisor in protecting the confidential information against intentional or inadvertent misuse, during the term of this Agreement and for five (5) years after it expires without renewal or terminates, neither Franchisee, nor any Covered Person shall have any interest as an owner, investor, partner, lender, director, officer, manager, employee, consultant, representative or agent or in any other capacity in any Competitive Business. Franchisee shall take all steps necessary to assure compliance with this provision by all Covered Persons. Any violation of this Section 11.4(c) by any Covered Person shall constitute a material breach of this Agreement by Franchisee.

(d) Franchisee acknowledges that the scope of the restriction in Section 11.4(c) is narrow, and does not restrict anyone from engaging in the food service business outside of the narrow scope of Section 11.4(c) or from engaging in an entire trade or profession, and that Franchisee has other considerable skills, experience and education which afford Franchisee the opportunity to derive income from other endeavors and therefore the covenants in this Section 11.4 will not impose any undue hardship on Franchisee.

(e) The restrictions in this Section 11.4 shall not apply to ownership of (a) securities listed on a stock exchange or traded on the over-the-counter market that represent 10 percent (10%) or less of the number of shares of the class of securities issued and outstanding or (b) other Yogurtland stores operated pursuant to franchise agreements with Franchisor.

(f) Each of the covenants in this Section 11.4 and each portion of them, shall be construed as independent of any other covenant or provision. If all or any portion of a covenant is unenforceable due to its scope in terms of geography, duration, or activity covered or otherwise, but could be enforced if reduced in scope, then the parties agree to be bound by any lesser covenant subsumed within the terms of the covenant imposing the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 11.4.

11.5. Hiring. During the term of this Agreement and for a period of two (2) years after its termination or expiration without renewal, Franchisee shall not employ, recruit or hire any person who is at that time, or was within the immediately preceding 6-month period, employed by Franchisor or by any franchisee of Franchisor, without obtaining the prior written consent of the applicable employer or former employer.

11.6. Owner and Employee Covenants. Before permitting any store manager to start employment, Franchisee shall obtain and provide to Franchisor a written agreement from that manager, agreeing to be bound by the provisions of Section 11.

Article 12. TRANSFER

12.1. Assignment by Franchisor. Franchisor shall have the right to assign Franchisor's rights under this Agreement, in whole or in part, on one or more occasions, without Franchisee's consent or prior approval.

12.2. Restrictions on Transfer. Franchisee's rights and obligations in this Agreement are personal to Franchisee. Franchisor has entered into this Agreement with Franchisee in reliance on Franchisor's perception of Franchisee's individual or collective character, skill, aptitude, attitude, business ability and financial capacity; and if Franchisee is not an individual, the same qualities of its owners and managers. Accordingly, Franchisee shall have no right to, and shall not purport to sell, assign or transfer, in whole or in part, any of Franchisee's interest in this Agreement and/or the assets of the franchise without first obtaining Franchisor's written consent. This written consent shall not be unreasonably withheld.

12.3. Conditions to Transfer Consent. Among the conditions that Franchisor shall have the right to impose before granting consent to a proposed transfer by Franchisee are that (a) Franchisee or the proposed transferee pay Franchisor the transfer fee described in Section 7.9; (b) Franchisee sign a general release of all known and unknown claims against Franchisor, including a waiver of rights under Section 1542 of the California Civil Code; (c) Franchisee pay all amounts owed to Franchisor, affiliates of Franchisor and third-party creditors; (d) Franchisee provide Franchisor with a complete copy of all agreements and proposed agreements concerning the proposed transfer together with certified financial statements of the prospective transferee; (e) Franchisee and the proposed transferee make any changes to the terms of the transfer, which may include changes to the substantive terms, requirements for subordination of debt repayment, and other changes, sufficient to satisfy Franchisor with regard to financial viability of the business and the transferee after the transfer; (f) the proposed transferee provide Franchisor with a completed application and complete all Franchisor's requirements applicable to a new franchisee; (g) Franchisor is satisfied with, and the proposed transferee provides information to assist Franchisor to determine if Franchisor is satisfied with, the proposed transferee's character, business experience and aptitude; (h) the transferee expressly assumes in writing, all obligations

of Franchisee under this Agreement and/or, at Franchisor's request, enter into Franchisor's then current form of Franchise Agreement, which may contain fees and other terms that materially differ from the terms of this Agreement, but which shall be modified to provide for a term and possible renewals equal in duration to the remainder of the term and possible renewals under this Agreement; (i) the proposed transferee shall agree to upgrade, remodel and refurbish the Store to Franchisor's current standards; and (j) Franchisee and the transferee obtain in writing, any required consent of the landlord of the premises of the Store.

12.4. Participation as Broker. Franchisor or Franchisor's designee shall have the right to assist as a finder or broker in any proposed sale of the franchise. If so, then Franchisee, as seller, shall pay a brokerage fee to Franchisor approximating an industry standard brokerage fee. The brokerage fee may be negotiated, depending on size, income and value of the Store being sold.

12.5. Franchisor's Right of First Refusal. Franchisor shall have a right of first refusal itself to accept the terms of any sale, transfer or assignment of any interest in this Agreement or in Franchisee, offered by Franchisee or by any one or more owners of Franchisee or offered and proposed to be accepted by any of them, whether voluntarily, by operation of law or otherwise. If Franchisor exercises the right of first refusal, then Franchisor will also have the right but no obligation to substitute cash for any form of payment proposed in the offer; and will have 30 calendar days after notifying Franchisee of its election to exercise the right of first refusal to prepare for closing. If a proposed transaction would involve more than 15% of the stock or other ownership interest of Franchisee then Franchisor will also have the right but no obligation to purchase not only the interest involved but also all the remaining interests, to acquire up to 100% of the interest in Franchisee, at a price proportionate to the price of the interests initially involved. If Franchisor exercises the right of first refusal, then at Franchisor's request, Franchisee shall also take all action necessary to cause the lease for the location and any other agreements designated by Franchisor, to be assigned to Franchisor.

12.6 Exercise of First Refusal. To provide Franchisor the opportunity to exercise the right of first refusal, Franchisee shall deliver to Franchisor a written notice stating all the terms of any proposed sale, transfer or assignment covered by the right of first refusal and shall provide any additional information that Franchisor requests about the proposed transaction. Franchisee shall require its owners to provide Franchisee sufficient information to enable Franchisee to comply with this obligation with regard to a transaction proposed by any of the owners of Franchisee. Within 21 calendar days after Franchisor receives the notice and the additional information requested by Franchisor, Franchisor will notify Franchisee whether Franchisor accepts for itself or its nominee the terms in the notice.

12.7. Non-Exercise of First Refusal. If Franchisor does not exercise the right of first refusal in Section 12.5, then Franchisee (or Franchisee's owner(s)) may proceed with the proposed sale, transfer or assignment on the same terms provided to Franchisor. The proposed sale, transfer or assignment shall remain subject to Franchisor's consent to the proposed transferee as provided for in Section 12.5. If the proposed sale, transfer or assignment is not completed within 120 days after delivery of the offer to Franchisor, or if there is any change in the terms of the sale, then Franchisee shall again provide Franchisor the purchase right provided for in Section 12.5. Franchisee shall provide a copy of the closing escrow statement to Franchisor at close of escrow.

12.8. Death or Disability. If Franchisee or a principal owner of a Franchisee that is an entity, dies or becomes permanently disabled, then the estate or conservator or equivalent for Franchisee or of the deceased or disabled principal owner shall have the right, during one hundred eighty (180) days following such death or disability, to demonstrate to Franchisor their capability to satisfactorily continue to operate the franchise, or to sell the franchise or the deceased or disabled person's interest in the franchise, to a transferee acceptable to Franchisor. This sale shall be subject to Franchisor's right of first refusal under Section 12.5, and to Franchisor's right of consent under Section 12.2. Failure to demonstrate ability to satisfactorily operate the franchise or to dispose of the interest within the specified time shall constitute a breach of this Agreement. For this Agreement, a "permanent disability" means a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent Franchisee or an owner of Franchisee from supervising the operation of the Store for a period of 6 or more months from the start of the disability, impairment or condition.

12.9. Effect of Consent to Transfer. Franchisor's consent to a transfer, sale or assignment does not constitute a waiver of any claims Franchisor may have against Franchisee or the particular transferor, nor a waiver of Franchisor's right to demand full compliance by the transferee with the terms of this Agreement.

Article 13. INDEMNIFICATION

13.1. Indemnity. Franchisee shall defend, indemnify and hold harmless Franchisor and Franchisor's affiliated entities, and their respective members, shareholders, managers, partners, directors, officers, employees, agents, and representatives and other personnel (the "Indemnified Parties") from and against all claims, liabilities, demands, actions, damages and expenses including attorney's fees incurred in connection with or arising from or relating to (a) any breach of this Agreement by Franchisee, (b) any damages or injury to any customer, employee or other person suffered or incurred on or about the Store; (c) product liability claims; (d) defective preparation by Franchisee of Yogurtland products; (e) any acts or omissions by Franchisee or any of Franchisee's shareholders, members, directors, officers, employees, agents or contractors; or (f) other activities of or relating to Franchisee's business. Franchisee's obligations in this Section 13.1 shall include actual, consequential, and incidental damages and costs incurred in defense of any claim against any of the Indemnified Parties. Franchisor shall have the right to defend any such claim against Franchisor at Franchisee's expense. Franchisee's obligations in this Section 13.1 shall continue in full force and effect regardless of termination or expiration of this Agreement.

13.2. Attorneys Fees. In any dispute, collection action or action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover attorneys fees and costs of suit.

Article 14. NOTICES

14.1. Notices. Any notice required or permitted by this Agreement shall be deemed to be delivered three (3) days after deposited in the U.S. mail, postage prepaid, registered or certified mail, or when delivered by overnight courier, addressed to the receiving party at the following address or such other address as that party has given notice to the other:

FRANCHISOR: Yogurtland Franchising, Inc.
Attention: Franchise Development Department
10612 Shoemaker Avenue, Unit C
Santa Fe Springs, California 90670

FRANCHISEE:

Article 15. RELATIONSHIP

15.1. **Independent Contractors.** The parties intend to and shall be independent contractors. Nothing in this Agreement is intended to establish any principal-agency, parent-sub subsidiary, joint venture, fiduciary, partnership, employer-employee or other relationship, except where this Agreement expressly authorizes Franchisor to act as attorney-in-fact for Franchisee in specified circumstances.

15.2. **Disclosure.** In all dealings with third parties including customers, employees, suppliers and others, Franchisee shall disclose, in the manner that Franchisor specifies from time to time, that Franchisee is an independent entity from Franchisor.

15.3. **No Binding Other Party.** A party to this Agreement shall have no authority to create or assume any obligation, express or implied, or to act or purport to act as agent or representative of the other party for any purpose, except for any express authorization in this Agreement for Franchisor to act for and on behalf of Franchisee in specified circumstances. Franchisee's employees shall be deemed to be employees only of Franchisee and shall not for any purpose be deemed employees of Franchisor. The parties acknowledge that Franchisor has no authority to exercise control over hiring, termination, promotion, or demotion of Franchisee's employees or independent contractors, nor over their compensation, working hours or conditions or day-to-day activities, except as needed to protect the goodwill of the Marks and the Yogurtland System.

15.4. **Taxes.** Franchisee shall be solely responsible and shall pay, and Franchisor shall have no liability for, any sales, use, service, occupation, excise, gross receipts, income, property or other tax, whether levied on Franchisee or Franchisee's assets or on Franchisor, arising from or in connection with Franchisee's sales or the business conducted by Franchisee, except for taxes that Franchisor is required by law to collect from Franchisee with regard to purchases from Franchisor and except for Franchisor's own income taxes.

Article 16. OFFSET

16.1. **Offset.** Franchisor shall have the right to retain any monies coming into Franchisor's possession of or relating to Franchisee or on Franchisee's behalf, to offset amounts owed by Franchisee to Franchisor.

Article 17. MODIFICATIONS

17.1. **Modification of Agreement.** This Agreement may be modified only by an instrument in writing signed by both parties.

17.2. **System Modification.** Franchisor shall have the right to modify the Manual and elements or all of the Yogurtland System as Franchisor deems appropriate from time to time. Any of these modifications shall be deemed to occur in the performance of and pursuant to this Agreement, and do not constitute solicitations to modify this Agreement.

17.3. **Further Actions.** Franchisee shall execute such other documents and perform such further acts as Franchisor deems to be needed or desirable to carry out the purposes of this Agreement.

Article 18. LAW

18.1. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. If the laws of the state where the Store is require terms other than those or in addition to those in this Agreement, then this Agreement shall be deemed to be modified to comply with the applicable state laws, but only to the extent needed to prevent invalidity or illegality of this Agreement. To the extent permitted by applicable law, Franchisee waives any provision of law, which renders any provision of this Agreement prohibited or unenforceable in any respect.

Article 19. SEVERABILITY

19.1. **Severability.** If any provision of this Agreement is held to violate any applicable law, regulation or ordinance, that provision shall be deemed to be severed from this Agreement and the remainder of this Agreement shall remain in effect. All rights and remedies provided in this Agreement or by law are cumulative and not mutually exclusive.

Article 20. FAILURE TO ENFORCE

20.1. **Failure to Enforce.** Failure of a party to enforce any provision of this Agreement shall not constitute a waiver of the right subsequently to enforce the provision or to enforce other provisions of this Agreement. If any covenant in this Agreement which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but would be enforceable by reducing any part or all of the covenant, Franchisee and Franchisor agree that the covenant will be enforced to the fullest extent permissible under the laws in the jurisdiction where enforcement is sought.

Article 21. SUCCESSION OF BENEFITS

21.1. **Succession of Benefits.** The rights and obligations of this Agreement shall benefit and bind the parties and their permitted successors and assigns.

Article 22. MISCELLANEOUS

22.1. **Interpretation.** Headings, table of contents, gender and language usages in this Agreement are for convenience only and shall not be used to interpret or construe the terms of this Agreement. As used in this Agreement, the male gender shall include the female and neuter genders, the singular shall include the plural, and the plural, the singular and vice versa.

22.2. **Force Majeure.** Neither party will be liable for failure or temporary delay in performance of this Agreement, other than payment of money due to Franchisor, for the length of time caused by strike, terrorism, war, embargo, fire, flood or other disaster, act of God, compliance with government order, or other force majeure event beyond the reasonable control of that party.

22.3. **Injunctive Relief.** Franchisee acknowledges that any breach or threatened breach of Sections 1.4, 4.3, 11.2, 11.4, 11.5, 11.6, 11.7 and 11.8 would cause irreparable harm to Franchisor, the Marks and the Yogurtland System. Franchisee therefore agrees that if Franchisee breaches, or threatens to breach any of these provisions, Franchisor shall be entitled to permanent and temporary injunctive relief from any arbitration panel or court of competent jurisdiction in addition to other remedies allowed by law.

22.4. **Mediation.** The parties agree to mediate any dispute or claim arising out of this agreement, or any resulting transaction, before resorting to arbitration or court action. The parties shall share equally the cost of the mediator. If a party attempts to commence an action subject to this paragraph, without first attempting mediation, then the action shall be stayed and the party shall not be entitled to recover attorneys fees and costs even if they would otherwise have been available to that party; provided that this Section 22.4 does not restrict a party from seeking provisional relief in court pending the outcome of mediation or arbitration.

22.5. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement or its breach, including without limitation, any claim that this Agreement or any provision is invalid, illegal, void or voidable shall be submitted to arbitration before and in accordance with the commercial arbitration rules of the American Arbitration Association. To the extent permitted by law, the parties shall share equally the cost of the arbitration. The arbitration shall be conducted before an arbitrator who is familiar with franchising and franchise law. The parties and their respective guarantors waive any right to seek or recover punitive or exemplary damages against the other and agree that in the event of a dispute, the recovery shall be limited to actual damages sustained. This arbitration provision shall be governed by and construed under the Federal Arbitration Act (9 U.S.C. Section 1 et seq.). Judgment on an arbitration award may be entered in any court having competent jurisdiction and shall be final, binding and non-appealable. This arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after expiration or termination of this Agreement. If a party fails to appear at a properly noticed arbitration proceeding, an award may be entered against that party by default or otherwise. Arbitration and/or mediation shall take place at Los Angeles, California.

22.6. **Exception to Mediation and Arbitration.** The obligations to arbitrate or mediate shall not bind either party regarding claims relating to trademarks, patents, and copyrights; any lease or sublease of real property between the parties or their affiliated entities; requests by a party for provisional or interim relief to preserve the status quo or prevent irreparable harm pending the outcome of mediation or arbitration; any matter within the jurisdiction of a probate, small claims, or bankruptcy court; filing of a court action to enable the recording of a notice of pending action; or any other matter provided in this agreement to be excluded from arbitration or mediation.

22.7. **Joint and several Liability.** If Franchisee consists of two or more persons or entities, whether or not as partners, joint ventures, or co-owners, the obligations, liabilities,

representations, warranties and all other provisions applicable to Franchisee shall be joint and several among such persons and entities.

Article 23. ACKNOWLEDGMENT BY PROSPECTIVE FRANCHISEE

23.1. **Acknowledgment.** The individual(s) executing this Agreement on behalf of Franchisee acknowledge having received Franchisor's Uniform Franchise Offering Circular (UFOC) together with all exhibits, at least 10 business days before executing this Agreement; and acknowledge that this Agreement has been in his/her/its possession with all material blank spaces filled in for at least 5 business days prior to executing this Agreement.

23.2. **No Reliance.** Franchisee acknowledges that Franchisee entered into this Agreement in reliance on information in this Agreement and the Uniform Franchise Offering Circular and did not rely on any promise, representation, statement or undertaking made by Franchisor or Franchisor's representatives that are in conflict with any statement or representation in this Agreement and the Uniform Franchise Offering Circular.

23.3. **Independent Advisors.** Franchisee acknowledges that Franchisee conducted an independent investigation of the business contemplated by this Agreement and had the opportunity to consult with independent advisors of Franchisee's choice, including an attorney and accountant, and that Franchisee made the decision whether or not to consult with independent advisors.

23.4. **Business Risk.** Franchisee acknowledges that the business contemplated by this Agreement involves risks and that any particular results depend largely on Franchisee's business abilities and efforts as well as external economic forces outside Franchisor's control. Franchisee acknowledges that neither Franchisor nor any other person can assure any particular results.

23.5. **No Financial Projections or Representations.** Franchisee acknowledges, represents and warrants that Franchisee has not received or relied on any data, warranty or assurance, expressed or implied, as to actual or potential sales volume, profit or success of the business.

23.6. **Entire Agreement.** This Agreement is the entire agreement of the parties into which all prior negotiations, commitments, representations and undertakings are merged and no modification or termination of this Agreement shall bind the parties unless executed in writing by all parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written herein.

FRANCHISOR:

YOGURTLAND FRANCHISING, INC.
a California Corporation

By: _____
PHILLIP CHANG, PRESIDENT

Date: _____

FRANCHISEE:

(Name of Entity)

(Signature of Sole Proprietor if a Sole Proprietorship)

Date: _____

(Signature of Partner if a Partnership all Partners must sign)

Date: _____

(Signature of Additional Partner if a Partnership)

Date: _____

(Signature of Additional Partner if a Partnership)

Date: _____

By: _____
Title (This line to be used if a corporate entity is involved)

Date: _____

Secretary (to be used if corporate entity is involved)

SHAREHOLDERS OR MEMBERS OF FRANCHISEE:

(If a corporate entity is involved – all shareholders/members of Franchisee must sign and date and by signing hereunder agrees to be individually bound by all of the terms and conditions this agreement)

Dates: _____

EXHIBIT A

LOCATION

The location of the Store as defined in Section 1.2 shall be:

EXCLUSIVE TERRITORY

The Exclusive Territory as defined in Section 2.1
of this Franchise Agreement shall be:
