



**LICENSE AGREEMENT**

**DATED** \_\_\_\_\_, \_\_\_\_\_

**STORE NO.** \_\_\_\_\_

**LICENSE AGREEMENT**

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## LICENSE AGREEMENT

AGREEMENT, dated as of the date set forth on the last page of this Agreement (the "Effective Date"), by and between COLD STONE CREAMERY, INC., an Arizona corporation ("Licensor"), whose principal business address is 9311 E. Via De Ventura, Scottsdale, Arizona 85258 (phone number 480-362-4800; fax number 480-362-4797), and the licensee identified on the last page of this Agreement ("Licensee"), whose address, phone number and fax number are set forth on the last page of this Agreement.

### RECITALS

- A. Licensor, under the Service Marks (as defined below), has, as a result of significant time, effort and money, originated a comprehensive system for the manufacture and restaurant sale of super-premium fresh made ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages and other frozen dessert products (prepared using proprietary recipes) and an assortment of complementary toppings and mix-ins (the "Licensed Business");
- B. Licensor owns certain intellectual property, including trade secrets and other confidential and proprietary information, processes, materials and rights relating to the development, promotion and operation of the Licensed Business (the "Proprietary Information");
- C. Licensor has developed a program, including the Proprietary Information, for conducting and operating the Licensed Business under the Service Marks (the "Program");
- D. Licensee desires to obtain a license from Licensor for the right to use the Program for operating the Licensed Business, and to obtain the benefits and knowledge of the Program (the "License");
- E. Licensor is willing to grant a License to Licensee; and
- F. The restrictions and controls on Licensee's operations contained in this Agreement are intended to protect the rights to the Service Marks and to fulfill Licensor's obligation to other licensees and franchisees to maintain a high quality of products and services provided under the Service Marks.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties agree as follows:

1. **Grant of License.** Subject to and in accordance with the terms of this Agreement, Licensor grants to Licensee, and Licensee accepts, a License for the right to conduct the Licensed Business, with the nonexclusive right to use, solely in connection with the Licensed Business, the Service Marks and the Proprietary Information. The type of Licensed Business agreed to between Licensor and Licensee is set forth on the signature page of this Agreement. Licensee must conduct the Licensed Business under the Service Marks. The parties acknowledge and

agree that Licensee's rights pursuant to this Agreement are probationary and temporary during the Probationary Period (as defined below), as set forth in Section 15 of this Agreement.

2. **Acknowledgement of Licensee.** Licensee acknowledges that, except as expressly set forth in the Franchise Offering Circular delivered to Licensee (the "Offering Circular"), neither Licensor, nor anyone acting on behalf of Licensor, has made any claims or representations whatsoever regarding potential sales, profits or earnings achievable by Licensee in connection with the conduct of the Licensed Business. Licensee acknowledges that he has been informed and he understands that the successful operation of the Licensed Business will depend primarily upon the efforts, capabilities and management skills of Licensee and general economic conditions and trends, and that he cannot rely upon the information set forth in the Offering Circular as representations or warranties of the results that will be achieved by Licensee in connection with his operation of the Licensed Business. Licensee acknowledges and confirms that he has selected, or will select, the premises in which the Licensed Business will be established and operated by him, and that the decision to establish and operate the Licensed Business at those premises was, or will be, made solely by him, without any reliance upon any information provided (if any), recommendation made (if any) or approval given (if any) by Licensor, any area developer, Cold Stone Creamery Leasing Company, Inc. or any of their respective shareholders, directors, officers, employees, representatives, agents or affiliates. Licensee accepts full responsibility for the consequences of his decision.

3. **Location of the Licensed Business; No Exclusive Territory or Other Rights.**

(a) Licensee must operate the Licensed Business at the location selected by Licensee identified in Exhibit A and approved by Licensor (the "Location"), which approval will not be unreasonably withheld.

(b) (i) Notwithstanding anything contained in this Agreement to the contrary, no exclusive territory or other exclusive rights are granted to Licensee and, accordingly, Licensor and/or its Affiliates (as defined below) may establish other licensed, franchised or company-owned restaurants or other businesses, that may or may not use the Service Marks, that may compete with Licensee's Licensed Business, including, across the street from Licensee's Licensed Business or in the same building or venue as Licensee's Licensed Business. In addition, Licensor and/or its Affiliates may market, directly or indirectly, products and/or services under the Service Marks (or under other trademarks) through methods of distribution other than restaurants operated by Licensor and/or its Affiliates and licensees and franchisees.

(ii) Licensee acknowledges that Licensor presently intends to develop Licensed Businesses (including licensed, franchised and company-owned restaurants) throughout the United States and internationally and that one or more future Licensed Businesses (including licensed, franchised and company-owned restaurants) may have an adverse effect on the revenues and profitability of existing Licensed Businesses, including Licensee's Licensed Business. Licensee further acknowledges that Licensor has not made any representation or agreement, or provided Licensee any assurances, that no future Licensed Business (including licensed, franchised and company-owned restaurants) would adversely affect the revenues and profitability of Licensee's Licensed Business.

(c) Licensor and its Affiliates reserve the right to, directly or indirectly, market products and/or services under the Service Marks (or under other trademarks) through methods of distribution other than Licensed Businesses or otherwise, including on the Internet. Licensee may not market his Cold Stone Creamery® restaurant or use the Service Marks on the Internet.

(d) Except as expressly limited in this Agreement, Licensor (for itself and its Affiliates and designees) retains all rights with respect to Licensed Businesses, the Service Marks, all Proprietary Information, all Copyrights and Copyrighted materials and the sale of Cold Stone Creamery® products anywhere in the world, including the right to:

(i) Establish and/or operate (or license to any other person or entity the right to establish and/or operate) Licensed Businesses owned or licensed by the Licensor at any location;

(ii) Develop, market, own, operate and/or participate in any other business under the Service Marks or any other trademarks;

(iii) Develop, lease and/or license the use of, at any location, trademarks other than the Service Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by Licensor on any terms or conditions that Licensor deems advisable, in its sole discretion;

(iv) Merge with, acquire and/or be acquired by any other business, including a business that competes with Licensee's Licensed Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned;

(v) Distribute, sell and/or license other persons or entities to distribute and/or sell products through all other channels. "Other Channels" means locations other than traditional Cold Stone Creamery® restaurants owned, licensed or franchised by Licensor, and includes sale by or through other channels of trade including kiosks, carts, grocery stores, convenience stores, food chains, electronic mail, Internet sales, malls, universities, schools, hospitals, military bases, casinos, convention centers, arenas, stadiums, health and fitness facilities, office buildings, theme parks, movie theatres, and amusement facilities; and

(vi) Implement multi-area marketing programs that may allow Licensor or others to solicit or sell to customers anywhere. Licensor also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

#### **4. Training Program.**

(a) Licensee (or, if Licensee is a corporation, partnership, limited liability company or other entity, a Principal) and his managers must attend the training provided by Licensor (the "Training Program"). (If more than one person signs this Agreement, both or all must satisfactorily complete the Training Program.) The cost of attendance at the Training Program

(excluding Licensee's expenses, such as travel, lodging and meal expenditures in connection with attending the Training Program, which will be borne by Licensee) for Licensee (or a Principal) and one additional person is included in the License Fee (as defined below). However, unless Licensor determines otherwise, Licensee will not be entitled to attend the Training Program at Licensor's expense with respect to Licensee's (or his Affiliates') second and subsequent license agreements or in connection with a relocation, at Licensor's expense.

(b) Training for more than two people will be provided by Licensor if Licensor's policies require more than two people to be trained or if Licensor requests that additional people be trained (and Licensor agrees to do so). The cost for additional training is \$1,500 per additional Training Program per person (excluding Licensee's expenses, such as travel, lodging and meal expenditures in connection with attending Training Program, which will be borne by Licensee). Training of the additional people may or may not be held at the same time as training of the initial two people, at Licensor's election.

(c) Licensee acknowledges that the Training Program will have multiple stages, as stated in the Offering Circular and that in connection with each stage Licensee may be tested and will be evaluated upon, among other things, the results of such tests, whether Licensee is competent, in Licensor's sole judgment, in performing the skills necessary to operate the Licensed Business, whether Licensee can speak English fluently, whether Licensee has an aptitude for the operation of the Licensed Business, whether Licensee is, in Licensor's sole judgment, a good fit within the Cold Stone Creamery® system and whether Licensee's operation of the Licensed Business may, in Licensor's sole judgment, adversely affect the goodwill or reputation of Licensor, its products or the Service Marks.

(d) (i) If Licensor determines, in its sole judgment, that Licensee (or, if Licensee is a corporation, partnership, limited liability company or other entity, a Principal) has not performed satisfactorily on the Training Program exams, that Licensee is not competent in performing the skills necessary to operate the Licensed Business, cannot speak English fluently, does not have an aptitude for the operation of the Licensed Business or has otherwise failed to satisfactorily complete the Training Program (except as contemplated by Section 4(d)(ii)), Licensor may terminate this Agreement, in which event Licensee must return to Licensor all materials delivered to him in connection with the License. If the License Agreement is terminated pursuant to this Section 4(d)(i), the License Fee will not be refunded to Licensee.

(ii) If Licensor determines, in its sole judgment, that Licensee (or, if Licensee is a corporation, partnership, limited liability company or other entity, a Principal) is not a good fit within the Cold Stone Creamery® system and/or that Licensee may adversely affect the goodwill or reputation of Licensor, its products or the Service Marks, Licensor may notify Licensee in writing that this Agreement will expire as of the end of the Probationary Period, in which event Licensee must comply with the requirements of Section 17 of this Agreement. Licensor will then refund the License Fee (less Licensor's expenses in connection with Licensee's attendance at the Training Program and other items) to Licensee. In addition, if Licensor provides that notice to Licensee after Stage 4 of the Training Program has been completed, Licensor will pay to Licensee the other amounts, if any, contemplated to be paid pursuant to Section 17(d) of this Agreement.



(e) Licensor may, in its sole discretion, require or permit Licensee to attend all or certain portions of the Training Program again, at Licensee's expense (\$1,500 per additional Training Program per person, plus travel, lodging and meal expenditures in connection with attending the Training Program).

(f) Before attending Stage 4 of the Training Program, Licensee must satisfy the Continuing Working Capital Requirement (as defined below), Licensee must have attended (at his expense) training in basic computer skills by a third party of his choice (if he does not have basic computer skills), Licensee must have satisfactorily completed (at his expense) a local food safety certification course and the Assignment of Concession Agreement or the Sublease, as the case may be, must be signed. Licensee must complete Stage 4 of the Training Program before beginning build-out of Licensee's Licensed Business and at least eight weeks before Licensee opens his Licensed Business. However, if this Agreement is signed in connection with a transfer, Licensee must complete Stage 4 of the Training Program at least two weeks before the transfer is closed and Licensee begins operating his Licensed Business.

(g) Licensee must perform at least 20 hours per month of site-based skills practice between the date that Licensee completes Stage 4 of the Training Program and the date that Licensee opens his Licensed Business.

(h) The individuals participating in the Training Program on behalf of Licensee will not be deemed to be employees of Licensor, the Area Developer or the owner of any store in which those individuals participate in the Training Program, but will be deemed to be employees of Licensee during all aspects of the Training Program.

(i) If Licensee (or any of his attendees) fails to provide Licensor at least 14 days' advance notice of his cancellation of any portion of the Training Program, Licensee may be assessed a \$500 no-show fee, payable upon Licensee's failure to cancel.

(j) The Training Program may be modified or amended from time to time.

(k) Licensor may establish additional training programs or refresher courses, which Licensee will attend, at his expense. Licensor may impose a charge for Licensee's failure to attend such programs and courses.

**5. Consulting Services.** Licensor will consult with Licensee by telephone, Monday through Friday 8:00 a.m. to 5:00 p.m. (Phoenix, Arizona time), with respect to all aspects of starting and operating the Licensed Business. Licensor may, in its sole discretion, and depending upon the geographic proximity between Licensee and Licensor, if Licensor's time permits, provide on-site consultation at Licensee's request at Licensor's then-current hourly rate (including consultation and travel time), plus travel, lodging and meal expenditures, at times agreed upon between Licensee and Licensor.

## **6. Site Approval.**

(a) (i) Licensee must engage a real estate broker on Licensor's approved list to assist Licensee in selecting a site and negotiating the letter of intent for the Master Lease (as

defined below). If Licensee uses a real estate broker not on Licensor's approved list, Licensee must pay Licensor a fee in an amount up to \$5,000 in connection with training Licensor's real estate broker regarding Licensee's requirements and reviewing the letter of intent.

(ii) Licensor will, within 90 days after it receives notice of Licensee's selection of the site that Licensee chooses for his Licensed Business (within the area designated in this Agreement) and the Additional Materials (as defined below), review and approve, or deny approval of, the site. Licensor will consider the potential customer base, the rental costs, competition, traffic patterns, population density and composition, visibility, drive times, trade areas, proximity to other Cold Stone Creamery® restaurants and other business factors of the site in determining whether to grant its approval of the site. Licensor will not unreasonably withhold its approval of the site.

(iii) Provided that Licensee has satisfied the Continuing Working Capital Requirement, Licensor will, within 60 days after it receives a copy of the proposed site concession agreement (the "Master Concession Agreement") or the site lease (the "Master Lease"), as the case may be, and the Additional Materials for the site Licensee chooses for his Licensed Business, review and approve, or deny approval of, that concession agreement or lease, in its sole discretion. Licensor may require the Master Concession Agreement or the Master Lease to contain appropriate provisions, including the permitted uses of the premises and the right to permit Licensor to assume the Master Concession Agreement or the Master Lease in the event of Licensee's breach of or default under the Master Concession Agreement or the Master Lease or upon the termination of this Agreement, and may require other revisions to the Master Concession Agreement or the Master Lease.

(iv) Licensee must provide to Licensor (a) such other documentation and information regarding the proposed site and the proposed Master Concession Agreement or the Master Lease that Licensor may, in its sole discretion, require and (b) current financial statements and such other financial documentation and information regarding Licensee's (and its Principals') financial condition, that Licensor may, in its sole discretion, require. (All of those materials are referred to as the "Additional Materials.") It is understood and agreed that if Licensor determines, in its sole discretion, that Licensee does not have the financial capacity to perform his obligations with respect to the site, the Master Concession Agreement or the Master Lease or that Licensee does not then satisfy the Continuing Working Capital Requirement, then Licensor may deny approval of the site, the Master Concession Agreement and/or Master Lease. It is also understood and agreed that that disapproval would be reasonable. In that event, Licensor (or its Affiliates) may operate a Licensed Business at that site or may permit another licensee or franchisee to do so. It is further understood that Licensor may forward the Additional Materials to the owner of the concession site or the Master Landlord (as defined below).

(v) If the Master Concession Agreement or the Master Lease, as the case may be, meets the approval of Licensor, Licensor or its Affiliate will sign the Master Concession Agreement or the Master Lease and assign or sublease the site to Licensee. In the case of a Master Concession Agreement, promptly after Licensor or its Affiliate signs the Master Concession Agreement with the owner of the site, Licensee (and his spouse) must sign and deliver to Licensor or its Affiliate an Assignment of Concession Agreement, substantially in the

form attached to the Offering Circular as Exhibit H (the "Assignment of Concession Agreement"), and, if required by the site owner, Licensee (and his spouse) and Licensee's Principals must sign and deliver to Licensor or its Affiliates the form of guaranty of the Master Concession Agreement that the site owner may require. In the case of a Master Lease, Licensee must promptly sign and deliver to Licensor or its Affiliate an Agreement of Intent to Sublet, substantially in the form attached to the Offering Circular as Exhibit G1. Promptly after Licensor or its Affiliate signs the Master Lease with the landlord of Licensee's site (the "Master Landlord"), Licensee (and his spouse) must sign and deliver to Licensor or its Affiliate a Sublease, substantially in the form attached to the Offering Circular as Exhibit G2 (the "Sublease"), and, if required by the Master Landlord, Licensee (and his spouse) and Licensee's Principals must sign and deliver to Licensor or its Affiliates the form of guaranty of lease that the Master Landlord may require.

(c) Simultaneously with the signing of the Sublease, Licensee must pay to Licensor (or its affiliates), (a) a lease administration fee ("Lease Administration Fee") in an amount equal to between 2% and 5% of the base rent under the Master Lease, as determined by Licensor, to compensate Licensor for serving as the tenant under the Master Lease (and the risk of loss relating thereto) and administering the Master Lease and the Sublease (including collecting and paying rent) and (b) an amount between \$2,000 and \$6,000, as determined by Licensor to pay for Licensor's attorney's review of the Master Lease on Licensor's behalf. (Such attorney may be an employee or independent contractor of Licensor.) If Licensee submits more than one Master Lease for Licensor's review, the fee for Licensor's attorney's review of the Master Lease will be charged for each Master Lease submitted.

(d) Any relocation of Licensee's Licensed Business must be for a legitimate business reason, will be subject to the other provisions of this Section 6, must be within the facility (e.g., the airport or shopping mall) in which Licensee is located and will be subject to a \$5,000 relocation fee, payable upon Licensor's approval of Licensee's request for relocation. Any relocation of Licensee's Licensed Business will be subject to Licensor's approval, which may be granted or withheld, in Licensor's sole discretion. In addition, Licensee must sign the form of license agreement then being signed by new licensees and will be subject to the terms of that license agreement (including the Royalties, the Brand Building and Support Fee and other charges), other than the license term; in addition, Licensee will not have the right to attend the Training Program and will not be required to pay the License Fee. In connection with any relocation, Licensee's Licensed Business may not be closed for business for more than 30 days. In addition, Licensee will be subject to the same requirements regarding his site, the Master Lease, the Sublease and the related fees as are applicable to the initial site of his Licensed Business.

## **7. Conduct of the Licensed Business.**

(a) Licensor will lend to Licensee, upon satisfactory completion of the Training Program, one copy of Licensor's Operating Manual (which is comprised of a series of volumes under various titles), for use by Licensee strictly in accordance with the terms of this Agreement during the term of this Agreement. Licensee must operate the Licensed Business strictly in accordance with Licensor's Operating Manual, as amended from time to time, and with the rules, regulations, instructions, policies and procedures as may from time to time be issued by

Licensor for the conduct of the Licensed Business as Licensor may, in its sole discretion, deem appropriate. If there is any disparity between Licensor's copy of the Operating Manual and Licensee's copy, Licensor's copy will govern.

(b) (i) Licensee must offer and sell at the premises of the Licensed Business all products designated by Licensor, consistent with Licensor's comprehensive standards and requirements. In addition, Licensee must incorporate into the Licensed Business all new products and services designated by Licensor and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by Licensor that Licensor requires Licensee to participate in. If Licensee fails or refuses to fully participate in any such program, initiative or campaign, Licensee will be subject to a Non-participation Fee in the amount of \$100 per day payable to Licensor.

(ii) Licensor reserves the right to designate, in its sole discretion, which of its licensees and franchisees may, or will be required to, participate in new product or service tests, new or modified product or service offerings and other programs, initiatives and campaigns that Licensor may, from time-to-time, develop. If Licensor designates Licensee for participation in any such test, offering, program, initiative or campaign, Licensee must participate when and as required by Licensor. If Licensee fails or refuses to fully participate in any such test, offering, program, initiative or campaign, Licensee will be subject to a Non-participation Fee in the amount of \$100 per day payable to Licensor.

(iii) Licensee must maintain at all times a sufficient supply of all approved products to meet the demand of Licensee's customers.

(c) Licensee must not offer or sell any products or services at or from the premises of the Licensed Business, or conduct any other business at or from the premises of the Licensed Business, unless Licensor specifically approves the offering and sale of those products or services, which approval may be withheld by Licensor, in its sole discretion. In addition, Licensee may not offer or sell any products or services specified by Licensor in any configuration, form or manner (including items for resale) other than that specifically approved by Licensor.

(d) (i) Licensee must operate the Licensed Business with the highest integrity and good business standards, and must use his best efforts to enhance, to the satisfaction of Licensor, the goodwill associated with the Service Marks.

(ii) Licensee must not disparage to any person Licensor, its employees, representatives or agents, its products or the Service Marks.

(e) (i) In order to maintain the high standards of product and service quality and consistency associated with the Service Marks, and the uniformity of the License, Licensee must purchase all food, supplies, equipment, signage, decor and other goods and services from vendors and suppliers on Licensor's list of approved vendors and suppliers (as it may exist from time to time), which Licensor will lend to Licensee for use by Licensee in accordance with the terms of this Agreement. Unless Licensor waives such requirement, Licensee must subscribe to Licensor's provider of Muzak® (or other provider of musical programming

designated by Licensor) and play Licensor's custom programming (or other musical programming designated by Licensor) at the Licensed Business. Licensee must contract with Licensor's approved vendors to provide credit card and gift card processing services, maintenance for Licensee's equipment and computers (hardware and software), Internet service, e-mail account and other services designated by Licensor. Licensee may request that Licensor add certain vendors or suppliers to Licensor's list of approved vendors and suppliers by notifying Licensor in writing. Licensor may require Licensee to submit samples or specifications for examination or testing, at Licensee's expense, to determine if the supplies or products meet Licensor's specifications in such areas as weight, size, shape, delivery, performance, consistency, warranties, design, appearance, atmosphere and price. Licensor will advise Licensee of its approval or denial of approval within 45 days after receipt of all applicable information.

(ii) Licensee will act as Licensee's broker for the purchase of all of Licensee's equipment and signage for the Licensed Business. Licensee must use Licensor as the broker for the purchase of Licensee's equipment and signage for the Licensed Business. Simultaneously with signing this Agreement, Licensee must sign and deliver to Licensor an Equipment and Signage Agreement, in substantially the form attached to the Offering Circular as Exhibit I. Licensee must deposit with Licensor or its Affiliates, by certified or cashiers' check, the cost of that equipment and signage (including sales and/or use taxes) before Licensor places Licensee's order with those vendors. Licensor or its Affiliates will coordinate the ordering and delivery of that equipment and signage and will use the proceeds of Licensee's deposit for the purchase of Licensee's equipment. In addition to the amount deposited by Licensee with Licensor or its Affiliates for the equipment and signage, Licensee will pay Licensor or its Affiliates a fee in an amount equal to 4% of the cost of the equipment and signage (including shipping, but excluding taxes) (the "Equipment Fee").

(f) Licensee must cause the Licensed Business premises to be constructed, equipped and decorated in strict compliance with Licensor's requirements and in accordance with Licensee's plans and specifications, as have been approved by Licensor. If these requirements, plans and specifications are not followed in all material respects or if changes were not approved in writing by Licensor prior to being implemented, Licensee may not open the Licensed Business to the public. Licensee must engage licensed contractors and architects, who are subject to Licensor's approval, obtain appropriate construction documents, and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as Licensor may require, even if the site's local government does not require same.

(g) (i) Licensee must cause the Licensed Business to be consistent in color, design and style with the standards adopted and approved by Licensor from time to time. Licensee must maintain the appearance and atmosphere of the Licensed Business, and the equipment and premises used in connection with the Licensed Business, in accordance with the standards that Licensor may adopt from time to time. If Licensor so requests, Licensee, at his expense, must remodel and update the Licensed Business to Licensor's then-current standards; provided, however, that no such remodeling or updating requirement will be imposed more frequently than (a) in the case of a major remodel/update, every 60 months and (b) in the case of a minor remodel/update or "spruce up," every 30 months. A minor remodel/update will not cost more than 5% (7.5% in the case of licenses located in Hawaii, Alaska or the Caribbean

and 20% in the case of licensees located in the New York metropolitan area) of the cost of building out a Cold Stone Creamery® restaurant, averaged over the 6-month period preceding Licensor's request to remodel (based on the licensees opening their licenses for business within such 6-month period). Whether a remodeling/update is major or minor will be determined by Licensor, in its sole discretion. Licensee must deposit with Licensor, within 90 days after the end of each calendar year, \$600 per year towards Licensee's minor remodel/update or "spruce up;" as and when Licensee performs a minor remodel/update or "spruce up," Licensor will return those funds to Licensee in the amount expended by Licensee.

(ii) All personnel employed by Licensee in connection with the Licensed Business must wear a uniform or other clothing approved by Licensor.

(iii) Any variations in color, design, style, appearance or atmosphere must be approved in writing by Licensor.

(h) (i) The Licensed Business must be (a) personally supervised by Licensee or by a Principal selected by Licensee who has been approved by Licensor and who has satisfactorily completed Licensor's Training Program (the "Supervising Principal") or (b) directly supervised "on-premises" by a manager who has been approved by Licensor and who has satisfactorily completed Licensor's Training Program, unless Licensor has waived that requirement. If supervised by a manager, the manager must spend at least 40 hours per week on the premises of the Licensed Business overseeing the operation of the Licensed Business. The name of the Supervising Principal or manager who will supervise the Licensed Business is set forth on the signature page of this Agreement. Any changes must be approved by Licensor.

(ii) Licensee (or, if Licensee is a corporation, partnership, limited liability company or other entity, the Supervising Principal), and Licensee's manager, if it has one, must be present and work at the Licensed Business during its grand opening (at least two to four days before the opening and the first two to three days after the opening).

(i) Licensee must keep the Licensed Business open to the public as Licensor requires in Licensor's Operating Manual (all of those requirements are referred to as the "Required Hours.") The Required Hours may be waived by Licensor, in its sole discretion. In addition, Licensee must keep the Licensed Business open during the hours of operation of the Licensed Business posted on or about the restaurant premises or otherwise advertised to the public (the "Posted Hours"). If Licensee fails to keep his Licensed Business open during the Required Hours or the Posted Hours, Licensee must pay Licensor the amount of \$100 per occurrence.

(j) Licensor may evaluate and inspect the premises of the Licensed Business (including public and private areas) at all times, with or without prior notice to Licensee, to verify compliance with the terms and conditions of this Agreement, to confirm whether the quality of service and products is being maintained to Licensor's satisfaction and for any other purpose related to this Agreement and the relationship between the parties. If Licensor believes, in good faith, that any materials, ingredients, products, supplies, goods, uniforms, fixtures, signs, furnishing and/or equipment on the premises of the Licensed Business do not comply with Licensor's requirements or standards, Licensor may select and remove, at no expense to Licensor, those items for evaluation and inspection purposes. If those items do not

comply with Licensor's requirements or standards, Licensor may retain or discard those items, at no expense to Licensor. Licensor may photograph or videotape any part of the premises of the Licensed Business, whether or not Licensee is present. Licensee will permit Licensor and its representatives access to its business premises, and will cooperate with Licensor in any such evaluation or inspection. At Licensor's request, Licensee will purchase and install a video surveillance system to which Licensor will have remote access to verify compliance with the terms and conditions of this Agreement, to confirm whether the quality of service and products is being maintained to Licensor's satisfaction and for any other purpose related to this Agreement and the relationship between the parties.

(k) Licensor or its representatives or agents may meet and communicate with, and solicit information (including books and records and other documentation) from, Licensee's past and present employees, suppliers, vendors, lenders, equipment lessors and customers to verify compliance with the terms of this Agreement, to confirm whether Licensee is performing his obligations to those persons and entities to confirm the quality and the adequacy of the products and services provided by Licensee and for any other purpose related to this Agreement and/or the relationship between the parties that Licensor, in its sole discretion, determines to be necessary or desirable, and Licensee will assist and cooperate with Licensor and its representatives and agents in that regard.

(l) Licensee hereby consents to Licensor's (and its representatives' and agents') such meetings, communications and solicitations and authorizes his employees, suppliers, vendors, lenders, equipment lessors and customers to provide Licensor any information and/or documents that Licensor may request, in its sole discretion, and Licensee expressly waives any and all rights that Licensee may have in connection with the disclosure of that information and those documents to Licensor and its representatives and agents, and the use of that information by Licensor or its representatives or agents. Licensee will promptly execute such documents, and take such other and further actions, as Licensor may request to confirm or effectuate Licensor's rights pursuant to this Section 7(l). Licensee irrevocably appoints and constitutes Licensor and its designated representatives and agents, with full power of substitution, as Licensee's agent and attorney-in-fact for and on behalf of, and in Licensee's name, and at Licensee's expense, to execute such documents and to take such other and further actions. This special power of attorney will be deemed to be coupled with an interest and irrevocable. The provisions of this Section 7(l) will survive the expiration and termination of this Agreement.

(m) As a service to Licensee and other licensees and franchisees of Licensor, Licensor may, but is not obligated to, utilize its experience and the data obtained from all of its licensees and franchisees to establish and maintain a suggested schedule of prices for products and services of the Licensed Business. In addition, Licensor may establish required maximum prices for products and services of the Licensed Business, and Licensee will be required to comply with that pricing schedule.

(n) [deleted]

(o) Licensee must obtain and maintain all licenses and permits required to be held by Licensee in connection with the conduct of the Licensed Business and must comply with all applicable federal, state and local laws, regulations, rules and ordinances in connection with the

conduct of the Licensed Business, including health, safety, sanitation, employment, environmental and taxation laws, regulations, rules and ordinances. Licensee must give Licensor written notice of Licensee's receipt of an unsatisfactory or failing health department inspection report within three days after Licensee's receipt of that report.

(p) Licensee must pay when due all debts and obligations incurred by Licensee in connection with the conduct of the Licensed Business, including all applicable tax liabilities.

(q) (i) Licensee must obtain and maintain during the term of this Agreement, such insurance policies as Licensor may require, in its sole discretion, as designated in Licensor's Operating Manual. These insurance policies must name Licensor, Cold Stone Creamery Leasing Company, Inc. (and any other Affiliates of Licensor that it may reasonably require), Licensee's area developer (if any) and the site owner or the Master Landlord as additional insureds. The insurance must be placed with an insurance carrier or carriers satisfactory to Licensor, must be satisfactory in form to Licensor and may not be subject to cancellation or any material change except after 30 days' prior written notice to Licensor. The insurance policies must provide that no failure of Licensee to comply with any term, condition or provision of the contract, or other conduct by Licensee, will void or otherwise affect the protection afforded to Licensor, Cold Stone Creamery Leasing Company, Inc. (or other Affiliates of Licensor that it may reasonably require) or Licensee's area developer under the policy. Certificates of insurance with respect to these insurance policies must be provided to Licensor with respect to all insurance policies in effect during the term of this Agreement, promptly after the issuance of the insurance policies and as may be requested by Licensor.

(ii) If Licensee sustains a loss by reason of fire, flood or other casualty of a type typically covered by insurance, and such casualty is caused wholly or partially by Licensor's (or its Affiliates') acts or omissions, Licensee must look solely to the proceeds of Licensee's insurance policy for reimbursement of the loss, and neither Licensee nor any insurance carrier may recover damages against Licensor (or its Affiliates) by way of direct action, subrogation, assignment of claims or otherwise. Licensee waives all such rights of recovery by Licensee, any insurance carrier or other person, and agrees to notify each insurance carrier of this provision.

(iii) If Licensee fails to pay any premium when due or any policy is in default, Licensor may, but will not be obligated to, pay any premium and/or take any action necessary to cure the default. In this event, Licensee must immediately pay to Licensor the amount so paid by Licensor or the amount expended by Licensor to cure such default, plus interest at the rate of 18% per annum from the date paid or expended by Licensor.

(r) Licensee must attend, at his expense, all annual and other meetings and conference calls of licensees and franchisees that Licensor determines are mandatory for all licensees and franchisees, or groups of licensees and franchisees (as designated by Licensor), such as licensees and franchisees within a particular geographic region. Licensor may impose a charge for Licensee's failure to attend such meetings and conference calls.

(s) Licensee must maintain an e-mail address with a provider approved by Licensor for purposes of communicating with Licensor, Licensee's area developer and other persons.



Licensee must inform Licensor and Licensee's area developer of his e-mail address promptly upon signing this Agreement and if his e-mail address is changed. Licensee should check and respond to his e-mail on a daily basis (except for weekends); provided, however, that the timeliness of Licensee's e-mail review and responses must be consistent with reasonable business practices and must not cause Licensor, area developers or other licensees or franchisees to be unable to communicate with Licensee in a timely manner.

(t) Licensor will be entitled to use the name, likeness and voice of Licensee and its Principals, officers, managers and employees for purposes of promoting the License, Licensor and its products, including all photos and audio and video recordings of Licensee and its Principals, officers, managers and employees, and Licensee hereby irrevocably consents thereto. Licensee acknowledges that Licensor will own all right, title and interest, to the extent allowed by law, in all rights of integrity, disclosure and publication and any other rights that may be known as or referred to as "moral rights," "artist's rights," "publicity rights" or the like associated with such photos and audio and video recordings, and assigns and transfers unto Licensor the full and exclusive right, title, and interest to such publicity rights. At Licensor's request, Licensee will obtain from any or all of its Principals, officers, managers and employees written consent, in such form as Licensor may request.

(u) (i) If Licensee fails to pay any amount he is required to pay, or perform any obligation he is required to perform, pursuant to this Agreement, Licensor may, but will not be obligated to, pay such amount and/or take any action necessary to cure the default. In this event, Licensee must immediately pay to Licensor the amount so paid by Licensor or the amount expended by Licensor to cure such default, plus interest at the rate of 18% per annum (or, if less, the highest amount permitted by law) from the date paid or expended by Licensor. This right will accrue whether or not Licensor terminates this Agreement.

(ii) If Licensee abandons (as evidenced by the Licensed Business being closed for business for more than three consecutive days or some other affirmative act, such as the authorization or auction or sale of equipment) or otherwise fails to operate the Licensed Business properly, Licensor may elect to operate (or select a designee to operate) the Licensed Business for a reasonable period on Licensee's behalf, for a reasonable fee to be determined by Licensor from time to time. In addition, Licensee must reimburse Licensor for any operating loss incurred by Licensor (or its designee).

(v) Licensee must participate in all programs of a charitable nature designated by Licensor from time-to-time, including contributing a designated percentage of opening day sales (or sales for other periods) to a charity chosen by Licensor or Licensee, as Licensor may elect.

(w) Licensee must obtain and maintain continuous access to Licensor's Internet website in a manner that will enable Licensee to download required information (without regard to size) and to otherwise interact with Licensor, Licensee's area developer and other persons, in such manner as Licensor may specify. Licensee is solely responsible for protecting himself from viruses, computer hackers and other computer-related problems, and hereby waives any and all claims against Licensor and its Affiliates relating to or arising out of us any harm caused by such computer-related problems.

(x) If Licensor believes, in good faith, that any product offered by Licensee, or any condition with respect to Licensee's Licensed Business, may be unhealthy, unsafe or unsanitary, and Licensor requests that Licensee remove and/or discard or destroy such product, or correct or otherwise modify such condition, Licensee must do so immediately. If Licensee does not do so immediately, Licensor may do so at Licensee's expense, with no liability to Licensor. In addition, Licensor may require Licensee to close the Licensed Business to the public until Licensor is satisfied that that unhealthy, unsafe or unsanitary condition has been completely corrected.

(y) Licensee must obtain, at his expense, the computer systems, equipment, software and programming that Licensor designates, including My Profit Keeper™ accounting software. Licensee must, at his expense, upgrade or update that computer system, equipment, software and programming software and programming when Licensor believes that it is necessary. Licensee must obtain annual support contracts with the vendors designated by Licensor, at Licensee's expense. Licensee may not install any hardware or software onto the computer systems used in connection with the Licensed Business without Licensor's express consent.

(z) (i) Licensee must hire, train and supervise efficient, competent and courteous employees of good character for the operation of the Licensed Business and must train his employees in accordance with Licensor's specifications for conduct of the Licensed Business. Licensee must ensure that all employees whose duties include customer service have sufficient literacy and fluency in the English language (or such other language that is the primary language in Licensee's market) to adequately serve the public in the Licensed Business. The person responsible for supervising the Licensed Business (as required by Section 7(h)) must demonstrate fluency in the English language (through independent testing to be conducted by Licensor). Licensee is solely responsible for hiring and discharging the employees of the Licensed Business. Licensee is solely responsible for setting the wages and terms of employment of the employees of the Licensed Business.

(ii) Licensee must implement all procedures recommended by Licensor to minimize employee theft. Licensee acknowledges and agrees that employee theft will not relieve Licensee of his obligation to make all payments to Licensor based upon Gross Sales.

## **8. Service Marks; Proprietary Information.**

(a) For purposes of this Agreement, the term "Service Marks" means (i) all trade names, trademarks, service marks, logos, product identifiers, selections and/or designations, including all registrations and applications for the same, owned by Licensor or used in connection with the Licensed Business and (ii) the trade dress used in connection with the Licensed Business, including the total appearance, atmosphere and image of Cold Stone Creamery® restaurants, the products and packaging, all related features such as size, texture, shape, color or color combinations, and graphics of Cold Stone Creamery® restaurants and the products and packaging, and all advertising and marketing techniques used to promote the Licensed Business, as well as specifically including all signage, menu boards, product and ice cream displays, all product configurations such as the appearance of the ice cream and the ice cream additives and/or "mix-ins", the cone configurations, all product packaging including any

containers, buckets or other packages for containing ice cream, and any color schemes and designs utilized in connection with the Cold Stone Creamery® restaurants' interior walls, counters, table tops, chairs, and floors ("Trade Dress"). Use of any Service Marks must be accompanied by the registration, service mark, trademark or other symbol, as designated by Licensor, in close proximity to the Service Marks. Licensee must refrain from any business or advertising practice that may be injurious to the business of Licensor, the goodwill associated with the Service Marks or the Licensed Business.

(b) Any reproduction of any items or materials suitable for copyright protection by Licensor (the "Copyrights"), including the copyrightable materials within the Proprietary Information, must bear a copyright notice in the form designated by Licensor. All advertising and promotional materials generated by or for Licensee or its officers, managers or employees will be subject to Licensor's prior approval, will be completely factual and will conform to the highest standards of ethical advertising. Further, all such advertising and promotional materials generated by or for Licensee or its Principals, officers, managers or employees for the Licensed Business will be deemed a work-made-for-hire, and all ownership rights, including any copyrights, in such advertising and promotional materials are hereby assigned by Licensee to Licensor. In addition, Licensee will require all of its Principals, officers, managers and employees to sign an agreement, in the form of Exhibit D or Exhibit F to the Offering Circular, as the case may be, obligating its Principals, officers, managers and employees to assign all of their rights, title and interest to the Copyrights to Licensor and requiring its Principals, officers, managers and employees to cooperate in the protecting the Copyrights.

(c) During the term of this Agreement, Licensee and its Principals, officers, managers and employees may conceive, invent, create, design and/or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to store operations, business practices or the manufacturing, production, marketing and sale of ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages and other frozen dessert products and related goods in connection with the Licensed Business (the "Innovations"). Licensee assigns any and all of its rights, title and interest in the Innovations, including any intellectual property rights, to Licensor, and also agrees to cooperate with Licensor and its counsel in the protection of the Innovations, including the perfecting of title thereto. In addition, Licensee will require all of its Principals, officers, managers and employees to sign an agreement, in the form of Exhibit D or Exhibit F to the Offering Circular, as the case may be, obligating its Principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to Licensor and requiring its Principals, officers, managers and employees to cooperate in the protecting and perfecting of title in the Innovations for Licensor.

(d) Licensee will not have the exclusive right to use the Service Marks, the Copyrights, the Innovations or the Proprietary Information. Licensee may not offer or grant any sublicense or other rights to use the Service Marks, the Copyrights, the Innovations or the Proprietary Information to any person or entity. Licensee acknowledges and agrees that Licensor maintains and reserves all rights to the Service Marks, the Copyrights, the Innovations and the Proprietary Information except as expressly set forth in this Agreement. Licensee further acknowledges and agrees that his right to use the Service Marks, the Copyrights, the Innovations and the Proprietary Information is derived solely from this Agreement and that

Licensee will not derive any right, title or interest in the Service Marks, the Copyrights, the Innovations or the Proprietary Information other than a license to use the Service Marks, the Copyrights, the Innovations and the Proprietary Information in connection with the conduct of the Licensed Business during the term of this Agreement. Upon expiration or termination of this Agreement, Licensee may not, directly or indirectly, use the Service Marks, the Copyrights, the Innovations or the Proprietary Information in any manner or for any purpose whatsoever. Licensee agrees that he will not in any way infringe upon, harm or contest the rights of Licensor or any other person or other entity to use of the Service Marks, the Copyrights, the Innovations and the Proprietary Information. Licensee further acknowledges that his use of the Service Marks, the Copyrights, the Innovations and the Proprietary Information pursuant to this Agreement will inure to the benefit of Licensor and the Program and that any goodwill arising from Licensee's use will automatically vest in Licensor.

(e) During the term of this Agreement, Licensee may not include the name "Cold Stone Creamery" or any substantially similar name in his corporate, partnership, limited liability company or other entity name. However, Licensee may include the Service Marks in any advertising or marketing materials approved by Licensor for distribution. Licensee must use the Service Marks, the Copyrights, the Innovations and the Proprietary Information only in the manner prescribed by Licensor and in no other manner.

(f) Licensee must immediately notify Licensor of any conduct that could constitute infringement of or challenge to the Service Marks, the Copyrights, the Innovations or the Proprietary Information. Licensor may, in its sole discretion, decide whether to institute any action in connection with infringement of or challenge to the Service Marks, the Copyrights, the Innovations or the Proprietary Information, and will control all proceedings and litigation. Licensor is not required to protect Licensee's right to use the Service Marks, the Copyrights, the Innovations or the Proprietary Information; provided, however, that Licensor will indemnify Licensee for, from and against all damages for which Licensee is held liable in any lawsuit arising out of Licensee's use of the Service Marks, the Copyrights, the Innovations or the Proprietary Information in compliance with this Agreement.

(g) Notwithstanding anything contained in this Agreement to the contrary, if it becomes advisable at any time, in Licensor's sole discretion, to modify or discontinue use of any Service Mark, Copyright, Innovation or Proprietary Information, or use one or more additional or substitute Service Marks, Copyrights, Innovations and/or Proprietary Information and/or other information and/or rights, Licensee must, at his expense, comply within a reasonable time after notice thereof by Licensor. However, if Licensor requires Licensee to modify or discontinue use of any material Service Mark at a time other than upon renewal of the License, and that requirement is a direct result of Material Issues (as defined in the Offering Circular), Licensor will bear the cost of those modifications or discontinuances. If Licensor requires Licensee to modify or discontinue use of any material Copyright, Innovation or Proprietary Information and/or use other information and/or rights in their place at any time other than upon renewal of the License, and that requirement is a direct result of proceedings or litigation that determined that Licensor's and its licensees' and franchisees' use of such Copyright, Innovation or Proprietary Information infringed upon a third party's rights, Licensor will bear the cost of those modifications or discontinuances.

(h) Licensee must not solicit other licensees, franchisees or area developers, or use the lists of licensees, franchisees and area developers, for any commercial or other purpose other than purposes directly related to the operation of their Licensed Businesses without the prior approval of Licensor. Licensee will cause its Principals, officers, managers and employees to comply with such restrictions.

(i) Upon any breach by Licensee of any of the terms of this Section 8, Licensor may institute and prosecute proceedings, at law or in equity, in any court of competent jurisdiction, to obtain an injunction to enforce the provisions of this Agreement and to pursue any other remedy to which Licensor may be entitled. Licensee agrees that the rights conveyed by this Agreement are of a unique and special nature and that Licensor's remedy at law for any breach would be inadequate and agrees and consents that temporary or permanent injunctive relief may be granted in any proceeding which may be brought to enforce any provision of this Section 8, without the necessity of posting bond therefor or proof of actual damages.

**9. License Fee; Royalties; Brand Building and Support Fee; Development Fee.** In consideration of the grant of the License by Licensor to Licensee:

(a) Subject to Section 9(a)(ii), Licensee must pay to Licensor an initial license fee (the "License Fee"), as follows:

Type of Cold Stone Creamery Restaurant	License Fee Per Year	Minimum License Fee (3 years)	Maximum License Fee (5 years)
"Gotta Have It"	\$4,200	\$12,600	\$21,000
"Love It"	\$3,600	\$10,800	\$18,000
"Like It"	\$3,000	\$9,000	\$15,000

The License Fee is payable by certified or cashiers' check upon the signing of this Agreement by Licensor and Licensee. The License Fee will be fully earned by Licensor upon signing this Agreement and, except as set forth in Section 17(d), will be nonrefundable.

(ii) (a) If Licensee executed this Agreement in connection with a renewal, Licensee will not be required to pay the License Fee. However, Licensee will be required to pay the renewal fee contemplated by Licensee's controlling prior license agreement, prior to or simultaneously with the execution of this Agreement.

(b) If Licensee executed this Agreement in connection with a relocation, Licensee will not be required to pay the License Fee.

(b) (i) Subject to Section 9(b)(ii), Licensee must pay to Licensor royalties ("Royalties") in an amount equal to 6% of the sales from all products and services sold at the Licensed Business, whether for on-site or off-site consumption ("Gross Sales"), including sales from products and services delivered to customers and/or sold from off-site locations. The term "Gross Sales" also includes the proceeds received or realized by Licensee in connection with any business interruption insurance maintained by or for the benefit of Licensee. Licensee must accurately and timely report Gross Sales to Licensor. Licensee acknowledges that accurate

reporting of Gross Sales requires, among other things, compliance with all standards related thereto and recording of all sales at the time the product is delivered to the purchaser, whether for cash, by redemption of gift certificates or coupons or sales for which payment may be deferred.

(ii) Royalties will be increased up to 18% of Gross Sales with respect to any period during which Licensee is in breach of his obligations under this Agreement. (The Royalties paid or owing to Licensor with respect to the period during which Licensee is in breach are referred to as "Breaching Royalties.") Breaching Royalties will be charged for a minimum 14-day period, regardless of the length of the actual breach.

(iii) If Licensee does not open his Cold Stone Creamery® restaurant to the public within one year after the Effective Date, 150 days after the Master Landlord makes the site for his Licensed Business available to him (as determined by Licensor) or the deadline in the Master Concession Agreement, whichever occurs first, in addition to Licensor's other rights pursuant to this Agreement, Licensee must pay royalties ("Late Opening Royalties"), from that date until the date that Licensee's Cold Stone Creamery® restaurant is open to the public for business or this Agreement has been terminated, at the rate of 6%, calculated based upon Licensor's Average Unit Volume (as defined below) from time to time. For purposes of this Agreement, the term "Average Unit Volume" means the average annual Gross Sales for Cold Stone Creamery® restaurants, calculated in the same manner as average unit volume is calculated for purposes of Licensor's then-current Franchise Offering Circular (or if the Average Unit Volume is not then disclosed in Licensor's then-current Franchise Offering Circular, calculated in the same manner as the Average Unit Volume was last so disclosed), divided by 52.

(c) Licensee must pay to Licensor an amount equal to 3% of Gross Sales (the "Brand Building and Support Fee.")

(d) If Licensor leased, built out, acquired permits and/or purchased signage, equipment and/or inventory for Licensee's Licensed Business prior to signing this Agreement, Licensee must pay to Licensor a development fee (the "Development Fee") equal to 25% of Licensor's cost of leasing, building out, developing, equipping and stocking Licensee's Licensed Business until Licensee acquires the Licensed Business (in lieu of paying such amounts directly to the applicable vendors and other parties).

(e) Royalties and the Brand Building and Support Fee will be due and payable on Friday of each week with respect to Gross Sales during the seven-day period ending on the prior Tuesday (this seven-day period is referred to in this Agreement as a ("Business Week"). Royalties, the Brand Building and Support Fee, the Lease Administration Fee, the Development Fee and any other fees or charges payable to Licensor or its Affiliates that are not paid within 10 days after their due date will bear interest at the rate of 18% per annum. In addition, Royalties, the Brand Building and Support Fee, the Lease Administration Fee, the Development Fee and any other fees or charges payable to Licensor or its Affiliates that are not paid within 10 days after their due date will be subject to a late charge of 5% of the unpaid amount, or \$100, whichever is greater. Further, the Royalty rate for delinquent Royalties will be increased, as set forth in Section 9(b).

(f) (i) Licensee authorizes Licensor to draw drafts against Licensee's bank accounts for the full amount of the Royalties, Brand Building and Support Fees, the Lease Administration Fee, the Equipment Fee, payments due under the Sublease and for any other amounts that Licensee owes to Licensor or its Affiliates. Simultaneously with signing this Agreement, Licensee must sign a pre-authorization form, in the form attached as Exhibit E to the Offering Circular, to enable Licensor to do so. In addition, from time to time at Licensor's reasonable request, Licensee must sign those other and further documents as Licensor may require to enable Licensor to draw drafts against Licensee's bank accounts for such purposes.

(ii) If Licensee fails to provide Licensor any necessary information or documentation with respect to Licensor's practice of drawing drafts against Licensee's bank accounts, Licensee must pay Licensor a fee in the amount of \$100 per day that that failure continues.

(g) If Licensee fails to submit to Licensor and his area developer, by 9:00 a.m. (Phoenix, Arizona time) on Friday of each week, an operating statement, in the form specified by Licensor, which includes Gross Sales figures for the prior Business Week, as required by Section 10(c), the amount drawn against Licensee's bank account, pursuant to Section 9(e), for the Royalties and the Brand Building and Support Fee with respect to the prior Business Week will be the amount drawn the previous Business Week plus 10%, as an estimate of the prior Business Week's Royalties and the Brand Building and Support Fee, and Licensee may be assessed a \$100 late charge per delinquent operating statement per week, or part thereof (until each delinquent operating statement has been delivered), which amount may be increased by Licensor from time to time.

(h) Licensee must pay to Licensor an amount equal to any sales, gross receipts or similar taxes assessed against, or payable by, Licensor and calculated on the License Fee, Royalties, Brand Building and Support Fees, the Lease Administration Fee, the Development Fee, the Equipment Fee, equipment and signage purchases or other payments required to be paid pursuant to this Agreement, unless the tax is an income tax or an optional alternative to an income tax otherwise payable by Licensor. Such amount will be due and payable within 10 days after receipt of Licensor's invoice.

(i) If Licensee fails to deliver or provide to Licensor and Licensee's area developer any statement, report or other document or information required to be delivered (for example, certificates of insurance and financial statements), by the applicable deadline, Licensee will be assessed a \$100 late charge per delinquent statement, document or other information per week, or part thereof (until each delinquent statement, document or other information has been delivered or provided), which amount may be increased by Licensor from time to time.

#### **10. Financial Reporting; Evaluations; Audits.**

(a) Licensee represents and warrants to Licensor that, as of the Effective Date, Licensee has working capital in an amount equal to \$35,000 in cash or other liquid funds.

(b) At each of the following times, Licensee must demonstrate to Licensor that Licensee has, at that time, in cash or other liquid funds, working capital in an amount equal to \$35,000 (the "Continuing Working Capital Requirement"):

(i) Immediately prior to Licensor's execution of the Master Concession Agreement or the Master Lease, as the case may be;

(ii) Immediately prior to the date that Licensee is scheduled to attend Stage 4 of the Training Program; and

(iii) Immediately prior to the date that Licensee's Licensed Business opens to the public for business.

If Licensee fails to satisfy the Working Capital Requirement at any of the above times, Licensor may, without any liability to Licensor, delay, defer or refuse to execute the Master Concession Agreement or the Master Lease, permit Licensee to attend Stage 4 of the Training Program or permit Licensee's Licensed Business to open to the public for business, as the case may be. If such failure continues for 30 days, Licensor may terminate this Agreement.

(c) (i) Licensee must submit to Licensor and his area developer in the English language the weekly reports required by Section 9(g) of this Agreement, and such other periodic reports as Licensor may require, in the form and manner designated by Licensor.

(ii) Licensee must submit to Licensor and his area developer in the English language such financial information, statements and reports that Licensor may require, in its sole discretion, from time to time, in the format that Licensor may require, in its sole discretion. Licensor may require that any such financial statements be compiled, reviewed or audited, at Licensee's expense. Licensee must maintain his books and records in the English language and in an orderly fashion, utilizing the software programs designated by Licensor, and in accordance with standard accounting procedures. Licensee must maintain such books and records as are required by law and such books and records as Licensor may require, in its sole discretion, including employee timecards; all of those books and records must be in the English language. All books and records maintained by Licensee relating to the Licensed Business must be retained by Licensee during the term of this Agreement and for the seven-year period following the expiration or termination of this Agreement. Licensor may disclose to any person (including any lender to, or equipment lessor of, Licensee) or use for any purpose, any financial or other information regarding Licensee in Licensor's possession, without obtaining Licensee's consent.

(d) Licensor may inspect, or cause its agents or representatives to inspect, at any time, Licensee's books and records with respect to the Licensed Business, including Licensee's federal and state tax returns, sales and use tax returns, customer records and financial accounts. Licensee must maintain his books and records with respect to the Licensed Business on the premises of its Licensed Business or such other place as is approved in writing by Licensor. If Licensee's books and records are maintained at a place other than on the premises of its Licensed Business, at the request of Licensor, or its agents or representatives, Licensee must, by 4:00 p.m. (local time) on the day upon which such request is made, (i) deliver its books and records (and/or accurate and complete copies thereof, at Licensor's option) to Licensor, or its



agents or representatives, at the Licensed Business or (ii) provide Licensor, or its agents or representatives, access to Licensee's books and records (and/or accurate and complete copies thereof, at Licensor's option) at the place at which they are maintained. Licensee must assist and cooperate with Licensor in establishing and maintaining Licensor's POS system, which provides Licensor and Licensee's area developer with independent access to the information and data generated by Licensee's electronic cash register or computer system, including, at Licensee's expense, acquiring any necessary hardware or software and setting the system to automatically transmit data and information designated by Licensor to Licensor and Licensee's area developer. All POS data generated by the Licensed Business will be the property of Licensor.

(e) Licensor may audit, or cause its agents or representatives to audit, Licensee's books and records with respect to the Licensed Business. Licensee must provide Licensor and its representatives and agents access to Licensee's books and records with respect to the Licensed Business, and must cooperate with the conduct of any audit. Licensor will pay all costs and expenses in connection with any audit unless the audit reveals that Licensee has underreported his Gross Sales, or underpaid his Royalties or the Brand Building and Support Fee, during the audited period. In this event, Licensee must promptly pay, or reimburse Licensor for, all costs and expenses in connection with the audit (including reasonable attorneys' fees and costs), and must pay Licensor the amount of the underpayment, plus interest at the rate of 18% per annum on the amount of the underpayment from the respective due date of each underpayment.

(f) Upon request, Licensee must, at its expense, promptly provide Licensor in the English language copies of Licensee's books and records requested by Licensor (including Licensee's charter documents, evidence of equity ownership and any agreements among its Principals.)

**11. Guaranty of Licensee's Obligations.** If Licensee is a person other than an individual (for example, a corporation, partnership, limited liability company or other entity), Licensee must deliver to Licensor, simultaneously with signing this Agreement, a guaranty or guaranties signed by each person (and his or her spouse) or entity owning, directly or indirectly, a 5% or greater equity interest in Licensee (for example, the general partners or the shareholders) (collectively, "Principals"), in the form of Exhibit D to the Offering Circular, pursuant to which the Principals agree to perform, and guarantee, Licensee's obligations to Licensor and its Affiliates (including the obligations under this Agreement, the Assignment of Concession Agreement and the Sublease), and agree to be bound by the restrictive covenants and the confidentiality and certain other provisions contained in this Agreement.

**12. Indemnification.** Licensee must protect, defend and indemnify Licensor, its Affiliates and their respective officers, directors, members, employees, shareholders, Affiliates, agents, successors and assigns (collectively, the "Indemnified People") and must hold the Indemnified People harmless (with counsel acceptable to Licensor) for, from and against any and all damages, claims, demands, liabilities, losses, costs and expenses (including reasonable attorneys' fees), of every kind and nature, suffered or incurred by any of the Indemnified People in connection with any lawsuit, action, proceeding or claim arising out of Licensee's actions or omissions or the conduct of the Licensed Business by Licensee.

**13. Confidentiality; Restriction on Hiring; Covenant Not to Compete.**

(a) (i) Licensee acknowledges that Licensor is engaged in a highly competitive business, the success of which is dependent upon, among other things, confidential and proprietary information. Licensee further acknowledges that Licensor's method of operation, processes, techniques, formulae and procedures and the other Proprietary Information constitute valuable trade secrets.

(ii) Licensee agrees not to use for any purpose, or disclose or reveal (and must cause all of Licensee's directors, officers and employees not to use for any purpose, or disclose or reveal), during the term of this Agreement or forever thereafter, to any person any contents of Licensor's Operating Manual, any Proprietary Information or any other information relating to the operation of the Licensed Business. Licensee must fully and strictly comply with all security measures prescribed by Licensor for maintaining the confidentiality of all Proprietary Information.

(iii) Licensee acknowledges that to breach his or her obligations under this Section 13(a) would cause damage to Licensor and to Licensor's other licensees and franchisees, and that Licensee would be liable for this damage.

(iv) Notwithstanding the foregoing, Licensee may disclose Proprietary Information to a person who is bound by the terms of this provision regarding confidentiality and a restrictive covenant contemplated by this Section 13, to the extent that that disclosure is necessary in connection with that person's capacity with Licensee. In addition, notwithstanding the foregoing, Licensee may use the Proprietary Information as may be necessary in connection with the operation of the Licensed Business.

(v) Notwithstanding the foregoing, the following will not be subject to the provisions of this paragraph (a):

(a) Information which is in the public domain as of the date of receipt by Licensee;

(b) Information which is known to Licensee prior to the date of receipt by Licensee;

(c) Information which becomes known to the public without a breach of the provisions of this Section 13 or any agreement signed in connection with this Agreement; and

(d) Information which is required by law to be disclosed or revealed, but only strictly to the extent required by law.

(b) Licensee may not, during the term of this Agreement and for the one-year period after the expiration or termination of this Agreement for any reason, directly or indirectly (as an owner, partner, director, officer, employee, manager, consultant, shareholder, representative,

agent, lender or otherwise), employ, hire or engage as an independent contractor or otherwise any person who is or was (at any time during the term of this Agreement) employed or engaged as an independent contractor or otherwise by Licensor or any of its Affiliates.

(c) (i) Licensee may not, during the term of this Agreement and for the one-year period after the expiration or termination of this Agreement for any reason, directly or indirectly (as an owner, partner, director, officer, employee, manager, consultant, shareholder, representative, agent, lender or otherwise), be engaged in a business that manufactures, produces, markets or sells ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages or any other frozen dessert products within, or for consumption within, a 10-mile radius of any Cold Stone Creamery® restaurant previously or presently owned, in whole or in part, by Licensee or any of Licensee's Affiliates, or any location with respect to which Licensee or any of Licensee's Affiliates has entered into a contract with respect to the future operation of a Cold Stone Creamery® restaurant.

(ii) Licensee may not, during the term of this Agreement and for the one-year period after the expiration or termination of this Agreement for any reason, directly or indirectly (as an owner, partner, director, officer, employee, manager, consultant, shareholder, representative, agent, lender or otherwise), be engaged in a business that manufactures, produces, markets or sells ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages or any other frozen dessert products, or for consumption within, a 10-mile radius of any Cold Stone Creamery® restaurant or any location with respect to which a contract has been entered into in connection with the future operation of a Cold Stone Creamery® restaurant.

(iii) Licensee may not, during the term of this Agreement and for the one-year period after the expiration or termination of this Agreement for any reason, directly or indirectly (as an owner, partner, director, officer, employee, manager, consultant, shareholder, representative, agent, lender or otherwise), be engaged in a business that manufactures, produces, markets or sells ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages or any other frozen dessert products within, or for consumption within, the United States.

(iv) Licensee may not, during the term of this Agreement and for the one-year period after the expiration or termination of this Agreement for any reason, directly or indirectly (as an owner, partner, director, officer, employee, manager, consultant, shareholder, representative, agent, lender or otherwise), be engaged in a business that manufactures, produces, markets or sells ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages or any other frozen dessert products outside of, or for consumption outside of, the United States.

(v) For purposes of this Section 13(c), a business will be deemed to be marketing or selling ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages or any other frozen dessert products if more than 15% of its gross sales are derived from the marketing or sale of such products.

(d) Simultaneously with the signing of this Agreement, Licensee must cause each of the Principals to sign an agreement in the form of Exhibit D to the Offering Circular, pursuant

to which the Principals agree to, among other things, be bound by the terms of this Section 13 and certain other provisions of this Agreement.

(e) Licensee must, promptly upon hiring or taking office, obtain from all officers of Licensee and all managers and employees of the Licensed Business, and must deliver to Licensor, signed agreements, in the form attached as Exhibit F to the Offering Circular, pursuant to which its officers, managers and employees agree to be bound by the provisions of this Section 13 and certain other provisions of this Agreement; provided, however, that Sections 13(b) and (c) will be effective with respect to officers during the term of their office with Licensee and for the one-year period thereafter and with respect to managers and employees during the term of their employment or other association with Licensee and for the six-month period thereafter.

(f) Licensee acknowledges that the provisions contained in this Section 13 (including the territorial and time restraints) are reasonable and necessary and agrees that his failure to adhere strictly to the restrictions contained in this Section 13 will cause substantial and irreparable damage to Licensor and to Licensor's other licensees and franchisees. Upon any breach by Licensee of any of the terms of this Section 13, Licensor may institute and prosecute proceedings, at law or in equity, in any court of competent jurisdiction, to obtain an injunction to enforce the provisions of this Agreement and to pursue any other remedy to which Licensor may be entitled. Licensee agrees that the rights conveyed by this Agreement are of a unique and special nature and that Licensor's remedy at law for any breach would be inadequate and agrees and consents that temporary or permanent injunctive relief may be granted in any proceeding which may be brought to enforce any provision of this Section 13, without the necessity of posting bond therefor or proof of actual damages.

(g) Upon any breach of Section 13(c), Licensee will, as liquidated damages and not as a penalty, be obligated to pay to Licensor an amount equal to the License Fee for each site operated in breach of Section 13(c) plus 10% of the sales from all products and services sold by or from a site operated in breach of Section 13(c), whether for on-site or off-site consumption.

(h) If the scope of any restriction contained in this Section 13 is too broad to permit the enforcement of that restriction to its fullest extent, then that restriction will be enforced to the maximum extent permitted by law, and Licensor and Licensee each consents and agrees that the scope may be judicially limited or modified accordingly in any proceeding brought to enforce that restriction. Each provision contained in this Section 13 is independent and severable and, to the extent that any provision is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, that declaration will not affect the legality, validity or enforceability of any other provision contained in this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction.

#### **14. Transfer of the Licensed Business; Assignment of License Rights.**

(a) Licensee may not offer or grant any sublicense of the License, or sell or otherwise transfer any equipment or other assets used in connection with the Licensed Business (other than in the ordinary course of Licensee's business), without the express written consent of Licensor, which consent may be withheld by Licensor, in its sole discretion.

(b) Licensee may not sell or otherwise transfer, by operation of law or otherwise, the License or the Licensed Business, or assign any right granted under this Agreement, without the prior written consent of Licensor, which consent may be withheld by Licensor, in its sole discretion and, if such consent is granted, will be subject to such additional requirements that Licensor may, in its sole discretion, determine.

#### 15. Term; Renewal.

(a) Subject to Section 16 of this Agreement, the term of this Agreement will commence on the Effective Date and will continue until the end of the Probationary Period. This Agreement will automatically be extended through the date that is between three and five years, as agreed to between Licensor and Licensee and set forth on the signature page of this Agreement, after the Effective Date (the "Initial Term"), unless Licensor provides to Licensee prior to the end of the Probationary Period written notice that this Agreement will expire as of the end of the Probationary Period. (However, if Licensee executed this Agreement in connection with a relocation, the Initial Term will continue until the date that Licensee's prior license agreement would have expired.) For purposes of this Agreement, the term "Probationary Period" will mean the period beginning on the Effective Date and ending on the date on which Licensor notifies Licensee in writing that this Agreement will expire as of the end of the Probationary Period because Licensor believes in good faith that Licensee (i) may not be a good fit within the Cold Stone Creamery® system or (ii) may adversely affect the goodwill or reputation of Licensor, its products or the Service Marks, but not later than the date on which Licensee's Licensed Business opens to the public for business.

(b) If this Agreement has not expired or been terminated prior to the end of the Initial Term, then Licensee may renew the License for three consecutive periods each equal to the Initial Term, commencing upon the expiration of the then-current term, provided that:

(i) At the time of each renewal, Licensee (and his Principals, officers, managers and employees) must not be in breach (or have a history of repeated breaches) of his (or their) obligations under, or related to, this Agreement (including the Events of Default) or any other agreement with Licensor or its Affiliates;

(ii) Licensee must notify Licensor in writing of his intention to renew at least one year (but not more than 18 months) before the end of each then-current term (initial or renewal), which notice must be accompanied by a renewal fee in an amount equal to the then-current license fee for Licensees (with respect to the type of Licensed Business operated by Licensee), payable by cashiers' or certified check;

(iii) Prior to each renewal, Licensee must, at his expense, remodel and update the Licensed Business to Licensor's then-current standards;

(iv) Prior to each renewal, Licensee must sign the form of license agreement then being signed by new licensees and will be subject to the terms of that license agreement (including the Royalties, the Brand Building and Support Fee, the Lease Administration Fee and other charges) other than the license term;

(v) Prior to each renewal, Licensee must sign a general release of Licensor and its Affiliates, in the form that Licensor may require;

(vi) Prior to each renewal, Licensee must, at his expense, attend such training programs or refresher courses as Licensor may request and

(vii) Licensor has not notified Licensee in writing that Licensor objects to the renewal and returns the renewal fee to Licensee.

If any of the above requirements have not been satisfied, the License will not be renewed and will expire at the end of the then-current term. The parties agree that Licensor's refusal to renew if any of the above requirements has not been satisfied constitutes "good cause."

**16. Termination.** Licensee is in material default, and Licensor may terminate this Agreement and/or seek an injunction, monetary damages and/or other relief, in Licensor's sole discretion, upon the occurrence of any of the following events ("Events of Default"), each of which individually constitutes "good cause" for termination of this Agreement:

(a) If Licensee (or his Principals) fails to pay any monies owed to Licensor or any of its Affiliates under this Agreement, or any other agreement with Licensor or its Affiliates, and that failure has not been cured within 30 days after Licensor has provided notice of that failure to Licensee. Termination will be effective immediately upon the expiration of the end of that cure period.

(b) If Licensee (or his Principals, officers, managers or employees) fails to perform any obligation (other than the payment of monies owed to Licensor or any of its Affiliates) under this Agreement, or any other agreement with Licensor or its Affiliates; provided, however, that if that failure is curable (in Licensor's discretion), Licensee may cure that failure within 30 days after Licensor has provided notice of that failure to Licensee. Termination will be effective immediately upon notice, unless that failure is curable, in which event, termination will be effective upon the 30th day after that notice, unless that failure is cured.

(c) If Licensee (or his Principals, officers, managers or employees) repeatedly (three or more times) fails to pay any monies owed to Licensor or any of its Affiliates or perform any obligation, or repeated Events of Default occur (either one obligation and/or Event of Default three times, three obligations and/or Events of Default one time each or any such combination) under this Agreement, or any other agreement with Licensor or its Affiliates. Termination will be effective immediately upon written notice to Licensee, without any opportunity to cure.

(d) If Licensee breaches or defaults under any obligation under the Master Concession Agreement, the Assignment of Concession Agreement, the Master Lease or the Sublease (and that breach or default has not been cured within the time period allowed by the Master Concession Agreement, the Assignment of Concession Agreement, the Master Lease or Sublease to cure), or loses possession of the restaurant premises or site for any reason during the term of this Agreement. Termination will be effective upon any of the following, at Licensor's election:

- (i) The date possession of the premises or site (or the right thereto) is lost; or
- (ii) The date that Licensor or its Affiliates (or the site owner or the Master Landlord) has provided notice of termination to Licensee.

(e) If Licensee fails to satisfy the Continuing Working Capital Requirement at any time that it is required to be satisfied, and that failure has not been cured within 30 days after that Licensor becomes aware of that failure. Termination will be effective as of end of that cure period, if that failure has not been cured.

(f) If Licensee loses, or fails to obtain or maintain, any permit or license necessary to operate the Licensed Business. Termination will be effective upon either of the following, at Licensor's election:

- (i) The date that that permit or license is lost or denied or
- (ii) The date 30 days after Licensor has provided notice of termination to Licensee, unless Licensee has obtained or regained that permit or license within 30 days after Licensor has provided notice of termination to Licensee.

(g) If Licensee underreports his Gross Sales by one percent or more during any calendar year. Termination will be effective immediately upon notice of termination to Licensee, without any opportunity to cure.

(h) If Licensee or any of the Principals files a petition for bankruptcy or is placed in involuntary bankruptcy. Termination will be effective immediately upon that filing or placement.

(i) If Licensee or any of the Principals becomes insolvent (defined as the inability to pay his debts in the ordinary course of business and/or the excess of liabilities (current or long term) over assets (current or long term)). Termination will be effective immediately written notice to Licensee.

(j) If any involuntary lien exceeding \$10,000 is placed on Licensee's business assets and is not promptly (but in any event within 30 days) removed or bonded against. Termination will be effective immediately upon notice to Licensee by Licensor.

(k) If Licensee conducts the Licensed Business in a manner that may adversely affect the goodwill or reputation of Licensor, its products or the Service Marks; provided, however, that if, in Licensor's sole discretion, that damage is curable, Licensee will have 30 days within which to cure that damage. Termination will be effective immediately upon notice, unless that damage is curable, in which event, termination will be effective upon the 30th day after that notice, unless that damage is cured.

(l) If Licensee does not open the Licensed Business within one year after the Effective Date, 150 days after the Master Landlord makes the site for his Licensed Business

available to him, as determined by Licensor, or the deadline in the Master Concession Agreement, whichever occurs first. Termination will be effective on such date or on such later date as Licensor may select.

(m) If Licensee attempts to transfer, or transfers, by operation of law or otherwise, the Licensed Business, or attempts to assign, or assigns, any right granted under this Agreement, without the prior written consent of Licensor or otherwise in violation of this Agreement. Any transfer of an equity interest in Licensee, by operation of law or otherwise, and any merger or consolidation of Licensee (if a corporation, partnership, limited liability company or other entity) is deemed to be a transfer in violation of this provision. Termination will be effective upon either of the following, at Licensor's election:

(i) The date of the attempted transfer, transfer, attempted assignment, assignment, merger or consolidation or

(ii) The date 30 days after Licensor has provided notice of termination to Licensee, unless the transfer or assignment has been rescinded within 30 days after Licensor has provided notice of termination to Licensee.

(n) Upon the death or permanent and total disability of Licensee (or, if Licensee is a person other than an individual (for example, a corporation, partnership, limited liability company or other entity), a Principal owning, directly or indirectly, a 50% or greater equity interest in Licensee), as determined by Licensor, in its sole discretion.

(o) If Licensee (or, if Licensee is a corporation, partnership, limited liability company or other entity, a Principal) fails to satisfactorily complete the Training Program, in the sole discretion of Licensor or, if Licensor so requires, refuses to attend the Training Program a second time.

(p) If any other license agreement, any area developer agreement or any other agreement between Licensor or any of its Affiliates and Licensee or any of his Affiliates is terminated. Termination will be effective on the date that that other agreement is terminated, unless Licensor provides notice to Licensee otherwise.

(q) If, at any time after:

(i) Licensee has received notice of termination of this Agreement, with or without the passage of a cure or notice period; or

(ii) Licensor has disapproved a requested transfer, or withheld its consent in connection with a requested transfer, of the License or the Licensed Business, or the assignment of any right granted under this Agreement,

Licensee conducts the Licensed Business in a manner that may adversely affect the goodwill or reputation of Licensor, its products or the Service Marks, damages the premises or any equipment in connection with the Licensed Business or otherwise breaches his obligations under this Agreement. Termination will be effective immediately upon notice. Pursuant to this



Section 16(q), Licensee will not have any right to cure a breach pursuant to any other provision of this Agreement, as Licensor's right to terminate pursuant to this Section 16(q) supersedes any other provision of this Agreement.

(r) If Licensee misrepresents, or commits fraud in connection with, any information contained in his application for a license, or in any other oral or written information communicated to Licensor. Termination will be effective immediately upon notice to Licensee, without any opportunity to cure.

(s) If Licensee ceases to operate or otherwise abandons the Licensed Business, as evidenced by the Licensed Business being closed for business for more than three consecutive days. Termination will be effective immediately upon notice to Licensee, without any opportunity to cure.

(t) If Licensee violates any health, safety or sanitation law, rule, regulation or ordinance and fails to begin to correct such noncompliance or violation immediately or fails to completely correct such noncompliance or violation within 24 hours after Licensor has provided notice of such noncompliance or violation to Licensee. Termination will be effective immediately upon notice to Licensee, without any opportunity to cure.

(u) If Licensee or any Principal is (or has been) convicted by a trial court of, or has plead guilty or no contest to, a felony or other crime or offense that may adversely affect the goodwill or reputation of Licensor, its products or the Service Marks, or if Licensee or any Principal engages in (or has engaged in) any conduct that may adversely affect the goodwill or reputation of Licensor, its products or the Service Marks. Termination will be effective immediately upon notice to Licensee, without any opportunity to cure.

(v) If Licensee or any Principal engages in any conduct that violates any law, regulation or ordinance or commits an act of moral turpitude. Termination will be effective immediately upon notice to Licensee, without any opportunity to cure.

(w) If Licensee uses, or permits the use of, the Licensed Business, or its premises, for any illegal or unauthorized purpose, including the passing off or substitution of products under the Service Marks. Termination will be effective immediately upon notice to Licensee, without any opportunity to cure.

(x) If Licensee refuses or fails to allow Licensor access to the premises of the Licensed Business, and such refusal or failure has not been cured within 24 hours after Licensor has sought access. Termination will be effective immediately upon notice to Licensee, without any opportunity to cure.

## **17. Rights and Obligations of the Parties upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement for any reason:

(i) Licensee will forfeit all fees paid.

(ii) All goodwill associated with Licensee's Licensed Business, and Licensee's use of the Service Marks, is, and will be, the property of Licensor, and Licensee will receive no payment therefor.

(iii) Licensee must promptly return to Licensor Licensor's Operating Manual, all training materials, all recipes and all other property of Licensor (including all materials relating to the Service Marks, the Copyrights, the Innovations or the Proprietary Information).

(iv) Licensor may enter the premises of the Licensed Business and recover Licensor's Operating Manual, all training materials, all recipes and all other property of Licensor (including all materials relating to the Service Marks, the Copyrights, the Innovations or the Proprietary Information).

(v) Licensee must immediately (a) cease using the Service Marks, the Copyrights, the Innovations and the Proprietary Information, (b) cancel all assumed names or equivalent business registrations relating to the use of the Service Marks, (c) notify the telephone company and all listing agencies of the termination of Licensee's right to use the Service Marks and, if requested by Licensor, of Licensee's assignment of Licensee's telephone numbers to Licensor, (d) not, directly, or indirectly, identify himself with Licensor or the Service Marks and (e) if requested by Licensor, renovate the premises of the Licensed Business to eliminate the Service Marks and de-identify such premises to remove all Trade Dress (including the "cold stone"), returning it to a "vanilla shell," at Licensee's expense. Licensee irrevocably appoints and constitutes Licensor and its representatives and agents, with full power of substitution, as Licensee's agent and attorney-in-fact for and on behalf of, and in Licensee's name, and at Licensee's expense, to take any or all of the above actions, without liability for trespass. This special power of attorney will be deemed to be coupled with an interest and irrevocable.

(vi) Licensee must pay to Licensor, within 10 days of expiration or termination of this Agreement, all amounts outstanding to Licensor or its Affiliates from Licensee or his Affiliates.

(b) In addition, upon expiration or termination of this Agreement by Licensor or by Licensee, Licensor may, but will not be obligated to, purchase, or have its designee purchase:

(i) All, or any portion of, Licensee's signage and menu boards; and/or

(ii) All, or any portion of, the restaurant equipment and other tangible assets of the Licensed Business for an amount equal to the Value (as defined below). If Licensor is required, by law, regulation or court order, to purchase the equipment and/or other tangible assets used in connection with the Licensed Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to Licensee's cost for such assets, less depreciation and amortization using a 200% declining balance method over a 5-year period. If all, or any portion of, Licensee's assets that are being purchased by Licensor or its designee are subject to lien(s), Licensor or its designee may pay, on Licensee's behalf, the lienholder(s) that portion of the purchase price for Licensee's assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying Licensee those funds.

In addition, Licensor, or its designee, may, but will not be obligated to, assume Licensee's future obligations under the Master Concession Agreement or Master Lease, as the case may be, or the Assignment of Concession Agreement or the Sublease, as the case may be, and continue the operations of Licensee's Licensed Business in Licensor's, or its designee's, name. If the Master Concession Agreement, the Assignment of Concession Agreement, the Master Lease or the Sublease is in arrears, Licensor or its designee may, on Licensee's behalf, (x) pay the site owner or the Master Landlord that portion of the purchase price for Licensee's assets (which may be the entire purchase price) that may be payable to the site owner or the Master Landlord under the Master Concession Agreement or the Master Lease with respect to the period prior to Licensor's, or its designee's, assumption of Licensee's future obligations under the Master Concession Agreement or the Master Lease and/or (y) retain that portion of the purchase price for Licensee's assets (which may be the entire purchase price) that may be payable to Licensor or its Affiliates under the Assignment of Concession Agreement or the Sublease with respect to the period prior to Licensor's, or its designee's, assumption of Licensee's future obligations under the Assignment of Concession Agreement or the Sublease. Further, Licensor may offset any amounts payable to Licensee pursuant to this Section, or otherwise pursuant to this Agreement, against any unpaid amounts payable to Licensor or its Affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

(c) Upon any breach by Licensee of any of the terms of this Section 17, Licensor may institute and prosecute proceedings, at law or in equity, in any court of competent jurisdiction, to obtain an injunction to enforce the provisions of this Agreement and to pursue any other remedy to which Licensor may be entitled. Licensee agrees that the rights conveyed by this Agreement are of a unique and special nature and that Licensor's remedy at law for any breach would be inadequate and agrees and consents that temporary or permanent injunctive relief may be granted in any proceeding which may be brought to enforce any provision of this Section 17, without the necessity of posting bond therefor or proof of actual damages.

(d) Notwithstanding the foregoing, if this Agreement expires at the end of the Probationary Period, the Assignment of Concession Agreement or the Sublease will be terminated as of that date. In connection with the expiration at the end of the Probationary Period, provided that Licensee has complied with the other requirements of this Section 17, if Licensor provides the required notice to Licensee:

(i) Before Stage 4 of the Training Program has been completed, the License Fee (less Licensor's expenses in connection with Licensee's attendance at the Training Program and other items) will be refunded to Licensee; and

(ii) After Stage 4 of the Training Program has been completed, the License Fee (less Licensor's expenses in connection with Licensee's attendance at the Training Program and other items) will be refunded to Licensee and Licensor will purchase, and Licensee will sell, the equipment, signage and fixtures purchased by Licensee in connection with the establishment of his Licensed Business in accordance with Licensor's standards and specifications for an amount equal to:

(a) Licensee's actual out-of-pocket direct costs paid or incurred by Licensee with respect to that equipment, signage and fixtures (the "Equipment Costs"); plus

(b) Licensee's actual out-of-pocket direct costs paid or incurred by Licensee with respect to the build-out of the premises of his Licensed Business (the Build-out Costs"); plus

(c) An amount equal to the interest (calculated at the prime rate, as published by the West Coast edition of The Wall Street Journal as of the end of the Probationary Period, plus 250 basis points) that would have accrued on the Equipment Costs and the Build-out Costs, beginning, in the case of each item, on the date that such item was paid for by Licensee and ending on the date on which the Probationary Period ends.

For purposes of this Section 17(d), the Equipment Costs and the Build-out Costs will include only direct costs and will exclude indirect costs, such as administrative expenses, travel expenses, legal expenses, expenses for intangible items, time expended and/or lost from other activities and other items that will not be directly utilized on the premises of Licensee's Licensed Business.

Prior to receiving any amounts pursuant to this Section 17(d), Licensee must otherwise comply with his obligations under this Section 17 and Licensee and the Principals must sign and deliver to Licensor a general release of Licensor and its Affiliates, in the form that Licensor may require.

**18. Survival.** Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Agreement that may affect the parties' rights and obligations after the expiration or termination of this Agreement will survive the expiration and termination of this Agreement.

**19. Relationship of the Parties.**

(a) Licensee must not represent or imply that the Licensed Business conducted by Licensee is owned by Licensor. Upon the request of Licensor, Licensee must post a sign in the Licensed Business stating that Licensee is an independent contractor and that the Licensed Business is not owned or operated by Licensor. Licensee will be an independent contractor, and nothing contained in this Agreement will be construed to create or imply a fiduciary relationship between the parties, nor to make either party a general or specific agent, legal representative, employee, joint venturer, partner or servant of the other. Licensee is in no way authorized to sign any contract or agreement, to make any representation or warranty or to create any obligation (express or implied) on behalf of Licensor. Licensee will be responsible for his own taxes (including any taxes levied upon the Licensed Business with respect to compensation or otherwise).

(b) The parties understand and agree that Licensee's area developer is in no way authorized to sign or amend any contract or agreement, to make any representation or warranty or to create any obligation (express or implied) on behalf of Licensor.

**20. Provisions.** Each provision, condition and term of this Agreement is material, and a breach or violation of any of them will constitute a default of that party's obligations under this Agreement.

**21. Affiliates.** For purposes of this Agreement, the term "Affiliate" means any person or entity (a) that beneficially owns a 20% or greater equity interest in the other person or entity (for example, a parent company of Licensee or an individual that owns at least a 20% interest in Licensee), (b) whose equity interests (20% or greater) are beneficially owned by the other person or entity (for example, a subsidiary of Licensee) or (c) whose equity interests (20% or greater) are beneficially owned by the other persons or entities who (on a cumulative basis) own a 20% or greater equity interest in the other person or entity (for example, a sister company of Licensee).

**22. Notices.** All communications or notices required or permitted to be given or served under this Agreement must be in the English language and in writing and will be deemed to have been duly given or made if (a) delivered in person or by courier (including by Federal Express or other courier), (b) deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, or (c) faxed, and addressed to the address or fax number set forth in this Agreement. All communications and notices will be effective upon delivery in person or by courier to the address set forth in this Agreement, upon being deposited in the United States mail in the manner set forth above or upon being faxed in the manner set forth above. Any party may change his, her or its address or fax number by giving notice in writing, stating his, her or its new address, to the other party to this Agreement as provided in the foregoing manner.

**23. Successors and Assigns.** Subject to Section 14, which restricts Licensee's rights to assign this Agreement and his rights hereunder, this Agreement will be binding upon and inure to the benefit of the parties and their respective assigns, legal representatives, executors, heirs and successors. Any attempt by Licensee to assign this Agreement, or any of his rights hereunder, or to delegate his obligations hereunder, without compliance with the terms of Section 14 will be void. Notwithstanding anything contained in this Agreement to the contrary, Licensor may assign this Agreement, or any of its rights hereunder, or delegate any of its obligations hereunder without the consent of Licensee or any other person.

**24. Amendment, Modification, Waiver or Deferral.**

(a) Notwithstanding anything contained in this Agreement to the contrary, if Licensee or any of his Affiliates signs a license agreement with Licensor or any of its Affiliates after the Effective Date, the terms of this Agreement and any previously signed license agreement (and/or the documents signed in connection with this Agreement and any previously signed license agreement) (as this Agreement and any previously signed license agreement, and/or such other documents may be or have been amended) will be automatically amended to be identical to the terms of that subsequent license agreement (and/or the documents signed in connection with that subsequent license agreement); provided, however, that the term of the license will be the period remaining under this Agreement (or previously signed license agreements, as the case may be) and the renewal fee will be the renewal fee under this Agreement (or previously signed license agreements, as the case may be). In

addition, the terms of this Agreement (and the terms of the documents signed in connection with this Agreement) will automatically amend the terms of license agreements (and those other documents) previously signed by Licensee or any of his Affiliates (as such license agreements and those other documents have previously been amended) to the effect that such previously signed license agreements (and those other documents) will be identical to the terms of this Agreement (and the other documents signed in connection with this Agreement); provided, however, that the term of the previously-signed license agreements will be the period remaining under those license agreements and the renewal fee contained the previously-signed license agreements will be the renewal fee for those license agreements.

(b) Notwithstanding anything contained in this Agreement to the contrary, if Licensor from time to time changes any fee payable in connection with this Agreement (including Royalties, the Brand Building and Support Fee, the Development Fee, the Equipment Fee and consulting fees), the terms of this Agreement (and/or the other documents signed in connection with this Agreement) will be automatically amended to be reflect the change in any such fee, and Licensee will be subject to such fees, as amended.

(c) Notwithstanding anything contained in this Agreement to the contrary, Licensor retains the right to modify and amend Licensor's Operating Manual and to issue rules, regulations, instructions, policies and procedures for the conduct of the Licensed Business from time to time, in its sole discretion, without obtaining the consent or approval of Licensee.

(d) Except as set forth in this Agreement, no amendment, modification or waiver of any condition, provision or term of this Agreement will be valid or of any effect unless made in a writing specifying with particularity the nature and extent of the amendment, modification or waiver and signed by Licensee and by Licensor's Chief Executive Officer, President or General Counsel, or by another person designated in writing to Licensee by one of such persons, on Licensor's behalf.

(e) Failure on the part of any party to complain of any act or failure to act of another party or to declare another party in default, irrespective of how long the failure continues, will not constitute a waiver by that party of his, her or its rights under this Agreement; provided, however, that any breach or default of Licensor will be deemed to be waived 90 days after the occurrence of this breach or default unless Licensee provides written notice of this breach or default to Licensor within this 90-day period. Any waiver by any party of any default of another party will not affect or impair any right arising from any other or subsequent default.

(f) Notwithstanding anything contained in this Agreement to the contrary, at any time that Licensee or any of his Affiliates is in breach of his obligations under this Agreement, or any other agreement between Licensee or any of his Affiliates and Licensor or any of its Affiliates, Licensor (or its Affiliate) may elect to defer the performance of Licensor's (or its Affiliate's) obligations under this Agreement or such other agreement, or defer the opening of Licensee's Licensed Business, until Licensee's (or its Affiliate's) breach has been cured. Licensor's (or its Affiliate's) exercise of that right will not constitute a waiver of its rights under this Agreement or such other agreement, including Licensor's (or its Affiliate's) right to terminate this Agreement or such other agreement. In addition, Licensor's (or its Affiliate's)

exercise of that right will not serve as a basis for any claim by Licensee (or his Affiliate) that Licensor did not perform its obligations in a timely manner.

**25. Severable Provisions; Enforceability.** Each and every provision of this Agreement is intended to be independent of and severable from the others. If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal, unenforceable or invalid for any reason whatsoever, that illegality, unenforceability or invalidity will not affect the validity of the remainder of this Agreement or the legality, enforceability or validity of that provision in any other jurisdiction. It is the intention and the agreement of the parties to this Agreement that the noncompetition and confidential information provisions set forth in Section 13 of this Agreement be enforceable to the maximum extent permitted by law and, to that end, understand and agree that said provisions may be limited or modified by a court of competent jurisdiction to ensure enforceability thereof.

**26. Entire Agreement.** This Agreement, including the other agreements contained as exhibits to Licensor's Offering Circular and Licensor's Operating Manual, contains the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties with respect to that subject matter. Each of the other agreements contained as exhibits to Licensor's Offering Circular and Licensor's Operating Manual are incorporated in this Agreement by this reference and constitute a part of this Agreement.

**27. Terminology.** All references in this Agreement to the term "including" means "including, without limitation." All references in this Agreement to the term "entity" include, among other things, a trust. Unless expressly provided to the contrary, any reference in this Agreement to Licensor's discretion or judgment means Licensor's sole and absolute discretion or judgment, and any determination (such as approval or consent), decision or judgment required or permitted to be taken or given by Licensor will be subject to Licensor's sole and absolute discretion. All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement or a limitation of the scope of the particular paragraph or section to which they apply. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, will, where appropriate, include all other genders and the singular will include the plural and vice versa.

**28. Counterparts.** This Agreement may be signed in two or more counterparts, each of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

**29. Arizona Law to Govern; Jurisdiction; Right to Jury Trial and Class Action Waived; Certain Damages Waived; Statute of Limitations.**

(a) This Agreement will be governed by, and construed and enforced in accordance with, the law of Arizona, regardless of any conflict-of-law provisions to the contrary.

(b) Each party agrees that any litigation between the parties will be commenced and maintained only in the courts located in Maricopa County, Arizona, and each party consents to the jurisdiction of those courts; provided, however, that Licensor may seek to obtain injunctive relief in any court that Licensor may select.

(c) LICENSEE HEREBY WAIVES THE RIGHT TO A JURY TRIAL, WAIVES THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION IN ANY FORUM, INCLUDING ARBITRATION, AND WAIVES THE RIGHT TO SEEK OR COLLECT PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION.

(d) LICENSEE HEREBY WAIVES THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION. IN ADDITION, THE PARTIES AGREE THAT THE MAXIMUM DAMAGES THAT LICENSEE MAY RECOVER IN CONNECTION WITH A WRONGFUL TERMINATION OF HIS LICENSE AND THIS AGREEMENT (UNLESS SUCH TERMINATION WAS IN BAD FAITH) WILL BE AN AMOUNT EQUAL TO THE PRODUCT OF:

(i) THE ANNUAL REVENUE (AS DEFINED BELOW) MULTIPLIED BY

(ii) THE LESSER OF:

(x) THE NUMBER OF FULL YEARS EXISTING BETWEEN THE DATE ON WHICH THE LICENSE AND THIS AGREEMENT WERE WRONGFULLY TERMINATED AND THE DATE ON WHICH THE INITIAL TERM OF THIS AGREEMENT WOULD HAVE OTHERWISE EXPIRED (OR, IF THE INITIAL TERM HAS EXPIRED, THE DATE ON WHICH THE THEN-CURRENT RENEWAL TERM WOULD HAVE OTHERWISE EXPIRED); OR

(y) THREE;

PROVIDED, HOWEVER, THAT IF LICENSEE'S LICENSED BUSINESS HAD NOT, PRIOR TO SUCH WRONGFUL TERMINATION, BEEN OPENED FOR BUSINESS TO THE PUBLIC FOR AT LEAST ONE MONTH, THEN THE MAXIMUM DAMAGES THAT LICENSEE MAY RECOVER IN CONNECTION WITH A WRONGFUL TERMINATION OF HIS LICENSE AND THIS AGREEMENT (UNLESS SUCH TERMINATION WAS IN BAD FAITH) WILL BE AN AMOUNT EQUAL TO THE DIRECT OUT-OF-POCKET COSTS ACTUALLY PAID BY LICENSEE PRIOR TO SUCH TERMINATION IN CONNECTION WITH (x) THE PURCHASE OF HIS FURNITURE, FIXTURES AND EQUIPMENT FOR THE LICENSED BUSINESS AND (y) THE BUILD-OUT OF THE PREMISES IN WHICH LICENSEE'S LICENSED BUSINESS WOULD HAVE BEEN CONDUCTED. FOR PURPOSES OF THIS AGREEMENT, THE TERM "ANNUAL REVENUE" MEANS AN AMOUNT EQUAL TO THE NET PROFITS OF LICENSEE'S LICENSED BUSINESS, AS REFLECTED ON LICENSEE'S TAX RETURN FILED WITH THE INTERNAL REVENUE SERVICE PRIOR TO SUCH TERMINATION; PROVIDED, HOWEVER, THAT IF SUCH TAX RETURN REFLECTS THE OPERATIONS OF LICENSEE'S LICENSED BUSINESS FOR



**A PERIOD LESS THAN ONE YEAR, SUCH NET PROFITS WILL BE ANNUALIZED BASED UPON THE NET PROFITS REFLECTED IN SUCH TAX RETURN.**

(e) Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of or related to, this Agreement must be brought within two years of the date on which the underlying cause of action accrued, and each party hereby waives any right to bring any such action after such two-year period.

**30. Mediation.**

(a) Subject to Section 30(b), if any controversy or dispute arises between the parties related in any way to this Agreement (including the performance, interpretation or application thereof) or the relationship between the parties, the parties will participate, in good faith, in the mediation process, with the purpose to resolve any and all controversies and disputes without the necessity of litigation, and the parties agree that no litigation will be filed unless and until the mediation process has been Completed (as defined below). At the request of either party, the mediation proceedings will be conducted in secrecy. The parties will act in good faith to select a mutually acceptable mediator; if the parties cannot agree upon the selection of a mediator, each party will select a mediator and those mediators will select a third mediator, who will act as the mediator. The parties to the mediation will share equally in its cost and expenses, except those costs and expenses incurred separately by each party. For purposes of this Agreement, the mediation process will be deemed to have been "Completed" when the parties agree it has been completed, the mediator declares that any impasse exists or 60 days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever first occurs.

(b) Controversies or disputes where provisional or injunctive relief is sought (as provided in this Agreement) will not be subject to the mediation provisions of Section 30(a). Further, Licensor will not be required to mediate pursuant to Section 30(a) if (i) the subject controversy or dispute involves or arises out of Licensee's fraudulent conduct or Licensee's conduct that may adversely affect the goodwill or reputation of Licensor, its products or the Service Marks, (ii) the delay resulting from the mediation process may adversely affect Licensor's financial condition or endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist) or (iii) Licensor in good faith believes that that controversy or dispute would not be resolved through the mediation process.

**31. Attorneys' Fees.** In the event of any Event of Default, or if any claim, controversy or dispute arising out of or relating to this Agreement, any the breach thereof, or the parties' relationship, Licensee must pay to Licensor all damages, costs and expenses, including all late fees, collection fees, interest and Licensor's reasonable investigation and attorneys' fees and costs incurred in connection with any proceeding or as a result of any breach by Licensee or Event of Default, as well as the costs of any experts and investigation relating thereto. Nothing herein in any way restricts Licensor's right to recover monetary damages, injunctive relief and/or any and all other remedies available to Licensor, in addition to its attorneys' fees and costs. All such interest, damages, costs and expenses may be included in and form part of the judgment awarded to Licensor in any proceeding between the parties.

32. **Remedies Cumulative.** The remedies of the parties under this Agreement are cumulative and will not exclude any other remedies to which any party may be lawfully entitled.

33. **Construction.** The parties acknowledge that each party was represented (or had the opportunity to be represented) by legal counsel in connection with this Agreement and that each of them and his, her or its counsel have reviewed this Agreement, or have had an opportunity to do so, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or any exhibits hereto or thereto.

34. **Additional Actions.** Each party agrees to do all acts and things and to make, sign and deliver such written instruments as may from time to time be reasonably required to carry out the terms and provisions of this Agreement.

35. **Computation of Time.** Whenever the last day for the exercise of any privilege or discharge of any duty under this Agreement falls upon Saturday, Sunday or any legal holiday under Arizona law, the party having that privilege or duty will have until 5:00 p.m. Phoenix, Arizona time, on the next succeeding regular business day to exercise that privilege or to discharge that duty.

36. **Currency.** Unless otherwise directed by Licensor in writing, all amounts contemplated by this Agreement will be paid in United States Dollars and deposited in the bank account specified by the recipient. Computation of any amounts to be paid which require conversion between currencies will be made at the selling rate for United States Dollars quoted by Licensor's primary bank on the date on which payment is made. Licensee will pay all costs of currency exchange.

37. **Authority.** Any individual signing below on behalf of a corporation, partnership, limited liability company or other entity personally represents that he has full authority to bind the party or parties on whose behalf he is signing.

38. **Executive Order 13224.** To enable Licensor to comply with U.S. Executive Order 13224, Licensee hereby represents and warrants to Licensor that neither Licensee, nor any of its equity owners, directors, officers, employees, representatives and agents (collectively, the "Included People"), (a) is, or is owned or controlled by, a "suspected terrorist," as defined in Executive Order 13224 and (b) to the best of Licensee's knowledge, has any of the Included People been designated a "suspected terrorist," as defined in Executive Order 13224.

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IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed, as of \_\_\_\_\_.

NAME OF LICENSEE: \_\_\_\_\_

Check One: Individual \_\_\_\_\_  
Corporation \_\_\_\_\_  
General Partnership \_\_\_\_\_  
Limited Partnership \_\_\_\_\_  
Limited Liability Company \_\_\_\_\_  
Other Entity (Identify) \_\_\_\_\_

State of Organization or Residence: \_\_\_\_\_

Executed By: \_\_\_\_\_

(Sign Name)

\_\_\_\_\_  
(Print Name)

If executed on behalf of a corporation, a partnership, a limited liability company or another type of entity, list title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Phone No. \_\_\_\_\_

Mobile No. \_\_\_\_\_

Fax No. \_\_\_\_\_

E-mail address \_\_\_\_\_

Type of Licensed Business: \_\_\_\_\_ "Gotta Have It" Cold Stone Creamery restaurant  
\_\_\_\_\_ "Love It" Cold Stone Creamery restaurant  
\_\_\_\_\_ "Like It" Cold Stone Creamery restaurant

Number of years of License Agreement: \_\_\_\_\_

Supervising Principal or Manager: \_\_\_\_\_

Principals of Licensee (Shareholders, Partners, Members, Etc.—Total MUST equal 100%)

<u>Name</u>	<u>% Ownership</u>
-------------	--------------------

**COLD STONE CREAMERY, INC.**

By: \_\_\_\_\_

Name:

Title:

The only persons authorized to sign this Agreement on behalf of Licensor are the Chief Executive Officer, the President and the General Counsel. No other person is authorized to bind Licensor to this Agreement.

**Consent of Spouse**  
(to be executed if Licensee is a married individual)

The undersigned is the spouse of the Licensee identified in the License Agreement, dated as of \_\_\_\_\_, between his or her spouse and Cold Stone Creamery, Inc. (the "Agreement"), to which this Consent of Spouse is attached.

The undersigned hereby declares that he/she has read the Agreement, including each of the documents that are exhibits to or referenced in the Agreement, in its entirety and, being fully convinced of the wisdom and equity of the terms of the Agreement, including each of the documents that are exhibits to or referenced in the Agreement, and in consideration of the premises and of the provisions of the Agreement, the undersigned hereby expresses his or her acceptance of the same and does agree to its provisions.

The undersigned further agrees that in the event of the death of his or her spouse, the provisions of this Agreement, including each of the documents that are exhibits to or referenced in the Agreement, will be binding upon him/her.

The undersigned further agrees that he/she will at any time make, execute and deliver such instruments and documents which may be necessary to carry out the provisions of the Agreement, including each of the documents that are exhibits to or referenced in the Agreement.

This instrument is not a present transfer or release of any rights which the undersigned may have in any of the community property of his or her marriage.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Spouse)

\_\_\_\_\_  
(Print name of Spouse)

**Exhibit A**  
**Geographic Area Within Which Licensee**  
**is Required to Locate the Licensed Business**

**RIDER TO LICENSE AGREEMENT  
FOR ILLINOIS RESIDENTS AND  
LICENSEES WHOSE LICENSES WILL BE LOCATED IN ILLINOIS ONLY**

AGREEMENT, dated as of the date set forth at the end of this Agreement, by and between COLD STONE CREAMERY, INC., an Arizona corporation ("Licensor"), and the licensee identified at the end of this Agreement ("Licensee").

That certain License Agreement, dated as of the date hereof, by and between Licensor and Licensee, is amended as follows:

1. The following will be inserted as the last sentence of Section 26 of the License Agreement:

"Any representations made in the Offering Circular are not excluded from that on which Licensee may rely."

2. Sections 29(a) and (b) of the License Agreement will be revised to read as follows:

"(a) This Agreement will be governed by, and construed and enforced in accordance with, the law of Illinois, regardless of any conflict-of-law provisions to the contrary.

"(b) Each party agrees that any litigation between the parties will be commenced and maintained in the courts located in the county in Illinois in which Licensee's principal business office is located, and each party consents to the jurisdiction of those courts."

The undersigned does hereby acknowledge receipt of this Rider.

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed, as of \_\_\_\_\_.

Cold Stone Creamery, Inc.

Name of Licensee: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Executed by: \_\_\_\_\_

The only persons authorized to sign this Agreement on behalf of Licensor are the Chief Executive Officer, the President and the General Counsel. No other person is authorized to bind Licensor to this Agreement.

\_\_\_\_\_  
(sign name)

\_\_\_\_\_  
(print name)

**RIDER TO LICENSE AGREEMENT  
FOR INDIANA RESIDENTS ONLY AND  
LICENSEES WHOSE LICENSES WILL BE LOCATED IN INDIANA ONLY**

AGREEMENT, dated as of the date set forth at the end of this Agreement, by and between COLD STONE CREAMERY, INC., an Arizona corporation ("Licensor"), and the licensee identified at the end of this Agreement ("Licensee").

1. Indiana law prohibits Licensor from operating a substantially identical business to that conducted by Licensee pursuant to that certain License Agreement, dated as of the date hereof, by and between Licensor and Licensee within a reasonable area, regardless of the trade name used by Licensor.
2. Indiana law prohibits Licensor from requiring Licensee to prospectively assent to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability to be imposed pursuant to the Indiana Deceptive License Practices Act or requiring any controversy between Licensee and Licensor to be referred to any person, if referral would be binding upon Licensee. Such prohibition does not apply to arbitration before an independent arbitrator.
3. Indiana law prohibits Licensor from limiting litigation brought for breach of the terms of the License Agreement.
4. Indiana law may prohibit Licensor from designating Arizona law to govern the License Agreement. If it is so construed, Indiana law will govern the License Agreement.
5. The License Agreement contains a covenant not to compete. Indiana law prohibits Licensor from requiring Licensee to covenant not to compete with Licensor for a period longer than three years or in an area greater than the exclusive area granted by the License Agreement or, in the absence of such a provision in the agreement, an area of reasonable size, upon termination of or failure to renew the license.

The undersigned does hereby acknowledge receipt of this Rider.

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed, as of \_\_\_\_\_.

Cold Stone Creamery, Inc.

Name of Licensee:

By: \_\_\_\_\_

Name:  
Title:

Executed by: \_\_\_\_\_

The only persons authorized to sign this Agreement on behalf of Licensor are the Chief Executive Officer, the President and the General Counsel. No other person is authorized to bind Licensor to this Agreement.

\_\_\_\_\_  
(sign name)

\_\_\_\_\_  
(print name)

**RIDER TO LICENSE AGREEMENT  
FOR MARYLAND RESIDENTS ONLY AND  
LICENSEES WHOSE LICENSES WILL BE LOCATED IN MARYLAND ONLY**

AGREEMENT, dated as of the date set forth at the end of this Agreement, by and between COLD STONE CREAMERY, INC., an Arizona corporation ("Licensor"), and the licensee identified at the end of this Agreement ("Licensee").

That certain License Agreement, dated as of the date hereof, by and between Licensor and Licensee, is amended as follows:

1. The provisions of Sections 2 and 3 are not intended to, nor will they, act as a release, estoppel or waiver of any liability incurred under the Maryland License Registration and Disclosure Law.
2. The general release required as a condition of renewal, sale and/or assignment/transfer will not apply to any liability under the Maryland License Registration and Disclosure Law.
3. Pursuant to the Maryland License Registration and Disclosure Law, litigation arising out of the License Agreement may be conducted in Maryland.
4. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the Franchise.

The undersigned does hereby acknowledge receipt of this Rider.

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed, as of \_\_\_\_\_.

Cold Stone Creamery, Inc.

Name of Licensee:

By: \_\_\_\_\_

Name:  
Title:

Executed by: \_\_\_\_\_

The only persons authorized to sign this Agreement on behalf of Licensor are the Chief Executive Officer, the President and the General Counsel. No other person is authorized to bind Licensor to this Agreement.

\_\_\_\_\_  
(sign name)

\_\_\_\_\_  
(print name)



**RIDER TO LICENSE AGREEMENT  
FOR MINNESOTA RESIDENTS ONLY AND  
LICENSEES WHOSE LICENSES WILL BE LOCATED IN MINNESOTA ONLY**

AGREEMENT, dated as of the date set forth at the end of this Agreement, by and between COLD STONE CREAMERY, INC., an Arizona corporation ("Licensor"), and the licensee identified at the end of this Agreement ("Licensee").

That certain License Agreement, dated as of the date hereof, by and between Licensor and Licensee, is amended as follows:

1. The provisions of Minnesota Statutes Section 80C.21 and Minnesota Rule 2860.440J prohibit Licensor from requiring litigation to be conducted outside Minnesota. In addition, nothing in this License Agreement can abrogate or reduce any of Licensee's rights as provided for in Minnesota Statutes, Chapter 80C, or Licensee's rights to any procedure, forum or remedies provided for by the laws of the jurisdiction. In connection therewith, Sections 13(f), 14(f)(iv) and 15(b)(v) will be deleted and the last sentence of Sections 8(g), 13(e) and 17(c) will be revised to read as follows:

"Licensee agrees that the rights conveyed by this Agreement are of a unique and special nature and that Licensor's remedy at law for any breach would be inadequate."

2. Section 29(c) of the License Agreement will be deleted.

3. Licensor will comply with Minnesota Statutes Section 80C.14, Subdivisions 3, 4 and 5, which require, except in certain specified cases, that a licensee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of this License Agreement. Sections 15 and 16 will be amended as strictly necessary to comply with such provisions.

4. Minnesota Rule 2860.440D prohibits Licensor from requiring Licensee to execute a general release in connection with renewal or transfer of the license.

The undersigned does hereby acknowledge receipt of this Rider.

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed, as of \_\_\_\_\_.

Cold Stone Creamery, Inc.

Name of Licensee:

By: \_\_\_\_\_

Name:  
Title:

Executed by: \_\_\_\_\_

The only persons authorized to sign this Agreement on behalf of Licensor are the Chief Executive Officer, the President and the General Counsel. No other person is authorized to bind Licensor to this Agreement.

\_\_\_\_\_  
(sign name)

\_\_\_\_\_  
(print name)

**RIDER TO LICENSE AGREEMENT  
FOR NORTH DAKOTA RESIDENTS ONLY AND  
LICENSEES WHOSE LICENSES WILL BE LOCATED IN NORTH DAKOTA ONLY**

AGREEMENT, dated as of the date set forth at the end of this Agreement, by and between COLD STONE CREAMERY, INC., an Arizona corporation ("Licensor"), and the licensee identified at the end of this Agreement ("Licensee").

That certain License Agreement, dated as of the date hereof, by and between Licensor and Licensee, is amended as follows:

1. Section 15(b)(v) of the License Agreement is hereby deleted.
2. Section 29 of the License Agreement is subject to the following: (a) litigation may be conducted in North Dakota, (b) North Dakota law will govern the License Agreement and (c) paragraphs (c) and (d) will be deleted.
3. Section 13(g) of the License Agreement is hereby deleted.
4. Section 13(c) of the License Agreement is subject to Section 9-08-06 of the North Dakota Century Code and, therefore, may be unenforceable in the State of North Dakota.

The undersigned does hereby acknowledge receipt of this Rider.

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed, as of \_\_\_\_\_.

Cold Stone Creamery, Inc.

Name of Licensee:

By: \_\_\_\_\_

Name:  
Title:

Executed by: \_\_\_\_\_

The only persons authorized to sign this Agreement on behalf of Licensor are the Chief Executive Officer, the President and the General Counsel. No other person is authorized to bind Licensor to this Agreement.

\_\_\_\_\_  
(sign name)

\_\_\_\_\_  
(print name)

**Consent of Spouse**  
(to be executed if Licensee is a married individual)

The undersigned is the spouse of the Licensee identified in the Rider to License Agreement, dated as of \_\_\_\_\_, between his or her spouse and Cold Stone Creamery, Inc. (the "Agreement"), to which this Consent of Spouse is attached.

The undersigned hereby declares that he or she has read the Agreement in its entirety and, being fully convinced of the wisdom and equity of the terms of the Agreement, and in consideration of the premises and of the provisions of the Agreement, the undersigned hereby expresses his or her acceptance of the same and does agree to its provisions.

The undersigned further agrees that in the event of the death of his or her spouse, the provisions of this Agreement will be binding upon him or her.

The undersigned further agrees that he or she will at any time make, execute and deliver such instruments and documents which may be necessary to carry out the provisions of the Agreement.

This instrument is not a present transfer or release of any rights which the undersigned may have in any of the community property of his or her marriage.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Spouse)

\_\_\_\_\_  
(Print name of Spouse)