

Exhibit B



**ABBOTT'S
FRANCHISE AGREEMENT**

™

Between

ABBOTT'S FROZEN CUSTARD, INC.

and

**ABBOTT'S FROZEN CUSTARD, INC.
FRANCHISE AGREEMENT**

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**ABBOTT'S
FRANCHISE AGREEMENT**

THIS AGREEMENT (the "Agreement") is made this _____ day of _____, 20____, by and between **ABBOTT'S FROZEN CUSTARD, INC.**, a New York corporation, having its principal place of business at 4791 Lake Avenue, Rochester, New York ("Franchisor" or "Abbott's") and _____, jointly and severally where more than one, having its principal place of business at _____, ("Franchisee").

WITNESSETH:

WHEREAS, Franchisor has developed and owns a unique system for opening and operating retail frozen custard (and related products) stands using a unique method for the preparation, marketing, distribution and serving of ice cream products, including frozen custard, frozen yogurt, sherbet, and related products. (the "Abbott's System" or "System");

WHEREAS, the distinguishing characteristics of Franchisor's Abbott's System include, without limitation, the names "Abbott's" and "Abbott's Frozen Custard"; specially designed color schemes, signs, emblems; confidential formulas and recipes used in the preparation of ice cream products; specialized menus; and standards and specifications for equipment, equipment layouts, products, operating procedures, marketing and management programs, all of which may be changed, improved, and further developed by Franchisor from time to time;

WHEREAS, Franchisor identifies the Abbott's System by means of certain trade names, service marks, trademarks, logos, emblems, and other indicia of origin, including, but not limited to, the marks "Abbott's", "Abbott's Original Frozen Custard", "Abbott's Frozen Custard: Always the Best", "Abbott's Homemade", "Abbott's Frozen Custard", "Abbott's Frozen Custard" Ribbon Logo, and "Abbott's Frozen Custard" Circle logo, and such other trade names, service marks, trademarks and trade dress as are now, or may hereafter, be designated by Franchisor for use in connection with the Abbott's System (collectively referred to as the "Proprietary Marks");

WHEREAS, Franchisor continues to develop, use, and control the use of such Proprietary Marks to identify for the public the source of services and products marketed thereunder in the Abbott's System and to represent the System's high standards of quality, appearance, and service;

WHEREAS, Franchisee wishes to be assisted, trained, and licensed by Franchisor as an Abbott's franchisee and licensed to use, in connection therewith, the Abbott's System;

WHEREAS, Franchisee understands the importance of the Abbott's System and Abbott's high and uniform standards of quality, cleanliness, appearance, and service, and the necessity of opening and operating Abbott's Units (as defined below) in conformity with the Abbott's System;

NOW, THEREFORE, the parties hereto agree as follows:

I. APPOINTMENT

1.01. Franchisor grants to Franchisee a franchise to open and operate an Abbott's frozen custard retail stand (the "Unit" or "Franchised Unit") at one location only as follows:

Address:

If the location is not determined at the time of signing this Agreement, Franchisee must submit a location approval application to Franchisor describing the proposed site. Franchisor shall respond within ten (10) days, either accepting or rejecting (with reasons) the proposed location. Franchisee must submit to Franchisor satisfactory evidence that Franchisee is permitted use under the zoning laws for the proposed location (or a copy of an application rezone or for a specific use permit).

1.02. Territory. Subject to the terms and conditions of this Agreement and provided Franchisee is not otherwise in default of this Agreement and/or any other agreement between Franchisor and Franchisee (or any parent, subsidiary or affiliate of Franchisee), Franchisor shall not establish, nor franchise another to establish a Unit under the Abbott's System, for the term of this Agreement, within the area described in Exhibit "A" of this Agreement (the "Territory"), without Franchisee's prior written consent. Notwithstanding the foregoing, Franchisor may, from time to time during the term hereof, reduce or modify the Territory to encompass a geographic area immediately surrounding the Franchised Unit which shall include a population (residential and/or daytime business or commercial) of no less than 10,000 people, which modification shall become effective upon Franchisee's receipt of written notice from Franchisor to Franchisee.

1.03. Except as otherwise set forth herein, (i) the franchise granted to Franchisee under this Agreement is non-exclusive, and grants to Franchisee the rights to establish and operate the Franchised Unit at only the specific location set forth hereinabove, (ii) no exclusive, protected or other territorial rights in the contiguous area or market of such Franchised Unit or otherwise is hereby granted or to be inferred and (iii) Franchisor and/or its affiliates have the right to operate and grant as many other franchises for the operation of Abbott's Units, anywhere in the world, as they shall, in their sole discretion, elect.

1.04. Franchisor retains the rights, among others, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein: (a) to establish and operate, and license others to establish and operate a business similar to or the same as the Franchised Unit under the same or different Proprietary Marks at any location outside of the Territory; (b) to sell or distribute, directly or indirectly, or license others to sell or distribute ice cream products and any other products or services, including, without limitation, sales made at supermarkets, convenience stores, grocery stores, machines, variety stores and the Internet, at any location (notwithstanding its proximity to the Unit) under the same or different Proprietary Marks as Franchisor and Franchisor's affiliates deem appropriate; and (c) to grant franchise rights within or outside of the Territory for other types of businesses that do not compete with the retail sale of frozen custard or ice cream products.

1.05. Franchisee may relocate its Unit to another location within the premises Territory; otherwise, Franchisee will not, without, Franchisor's prior written consent (which shall not unreasonably be withheld), move the Unit or operations or establish another Unit or operation in the Territory during the term of this Agreement. If Franchisee moves the Unit or operations in accordance with this section, Franchisee and Franchisor must agree upon a new Territory, and such Territory may not continue to be as originally defined in Section 1.02 above. Franchisee will not operate any business other than a Unit from the subject location without Franchisor's written consent.

1.06. With Franchisor's prior written approval, which shall not be unreasonably withheld, Franchisee may participate in fairs, festivals and other public community events in the Territory; provided, however, Franchisor reserves the right to grant another Abbott's franchisee the right to participate in such events if Franchisee does not confirm to Franchisor within three (3) days after Franchisor's written notice to Franchisee inquiring about Franchisee's participation in such event.

II. TERM

2.01. Except as otherwise provided in this Agreement, the initial term of this Franchise Agreement (the "Term") shall expire on the tenth (10th) anniversary of the date of commencement of operation of the Franchised Unit. For all purposes under this Agreement, the date of commencement of operation of the Franchised Unit shall be the date verified in writing by Franchisor and delivered to Franchisee in a form substantially similar to the Notice attached hereto as Exhibit "B." Franchisee agrees and shall be obligated to operate the Franchised Unit and perform hereunder for the full Term of this Agreement.

2.02. Franchisee may, at its option, renew this franchise for one (1) additional period of ten (10) years, provided that, at the time of renewal:

- A. Franchisee gives Franchisor written notice of such election to renew not less than six (6) months nor more than twelve (12) months prior to the end of the initial Term;
- B. Franchisee executes Franchisor's then-current standard form of franchise agreement, which may include, without limitation, a higher royalty fee or other amounts due Franchisor other than those contained in this Agreement;
- C. Franchisee executes a general release in a form prescribed by Franchisor of any and all claims against Franchisor and its officers, directors, agents, and employees;
- D. Franchisee is not in default of any provision of this Agreement, or any amendment hereof or successor hereto, or any other agreement between Franchisee and Franchisor and Franchisee has fully and faithfully performed all of Franchisee's obligations throughout the term of this Agreement;
- E. Franchisee has paid or otherwise satisfied all monetary obligations owed by Franchisee to Franchisor and any indebtedness of Franchisee, which is guaranteed by Franchisor, and Franchisee has timely paid or otherwise satisfied these obligations throughout the term of this Agreement;
- F. Franchisee agrees, at its sole cost and expense, to reimage, renovate, refurbish and modernize or replace the Franchised Unit, within the timeframe required by Franchisor, including, equipment, signs, interior and exterior decor items, fixtures, furnishings, trade dress, color scheme, presentation of trademarks and service marks, supplies and other products and materials to bring the Unit in compliance with Franchisor's then-current standards, specifications and design criteria for Abbott's Units, as contained in the then-current franchise agreement, Manual (as defined herein), or otherwise in writing, including, without limitation, such structural changes, remodeling and redecoration and such modifications to existing improvements as may be necessary; and
- G. Franchisee shall pay to Franchisor the then-current renewal fee in effect at the date of renewal.

III. FEES

3.01. In consideration of the franchise granted to Franchisee herein, Franchisee shall pay to Franchisor the following:

A. A franchise fee of Twenty Six Thousand Dollars (\$26,000) ("Franchise Fee") of which \$7,500 is payable as a deposit upon the signing of the Addendum to the Franchise Agreement, Exhibit "C" to this Agreement and the remainder is payable within five (5) days after Franchisee's signing and delivery to Franchisor of a lease or other suitable arrangement for the Unit. Such Franchise Fee shall be fully earned by Franchisor upon execution of this Agreement by Franchisee.

B. A recurring, non-refundable royalty fee of \$2.20 per gallon of frozen custard mix, frozen yogurt, sherbet, and sorbet purchased by Franchisee or utilized by Franchisee or Franchisee's assignees in operation of the Unit ("Per Gallon Royalty"); provided, however, that Franchisor reserves the right to charge a royalty fee equal to the greater of (i) the Per Gallon Royalty, or (ii) 5.5% of Gross Sales (as defined herein) of all goods sold at the Unit (and any other Units opened pursuant to this Agreement) during the term of this Agreement ("Gross Sales Royalty"). The Per Gallon Royalty shall be due and payable every two (2) weeks on the first business day of such week (i.e., Monday, unless a holiday, in which case it shall be due the next business day) on the number of gallons purchased during the preceding applicable two (2) weeks. The Gross Sales Royalty shall be due and payable monthly on the first business day of such month, unless a holiday, in which case it shall be due the next business day, and shall be based on the Gross Sales of the preceding month.

C. After the expiration of the first calendar year of this Agreement, Franchisor may increase the royalty amount but the increase will not exceed the percentage increase in the goods or general category of the Consumer Price Index for All Urban Consumers (CPI U) published by the United States Bureau of Labor Statistics, or comparable index if the specified index ceases to be available. The base index will be that of the beginning of the calendar year in which this Agreement is executed by the parties. Franchisor will give Franchisee written notice of any increased royalty amount, and such increased royalty will be applicable to all sales by Franchisee from the beginning of the next calendar month. The royalty per gallon as modified by escalation will be computed to two decimal places.

D. If Franchisor implements the Gross Sales Royalty, Gross Sales will be deemed to equal to all revenues received less sales taxes collected, and once a month thereafter, based on Franchisee's actual Gross Sales, Franchisor will either issue a credit or an invoice to Franchisee representing the difference between the applicable Per Gallon Royalty and the applicable Gross Sales Royalty. Any amount due to Franchisee (a credit) or any amount due to Franchisor (an invoice) will be credited or paid as applicable on the next date a royalty payment is due.

E. Franchisee shall pay an initial advertising fee of Five Thousand Dollars (\$5,000) before opening of the Franchised Unit and at the time the Franchise Fee is paid.

3.02 Franchisee will pay an advertising fee of \$.195 per gallon of custard mix, yogurt, sherbet, or sorbet; provided, however, that Franchisor reserves the right to charge an advertising fee equal to the greater of a) \$.195 per gallon of custard mix, yogurt, sherbet, or sorbet; or b) 2% of the Gross Sales of the Franchised Unit. The advertising fee is due and payable biweekly during the initial calendar year or any portion of the calendar year during which this Agreement is in effect. In the following years, the 2% fee may be increased by Franchisor to an amount not to exceed 3% per year. Franchisor will apply amounts so received, together with an equal percentage amount from each Abbott's Unit owned by Franchisor, as Franchisor deems appropriate in Franchisor's sole discretion, to the cost of advertising the product and Franchisee's business and other franchisees who are also paying an advertising fee to Franchisor and whose franchise primary marketing areas are within the same standard metropolitan statistical area. Franchisor, in its sole discretion, may elect to waive or reduce the advertising fee if Franchisor determines that Franchisee is outside of this primary marketing area.

3.03 Franchisee agrees that, in case of default or delay on its part in making any payments to Franchisor required under this Agreement, Franchisee will make an additional payment to Franchisor, in addition to the amounts due, equal to 0.5% per week, or portion of the week until paid.

3.04 For the purposes of this Agreement, the term "Gross Sales" shall mean all revenues generated by Franchisee's Unit (and any other Units opened pursuant to this Agreement) conducted upon, from or with respect to the Franchised Unit, whether such sales are evidenced by cash, check, credit, charge, account, barter or exchange. Gross Sales shall include, without limitation, monies or credit received from the sale of food and merchandise, from tangible property of every kind and nature, promotional or otherwise, and for services performed from or at the Franchised Unit. Gross Sales shall not include the sale of food or merchandise for which refunds have been made in good faith to customers, the sale of equipment used in the operation of the Franchised Unit, nor shall it include sales, use or excise tax imposed by a governmental authority directly on sales and collected from customers; provided that the amount for such tax is added to the selling price or absorbed therein, and is actually paid by Franchisee to such governmental authority.

3.05 Franchisor will not change the method of calculating royalties pursuant to Section 3.01.B without giving Franchisee at least six months' prior written notice.

3.06 Franchisee shall pay Franchisor an amount equal to any sales, use or similar tax (but not income taxes) imposed on Franchisor by the authorized taxing authority of any state or political subdivision with respect to any payment made by Franchisee to Franchisor for services or material furnished by Franchisor to Franchisee under this Agreement.

IV. ACCOUNTING AND RECORDS

4.01. Accurate Books and Records. During the Term of this Agreement, Franchisee shall maintain and preserve, for at least three (3) years from the dates of their preparation, full, complete and accurate books, records and accounts in accordance with generally accepted accounting principles and in the form and the manner prescribed by Franchisor from time-to-time in the Manual (as defined herein) or otherwise in writing. These records shall include, without limitation, cash register sales tape, purchases, sales and other tax returns (including copies of applicable federal income tax returns and those of Franchisee's assignees, if any, for verification of royalty amounts payable), duplicate deposit slips and other evidence of Gross Sales and all other business transactions. In addition, Franchisee grants to Franchisor the right to verify such amounts payable by checking or receiving directly, copies of invoices or shipping data from Franchisor's suppliers or approved suppliers of frozen custard, sherbet mix, yogurt, or sorbet.

4.02. Royalty Reports. Franchisee must report its Gross Sales (and all sales taxes collected and paid) to Franchisor every month. Each monthly report shall be delivered to Franchisor by the third business day of the next month on forms prescribed on forms prescribed by Franchisor, accurately reflecting all Gross Sales during the preceding applicable period and such other forms, reports, records, financial statements or information as Franchisor may reasonably require in the Manual (as defined herein), or otherwise in writing.

4.05. Other Reports. Franchisee shall also submit to Franchisor, for review or auditing, such other forms, financial statements, reports, records, information and data as Franchisor may reasonably designate, in the form and at the times and places reasonably required by Franchisor, upon request and as specified from time-to-time in the Manual (as defined herein) or otherwise in writing. If Franchisee has combined or consolidated financial information relating to the Franchised Unit with that of any other business or businesses, including a business licensed by Franchisor, Franchisee shall simultaneously submit to Franchisor, for review or auditing, the forms, reports, records and financial statements which contain the detailed financial information relating to the Franchised Unit, separate and apart from the financial information of such other businesses. Franchisee hereby authorizes all of its suppliers and distributors to release to Franchisor, upon Franchisor's request, any and all of its

books, records, accounts or other information relating to goods, products and supplies sold to Franchisee and/or the Franchised Unit.

4.06. Equipment. Franchisee shall record all sales on cash registers or other point-of-sale equipment approved, in writing, by Franchisor.

4.07. Franchisor's Right of Audit. Franchisor or its designated agents or auditors shall have the right at all reasonable times to audit, review and examine by any means, including electronically through the use of telecommunications devices or otherwise, at its expense, the books, records, accounts, and tax returns of Franchisee related to the Franchised Unit. If Franchisor has elected to have Franchisee pay Gross Sales Royalty and any audit, review or examination reveals that Gross Sales have been understated in any report to Franchisor, Franchisee shall immediately pay to Franchisor the Gross Sales Royalty due with respect to the amount understated upon demand, plus the additional payment provided for in Section 3 calculated from the date such amount was due until paid. If any such understatement exceeds two percent (2%) of Gross Sales as set forth in the report, Franchisee shall, in addition, upon demand, reimburse Franchisor for any and all costs and expenses connected with such audit, review or examination (including, without limitation, reasonable accounting and attorneys' fees). The foregoing remedies shall be in addition to any other rights and remedies Franchisor may have.

V. PROPRIETARY MARKS

5.01. It is understood and agreed that the Franchised Unit granted herein to use Franchisor's Proprietary Marks applies only to use in connection with the operation of the Franchised Unit franchised in this Agreement at the location designated in Section I hereof, and includes only such Proprietary Marks as are now designated or which may hereafter be designated, in the Manual (as defined herein) or otherwise in writing as a part of the System (which might or might not be all of the Proprietary Marks pertaining to the System owned by Franchisor), and does not include any other mark, name, or indicia of origin of Franchisor now existing or which may hereafter be adopted or acquired by Franchisor.

5.02. With respect to Franchisee's use of the Proprietary Marks pursuant to this Agreement, Franchisee acknowledges and agrees that:

A. Franchisee shall not use the Proprietary Marks as part of Franchisee's corporate or other business name;

B. Franchisee shall not hold out or otherwise use the Proprietary Marks to perform any activity or incur any obligation or indebtedness in such manner as might, in any way, make Franchisor liable therefor, without Franchisor's prior written consent;

C. Franchisee shall execute any documents and provide such other assistance deemed necessary by Franchisor or its counsel to obtain protection for the Proprietary Marks or to maintain the continued validity of such Proprietary Marks; and

D. Franchisor reserves the right to substitute different Proprietary Marks for use in identifying the System and the franchised businesses operating thereunder, and Franchisee agrees to immediately substitute Proprietary Marks upon receipt of written notice from Franchisor.

5.03. Franchisee expressly acknowledges Franchisor's exclusive right to use the mark "Abbott's" for store services, ice cream products, including frozen custard, frozen yogurt, sherbet, and other related food products; and the other Proprietary Marks of the System. Franchisee agrees not to represent in any manner that it has any ownership in the Proprietary Marks or the right to use the Proprietary Marks except as provided in this Agreement. Franchisee further agrees that its use of the Proprietary Marks shall not create in its favor any right, title, or interest in or to the Proprietary Marks, and that all of such use shall inure to the benefit of Franchisor.

5.04. Franchisee acknowledges that the use of the Proprietary Marks outside the scope of this license, without Franchisor's prior written consent, is an infringement of Franchisor's exclusive right to use the Proprietary Marks, and during the term of this Agreement and after the expiration or termination hereof, Franchisee covenants not to, directly or indirectly, commit an act of infringement or contest or aid in contesting the validity or ownership of Franchisor's Proprietary Marks, or take any other action in derogation thereof.

5.05. Franchisee shall promptly notify Franchisor of any suspected infringement of, or challenge to, the validity of the ownership of, or Franchisor's right to use, the Proprietary Marks licensed hereunder. Franchisee acknowledges that Franchisor has the right to control any administrative proceeding or litigation involving the Proprietary Marks. In the event Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Franchisee agrees to execute any and all documents and to do such acts and things as may, in the opinion of counsel for Franchisor, be necessary to carry out such defense or prosecution.

5.06. Franchisee understands and agrees that its license with respect to the Proprietary Marks is non-exclusive to the extent that Franchisor has and retains the right under this Agreement as described in Section 1.04 herein:

- A. To grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees;
- B. To develop and establish other franchise systems for the same, similar, or different products or services utilizing proprietary marks not now or hereafter designated as part of the System licensed by this Agreement, and to grant licenses thereto, without providing Franchisee any right therein; and
- C. To develop and establish other systems for the sale, at wholesale or retail, of similar or different products utilizing the same or similar Proprietary Marks, without providing Franchisee any right therein.

5.07. Franchisee acknowledges and expressly agrees that any and all goodwill associated with the System and identified by the Proprietary Marks used in connection therewith shall inure directly and exclusively to the benefit of Franchisor and its affiliates and is the property of Franchisor and its affiliates, and that upon the expiration or termination of this Agreement or any other agreement, no monetary amount shall be assigned as attributable to any goodwill associated with any of Franchisee's activities in the operation of the Franchised Unit granted herein, or Franchisee's use of the Proprietary Marks.

5.08. Franchisee understands and acknowledges that each and every detail of the Abbott's System is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high and uniform standards of quality and services, and hence to protect the reputation and goodwill of Abbott's Units. Accordingly, Franchisee covenants:

- A. To operate and advertise the Franchised Unit, at Franchisee's own expense, under the name "Abbott's," without prefix or suffix;
- B. To adopt and use the Proprietary Marks licensed hereunder solely in the manner prescribed by Franchisor;
- C. To observe such reasonable requirements with respect to trademark registration notices as Franchisor may from time to time direct in the Manual (as defined herein) or otherwise in writing; and
- D. To only use Abbott's name, logo, or any advertising or promotional materials for the Franchised Unit which are approved in writing in advance in each instance by Franchisor.

5.09. In order to preserve the validity and integrity of the Proprietary Marks licensed herein and to assure that Franchisee is properly employing the same in the operation of the Franchised Unit, Franchisor or its agents shall at all reasonable times have the right to inspect Franchisee's operations, premises, and Franchised Unit and make periodic evaluations of the services provided and the products sold and used therein. Franchisee shall cooperate with Franchisor's representatives in such inspections and render such assistance to the representatives as may reasonably be requested. If Franchisee materially fails to observe those instructions, the terms of this Agreement, or if Franchisee fails to pursue the franchise operations with Franchisee's best efforts, Franchisor will give notice in writing to Franchisee of the observed defects or deficiencies, and Franchisee will have five (5) business days to correct such defects. Failure to correct any such breach will be an act of default under this Agreement by Franchisee entitling Franchisor (i) to seek injunctive relief pursuant to Section 24.04 herein or (ii) to terminate the Franchised Unit immediately as set forth in Section XV.

VI. OBLIGATIONS OF CORPORATE OR PARTNERSHIP FRANCHISEE

6.01. If Franchisee, or any successor to or assignee of Franchisee, is a corporation, or limited liability company:

A. Franchisee shall furnish to Franchisor, upon execution or any subsequent transfer of this Agreement, a copy of Franchisee's Articles of Incorporation, Certificate of Incorporation, Bylaws and a list of shareholders showing the percentage interest of each, and shall thereafter promptly furnish Franchisor with a copy of any and all amendments or modifications thereto;

B. Franchisee shall promptly furnish Franchisor, on a regular basis, with certified copies of such corporate records material to the Franchised Unit as Franchisor may require from time to time in the Manual (as defined herein) or otherwise in writing; and

C. Franchisee shall maintain stop-transfer instructions against the transfer, on its records, of any securities with voting rights, subject to the restrictions of this Agreement, and each stock certificate of the corporate Franchisee representing each share of stock, shall have conspicuously endorsed upon it the following legend:

"The transfer of this stock is subject to the terms and conditions of an Abbott's Franchise Agreement with Abbott's Frozen Custard, Inc. dated _____. Reference is made to the provisions of said Franchise Agreement and to the Articles and By-Laws of this corporation."

D. Franchisee shall, prior to the execution of this Agreement, complete and furnish to Franchisor the shareholders of Franchisee list, Exhibit "D" to this Agreement.

6.02. If Franchisee, or any successor to or assignee of Franchisee, is a partnership, limited partnership or limited liability partnership, Franchisee shall furnish to Franchisor, upon execution or any subsequent transfer of this Agreement, a copy of Franchisee's Articles of Partnership, if any, and Partnership Agreement, and shall thereafter promptly furnish Franchisor with a copy of any and all amendments or modifications thereto.

6.03. Franchisee shall, prior to the execution of this Agreement, furnish to Franchisor a completed Statement of Legal Composition in the form attached hereto as Exhibit "E" or such other form as Franchisor may designate, which completed statement shall identify all parties with an ownership interest in Franchisee, the amount of such ownership interest, the jurisdiction in which Franchisee is legally incorporated or organized, and other information specified. Franchisee shall thereafter furnish to Franchisor an updated Statement of Legal Composition promptly when requested by Franchisor. Franchisee shall promptly advise Franchisor of any change in Franchisee's legal composition. By furnishing to Franchisor a completed Statement of Legal Composition, Franchisee represents, warrants, and covenants to Franchisor that all of the information furnished in the completed

statement is true and correct as of the date it is furnished to Franchisor.

VII. CONFIDENTIAL OPERATING STANDARDS MANUAL

7.01. In order to protect the reputation and goodwill of Franchisor and the Abbott's System and to maintain uniform standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct the Franchised Unit in accordance with Franchisor's Confidential Operating Standards Manual (the "Manual").

7.02. Franchisee shall at all times treat the Manual, and the information contained therein, as confidential, and shall use all reasonable efforts to keep such information secret and confidential. Franchisee shall not, at any time, without Franchisor's prior written consent, copy, duplicate, record, or otherwise make the Manual available to any unauthorized person or entity.

7.03. The Manual shall at all times remain the sole property of Franchisor.

7.04. In order for Franchisee to benefit from new knowledge information, methods and technology adopted and used by Franchisor in the operation of the System, Franchisor may from time-to-time revise the Manual and Franchisee agrees to adhere to and abide by all such revisions.

7.05. Franchisee agrees at all times to keep its copy of the Manual current and up-to-date, and in the event of any dispute as to the contents of Franchisee's Manual, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's home office, shall be controlling.

7.06. The Manual is intended to further the purposes of this Agreement, and is specifically incorporated, by reference, into this Agreement. Except as otherwise set forth in this Agreement, in the event of a conflict between the terms of this Agreement and the terms of the Manual, the terms of this Agreement shall control.

VIII. TRAINING AND ADVERTISING

8.01. As an aid to Franchisee in setting up Franchisee's operations, Franchisor will provide training for Franchisee, a partner of Franchisee if Franchisee is a partnership, or a principal shareholder of Franchisee if Franchisee is a corporation, and up to two (2) of Franchisee's personnel in the proper operation of equipment, serving of products, and other tasks pertinent to the good operation of the Franchised Unit. Such training will continue until Franchisor, in its sole discretion, deems the personnel qualified and has completed the training to Franchisor's satisfaction. Franchisor reserves the right to impose reasonable charges and to be reimbursed for materials used in connection with the training. Further, Franchisee will be responsible for all of Franchisee's and Franchisee's employees' costs for wages, employee benefits, travel, lodging and meals during the training program.

8.02. Franchisor may make available to Franchisee or Franchisee's employees, from time to time, such additional training programs as Franchisor, in its sole discretion, may choose to conduct. Attendance at said training programs may be mandatory. Franchisor reserves the right to charge Franchisee a fee to cover the cost of conducting such mandatory training programs. All other expenses during the training period, including meals, lodging, wages and travel, shall be borne by Franchisee. Optional training programs (instruction and required materials) may be offered to Franchisee for a fee.

8.03. Franchisor shall create a fund from Franchisee's payment of the advertising fees described in Section 3.02 herein (the "Fund"). The funds collected for the Fund will be used to promote the products and services sold by Franchisee and Franchisor. Any remaining funds in the Fund at the end of a fiscal year remain in the Fund and accrue from year to year.

8.04. Franchisor shall (a) review and approve, if acceptable, all of Franchisee's marketing and

promotional materials and programs, including on site, direct mail, newspaper, radio, and television advertising; Franchisor will provide Franchisee with notice of approval or disapproval within 10 days after Franchisor's receipt of Franchisee's proposed advertising; (b) require Franchisee's participation in Franchisor's promotional and special event programs, the cost of which will be paid for from the Fund; (c) reserve the right to receive payment for providing goods or services to the Fund; and (d) administer the Fund for the purpose of marketing and promoting Abbott's Frozen Custard, Inc. An unaudited annual statement of Fund administration for the most recent fiscal year will be provided to Franchisee upon written request.

IX. DUTIES OF THE FRANCHISOR

9.01. Franchisor will make available to Franchisee such continuing advisory assistance in the operation of the Franchised Unit, in person or by electronic or written bulletins made available from time to time, as Franchisor may deem appropriate.

9.02. Franchisor, in its sole discretion, may provide opening assistance to Franchisee at the Franchised Unit.

9.03. Franchisor will loan one (1) copy of the Manual, if and when available, to Franchisee for the duration of this Agreement or make the Manual available to Franchisee electronically via diskette, CD ROM, electronic mail, the internet or other electronic format. The Manual will contain the standards, specifications, procedures and techniques of the Abbott's System.

9.04. Franchisor will continue its efforts to maintain high and uniform standards of quality, cleanliness, appearance and service at all Abbott's Units, to protect and enhance the reputation of the Abbott's System and the demand for the products and services of the System. Franchisor will establish uniform criteria for approving suppliers; make every reasonable effort to disseminate its standards and specifications to prospective suppliers of Franchisee upon the written request of Franchisee, provided that Franchisor may elect not to make available to prospective suppliers the standards and specifications for such formulas or equipment designs deemed by Franchisor in its sole discretion to be confidential; and may conduct periodic inspections of the premises and evaluations of the products used and sold at the Franchised Unit and in all other Abbott's Units.

9.05. Franchisor will provide training to Franchisee as set forth in Section VIII hereof.

9.06. Franchisor will approve the architecture, layout, and initial appearance of the Franchised Unit.

9.07. Franchisor will provide Franchisee with a list of approved items of required equipment and inventory.

9.08. As Franchisor deems appropriate, Franchisor shall conduct inspection visits of the construction of the Franchised Unit and its operations; provided that Franchisee shall pay for round-trip fares between the construction site and Franchisor's offices, car rental, and per diem (food and lodging) charges per visit for up to two (2) of Franchisor's representatives to conduct such inspection.

X. DUTIES OF THE FRANCHISEE

Franchisee understands and acknowledges that every detail of the System is important to Franchisor, Franchisee and other franchisees in order to develop and maintain high and uniform operating standards, to increase the demand for Abbott's products and services, and to protect the reputation and goodwill of Franchisor. Accordingly, Franchisee agrees that:

10.01. Franchisee shall maintain, at all times during the term of this Agreement, at Franchisee's expense, the premises of the Franchised Unit and all fixtures, furnishings, signs, systems and equipment ("improvements") thereon or therein, in conformity with Franchisor's high standards and public image and to make such additions,

alterations, repairs, and replacements thereto (but no others, without Franchisor's prior written consent) as may be required by Franchisor, including but not limited to the following:

A. To keep the Franchised Unit in the highest degree of sanitation and repair, including, without limitation, such periodic repainting, repairs or replacement of impaired equipment, and replacement of obsolete signs, as Franchisor may reasonably direct;

B. To meet and maintain the highest governmental standards and ratings applicable to the operation of the Franchised Unit;

C. At its sole cost and expense, to complete a full reimaging, renovation, refurbishment and modernization of the Franchised Unit, within the time frame required by Franchisor, but no more often than once every five (5) years, including the equipment, signs, interior and exterior decor items, fixtures, furnishings, trade dress, color scheme, presentation of trademarks and service marks, supplies and other products and materials, to meet Franchisor's then-current standards, specifications and design criteria for Abbott's Units, including without limitation, such structural changes, remodeling and redecoration and such modifications to existing improvements as may be necessary to do so (a "Franchised Unit Renovation"). Franchisee shall not be required to perform a Franchised Unit Renovation if there are less than four (4) years remaining on the term of this Agreement. Nothing herein shall be deemed to limit Franchisee's other obligations, during the term of this Agreement, to operate the Franchised Unit in accordance with Franchisor's standards and specifications for the Abbott's System, including, but not limited to, the obligations set forth in this Section X.

10.02. Franchisee shall operate the Franchised Unit in conformity with such uniform methods, standards, and specifications as Franchisor may from time to time prescribe in the Manual or otherwise in writing, to insure that the highest degree of quality, service and cleanliness is uniformly maintained and to refrain from any deviation therefrom and from otherwise operating in any manner which reflects adversely on Franchisor's name and goodwill or on the Proprietary Marks, and in connection therewith:

A. To maintain in sufficient supply, and use at all times, only such ingredients, products, materials, supplies, and paper goods as conform to Franchisor's standards and specifications, and to refrain from deviating therefrom by using non-conforming items, without Franchisor's prior written consent;

B. To sell or offer for sale only such products and menu items that have been expressly approved for sale in writing by Franchisor, including, but not limited to, frozen custard, frozen yogurt, and sherbet cones, desserts, and soft drinks, refrain from selling any products and menu items that are not approved by Franchisor or for which Franchisor has withdrawn approval and meet Franchisor's uniform standards of quality and quantity and as have been prepared in accordance with Franchisor's methods and techniques for product preparation; to sell or offer for sale the minimum menu items specified in the Manual or otherwise in writing; to refrain from any deviation from Franchisor's standards and specifications for serving or selling the menu items, without Franchisor's prior written consent; and to discontinue selling or offering for sale such items as Franchisor may, in its discretion, disapprove in writing at any time;

C. To use the premises of the Franchised Unit solely for the purpose of conducting the business franchised hereunder, and to conduct no other business or activity thereon, whether for profit or otherwise, without Franchisor's prior written consent;

D. To keep the Franchised Unit open and in normal operation during such business hours as Franchisor may prescribe in the Manual or otherwise in writing;

E. To permit Franchisor or its agents, at any time during ordinary business hours, to remove

from the Franchised Unit samples of any ingredients, products, materials, supplies, and paper goods used in the operation of the Franchised Unit, without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent laboratory, to determine whether such samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require Franchisee to bear the cost of such testing if any such ingredient, products, materials, supplier or paper goods have been obtained from a supplier not approved by Franchisor, or if the sample fails to conform to Franchisor's specifications;

F. To purchase, install and construct, at Franchisee's expense, all improvements furnishings, signs and equipment specified in the approved standard plans and specifications, and such other furnishings, signs or equipment as Franchisor may reasonably direct from time to time in the Manual or otherwise in writing; and to refrain from installing or permitting to be installed on or about the premises of the Franchised Unit, without Franchisor's written consent, any improvements, furnishings, signs or equipment not first approved in writing as meeting Franchisor's standards and specifications;

G. To comply with all applicable federal, state and local laws, regulations and ordinances pertaining to the operation of the Franchised Unit;

H. Franchisee shall grant Franchisor and its agents the right to enter upon the premises of the Franchised Unit at any time during ordinary business hours for the purpose of conducting inspections; cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents, and without limiting Franchisor's other rights under this Agreement, take such steps as may be necessary immediately to correct the deficiencies detected during any such inspection, including, without limitation, immediately desisting from the further use of any equipment, promotional materials, products, or supplies that do not conform with Franchisor's then-current specifications, standards, or requirements; and

I. Franchisee will maintain a fully trained staff, having completed training with Abbott's in order to ensure all employees meet the minimum position training standards to prepare and serve Abbott's products to the required specifications as defined in the Manual.

10.03. Franchisee shall purchase all custard-mixing equipment, requirements for the frozen custard mix and other ingredients (including yogurt, sherbet, cones, flavorings, syrups, sundaes, etc.), and any other items sold as part of the end products that are offered for consumption to the retail consumer, as described in Schedule A to this Agreement (the "Products"), only from Franchisor.

10.04. Franchisee shall purchase all ingredients, products, materials, supplies, paper goods, and other items required for the operation of the Franchised Unit, except the Products, solely from us or suppliers who demonstrate, to the continuing reasonable satisfaction of Franchisor, the ability to meet Franchisor's reasonable standards and specifications for such items; who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably; and who have been approved in writing by Franchisor and such approval has not thereafter been revoked. If Franchisee desires to purchase any such items from an unapproved supplier, Franchisee shall submit to Franchisor a written request for approval, or shall request the supplier itself to seek approval. Franchisor shall have the right to require, as a condition of its approval, that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, at Franchisor's option, either to Franchisor or to an independent laboratory designated by Franchisor for testing prior to granting approval. A charge not to exceed Franchisor's reasonable cost of inspection and the actual cost of testing shall be paid by the supplier or Franchisee. Franchisor reserves the right, at its option, to reinspect the facilities and products of any such approved supplier from time to time and to revoke its approval upon failure of such supplier to continue to meet any of the foregoing criteria.

10.05. All local advertising by Franchisee shall be in such media, and of such type and format as Franchisor may approve; shall be conducted in a dignified manner; and shall conform to such standards and

requirements as Franchisor may specify. Franchisee shall not use any advertising or promotional plans or materials unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in Section 10.06. hereof.

10.06. All advertising and promotional plans proposed to be used by Franchisee except such plans and materials that have been previously approved by Franchisor shall be submitted to Franchisor for Franchisor's written approval (except with respect to prices to be charged) prior to any use thereof. Franchisor shall use its best efforts to complete its review of Franchisee's proposed advertising and promotional plans within fifteen (15) days after Franchisor receives such plans. If written approval is not received by Franchisee from Franchisor within fifteen (15) days after receipt by Franchisor of such plans, Franchisor shall be deemed to have disapproved such plans.

10.07. Franchisee shall, at Franchisor's request, require all of its supervisory employees, as a condition of their employment, to execute an agreement prohibiting them, during the term of their employment or thereafter, from communicating, divulging, or using for the benefit of any person, persons, partnership, association, corporation or other entity any confidential information, trade secrets, knowledge, or know-how concerning the Abbott's System or methods of operation of the Franchised Unit which may be acquired as a result of their employment with Franchisee or other franchisees. A duplicate original of each such agreement shall be provided by Franchisee to Franchisor immediately upon execution.

10.08. If at any time the Franchised Unit is proposed to be operated by an entity or individual other than Franchisee, Franchisor reserves the right to review and approve the operating entity or individual and to require and approve an operating agreement prior to such party's assumption of operations. Franchisor may, in its sole discretion, reject either the operating entity, the individual operator or the operating agreement. If approved by Franchisor, the operating entity and/or individual shall agree in writing to comply with all of Franchisee's obligations under the Franchise Agreement as though such party were the franchisee designated therein, on such form as may be designated by Franchisor. The operation of the Franchised Unit by any party other than Franchisee, without Franchisor's prior written consent, shall be deemed a material default of this Agreement for which Franchisor may terminate this Agreement pursuant to the provisions of Section 15.02. hereof.

10.09. Franchisee will maintain the Unit in strict accordance with all applicable laws and regulations (e.g., health and sanitation requirements) and with Franchisor's instructions and quality standards as established by Franchisor in the Manual or otherwise in writing, including portion sizes, cones, paper and plastic goods and other supplies, advertising, Unit colors, cleanliness, appearance of personnel and general franchise operation appearance, and insurance coverage. In addition, Franchisee shall pursue the operation of the Unit with Franchisee's best efforts.

10.10. Franchisee shall, within thirty (30) days from receipt of written notice from Franchisor, purchase and install computer hardware and software equipment at the Franchised Unit and/or at Franchisee's principal business office, which computer hardware shall include telecommunications devices, and which software may be a single program or set of programs, all of which must be obtained in accordance with Franchisor's standards and specifications (the "Required Computer Equipment"). The Required Computer Equipment shall permit twenty-four (24) hour per day electronic communications between Franchisor and Franchisee including access to the internet and Franchisor's intranet.

10.11. Franchisee Web Sites. Franchisee shall not promote, offer or sell any products or other services related to the Franchised Unit through the internet or use the Proprietary Marks in any internet domain name, electronic mail address or home page address, or in the operation of any internet web site without Franchisor's prior written consent. In connection with any such consent, which Franchisor may grant or withhold, in Franchisor's sole discretion, Franchisor may establish such requirements as Franchisor deems appropriate, including, among others: (i) Franchisor may require Franchisee to submit to Franchisor for Franchisor's prior written approval, a sample of any proposed internet web site for the Franchised Unit ("Web Site"), domain name, home page address, format and visible (including proposed screen shots and any text, video clips, photographs,

images, sound bites or other materials in which any third party has any ownership interest) and non-visible content (including meta-tags) in the form and manner that Franchisor may reasonably require; (ii) Franchisor may require Franchisee to establish hyperlinks to Franchisor's web site and others as Franchisor may require, and to obtain Franchisor's prior written approval of Franchisee's use of any other hyperlinks and/or other links; (iii) Franchisor may require Franchisee to submit to Franchisor for Franchisor's prior written approval any modifications to Franchisee's Web Site. Franchisor may revoke Franchisor's approval of Franchisee's Web Site at any time and require Franchisee to discontinue Franchisee's use of it. In addition to any other applicable requirements, Franchisee must comply with any standards and specifications Franchisor develops that are applicable to Web Sites as set forth in the Manual or otherwise in writing, which standards and specifications Franchisor may modify from time to time. Franchisor may designate the form and content of Franchisee's Web Site and may require that any such Web Site be hosted by Franchisor or a third party whom Franchisor designates. Franchisor also may charge Franchisee a fee for developing, reviewing and approving Franchisee's Web Site and/or hosting it. In addition to the foregoing, Franchisee shall not use or permit any third party to use any of the Proprietary Marks in connection with any internet web site and/or as part of any internet domain name or electronic mail or home page address, unless such use is expressly approved by Franchisor in writing.

10.12. Franchisee must use Franchisor's designated architect to design the Unit. In addition, Franchisor must approve, in writing, the layout and architecture and exterior and interior appearance and decor of the Unit and any changes before Franchisee commences operations and afterwards. Franchisor may require Franchisee to adopt certain changes in the appearance of the Unit from time to time, including (without limitation) updating the décor, appearance, or equipment for the operation of the Unit. Franchisee must comply with all such requests within four (4) weeks after receipt of notification from Franchisor.

10.13 Franchisee will operate the Unit for at least ten (10) consecutive months per calendar year.

10.14 Franchisee shall comply with all other requirements set forth in this Agreement.

10.15 Franchisee shall have its guarantors execute the Guarantee and Indemnity Agreement attached as Exhibit "F" to this Agreement.

10.16 Franchisee shall allow Franchisor access to information and data on sales recorded on cash registers or other point-of-sale equipment.

XI. INSURANCE

11.01. Insurance Program. Franchisee shall be responsible for all loss or damage arising from or related to Franchisee's development and operation of the Franchised Unit, and for all demands or claims with respect to any loss, liability, personal injury, death, property damage or expense whatsoever occurring upon the premises of, or in connection with the development or operation of, the Franchised Unit. Franchisee shall procure, prior to commencement of construction of the Franchised Unit, and shall maintain in full force and effect during the Term of this Agreement at Franchisee's expense, an insurance policy or policies protecting Franchisee and Franchisor, and their officers, directors, agents and employees, against any loss, liability, or expense whatsoever from personal injury, death or property damage or casualty, including, fire, lightning, theft, vandalism, malicious mischief, and other perils normally included in an extended coverage endorsement arising from, occurring upon or in connection with the construction, operation or occupancy of the Franchised Unit, as Franchisor may reasonably require for its own and Franchisee's protection.

11.02. Insurance Requirements. Such policy or policies shall be written by an insurance company satisfactory to Franchisor and Franchisee shall maintain in full force and effect throughout the term of this Agreement that insurance which Franchisee determines is necessary or appropriate for liabilities caused by or occurring in connection with the development or operation of the Franchised Unit, which insurance shall include, at a minimum the following coverage:

A. Workers' Compensation Insurance, with statutory limits as required by the laws and regulations applicable to the employees of Franchisee who are engaged in the performance of their duties relating to the Franchised Unit, including any pre-opening training programs, as well as such other insurance as may be required by statute or regulation of the state in which the Franchised Unit is located.

B. Employer's Liability Insurance, for employee bodily injuries and deaths, with a limit of \$500,000 each accident.

C. Comprehensive or Commercial General Liability Insurance, covering claims for bodily injury, death and property damage, including Premises and Operations, Independent Contractors, Products and Completed Operations, Personal Injury, Contractual, and Broadform Property Damage liability coverages, with limits as follows:

Occurrence/Aggregate Limit of \$1,000,000 for bodily injury, death and property damage each occurrence and \$2,000,000 for general aggregate,

or

Split liability limits of:

\$1,000,000	for bodily injury per person;
\$1,000,000	for bodily injury per occurrence; and
\$ 500,000	for property damage.

D. All Risk Property Insurance, on a replacement cost basis, with limits as appropriate, covering the real property of Franchisee and any real property which Franchisee may be obligated to insure by contract. Such real property may include building, machinery, equipment, furniture, fixtures and inventory.

11.03. All such policies of insurance shall provide that the same shall not be canceled, modified or changed without first giving thirty (30) days' prior written notice thereof to Franchisor. No such cancellation, modification or change shall affect Franchisee's obligation to maintain the insurance coverages required by this Agreement. Except for Workers' Compensation Insurance, Franchisor shall be named as an Additional Insured on all such required policies. All liability insurance policies shall be written on an "occurrence" policy form. Franchisee shall be responsible for payment of any and all deductibles from insured claims under its policies of insurance. Franchisee shall not satisfy the requirements of this Section XI unless and until certificates of such insurance, including renewals thereof, have been delivered to and approved by Franchisor. Franchisee shall not self-insure any of the insurance coverages required by this Agreement, or non-subscribe to any State's applicable workmen's compensation laws without the prior written consent of Franchisor. Franchisor shall have the right, at any time during the term of this Agreement to increase the minimum limits of insurance coverage or otherwise modify the insurance requirements of this Agreement upon written notice in the Manual or as otherwise prescribed by Franchisor in writing. If Franchisee shall fail to comply with any of the insurance requirements herein, upon written notice to Franchisee by Franchisor, Franchisor may, without any obligation to do so, procure such insurance and Franchisee shall pay Franchisor, upon demand, the cost thereof plus a reasonable administrative fee designated by Franchisor.

11.04. Insurance Obtained by Franchisee Shall Be Primary to Franchisor's Own Insurance. Franchisee agrees that all insurance policies obtained by Franchisee pursuant to Sections 11.01. and 11.02. shall be primary coverage, the applicable limits of which shall be exhausted before any benefits (defense or indemnity) may be obtained under any other insurance (including self-insurance) providing coverage to Franchisor. In the event payments are required to be made under Franchisor's own insurance policies or self-insurance (whether for defense or indemnity) before the applicable coverage limits for the insurance policies obtained by Franchisee are

exhausted, then Franchisee hereby agrees to reimburse, hold harmless and indemnify Franchisor and its insurers for such payments. Franchisee shall notify its insurers of this Agreement and shall use best efforts to obtain an endorsement on each policy it obtains pursuant to Sections 11.01. and 11.02. stating as follows:

The applicable limits of this policy shall be applied and exhausted before any benefits may be obtained (whether for defense or indemnity) under any other insurance (including self-insurance) that may provide coverage to Franchisor. All insurance coverage obtained by Franchisor shall be considered excess insurance with respect to this policy, the benefits of which excess insurance shall not be available until the applicable limits of this policy are exhausted.

11.05. No Limitation on Coverage. Franchisee's obligation to obtain and maintain the foregoing policy or policies of insurance in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section XVIII of this Agreement.

11.06. Issuance of Insurance. Franchisee must obtain the insurance required by this Agreement no later than fifteen (15) days before the date on which any construction is commenced. The Franchised Unit shall not be opened for business prior to Franchisor's receipt of satisfactory evidence that all insurance required by this Agreement is in effect. Upon obtaining such insurance, and on each policy renewal date thereafter, Franchisee shall promptly submit evidence of satisfactory insurance and proof of payment therefor to Franchisor, together with, upon request, copies of all policies and policy amendments. The evidence of insurance shall include a statement by the insurer that the policy or policies will not be canceled or materially altered without at least thirty (30) days' prior written notice to Franchisor.

11.07. No Representations. Franchisee acknowledges that no requirement for insurance contained in this Agreement constitutes advice or a representation by Franchisor that only such policies, in such amounts, are necessary to protect Franchisee from losses in connection with its business under this Agreement. Maintenance of the insurance required by this Agreement, and the performance by Franchisee of its obligations under this Section of the Agreement shall not relieve Franchisee of liability under the indemnification provisions or any other provisions of this Agreement.

XII. CONFIDENTIAL INFORMATION

12.01. Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, association, corporation or other entity, any confidential information, knowledge or know-how concerning the construction and methods of operation of the Franchised Unit which may be communicated to Franchisee, or of which Franchisee may be apprised, by virtue of Franchisee's operation under the terms of this Agreement. Franchisee shall divulge such confidential information only to such employees of Franchisee as must have access to it in order to exercise the franchise rights granted hereunder and to establish and operate the Franchised Unit pursuant hereto and as Franchisee may be required by law, provided Franchisee shall give Franchisor prior written notice of any such required disclosure immediately upon receipt of notice by Franchisee in order for Franchisor to have the opportunity to seek a protective order or take such other actions as it deems appropriate under the circumstances.

12.02. Any and all information, knowledge, and know-how, including, without limitation, drawings, materials, equipment, recipes, prepared mixtures or other food products, and other data, which Franchisor designates as confidential, and any information, knowledge, or know-how which may be derived by analysis thereof, shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to Franchisee's attention prior to disclosure thereof by Franchisor; or which, at the time of disclosure thereof by Franchisor to Franchisee, had become a part of the public domain, through publication or communication by others; or which, after disclosure to Franchisee by Franchisor, becomes a part of the public domain, through publication or communication by others.

XIII. COVENANTS

13.01. Franchisee covenants that, during the term of the Agreement, except as otherwise approved in writing by Franchisor, Franchisee or, alternatively, one (1) designated management employee if that employee assumes primary responsibility for the operation of the Franchised Unit, shall devote full time, energy and best efforts to the management and operation of the Franchised Unit.

13.02. Franchisee acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including without limitation, information regarding the operational, sales, promotional, and marketing methods, procedures and techniques of Franchisor and the System. Franchisee covenants that, during the term of this Agreement, Franchisee (who, unless otherwise specified, shall include, for purposes of this Section XIII, collectively and individually, all officers, directors and holders of a beneficial interest of five percent (5%) or more of the securities with voting rights of Franchisee and of any corporation, directly or indirectly controlling Franchisee, if Franchisee is a corporation, and the general partner and any limited partners, including any corporation, and the officers, directors and holders of a beneficial interest of five percent (5%) or more of securities with voting rights of a corporation which controls, directly or indirectly, any general or limited partner, if Franchisee is a partnership) shall not, either directly or indirectly, for itself or on behalf of, or in conjunction with, any person, persons, partnership, association, corporation or other entity:

A. Divert or attempt to divert any business or customer of the business franchised hereunder to any competitor by direct or indirect inducements or otherwise, or to do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System;

B. Employ or seek to employ any person who is, at that time, employed by Franchisor or by any other Abbott's franchisee, or otherwise, directly or indirectly, induce such person to leave his or her employment therewith; or

C. Own, maintain, operate, engage in, or have any interest in any fast food (either takeout, on premises consumption, or a combination thereof) store that specializes in the sale of ice cream products ("Ice Cream Store"); provided, however, that the term "Ice Cream Store" shall not apply to any business operated by Franchisee under a franchise agreement with Franchisor or an affiliate of Franchisor.

13.03. Franchisee covenants that Franchisee shall not, regardless of the cause for termination, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, association, corporation or other entity:

A. For a period of two (2) years following the termination or expiration of this Agreement, own, maintain, engage in, or have any interest in any Ice Cream Store which is located within a radius of twenty (20) miles of the location specified in Section I hereof, or the location of any other Abbott's Unit under the System, whether owned by Franchisor or any other Abbott's franchisee, which is in existence as of the date of expiration or termination of this Agreement; or

B. For a period of one (1) year following the termination or expiration of this Agreement, employ or seek to employ any person who is, at the time, employed by Franchisor or by any other Abbott's franchisee, or otherwise, directly or indirectly, induce such person to leave his or her employment therewith.

13.04. At Franchisor's request, Franchisee shall require and obtain execution of covenants similar to those set forth in this Section XIII (including covenants applicable upon the termination of a person's relationship with Franchisee) in a form satisfactory to Franchisor, including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them, from any or

all of the following persons:

- A. All managers and assistant managers of the Franchised Unit, and any other personnel employed by Franchisee who have received or will receive training from Franchisor;
- B. All officers, directors, and holders of a direct or indirect beneficial ownership interest of five percent (5%) or more in Franchisee.

The failure of Franchisee to obtain execution of a covenant required by this Section 13.04. shall constitute a material breach of this Agreement. A duplicate original of each such covenant shall be provided by Franchisee to Franchisor immediately upon execution.

13.05. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section XIII, is held unreasonable or unenforceable by a court or agency having jurisdiction in a final decision, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant was separately stated in and made a part of this Section XIII.

A. Right to Reduce Covenants. Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 13.02. and 13.03. of this Agreement, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee agrees that it shall comply with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section XXII hereof.

B. Injunctive Relief. The parties acknowledge that it will be difficult to ascertain with any degree of certainty the amount of damages resulting from a breach by Franchisee of any of the covenants contained in this Section XIII. It is further agreed and acknowledged that any violation by Franchisee of any of said covenants will cause irreparable harm to Franchisor. Accordingly, Franchisee agrees that upon proof of the existence of a violation of any of said covenants, Franchisor will be entitled to injunctive relief against Franchisee in any court of competent jurisdiction having authority to grant such relief, together with all costs and reasonable attorneys' fees incurred by Franchisor in bringing such action.

XIV. TRANSFERABILITY OF INTEREST

14.01. Transfer by Franchisor. This Agreement shall inure to the benefit of the successors and assigns of Franchisor. Franchisor shall have the right to transfer or assign its interest in this Agreement to any person, persons, partnership, association, corporation, or other entity. If Franchisor's assignee assumes all the obligations of Franchisor hereunder and sends Franchisee written notice of the assignment so attesting, Franchisee agrees promptly to execute a general release of Franchisor, and any affiliates of Franchisor, from claims or liabilities of Franchisor under this Agreement.

14.02. Transfer by Franchisee. Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this Agreement in reliance on Franchisee's business skill and financial capacity. Accordingly, neither (i) Franchisee, nor (ii) any immediate or remote successor to Franchisee, nor (iii) any individual, partnership, corporation or other legal entity which directly or indirectly owns any interest in Franchisee or in this Franchise Agreement, shall sell, assign, transfer, convey, donate, pledge, mortgage, or otherwise encumber any direct or indirect interest in this Agreement or in any legal entity which owns the Franchised Unit without the prior written consent of Franchisor. Acceptance by Franchisor of any royalty fee, advertising fee or any other amount accruing hereunder from any third party, including, but not limited to any proposed transferee, shall not constitute Franchisor's approval of such party as a transferee or the transfer of this Franchise Agreement to such party. Any purported assignment or transfer, by

operation of law or otherwise, not having the written consent of Franchisor, shall be null and void, and shall constitute a material breach of this Agreement, for which Franchisor may then terminate without opportunity to cure pursuant to Section 15.02.E. of this Agreement.

14.03. Conditions for Consent. Franchisor shall not unreasonably withhold its consent to any transfer referred to in Section 14.02., when requested; provided, however, that prior to the time of transfer;

A. All of Franchisee's accrued monetary obligations to Franchisor and its subsidiaries and affiliates shall have been satisfied;

B. Franchisee shall have agreed to remain obligated under the covenants contained in Section XIII hereof as if this Agreement had been terminated on the date of the transfer;

C. The transferee must be of good moral character and reputation, in the reasonable judgment of Franchisor;

D. Franchisor shall have determined, to its satisfaction, that the transferee's qualifications meet Franchisor's then-current criteria for new franchisees;

E. Franchisee and transferee shall execute a written assignment, in a form satisfactory to Franchisor, pursuant to which the transferee shall assume all of the obligations of Franchisee under this Agreement and Franchisee shall unconditionally release any and all claims Franchisee might have against Franchisor as of the date of the assignment;

F. The transferee shall execute the then-current form of Franchise Agreement and such other then-current ancillary agreements as Franchisor may reasonably require. The then-current form of Franchise Agreement may have significantly different provisions including, without limitation, a higher royalty fee and advertising contribution than that contained in this Agreement. The then-current form of Franchise Agreement will expire on the expiration date of this Agreement and will contain the same renewal rights, if any, as are available to Franchisee herein;

G. The transferee shall agree at its sole cost and expense, to (i) complete a Franchised Unit Renovation, within the time frame required by Franchisor, unless a Franchised Unit Renovation was completed within five (5) years prior to the date of the transfer and (ii) perform such other scope of work as may be determined by Franchisor;

H. The transferee and such other individuals as may be designated by Franchisor in the Manual or otherwise in writing, must have successfully completed the training course then in effect for new franchisees. If the Franchised Unit is the transferee's first Abbott's Unit, the transferee shall pay to Franchisor the then-standard Training Fee if any;

I. If the transferee is a partnership, the partnership agreement shall provide that further assignments or transfers of any interest in the partnership are subject to all restrictions imposed upon assignments and transfers in this Agreement;

J. Franchisee shall, at Franchisor's option and request, execute a written guaranty of the transferee's obligations under the Agreement, which guaranty shall not exceed a period of three (3) years from the date of transfer; and

K. Franchisee shall pay to Franchisor a transfer fee of one-third (1/3) of the franchise fee prevailing at the time of such transfer, to cover Franchisor's administrative expenses in connection with the transfer; however, no additional franchise fee shall be charged by Franchisor for a transfer. If the transferee is (i) a corporation formed by Franchisee for the convenience of ownership and in which

Franchisee is the sole shareholder or (ii) a member of Franchisee's immediate family, no transfer fee shall be required.

14.04. Grant of Security Interest. Franchisee is not required to obtain financing for the Unit; however, before Franchisee may grant a security interest in this Agreement, the Franchised Unit, or in any of its assets, the secured party must agree that, in the event of any default by Franchisee under any documents related to the security interest: (i) Franchisor shall be provided with notice of default and given a reasonable time within which to cure said default; (ii) Franchisor shall have the right and option to be substituted as obligor to the secured party and to cure any default of Franchisee or to purchase the rights of the secured party upon payment of all sums then due to such secured party, except such amounts which may have become due as a result of any acceleration of the payment dates based upon Franchisee's default; and (iii) the secured party shall agree to such other requirements as Franchisor, in its sole discretion, deems reasonable and necessary to protect the integrity of the Proprietary Marks and the Abbott's System.

14.05. Transfer on Death or Mental Incapacity. Upon the death or mental incapacity of any person with an interest in this Agreement, the Franchised Unit or Franchisee, the executor, administrator, or personal representative of such person shall transfer his or her interest to a third party approved by Franchisor within twelve (12) months after such death or mental incapacity. Such transfer, including, without limitation, transfer by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer. However, in the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Section XIV, the personal representative of the deceased Franchisee shall have a reasonable time, but in no event more than eighteen (18) months from Franchisee's death, to dispose of the deceased's interest in this Agreement and the business conducted pursuant hereto, which disposition shall be subject to all the terms and conditions for assignments and transfers contained in this Agreement. If the interest is not disposed of within twelve (12) or eighteen (18) months, whichever is applicable, Franchisor may terminate this Agreement.

14.06. Right of First Refusal. Any party holding an interest in this Agreement, the Franchised Unit or in Franchisee, and who desires to accept a bona fide offer from a third party to purchase such interest, shall notify Franchisor in writing of such offer within ten (10) days of receipt of such offer, and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within sixty (60) days after receipt of such written notification, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. In the event that Franchisor elects to purchase the seller's interest, closing on such purchase must occur within sixty (60) days from the date of notice to the seller of the election to purchase by Franchisor. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of an initial offer. Failure of Franchisor to exercise the option afforded by this Section 14.06. shall not constitute a waiver of any other provisions of this Agreement, including all of the requirements of this Section XIV, with respect to a proposed transfer. In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest in this Agreement, Franchisee, or the Franchised Unit proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time as to the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, an independent appraiser shall be designated by Franchisor, and his or her determination shall be binding upon the parties.

XV. TERMINATION

15.01. Franchisee shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Franchisee, if Franchisee shall become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Franchisee or such a petition is filed against Franchisee and not opposed by Franchisee; or if Franchisee is adjudicated bankrupt or insolvent; or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is

appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under the applicable law of any jurisdiction should be instituted by Franchisee or against Franchisee and not opposed by Franchisee; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); or if Franchisee is dissolved; or if execution is levied against Franchisee's property or business; or if suit to foreclose any lien or mortgage against the premises or equipment of any Franchised Unit developed hereunder is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of any Unit developed hereunder shall be sold after levy thereon by any sheriff, marshal, or constable.

15.02. Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder without affording Franchisee any opportunity to cure the default upon the occurrence of any of the following events:

A. If Franchisee fails to complete construction of the Franchised Unit and open for business within one hundred eighty (180) days of execution of this Agreement. Franchisor may, in its sole discretion, extend this period to address unforeseen construction delays, not within the control of Franchisee;

B. If Franchisee, at any time, ceases to operate the Franchised Unit for the required ten (10) months per year without Franchisor's prior written consent, or otherwise abandons the Franchised Unit, or loses the right to possess the premises of the Franchised Unit, or otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Unit is located; provided, however, that if, through no fault of Franchisee, the premises are damaged or destroyed by an event not within the control of Franchisee such that repairs or reconstruction cannot be completed within one hundred eighty (180) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld, but may be conditioned upon the payment of an agreed minimum royalty to Franchisor during the period in which the Franchised Unit is not in operation;

C. If Franchisee is convicted of or pleads guilty to a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;

D. If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Franchised Unit;

E. If Franchisee, or any partner or shareholder of Franchisee purports to transfer any rights or obligations under this Agreement or any interest in Franchisee to any third party without Franchisor's prior written consent, contrary to the terms of Section XIV hereof;

F. If Franchisee fails to comply with the in-term covenants in Section 13.02. hereof or fails to obtain execution of the covenants required under Sections 10.07. or 13.04. hereof;

G. If, contrary to the terms of Section VII hereof, Franchisee discloses or divulges the contents of the Manual or any other confidential information provided to Franchisee by Franchisor;

H. If an approved transfer is not effected as required by Section 14.05. hereof, following Franchisee's death or mental incapacity;

I. If Franchisee knowingly maintains false books or records, or submits any false reports to Franchisor;

J. If Franchisee or any individual, group, association, limited or general partnership, corporation or other business entity which directly or indirectly controls, is controlled by, or is under common control with Franchisee; or which directly or indirectly owns, controls, or holds power to vote ten percent (10%) or more of the outstanding voting securities of Franchisee; or which has in common with Franchisee one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions (“Affiliate”) commits any act of default under any other Franchise Agreement, (except for failure to meet the development schedule thereunder), asset purchase agreement, promissory note or any other agreement entered into by Franchisee or an Affiliate of Franchisee, and Franchisor, or any parent, subsidiary, affiliate, predecessor or successor to Franchisor;

K. If Franchisee, after or during a default pursuant to Section 15.03. hereof, commits the same default again, whether or not such default is cured after notice;

L. If Franchisee defaults more than once in any twelve (12) month period under Section 15.03. hereof for failure to substantially comply with any of the requirements imposed by this Agreement, whether or not cured after notice;

M. If Franchisee refuses to permit Franchisor or its agents to enter upon the premises of the Franchised Unit to conduct any periodic inspection as set forth in Sections 5.09. and 10.02.H. hereof; or

N. If Franchisee uses any of Franchisor’s Proprietary Marks in any unauthorized manner or is otherwise in default of the provisions of Section V hereof.

15.03. Except as provided in Sections 15.01. and 15.02. of this Agreement, upon any default by Franchisee which is susceptible of being cured, Franchisor may terminate this Agreement only by giving written Notice of Termination stating the nature of such default to Franchisee at least ten (10) days prior to the effective date of termination if the default is for failure to pay royalties, financial obligations owed to Franchisor by Franchisee), and thirty (30) days, prior to the effective date of termination for any other default; provided, however, that Franchisee may avoid termination by curing such default to Franchisor’s satisfaction within the ten (10) day or thirty (30) day period, as applicable. If any such default is not cured within the specified time, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the ten (10) day or thirty (30) day period, as applicable, or such longer period as applicable law may require. Notwithstanding anything to the contrary set forth in this Agreement, Franchisee hereby acknowledges that any agreement between Franchisee and Franchisor relating to past due amounts accruing hereunder, (an “Arrearage Agreement”), including, but not limited to any promissory note, payment plan or amendment to this agreement shall be deemed to be a material part of this agreement and shall be incorporated herein by reference. A default under any Arrearage Agreement shall be deemed a material default of this Franchise Agreement, regardless of the reason Franchisee fails to pay the amount which is the subject of such Arrearage Agreement.

15.04. Franchisee shall indemnify and hold Franchisor harmless for all costs, expenses and any losses incurred by Franchisor in enforcing the provisions hereof, or in upholding the propriety of any action or determination by Franchisor pursuant to this Agreement, or in defending any claims made by Franchisee against Franchisor, or arising in any manner from Franchisee’s breach of or failure to perform any covenant or obligation hereunder, including, without limitation, reasonable litigation expenses and attorneys’ fees incurred by Franchisor in connection with any threatened or pending litigation relating to any part of this Agreement, unless Franchisee shall be found, after due legal proceedings, to have complied with all of the terms, provisions, conditions and covenants hereof.

15.05. If Franchisee breaches any of its obligations in this Agreement, the parties hereto agree that Franchisor will be damaged and that, at the time of executive of this Agreement, damages are difficult to estimate. Accordingly, Franchisee agrees that if Franchisee violates any covenant in this Agreement, or violates such agreement, after the fifth day Franchisor provides written notice to Franchisee of the violation, Franchisee will pay Franchisor Five Hundred Dollars (\$500) per day as liquidated damages, and not as a penalty, for each day during

which such violations continues, or such lesser amounts as shall be permitted under local law. Franchisee hereby waives its right to contest such determination. Nothing herein shall bar Franchisor from obtaining injunctive relief.

XVI. EFFECT OF TERMINATION OR EXPIRATION

16.01. Upon termination or expiration of this Agreement, all rights granted herein shall forthwith terminate, and:

A. Franchisee shall immediately cease to operate the Franchised Unit as an Abbott's Unit, and shall not thereafter, directly or indirectly, represent to the public that the store is an Abbott's Unit;

B. Franchisee shall immediately and permanently cease to use, by advertising or in any manner whatsoever, any menus, confidential formulas, equipment, methods, procedures, and the techniques associated with the System, Franchisor's Proprietary Marks, and Franchisor's other trade names, trademarks and service marks associated with the Abbott's System. In particular, and without limitation, Franchisee shall cease to use all signs, equipment, advertising materials, stationery, forms, packaging, containers and any other articles which display the Proprietary Marks;

C. Franchisee agrees, if Franchisee continues to operate or subsequently begins to operate stores or other businesses, not to use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks in conjunction with such other business which is likely to cause confusion or mistake or to deceive, and further agrees not to utilize any trade dress, designation of origin, description, or representation which falsely suggests or represents an association or connection with Franchisor;

D. Franchisee agrees, upon termination or expiration of this Agreement or upon cessation of the Franchised Unit at the location specified in Section I hereof for any reason, whether or not Franchisee continues to operate any business at such location, and whether or not Franchisee owns or leases the location, to make such modifications or alterations to the Franchised Unit premises immediately upon termination or expiration of this Agreement or cessation of operation of the Franchised Unit as may be necessary to prevent the operation of any businesses thereon by Franchisee or others in derogation of this Section XVI, and shall make such specified additional changes thereto as Franchisor may reasonably request for that purpose. The modifications and alterations required by this Section XVI shall include, but are not limited to, removal of all trade dress, proprietary marks and other indicia of the Abbott's System;

E. Franchisee shall immediately pay all sums owing to Franchisor no later than thirty (30) days after the effective date of termination or expiration. In the event of termination for any default by Franchisee, such sums shall include all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default; and

F. Franchisee shall immediately turn over to Franchisor the Manual, all other manuals, records, files, instructions, correspondence and any and all other materials relating to the operation of the Franchised Unit in Franchisee's possession and all copies thereof (all of which are acknowledged to be Franchisor's property) and shall retain no copy or record of any of the foregoing, with the exception of Franchisee's copy of this Agreement, any correspondence between the parties, and any other documents which Franchisee reasonably needs for compliance with any provision of law.

16.02. Franchisor shall have the right (but not the duty) to be exercised by notice of intent to do so within thirty (30) days after termination or expiration of this Agreement, to purchase any and all improvements, equipment, advertising and promotional materials, ingredients, products, materials, supplies, paper goods and any items bearing Franchisor's Proprietary Marks at current fair market value. If the parties cannot agree on a fair market value within a reasonable time, an independent appraiser shall be designated by Franchisor, and his or her determination of fair market value shall be binding. If Franchisor elects to exercise any option to purchase herein

provided, it shall have the right to set-off all amounts due from Franchisee under this Agreement and the cost of the appraisal, if any, against any payment therefor.

16.03. In the event the premises are leased to Franchisee, Franchisee shall, upon termination of this Agreement and upon request by Franchisor, immediately assign, set over and transfer to Franchisor, at Franchisor's sole option and discretion, said lease and the premises, including improvements. Any such lease entered into by Franchisee shall contain a clause specifying the landlord's consent to assign such lease to Franchisor or its assignee in the event this Agreement is terminated.

16.04. Franchisee shall pay to Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor in seeking recovery of damages caused by any action of Franchisee in violation of, or in obtaining injunctive relief for the enforcement of, any portion of this Section XVI. Further, Franchisee acknowledges and agrees that any failure to comply with the provisions of this Section XVI, shall result in irreparable injury to Franchisor.

16.05. All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.

16.06. Franchisee shall comply with the covenants contained in Section XIII of this Agreement.

16.07. Franchisee shall execute such documents as Franchisor may reasonably require to effectuate termination of the Franchised Unit and Franchisee's rights to use the trademarks and systems of Franchisor.

XVII. TAXES, PERMITS, AND INDEBTEDNESS

17.01. Franchisee shall promptly pay when due all taxes, accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the Franchised Unit under this Agreement.

17.02. Franchisee, in the conduct of the Franchised Unit, shall comply with all applicable laws and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the businesses operated under this Agreement, including, without limitation, licenses to do business, trade name registrations, sales tax permits and fire clearances.

XVIII. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

18.01. This Agreement does not constitute Franchisee an agent, legal representative, joint venturer, partner, employee or servant of Franchisor for any purpose whatsoever. It is understood and agreed that Franchisee shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty, or representation on behalf of Franchisor. The parties further agree that this Agreement does not create any fiduciary relationship between them.

18.02. During the term of this Agreement and any extensions hereof, Franchisee agrees to take such action as Franchisor deems reasonably necessary for Franchisee to inform and hold itself out to the public as an independent contractor operating the Franchised Unit pursuant to a franchise from Franchisor, including, without limitation, exhibiting a notice of that fact at the Franchised Unit in form and substance satisfactory to Franchisor.

18.03. Franchisee agrees to defend, indemnify and hold harmless Franchisor and its successors and assigns from all claims, demands, losses, damages, liabilities, cost and expenses (including attorneys' fees and litigation expenses) resulting from, or alleged to have resulted from, or in connection with Franchisee's operation of the Franchised Unit, including, but not limited to, any claim or action based on or arising out of any injuries, including death to persons or damages to or destruction of property, sustained or alleged to have been sustained in connection with or to have arisen out of or incidental to the Franchised Unit and/or the performance of this contract by Franchisee, its agents, employees, and/or its subcontractors, their agents and employees, or anyone for

whose acts they may be liable, regardless of whether or not such claim, demand, damage, loss, liability, cost or expense is caused in whole or in part by the negligence of Franchisor, Franchisor's representative, or the employees, agents, invitees, or licensees thereof.

18.04. Franchisor shall advise Franchisee in the event Franchisor receives notice that a claim has been or may be filed with respect to a matter covered by this Agreement, and Franchisee shall immediately assume the defense thereof at Franchisee's sole cost and expense. In any event, Franchisor will have the right, through counsel of its choice, to control any matter to the extent it could directly or indirectly affect Franchisor and/or its successors or assigns. If Franchisee fails to assume such defense, Franchisor may defend, settle, and litigate such action in the manner it deems appropriate and Franchisee shall, immediately upon demand, pay to Franchisor all costs (including attorneys' fees and litigation expenses) incurred by Franchisor in affecting such defense, in addition to any sum which Franchisor may pay by reason of any settlement or judgment against Franchisor.

18.05. Franchisor's right to indemnity hereunder shall exist notwithstanding that joint or several liability may be imposed upon Franchisor by statute, ordinance, regulation or judicial decision.

18.06. Franchisee agrees to pay Franchisor all expenses, including without limitation attorneys' fees and court costs, incurred by Franchisor and its successors and assigns to remedy any defaults of or enforce any rights under this Agreement, effect termination of this Agreement or collect any amounts due under this Agreement.

XIX. APPROVALS AND WAIVERS

19.01. Whenever this Agreement requires the prior approval of Franchisor, Franchisee shall make a timely written request to Franchisor therefor, and such approval or consent shall be in writing.

19.02. Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee or any third party to which Franchisor would not otherwise be subject, by providing any waiver, approval, advice, consent, or suggestions to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

19.03. No failure of Franchisor to exercise any power reserved to it in this Agreement, or to insist upon compliance by Franchisee with any obligation or condition in this Agreement, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms of this Agreement. Waiver by Franchisor of any particular default shall not affect or impair Franchisor's right in respect to any subsequent default of the same or of a different nature, nor shall any delay, forbearance, or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants of this Agreement, affect or impair Franchisor's rights, nor shall such constitute a waiver by Franchisor of any rights, hereunder or right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payments due to it shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants, or conditions of this Agreement.

XX. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which will provide evidence of the date received to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:	Abbott's Frozen Custard, Inc. 4791 Lake Avenue Rochester, New York 14612 Attention: Robert J. Amico
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Notices to Franchisee:

Attention: _____

All written notices and reports permitted or required to be delivered by the provisions of this Agreement shall be addressed to the party to be notified at its most current principal business address of which the notifying party has been notified and shall be deemed so delivered: (i) at the time delivered by hand; (ii) one (1) business day after sending by telegraph, facsimile or comparable electronic system; or (iii) if sent by registered or certified mail or by other means which affords the sender evidence of delivery, on the date and time of receipt or attempted delivery if delivery has been refused or rendered impossible by the party being notified.

XXI. SEVERABILITY AND CONSTRUCTION

21.01. Except as expressly provided to the contrary herein, each section, paragraph, part, term, and/or provision of this Agreement shall be considered severable; and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect to bind the parties hereto; and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be part of this Agreement.

21.02. Except as has been expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee, Franchisor, Franchisor's officer, directors, and employees, and Franchisee's permitted and Franchisor's respective successors and assigns, any rights or remedies under or by reason of this Agreement.

21.03. All captions in the Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

21.04. All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable, and all acknowledgements, promises, covenants, agreements and obligations herein made or undertaken by Franchisee shall be deemed jointly and severally undertaken by all the parties hereto on behalf of Franchisee.

21.05. This Agreement may be executed in counterparts, and each copy so executed shall be deemed an original.

XXII. ENTIRE AGREEMENT: SURVIVAL

22.01. This Agreement, the documents referred to herein, the Development Agreement, if any, and the exhibits hereto, constitute the entire, full and complete agreement between Franchisor and Franchisee concerning the subject matter hereof and supersede any and all prior agreements. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, modification or variance of this Agreement shall be binding on either party unless in writing and executed by Franchisor and Franchisee. Representations by either party, whether oral, in writing, electronic or otherwise, that are not set forth in this Agreement shall not be binding upon the party alleged to have made such representations and shall be of no force or effect.

I have read this Section 22.01. and agree that I have not been induced by and am not relying upon any representation not contained in this Agreement.

_____, Franchisee

22.02. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever (including the execution of a subsequent Franchise Agreement pursuant to the provisions of Sections 2.02.B. and 14.03.F.), or upon the expiration of the Term hereof, any provisions of this Agreement which, by their nature, extend beyond the expiration or termination of this Agreement, shall survive termination or expiration and be fully binding and enforceable as though such termination or expiration had not occurred.

XXIII. ACKNOWLEDGMENTS

23.01. Franchisee acknowledges that Franchisee has conducted an independent investigation of the Abbott's franchise and recognized that the business venture contemplated by this Agreement involves business risks and Franchisee's success will be largely dependent upon the ability of Franchisee as an independent business entity.

Franchisee
Must Initial

FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND FRANCHISEE ACKNOWLEDGES THAT FRANCHISEE HAS NOT RECEIVED, ANY WARRANTY OR GUARANTY, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS OR SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT.

Franchisee
Must Initial

FRANCHISEE ACKNOWLEDGES THAT FRANCHISEE HAS RECEIVED A COMPLETED COPY OF THIS AGREEMENT, THE EXHIBITS HERETO, IF ANY, AND THE AGREEMENTS RELATING THERETO, IF ANY, AT LEAST FIVE (5) BUSINESS DAYS PRIOR TO THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED.

Franchisee
Must Initial

FRANCHISEE FURTHER ACKNOWLEDGES THAT FRANCHISEE HAS RECEIVED THE DISCLOSURE DOCUMENT REQUIRED BY THE TRADE REGULATION RULE OF THE FEDERAL TRADE COMMISSION ENTITLED "DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING AND BUSINESS OPPORTUNITY VENTURES" AT LEAST TEN (10) BUSINESS DAYS PRIOR TO THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED.

Franchisee
Must Initial

FRANCHISEE ACKNOWLEDGES THAT FRANCHISEE HAS READ AND UNDERSTOOD THIS AGREEMENT, THE EXHIBITS HERETO, IF ANY, AND AGREEMENTS RELATING THERETO, IF ANY, AND THAT FRANCHISOR HAS ACCORDED FRANCHISEE AMPLE TIME AND OPPORTUNITY AND HAS ENCOURAGED FRANCHISEE TO CONSULT WITH ADVISORS OF FRANCHISEE'S OWN CHOOSING ABOUT THE POTENTIAL BENEFITS AND RISKS OF ENTERING INTO THIS AGREEMENT.

Franchisee
Must Initial

FRANCHISEE RECOGNIZES AND UNDERSTANDS THAT IT MAY INCUR OTHER EXPENSES AND/OR OBLIGATIONS AS PART OF THE INITIAL INVESTMENT IN THE FRANCHISED UNIT WHICH THE TERMS OF TERMS OF THIS AGREEMENT MAY NOT ADDRESS, AND WHICH INCLUDE WITHOUT LIMITATION: OPENING ADVERTISING, EQUIPMENT, FIXTURES, OTHER FIXED ASSETS, CONSTRUCTION, LEASEHOLD IMPROVEMENTS AND DECORATING COSTS AS WELL AS WORKING CAPITAL NECESSARY TO COMMENCE OPERATIONS.

XXIV. APPLICABLE LAW; VENUE

24.01. Applicable Law. This Agreement takes effect upon its acceptance and execution by Franchisor

and shall be interpreted and construed under the laws of the State of New York which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of New York choice of law or conflict of law rules) except to the extent governed by the U. S. Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.* (the "Lanham Act") as amended; provided, however, that if the covenants in Section XIII of this Agreement would not be enforceable under the laws of New York, and the Franchised Unit is located outside of New York, then such covenants shall be interpreted and construed under the laws of the state in which the Franchised Unit is located. Nothing in this Section XXIV is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of New York to which this Agreement would not otherwise be subject.

24.02. The parties agree that any action brought by Franchisee against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Franchisee in any court, whether federal or state, may be brought within the state and in the judicial district in which Franchisor has its principal place of business. Franchisee hereby consents to personal jurisdiction and venue in the state and judicial district in which Franchisor has its principal place of business.

24.03. No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy herein, or by law or equity provided or permitted; but each shall be cumulative of any other right or remedy provided in this Agreement.

24.04. Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

24.05. Franchisor and Franchisee hereby waive to the fullest extent permitted by law any right to or claim of any consequential, punitive, or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

XXV. CORPORATE FRANCHISEE

In the event Franchisee named herein is a corporation at the time of execution of this Agreement, it is warranted, covenanted and represented to Franchisor that:

25.01. All of the issued and outstanding stock of Franchisee is owned, legally and beneficially, by the person or persons listed on Exhibit "D" attached hereto.

25.02. The above-named person or persons has (have) individually, and jointly and severally, executed this Agreement, and such person, or one of such persons, is and shall be the chief executive officer of Franchisee corporation, holding such corporate office or offices as may be necessary to maintain and exercise the actual power and authority actively to direct the affairs of Franchisee.

25.03. Franchisee is validly incorporated and duly existing under the laws of the State of _____, is duly qualified to conduct business therein, and has its principal place of business at _____. Franchisee shall promptly notify Franchisor in writing of any change thereto during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have duly executed, sealed, and delivered this Agreement in triplicate on the day and year first above-written.

WITNESS:

FRANCHISOR:

ABBOTT'S FROZEN CUSTARD, INC.

By:

Title:

WITNESS:

FRANCHISEE:

By:

Title:

[SIGNATURE PAGE TO FRANCHISE AGREEMENT]

EXHIBIT A

**ABBOTT'S FROZEN CUSTARD, INC.
FRANCHISE AGREEMENT**

TERRITORY

EXHIBIT B

**ABBOTT'S FROZEN CUSTARD, INC.
FRANCHISE AGREEMENT**

NOTICE OF COMMENCEMENT DATE

Name of Franchisee: _____

Franchise Agreement Dated: _____

Franchise Premises Address: _____

NOTICE is hereby given to the abovementioned Franchisee pursuant to Section 2.01. of the Franchise Agreement that the Term of the abovementioned Franchise Agreement commenced on _____, 20____, and that the Term shall expire on _____, _____, unless the Franchise Agreement is terminated earlier, pursuant to its terms and conditions.

ABBOTT'S FROZEN CUSTARD, INC.

By: _____

Title: _____

Date of Notice: _____

EXHIBIT C

**ABBOTT'S FROZEN CUSTARD, INC.
FRANCHISE AGREEMENT**

ADDENDUM

ADDENDUM

This Addendum ("Addendum") is to a certain Franchise Agreement between Abbott's Frozen Custard, Inc. ("Franchisor") and _____ ("Franchisee") dated _____, 200_ (the "Agreement"). For the purposes of this Addendum, _____ will be referred to as "Guarantor(s)."

1. Franchisor acknowledges receipt this date of a Seven Thousand Five Hundred Dollar (\$7,500.00) deposit ("Deposit") from Franchisee pursuant to Section 3.01 of the Agreement and Franchisee acknowledges receipt of a copy of Franchisor's applicable Uniform Franchise Offering Circular containing a copy of the Agreement more than ten (10) days prior to the date of this Addendum.

2. Franchisor and Franchisee agree that the Agreement will not be effective until the parties agree upon the Territory and a location for the Unit and Franchisee has either executed a lease for or has entered into an agreement to purchase such location for the purpose of establishing an Abbott's Unit.

3. Upon agreement on the Territory and Franchisee's execution and delivery of a lease for such location or a binding purchase commitment therefor, the Agreement will become effective and Franchisee will, within five (5) days, pay to Franchisor the sum of _____ (\$ _____) which constitutes the unpaid balance of the initial franchise fee (\$26,000.00) and the required down payment (\$ _____) for custard-mixing equipment purchased from Franchisor. A second payment of \$ _____ will be paid to Franchisor prior to the delivery of such equipment to the franchise location, and Franchisee will pay the remaining balance as determined by Franchisor upon the completion of equipment installation, or upon Franchisee opening for business, whichever event occurs first.

4. Upon agreement on the Territory and Franchisee's execution and delivery of a lease for an Abbott's Unit location or a binding purchase commitment therefor, Franchisee will also, within five (5) days, Franchisee will pay Franchisor an initial advertising fee of \$5,000.

5. If Franchisor has not agreed upon the Territory and Franchisee has not entered into such lease or binding purchase commitment for a franchise location within one hundred eighty (180) days from the date of this Addendum, then either Franchisor or Franchisee may cancel the Agreement effective upon receipt of written notice by the other party, and Franchisor will immediately return to Franchisee \$4,000 of the Deposit. Franchisor shall keep the balance of the deposit as reimbursement for Franchisor's time, expenses, overhead and efforts.

IN WITNESS WHEREOF, the parties to this Addendum have executed this Addendum this ____ day of _____, 200_, which may be in counterparts, each of which will be deemed an original and one of which is delivered to each party to this Agreement.

FRANCHISEE:

ABBOTT'S FROZEN CUSTARD, INC.

By: _____

By: _____

Schedule A

EQUIPMENT

1	Custard machine (double barrel AR200RR)
4	Dipping cabinets (LMC 600)
12	Stainless Steel Custom Cans (SS-8843)
4	Stainless Steel Custom Tops (SS-8842)
8	Five-gallon plastic containers for transfer of mix (GD-4791)
1	Step-in cooler (CM156-50)
1	Novelty freezer (IG408A)
1	Double Door freezer (CCR 49DF)
1	Cake display freezer (FIP 50)
1	Sundae bar with nine (9) holes (MS58W)
3	Fudge warmers (FSP)
1	Milkshake machine (HB950)
1	Three compartment sink and faucet (T9354X & K1X)
1	Hand sink (DL110)
2	Cash registers (SAMS CLUB \$600.00 VALUE)
1	Flurry machine (HDN75A)
1	Stirring rod (HOL-SS-26)
1	Waffle baker

SMALLWARES PACKAGE

CAKE NEEDS

2	each-Tips #3, #104, #352, #32
1	offset metal spatula
1	straight metal spatula
1	each- spring form pans 7", 8", 10"
1	each-half sheet and full sheet pans
6	14" fronting bags
6	couplings for frosting bags
1	metal mixing bowl for colored frosting

MEASURING TOOLS

1	small measuring cup with 1 oz. line
1	large measuring cup, at least 48 oz.

MISCELLANEOUS

2	each- large disher #12
10	each- small disher #30
1	metal tongs for cherries
2	steel drip pans for front of machine
1	stainless steel milkshake cups
1	metal ice cream spades
1	scale
16	each- large blue rubbermaid containers for toppings
6	each- small white rubbermaid containers for toppings
10	each- blue trays
1	cake spindle
1	knife
1	can opener
1	funnel
2	each- tablespoons
2	each cone holders
2	each- small napkin dispensers
2	small plastic spatulas
2	large plastic spatulas

Except for the custard machines, Franchisor will approve Franchisee's proposed sources of supply for the above equipment if Franchisee can demonstrate to Franchisor's satisfaction that another supplier can supply the same items of the same quality, taste and/or appeal as similar items sold, used, processed or served by us in our company-owned Units; otherwise Franchisee must purchase the items from Franchisor. The above list does not include outside or inside advertising displays, menus or any signage (the size of which will be dependent upon site location) which are subject to the same approval process. There may be differing or additional requirements depending on site location and building size.

Equipment will be installed under Franchisor's supervision after approved electrical, water, plumbing and sanitary facilities have been installed. Equipment will be installed by Franchisee's service provider.

EXHIBIT D

**ABBOTT'S FROZEN CUSTARD, INC.
FRANCHISE AGREEMENT**

SHAREHOLDERS OF FRANCHISEE

(For Corporate Franchisees)

<u>Name of Shareholders</u>	<u>Number of Shares</u>	<u>Percent Ownership of Franchisee</u>	<u>Title</u>
--	------------------------------------	---	---------------------

EXHIBIT E

**ABBOTT'S FROZEN CUSTARD, INC.
FRANCHISE AGREEMENT**

STATEMENT OF LEGAL COMPOSITION

FRANCHISEE represents, warrants, and covenants that the following information is true, correct, and complete as of the date given below.

1. As of the date of this Agreement, Franchisee is:

- _____ an individual (complete Section 2, below);
- _____ a corporation (complete Sections 2 and 3, below);
- _____ a partnership (complete Sections 2 and 4, below); or
- _____ a limited liability company (complete Sections 2 and 5, below).

2.

(Name of Franchisee, Corporation, Partnership or Limited Liability Company)

(Street Address) **(City, State, Zip Code)**

(Country) **(Phone)**

3. If Franchisee is a corporation, Franchisee shall complete this Section.

- a. Franchisee is a corporation duly organized and existing under the laws of _____
- b. The corporation was organized on the ___ day of _____.
- c. The names, addresses and percentages of shares issued to each shareholder having a direct or indirect ownership interest in Franchisee is as follows:

Name	Address	Percentage of Issued Shares
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

d. The names and addresses of officers and directors of the company is as follows:

Name	Address	Title
_____	_____	President
_____	_____	Vice-President
_____	_____	Sec/Treasurer
_____	_____	Treasurer
_____	_____	Other Officer
_____	_____	Director
_____	_____	Director

e. The name(s) and address(es) of the Managing Director(s) is/are as follows:

Name	Address
_____	_____
_____	_____

4. If Franchisee is a partnership, Franchisee shall complete this Section.

a. Franchisee is a partnership duly organized and existing under the laws of _____

b. The partnership was organized on the ___ day of _____,

c. The names, addresses and percentages of shares issued to each shareholder having a direct or indirect ownership interest in Franchisee is as follows:

	Name	Address	Percentage of Issued Shares
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

d. The name(s) and address(es) of the General Managing Partner(s) is/are as follows:

Name **Address**

5. If Franchisee is a limited liability company, Franchisee shall complete this Section.

a. Franchisee is a limited liability company duly organized and existing under the laws of _____

b. The limited liability company was organized on the _____ day of _____, _____.

c. The names, addresses and percentages of shares issued to each shareholder having a direct or indirect ownership interest in Franchisee is as follows:

Name **Address** **Percentage of Issued Shares**

1. _____
2. _____
3. _____
4. _____

d. The name(s) and address(es) of the Principal Manager(s) is/are as follows:

Name **Address**

IN WITNESS WHEREOF, Franchisee has hereunto set its hand this ____ day of _____, 20____.

Name of Corporation, Partnership, or Limited Liability Company

BY: _____

ITS: _____

ATTEST: _____

EXHIBIT F

**ABBOTT'S FROZEN CUSTARD, INC.
FRANCHISE AGREEMENT**

GUARANTEE AND INDEMNITY

GUARANTEE AND INDEMNITY

TO: Abbott's Frozen Custard, Inc.

In order to induce Abbott's Frozen Custard, Inc. ("AFC") to enter into a Franchise Agreement (the "Franchise Agreement") dated _____, 200_ between AFC and _____ ("Franchisee") the undersigned, _____ ("Guarantor(s)"), for good and valuable consideration, the receipt and sufficiency are acknowledged covenants and agrees with AFC as follows:

1. Terms not otherwise defined will have the same meaning as in the Franchise Agreement.

2. Guarantor(s) guarantees the due and punctual payment of all amounts stated to be payable on the part of Franchisee under the Franchise Agreement and the prompt and complete performance of all of the terms, covenants, conditions and agreements contained on the part of Franchisee pursuant to the Franchise Agreement. The guarantee and indemnity is one of performance and payment and not of collection.

3. Guarantor(s) further agrees to indemnify and save harmless AFC from all losses, costs or damages arising out of any failure on the part of Franchisee to pay the amounts referred to in Section 2 of this guarantee and indemnity or to perform any of the terms, covenants, conditions or agreements referred to in Section 2 but only to the same extent Franchisee is obligated to indemnify the Indemnitees under the Franchise Agreement.

4. This guarantee is absolute and unconditional and the obligations of Guarantor(s) will not be released, discharged, mitigated, impaired or affected by:

(a) any settlements, extensions of time, indulgences or modifications which AFC may extend to or make with Franchisee or any co-surety in respect of any one or more of the provisions of the Franchise Agreement or any other agreement;

(b) any waiver by AFC of, or any failure or delay on the part of AFC, to enforce any of the terms, covenants, conditions or provisions of the Franchise Agreement;

(c) any amendment or alteration to the Franchise Agreement or any of the covenants or terms; or

(d) any assignment or other Transfer of the Franchise Agreement by Franchisee.

5. Guarantor(s) expressly waives notice of the acceptance of this indemnity and all notices of non-performance, non-payment or non-observance on the part of Franchisee of the terms, covenants, conditions and provisions of the Franchise Agreement.

6. If the Franchisee defaults under the Franchise Agreement, AFC will not be required, before enforcing this guarantee and indemnity, to:

(a) proceed against Franchisee or any other Guarantor(s) or pursue any rights or

remedies with respect to the Franchise Agreement;

- (b) proceed against or exhaust any security of Franchisee or any other person held by AFC; or
- (c) pursue any other remedy in the power of AFC.

7. AFC shall have the right to enforce this guarantee and indemnity regardless of the acceptance of additional security and regardless of the release or discharge of Franchisee or of any other surety (including any signatory hereto) or of any other security held by AFC or by others whether by agreement or by operation of law.

8. Without limiting the generality of the foregoing, Guarantor(s) will be bound by this guarantee and indemnity in the same manner as though Guarantor(s) was Franchisee named in the Franchise Agreement, except that the liability of Guarantor(s) under this guarantee and indemnity will not be waived, released, discharged, impaired or affected by reason of the release or discharge of Franchisee or any surety in any receivership, bankruptcy, winding-up or other creditor's proceeding. No action or proceeding brought or instituted under and no recovery or judgment in pursuance of this guarantee and indemnity will be a bar or defense to any further action or proceeding which may be brought under this guarantee and indemnity by reason of any further default or defaults under this guarantee and indemnity or in the performance and observance of the terms, conditions and provisions of the Franchise Agreement. No modification of this guarantee and indemnity will be effective unless it is in writing and signed by both Guarantor(s) and AFC.

9. If two or more individuals or entities execute this guarantee and indemnity as Guarantor(s), the liability of each shall be joint and several.

10. This guarantee and indemnity shall remain in full force and effect for such period of time as the Franchise Agreement and any novation or renewal of this guarantee and indemnity shall remain in force and effect and so long as any obligation under this guarantee and indemnity remains outstanding and undischarged.

11. There are no representations, collateral agreements or conditions with respect to this guarantee and indemnity or affecting the liability of Guarantor(s), other than as contained in this guarantee and indemnity.

12. Guarantor(s) shall be bound by any account settled between AFC and Franchisee.

13. This guarantee and indemnity will be operative and binding upon every signatory regardless of the non-execution by any other proposed signatory or signatories, and possession of this instrument by AFC will be conclusive evidence against the undersigned Guarantor(s) that this instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any conditions precedent or subsequent had been complied with unless at the time of receipt of this instrument by AFC, each signatory obtains from AFC a letter setting out the terms and conditions under which this instrument was delivered and the conditions, if any, to be observed before it becomes effective.

14. Any notice which AFC wishes to serve on Guarantor(s) will be sufficiently given if served personally on Guarantor(s), or mailed by prepaid registered or certified mail addressed to Guarantor(s) at the address indicated below, and every such notice will be deemed given on the day it was personally served, or if mailed, on the third business day after it was mailed. Guarantor(s) may designate, by notice in writing to AFC, a substitute address for notice. If two or more persons are named as Guarantor(s), any notice will be deemed given to all such persons when the same is served personally or mailed in the foregoing manner to any one of such persons.

15. All of the terms, agreements and conditions of this guarantee and indemnity will extend to and be binding upon Guarantor(s) and Guarantor's heirs, executors, administrators, successors and assigns and shall inure to the benefit of and may be enforced by AFC, its successors and assigns.

SIGNATURE: _____ DATED this ___ day of _____, 200__.

NAME OF GUARANTOR(S) (printed):

ADDRESS: _____
