

EXHIBIT B

FRANCHISE AGREEMENT

MARBLE SLAB CREAMERY, INC.

FRANCHISE AGREEMENT
FOR A
MARBLE SLAB CREAMERY STORE

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EXHIBITS:

GLOSSARY OF TERMS
GUARANTY AND ACKNOWLEDGMENT

- A: DESCRIPTION OF PRINCIPAL MARKS
- B: APPROVED LOCATION AND TRADE AREA
- C: FRANCHISE FEE
- D: AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENTS
- E: ASSIGNMENT OF TELEPHONE NUMBER(S)
- F: LEASE RIDER
- G: STATE SPECIFIC AMENDMENTS



MSC STORE NO. _____

**FRANCHISE AGREEMENT
FOR A
MARBLE SLAB CREAMERY STORE**

THIS AGREEMENT is entered into between Marble Slab Creamery, Inc., a Texas corporation (“Company”), and the individual or business entity identified in the signature block of this Agreement (“Franchisee”). Certain terms are used in this Agreement with the meanings assigned in the Glossary of Terms appended to this Agreement. That Glossary is incorporated into, and made an integral part of, this Agreement by reference.

1. Recitals.

Company has developed a distinctive System to guide and govern the operation of ice cream stores that operate under the Marble Slab Creamery® trade name and in association with the Marks listed on Exhibit A to this Agreement. Stores feature a superior grade of ice cream that customers can order in combination with nuts, fruit and other Mixins that are blended into the ice cream on a chilled marble or granite slab. Company franchises the operation of Stores in addition to conducting other business activities. Franchisee has submitted an application for a franchise to operate a Store, and Company has approved Franchisee’s application. The parties are now ready to embark on a franchise relationship and have entered into this Agreement to evidence the terms and conditions of their relationship.

2. Grant of Franchise.

(a) Subject to the terms, conditions and limitations of this Agreement, Company grants Franchisee a franchise to operate a Store at the address shown as the Approved Location in Exhibit B. Franchisee’s use of any of the Marks or any element of the System in the operation of a business at any other location or in any other channel of distribution without Company’s express written authorization will constitute willful infringement of Company’s rights in the Marks and the System.

(b) The franchise includes the following rights and licenses:

(1) Authorization to operate the Store under the Marble Slab Creamery® trade name, in association with the Marble Slab Creamery® service mark and in accordance with the System;

(2) Authorization to install the Trade Dress and exterior and interior signs bearing the Marble Slab Creamery® name and logo at the Store;

(3) Subject to Company’s approval of Franchisee’s catering equipment and facilities, authorization to engage in Catering activities, including Catering of special programs

and events held in Special Outlets, but excluding programs, events and activities in shopping centers and malls in which Stores operated by Company or other franchisees are located; and

(4) Authorization to use the Marks to identify, advertise and promote the Store's products and services.

(c) Franchisee will acquire no rights or authority under this Agreement or as an element of the franchise:

(1) To sell Base Mix or the ingredients with which any other Store menu item is made or prepared to any wholesale or retail customer;

(2) To provide Catering at locations in shopping centers and malls in which Stores operated by Company or other franchisees are located; or

(3) To sell Marble Slab Creamery brand ice cream, memorabilia or other merchandise through catalogues or from an Internet Website.

(d) Company reserves all rights that are not expressly granted to Franchisee in this Agreement.

3. Franchise Fee.

(a) In consideration of Company's granting the franchise, Franchisee must pay Company a franchise fee in the amount specified in Exhibit C. The franchise fee will be payable in full by cashier's check or wire transfer of immediately available funds when Franchisee signs this Agreement.

(b) No part of the franchise fee is refundable under any circumstances.

4. Competitive Protection.

(a) Company does not grant exclusive territories, but does provide its franchisees protection against some forms of competition inside a geographic Trade Area. Exhibit B to this Agreement describes the Trade Area that Company will prescribe for the Store when the parties agree on the Approved Location. Franchisee will enjoy competitive protection in the Trade Area to the extent the following paragraphs of this Section 4 expressly provide. Franchisee will have no protection against competition from Stores or other establishments located anywhere outside the Trade Area's physical boundaries, even if these establishments market their products and services in or draw customers from the Trade Area. On the other hand, there will be no limitation on the geographic area in which Franchisee may advertise and promote the Store or from which the Store may draw customers.

(b) Company will not open or authorize anyone except Franchisee to operate a Store in the Trade Area. For purposes of this commitment, "Store" has the precise, restricted meaning assigned in the attached Glossary of Terms.

(c) Franchisee will have no competitive protection from Catering activities that Company or other franchisees conduct in the Trade Area, except within the physical boundaries (including the parking lot) of the shopping center or mall in which the Approved Location is located.

(d) The competitive protection that this Section 4 provides to Franchisee will not prohibit or restrict Company or its affiliates from selling proprietary products, memorabilia and other merchandise to customers inside the Trade Area through catalogues, telemarketing campaigns, an Internet Website and other direct-order techniques. Company and its affiliates may distribute catalogues and similar sales solicitation materials in the Trade Area, broadcast television and radio commercials for direct-order merchandise into the Trade Area, initiate telephone contact with and accept telephone orders from residents of the Trade Area, and fill customer orders for direct-order merchandise in the Trade Area, without in any such case infringing Franchisee's competitive protection rights.

(e) Franchisee acknowledges and agrees that Company has no express obligation or implied duty to insulate or protect Franchisee's revenues from erosion as the result of the Store's competing (i) with other Stores located outside the Trade Area; (ii) with other franchisees who offer Catering inside the Trade Area pursuant to the terms of their franchise agreements; (iii) with other establishments that sell ice cream and other consumable items under trade and brand names other than Marble Slab Creamery; or (iv) with Company or other franchisees in the other ways this Section 4 provides or contemplates. Franchisee expressly waives and relinquishes any right to assert any claim against Company based on the existence, actual or arguable, of any such obligation or duty.

5. Modification of Concept, Trade Dress and Equipment Standards.

(a) Company reserves the right to modify the Store concept, Trade Dress and equipment package from time to time for a variety of reasons. These reasons include the need (i) to respond to changes in consumer expectations and buying trends, (ii) to seize efficiencies made possible by growth of the Marble Slab Creamery Store network, (iii) to implement efficiencies made possible by technological advances or as a result of Company's research and development activities, (iv) to implement co-branding alliances with other companies, and (v) to meet competition. Company reserves the right and discretion (1) to add new and different menu items to the list of authorized Store merchandise, (2) to withdraw menu items from the list of authorized Store merchandise, or to change their names, recipes and image, (3) to change the Trade Dress, equipment and fixtures standards for Stores, (4) to add or change the standards for customer services (such as Catering), (5) to abandon the use of equipment, fixtures and merchandising displays for any menu item that Company withdraws from the list of authorized Store merchandise, and (6) to require the use of new or different electronic data processing and communications equipment and facilities.

(b) If the addition of a menu item or product to the authorized merchandise list would not require the installation of new fixtures or equipment (other than items Company classifies as smallwares), Company may instruct Store franchisees to begin offering the new menu item as of a date specified in a supplement to the Operations Manual. Similarly, if the deletion of a menu item or product from the authorized Store merchandise list would not require the removal of fixtures or equipment (other than items Company classifies as smallwares), Company may direct Store franchisees to cease offering the product as of a date specified in a supplement to the

Operations Manual. Franchisee will comply with Company's instructions as of the date Company specifies, which need not be more than 30 days after Company distributes the Operations Manual supplement.

(c) If Company abandons or adopts changes in the Store operating concept that necessitate the addition or removal of furniture, fixtures, equipment, signs or Trade Dress items, Company may instruct Store franchisees to adapt their Stores to the concept change through a supplement to the Operations Manual. Company, in consultation with Franchisee, will establish a schedule for Franchisee to implement the concept change that will depend, among other factors, on the Store's size, age, and the amount Franchisee has spent in recent periods to refurbish and upgrade the Store. Franchisee will remove from the Store any items Company designates as obsolete and will purchase and install any different or additional items Company specifies as meeting its new standards, all in accordance with the schedule Company establishes for Franchisee's Store.

(d) Company may eventually require that all Stores install and maintain a computer-based Information System that permits faster and more accurate communication between Company and Store franchisees. The Information System may involve or include an Intranet network that Company designs and administers for the Marble Slab Creamery Store network. Franchisee acknowledges that this Section 5 obligates Franchisee to install the type and capacity of computer, modem and peripheral equipment Company designates and to participate in the Information System in accordance with standards, protocols and procedures Company includes in the Operations Manual.

(e) Franchisee will bear the entire cost of complying with all changes that Company requires in accordance with this Section 5.

(f) If Company allows the Store to participate in any new product test, Franchisee will participate in the test in accordance with Company's standards and specifications and will discontinue offering any product that Company decides not to add permanently to the authorized Store merchandise list.

(g) If Franchisee develops or suggests an innovation or improvement that Company decides to incorporate into the Marble Slab Creamery Store concept or System, either temporarily or permanently, Franchisee will assign ownership of the innovation or improvement to Company without compensation. The sole consideration for the assignment will be Company's giving Franchisee recognition and credit for the innovation or improvement in announcing it to members of the Marble Slab Creamery Store network.

6. Company Services and Assistance.

(a) **Development Stage Assistance.** Company will provide the following services and assistance to Franchisee before Franchisee opens the Store.

(1) Unless Company is already familiar with the market, it will visit the area in which Franchisee proposes to locate the Store and will help Franchisee locate and informally evaluate potential sites. Company will make up to two one-day visits to the area at its own expense. If Franchisee requests additional or longer visits, Franchisee must pay the travel, lodging and meal expenses of the representatives Company sends.

(2) Company will review lease information packets from up to four potential sites that Franchisee preliminarily selects for closer examination and will help Franchisee rank the sites in numerical order. Company reserves the right to exclude from further consideration any site that Company considers unsuitable for the location of a Store. After Company and Franchisee agree on a ranking, Company will contact the landlord of the top-ranked site to initiate lease negotiations and will assist Franchisee with lease negotiations until Franchisee and the landlord either reach an impasse or successfully conclude their negotiations. (If Franchisee decides to purchase, rather than lease, a site for the Store, Company will not become involved in the purchase negotiations.) If negotiations with the landlord of the top-ranked site reach an impasse, Company will repeat the process with the other sites in descending rank until Franchisee either concludes negotiation of a lease that is acceptable to Franchisee and Company or reaches an impasse with the landlord of the lowest-ranked site. If Franchisee reaches an impasse with the landlord of the lowest-ranked site, Company will review additional lease packets that Franchisee provides, but reserves the right not to become actively involved in lease negotiations.

(3) When Franchisee and a landlord conclude negotiation of a lease that contains terms reasonably satisfactory to Company (including a Lease Rider in substantially the form of Exhibit F to this Agreement), Company will convey its approval of the site by providing Franchisee a copy of an Exhibit B that has the address of the Approved Location and the boundaries of the Trade Area filled in. The completed Exhibit B that Company provides to Franchisee will become an integral part of this Agreement. (If Franchisee decides to purchase the site, Company will provide the required Exhibit B when Franchisee submits to Company a copy of the purchase contract.)

(4) When Franchisee provides Company an executed photocopy of the entire lease for the Approved Location, including exhibits, addenda and riders (or a copy of the deed to the site if Franchisee decides to purchase it), Company will loan Franchisee a sample set of plans and MEP specifications for a typical Store, which Franchisee's architect must use as the basis for preparing the construction documents for the Store's build out. The sample documents will not bear an architect's stamp or otherwise be suitable to satisfy the requirements for a building permit.

(5) After Franchisee provides Company an executed photocopy of the lease or recorded deed for the Approved Location, Company will furnish Franchisee a list that describes or shows the specifications for the furniture, fixtures, equipment and Trade Dress items that Franchisee must install in the Store, together with the names of any suppliers Company has designated or approved. Company will also provide Franchisee's architect or general contractor information about the sequence of events and procedures that must be followed in building out and equipping a Store.

(6) If this Agreement covers Franchisee's first Store, Company will provide a training program at its training facility in Houston, Texas. Company will provide the training without tuition charge for Franchisee and the Manager (or for Franchisee and one other individual if Franchisee will act as the Manager). Franchisee must pay the travel, lodging and incidental expenses that Franchisee, the Manager and Franchisee's other designated trainees incur to attend the training program. If this Agreement covers Franchisee's second or later Store, Company will have no obligation to provide training to Franchisee or the Manager.

(7) When Franchisee arrives for training, Company will loan Franchisee one set of the Operations Manual, including an Advertising Kit. (If Company is not obligated to provide training, Company will loan a set of the Operations Manual to Franchisee before the Store opens.)

(8) After Franchisee satisfactorily completes Company's training program, Company will furnish Franchisee lists of the inventory, supplies, paper goods and smallwares needed to stock and operate a Store, together with the names of suppliers Company has designated or approved.

(9) After Franchisee satisfactorily completes Company's training program, Company will introduce Franchisee to a dairy that is authorized to produce the Base Mix and will assist Franchisee in establishing an account with the dairy. (If Company is not obligated to provide training, it will not be obligated to provide this introduction unless the dairy that will serve the new Store is not the same as the dairy that serves Franchisee's other Stores.)

(b) Operational Assistance. Company will provide the following services and assistance to Franchisee after the Store opens.

(1) If this Agreement covers Franchisee's first Store, Company will send training personnel to the Store for approximately six days during the opening period to verify that Franchisee is operating the Store in accordance with the Operations Manual. If this Agreement covers Franchisee's second or later Store, Company will send training personnel to the Store for the amount of time, if any, that Company considers adequate.

(2) Company will advise and assist Franchisee in planning publicity and promotions for the Store's opening.

(3) Company will make its staff accessible to the Manager for consultation by telephone, fax and written communication (and by e-mail after Company implements an Intranet network). Company will visit the Store from time to time to conduct QSC Inspections, but will not provide routine field supervision.

(4) Company will arrange for the production and distribution of Base Mix and of any proprietary flavorings in quantities sufficient to satisfy the Store's reasonable needs. Company will be relieved of any obligations to Franchisee under this Section 6(b)(4) if Franchisee fails to maintain a satisfactory payment history with the dairy or distributor from which Franchisee purchases Base Mix or flavorings, or if Franchisee becomes significantly or habitually late in paying royalties or Ad Fund contributions on time.

(5) Company will loan Franchisee additions and supplements to the Operations Manual as they become available, and will disclose to Franchisee additional Trade Secrets, if any, Company develops that relate to the operation of Stores.

(6) Company will from time to time offer supplemental and refresher training materials and programs through various media (such as classroom, videotape and Internet programs) at reasonable prices or for a reasonable tuition charge.

(7) So long as Franchisee complies with Franchisee's financial, operational and reporting obligations under this Agreement, Company will invite Franchisee to attend (at Franchisee's expense) all conventions, seminars and other Franchisee-oriented functions Company from time to time plans and sponsors.

7. Franchisee's Performance.

(a) **Business Entity Requirements.** If Franchisee is a corporation, partnership, limited liability company, or other business entity, the following requirements apply:

(1) Franchisee must be newly organized and its Charter Documents must provide that Franchisee's purposes and activities are restricted exclusively to operating Marble Slab Creamery Stores.

(2) True, complete and duly authenticated copies of Franchisee's Charter Documents and of a resolution of Franchisee's board of directors, general partner or other managing body authorizing Franchisee to enter into and perform this Agreement must be furnished to Franchisor prior to the execution of this Agreement.

(3) Franchisee's Charter Documents will impose transfer restrictions that give effect to Section 13(a), and each certificate representing an ownership interest in Franchisee will contain or have conspicuously noted upon its face a statement in a form satisfactory to Franchisor to the effect that any assignment or transfer of the certificate is subject to all restrictions this Agreement imposes on transfers and assignments.

Franchisee will maintain a list of all record and beneficial owners of equity interests in Franchisee and will furnish a current version of the list to Franchisor between December 15th and 31st of each year and upon request.

(b) Selection and Possession of Approved Location.

(1) Franchisee must actively participate in the site selection and lease negotiation process that Section 6(a) describes. Franchisee acknowledges that responsibility for selecting an appropriate site rests with Franchisee and that Franchisee will have sole responsibility for the Approved Location's suitability.

(2) Franchisee will negotiate the terms of a lease for the Store in good faith and will give due consideration to business and legal points that Company suggests.

(3) When Franchisee and a landlord conclude negotiation of a definitive lease agreement, Franchisee will sign the lease and furnish Company a photocopy of the executed lease, including all exhibits, addenda and riders. Alternatively, if Franchisee purchases the site, Franchisee will furnish Company a photocopy of the recorded deed. Franchisee must secure possession of a suitable site for the Store within 18 months after the Effective Date.

(c) Pre-Construction Procedures.

(1) Franchisee will, at its sole cost and expense, obtain the architectural drawings, MEP plans and specifications, construction drawings, and permits necessary for the

construction and build-out of the Store in accordance with Company's standards. Promptly after Franchisee takes possession of the Approved Location, Franchisee will retain a licensed architect to develop plans and specifications for the Store, using the sample set of documents that Company provides in accordance with Section 6(a)(4). Within 30 days after Franchisee retains the architect, Franchisee must submit for Company approval a complete set of construction documents for the Store, including MEP specifications. The construction documents must incorporate Company's signage and Trade Dress specifications and otherwise satisfy Company's standards for a Store's layout and décor. The documents will be subject to Company's review and approval, and Franchisee will have responsibility for ensuring that the architect incorporates Company's changes into the construction documents. Franchisee agrees to defer signing contracts for the Store's construction, equipment, fixtures or signage until Franchisee has received Company's written approval of Franchisee's final construction documents (the "Final Plans").

(2) If required by the lease for the Approved Location, the Final Plans will be subject to the landlord's approval. However, Franchisee agrees to make no changes in or additions to the Final Plans without Company's prior written consent. Franchisee must complete the Final Plans, obtain a building permit and take any other actions required to commence construction or build-out of the Store within 21 months after the Effective Date.

(3) Franchisee will provide a copy of the Final Plans to Company, at no cost to Company, for Company's use as sample plans for future Stores. Franchisee will cause the architect who prepared the Final Plans to assign its copyright or other rights in the Final Plans to Company, at no cost to Company, as derivative works of the sample plans Company provided in accordance with Section 6(a)(4). Franchisee consents to all uses of the Final Plans that Company deems appropriate.

(4) Company will not be responsible for Franchisee's selection of an architect or contractor or for any defects in the Final Plans. Company will bear no liability for any damages, costs or expenses resulting from the Store's construction, whether or not the Final Plans and/or construction work contain any errors or omissions, and regardless of the problem's cause, including Company's active or passive negligence.

(d) **Construction and Operations.** In connection with the construction and operation of the Store, Franchisee agrees to fulfill the requirements, to perform the obligations and to observe the restrictions stated in this Section 7(d).

(1) Franchisee will, at its sole cost and expense, construct, build-out, equip, furnish and decorate the Store in accordance with the Final Plans and Company's equipment, Trade Dress, Information System and signage specifications. Franchisee agrees not to request or approve any changes to the Final Plans without first submitting the proposed change order to Company and obtaining its approval of the change. Franchisee will complete the Store's build-out and open it for business within 24 months after the Effective Date. After the Store opens, Franchisee will not alter its furniture, fixtures, equipment, signs or Trade Dress in any fashion without Company's express prior permission.

(2) Franchisee will affix to an exterior window or a prominent place on an interior wall of the Store a Company-approved decal or placard containing the following statement: "This store is owned and operated by [Franchisee's name] under a license from

Marble Slab Creamery, Inc. “ Franchise will not move or remove the decal/placard and will never make a statement or representation to any person that is contrary to or inconsistent with Section 22 of this Agreement.

(3) If this Agreement covers Franchisee’s first Store, Franchisee will attend and send the Manager to the training program described in Section 6(a)(6). Franchisee and the Manager must both complete Company’s training program with a passing grade before the Store may open for business. If this Agreement covers Franchisee’s second or later Store, Franchisee will provide a training program for the Store’s staff before the Store opens that covers the materials and topics that Company prescribes.

(4) As soon as Franchisee obtains a telephone number for the Store, Franchisee will sign and deliver to Company an Assignment of Telephone Number(s) for the number in the form attached to this Agreement as Exhibit E. If the Store’s telephone number changes during the franchise’s term, or if Franchisee adds additional lines for a modem or other purposes, Franchisee will promptly sign and deliver to Company a new Assignment of Telephone Number(s) for the new or additional number(s).

(5) Franchisee will open the Store for business not later than 90 days after Franchisee obtains possession of the Approved Location by lease or purchase. Franchisee will send Company notice of the proposed Opening Date not less than 21 days before it is scheduled to occur, as well as notice of the actual Opening Date within 10 days after it occurs. Franchisee will operate the Store continuously throughout the entire term of the franchise solely under the Marble Slab Creamery trade name and System. If the Store’s completion is interrupted by a natural disaster, fire or other casualty, labor dispute, materials shortage or similar event over which Franchisee lacks control, the deadline by which Franchisee must open the Store will be extended for the time reasonably necessary to remedy the effects of the occurrence.

(6) Franchisee will (i) comply with and adhere to the policies and procedures set forth in the Operations Manual, as revised and supplemented from time to time, (ii) follow Company procedures in the processing, storage, presentation and dispensing of ice cream, Mixins, and other authorized menu items and merchandise, (iii) purchase and use fresh, processed and prepackaged ingredients that satisfy or exceed the minimum grade or quality standards Company from time to time specifies; (iv) purchase from a dairy designated by Company and exclusively use genuine Base Mix; and (v) purchase inventory and supplies only from suppliers Company designates or approves from time to time.

(7) Franchisee will provide appropriate training, supervision and security for all personnel employed in the Store, maintain standards of prompt and courteous customer service, and instruct all employees of the Store in the proper use and display of the Marks and the confidential handling of the Trade Secrets and the Operations Manual, as stated in Section 12.

(8) Franchisee will ensure that all the Store’s employees follow Company’s grooming and dress code and wear the Marble Slab Creamery uniform items developed by Company.

(9) Franchisee will notify Company promptly of any change in the Manager. At Company’s request, Franchisee will send any Manager designated by Company to any refresher, remedial or supplemental training program that Company provides, whether at its

training facility in Houston, Texas or elsewhere. Franchisee must pay any charges for tuition and instructional materials that Company assesses; the travel, lodging and meal expenses of each Manager who attends training; and the compensation of each Manager who attends training.

(10) Without prior permission of the affected employer, Franchisee will not, directly or through others, contact, solicit or offer any inducements to any employee of Company, a Company affiliate or another Marble Slab Creamery franchisee for the purpose of persuading or attempting to persuade the employee to accept employment by Franchisee in any capacity.

(11) Franchisee will offer all foods (including the full complement of ice cream flavors and Mixins) and beverages included on Company's standard menu, as revised from time to time, and will offer Marble Slab Creamery gift certificates and such other merchandise as Company specifies from time to time. Franchisee will not offer any food, beverage or other merchandise that is not included on Company's authorized Store menu or merchandise list, as revised from time to time, without Company's prior written consent.

(12) Franchisee will imprint the Marble Slab Creamery logo on all cups, containers, bags, take-out menus and other paper goods used in the Store in accordance with instructions contained in the Operations Manual, and will purchase items imprinted with the Marble Slab Creamery logo only from suppliers Company designates or approves.

(13) Franchisee will purchase as they become available and display in the Store all (i) product identification materials, (ii) point-of-purchase promotional materials, (iii) promotional memorabilia, merchandise and prizes, and (iv) other advertising and marketing materials Company creates or authorizes for use by Store operators. Franchisee will purchase these materials from a source Company designates or approves.

(14) At Company's request, Franchisee will display in a prominent, accessible place a "franchise opportunity" display furnished by Company at its expense for the purpose of increasing public awareness of the availability of Store franchises.

(15) Franchisee will use the Marks, the Trade Secrets, the Operations Manual and other Copyrighted Materials in strict compliance with Section 12 and in a manner tending to promote the goodwill and public image of the Marble Slab Creamery franchise system.

(16) Franchisee will follow Company procedures in processing the Base Mix, in storing and rotating finished ice cream inventory, in maintaining and cleaning the Store's equipment and fixtures. Franchisee will maintain the food handling, customer seating, storage and restroom areas of the Store in a safe and sanitary condition at all times.

(17) Franchisee will maintain the physical appearance and integrity of the Store in accordance with the repair, refurbishing and remodeling standards stated in the Operations Manual.

(18) Franchisee will permit Company representatives to conduct unannounced QSC Inspections of the Store at any time during normal business hours. Franchisee must promptly correct any condition noted as a deficiency in a QSC Inspection report.

(19) Franchisee will maintain Store business hours and days of operation in accordance with System standards, as stated in the Operations Manual.

(20) Franchisee will comply strictly with all federal, state and local laws and government regulations applicable to Franchisee's franchised business, including those relating to taxation, employment and promotion practices, employee wages, child and immigrant labor, disabled persons, workers' compensation, truth-in-advertising, occupational safety and health, and sanitation.

(21) Franchisee will (i) adopt and follow Company's fiscal year for accounting purposes, (ii) adopt and follow the accounting principles, policies and practices Company prescribes, including use of Company's standard chart of accounts, (iii) acquire, install and use the Information System Company specifies from time to time in the Operations Manual, (iv) install and continually maintain a telephone line for the Store's modem, and (v) furnish Company the modem's telephone number, as originally assigned and as changed from time to time.

(22) Franchisee will accurately calculate and report Gross Sales to Company at the times and through the procedures Company from time to time specifies in the Operations Manual. Until otherwise instructed by Company, Franchisee will provide to Company on a weekly basis copies of the daily Z-tapes from Franchisee's cash register and a Summary of Weekly Sales on a form Company specifies. Franchisee acknowledges that Company may someday require that Franchisee install and maintain an Information System that allows Company to poll the Store's cash register and computer electronically to obtain Gross Sales data, as well as other financial and operating information. Franchisee agrees to enable and allow Company to maintain continual data network access to the Store's Information System.

(23) At Company's request, Franchisee will furnish Company copies of all federal and state income and sales tax returns filed by Franchisee with respect to the Store's income or sales.

(24) Franchisee will permit Company, at any time during the term of the franchise and for three years after it expires or terminates, to conduct a special audit of Franchisee's books and records relating to the Store's operation. To assist Company in planning and conducting its audit program, Franchisee expressly authorizes Company to obtain from any vendor with which Franchisee does business copies of invoices and other sales data related to Franchisee's account with the vendor. If an audit establishes that Franchisee's royalty reports or profit and loss statements have understated Gross Sales for any fiscal year by more than 3%, Franchisee will pay the audit's cost, including the travel, lodging and meal expenses of the persons who conduct the audit. Otherwise, Company will bear the audit's entire cost. Franchisee will promptly pay Company any royalty and marketing fee deficiencies established by an audit, together with interest as provided in Section 14.

(25) Franchisee will maintain complete and accurate books and records relating to the operation of the Store in accordance with Section 7(d)(21), permit Company representatives to inspect such books and records at reasonable times and, within 45 days after the end of each fiscal year of the Store, submit to Company a balance sheet, income statement and statement of cash flow for the year then ended. These financial statements will disclose separately the items specified by Company on forms it provides, and will be prepared in accordance with the accounting principles and practices Company prescribes. If Franchisee is at

any time required to furnish any lender, lessor, government agency or other person audited financial statements with respect to Franchisee's franchised business, Franchisee will concurrently furnish Company a copy of such audited financial statements.

(26) (i) Franchisee will carry continuously during the term of the franchise insurance of the types (including worker's compensation and various special liability coverages), in the amounts and with the coverages the Operations Manual specifies from time to time. Until the Operations Manual specifies otherwise, Franchisee will carry general liability insurance with policy limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, and with umbrella coverage of \$2,000,000. Each policy must (1) be obtained from an insurance carrier that has and maintains a Best's Insurance Reports rating of A, Class VIII, or better; (2) name Company as an additional insured and afford separate coverage to each named insured; (3) provide for a deductible of not more than \$1,000 per occurrence; (4) contain no provision that limits or reduces Franchisee's coverage on account of a claim against Franchisee by Company; and (5) provide for not less than 30 days' prior notice to Company of cancellation or non-renewal.

(ii) Franchisee will furnish Company certificates of insurance to prove that such insurance coverage is in effect, both prior to the opening of the Store and within 10 days after each policy renewal date. If Franchisee fails to maintain the required insurance, Company may obtain coverage on Franchisee's behalf and charge the cost to Franchisee. Franchisee agrees to reimburse Company for the premium costs it incurs to provide such coverage, plus interest as provided in Section 14, within 10 days after Company submits a statement for its costs.

(27) (i) Franchisee will indemnify, hold harmless and timely defend Company, Company's affiliates and their respective officers, directors, shareholders, employees, agents, successors and assigns (collectively, "Indemnified Parties") from and against any and all claims, demands, legal proceedings, administrative inquiries, investigations and proceedings, damages, losses, judgments, settlements, fines, penalties, remedial actions, costs and expenses (including attorneys' fees) asserted against, incurred or sustained by any Indemnified Party, whether or not separately insured, that arise out of or are attributable to Franchisee's operation of the Store or use of any Internet site or Intranet network Company develops.

(ii) Company may elect (but under no circumstance will be obligated) to undertake or assume the defense of any such claim, demand, inquiry, investigation or proceeding (an "Indemnified Matter"), and to conduct and supervise all settlement negotiations related to any Indemnified Matter. Company will pay the legal fees and other expenses it incurs in connection with the investigation, defense and settlement of any Indemnified Matter it undertakes to defend or assumes. If a proposed settlement of any Indemnified Matter will result in an admission of liability or financial contribution by Franchisee, Company will not settle the Indemnified Matter without Franchisee's participation and concurrence. Otherwise, Company's election to undertake or assume the defense or settlement of an Indemnified Matter will in no way or circumstance extinguish or diminish Franchisee's obligation to indemnify and hold the Indemnified Parties harmless.

(28) Franchisee will not, without Company's prior written consent, sell any interior or exterior sign bearing or representing any of the Marks, sell all or substantially all the Store's assets, or assign or sublease the Store's premises to any person or entity who has not agreed in accordance with Section 13 to continue operating a Store in the premises.

(29) From time to time within 10 days after Company submits a request, Franchisee will provide to Company or a third party it designates a duly executed and authenticated certificate, in a form furnished or approved by Company, stating that this Agreement is in full force and effect and indicating the status of performance of the parties' obligations under this Agreement. If Franchisee fails to provide an appropriate certificate within the 10-day period, Franchisee will be deemed to have adopted and approved the contents of the certificate that Company submitted for Franchisee's execution, and Franchisee authorizes Company to rely on and to certify the contents of the certificate to third parties.

8. Advertising and Promotions.

(a) Ad Fund.

(1) Company maintains a separate and segregated advertising fund ("Ad Fund") to which all Stores, both Company-operated and franchised, are obligated to make contributions. Franchisee agrees to make contributions to the Ad Fund at a rate determined in accordance with Section 8(a)(2), at the time and in the manner Section 10(b) specifies.

(2) The current Ad Fund contribution rate is 2% of Gross Sales. Company may not increase the contribution rate above 2% of Gross Sales unless a proposed increase is approved by the affirmative vote of franchisees who own a majority of the Stores that comprise the Marble Slab Creamery network at the time a vote is taken. Any increase approved in accordance with the preceding sentence will constitute an amendment to this Agreement and will be binding on Franchisee without the need for a signed amendment. Company may not vote on a proposal to increase the aggregate contribution rate.

(3) Company will use Ad Fund contributions (i) to create and produce advertising and promotional materials relating to the Marble Slab Creamery franchise system and the products Stores sell, (ii) to place and run advertisements, commercials and promotional materials in local, regional and national media, (iii) to pay for public relations projects intended to enhance the goodwill and public image of the Marble Slab Creamery franchise system, and (iv) to reimburse Company or its affiliates (based on reasonable allocations calculated by Company's management) (a) for salaries and other overhead expenses that are directly related to projects of a character described in clauses (i), (ii) and (iii), and (b) for part of the cost of maintaining and enhancing the Marble Slab Creamery Internet Website, as authorized in Section 9.

(4) Company will endeavor to use Ad Fund revenues in a manner that provides marketing benefits to all Stores. However, Company reserves the right to allocate Ad Fund revenues to various permitted uses as it sees fit and does not guarantee that all participants will receive identical media exposure or advertising benefits in view of regional differences in media costs, varying degrees of market penetration in different DMAs and other relevant factors.

(5) Company will from time to time seek advice from franchisees with respect to advertising themes, media plans and promotional projects. Company may seek such advice informally from individual franchisees. Company may also appoint a franchise advisory committee consisting of three or more franchisees who, in Company's estimation, possess the experience and judgment necessary to make informed recommendations. In lieu of appointing some or all of the members of the advisory committee, Company may request that the members

of an independent franchisee association (if one exists) elect from its ranks the number of advisory committee members that Company designates. The franchise advisory committee's authority will only be advisory; Company's decisions with respect to advertising themes, campaigns and expenditures will be final, and Company will have no liability to the advisory committee, any franchisee association or any franchisee with respect to any decision Company makes.

(b) Local Advertising.

(1) Franchisee agrees to spend a reasonable percentage of Gross Sales to advertise and promote the Store locally. Company imposes no minimum expenditure requirement, but recommends that franchisees spend at least 2% of Gross Sales on local advertising and promotions.

(2) Franchisee agrees to participate in all system-wide promotions that Company originates. Except for Franchisee's commitments to participate in system-wide promotions and to use Company-produced marketing materials in accordance with Section 7(d)(13), Franchisee will initially have discretion over the approach Franchisee takes to local advertising and promotions. This discretion will continue until an Area Cooperative is established in the Store's DMA under Section 8(c). As provided in Section 12(a)(6), Company reserves the right to approve in advance of use by Franchisee any graphic materials or commercials developed by Franchisee that feature any of the Marks.

(3) Upon request, Company will furnish Franchisee one slick, master or other "suitable for reproduction" sample of all newspaper inserts, direct mail flyers, point-of-purchase promotional pieces, television and radio commercials, and other marketing and product identification materials that Company creates with Ad Fund revenues. If Franchisee chooses to use these materials in Franchisee's local marketing program, Franchisee must pay to reproduce them.

(4) Within 30 days after the end of each fiscal quarter, Franchisee will submit a Local Area Marketing ("LAM") Report to Company on a form Company provides. Each LAM Report will show the amount Franchisee spent for local advertising and promotions during the preceding quarter and the way Franchisee spent those funds. Upon Company's request, Franchisee will also submit documents substantiating that Franchisee incurred and paid particular expenditures during the quarter.

(c) Area Cooperatives.

(1) At the time the DMA in which the Store is located encompasses Stores operated by at least two owners, the owners in the DMA will, at Company's request and with its advice and assistance, form a cooperative advertising association among themselves (an "Area Cooperative") for the purpose of jointly advertising and promoting their Stores.

(2) If, in connection with an Area Cooperative's formation or functioning, its members are unable to reach agreement with respect to any disagreement over organization, administration, "spill" policy, contribution waivers or exceptions, budget or other matters that the members cannot resolve within 45 days, the issue will be referred to Company for resolution. Company's decision with respect to the issue's resolution will be binding on all members of the

Area Cooperative. In addition, Company reserves the right to review each Area Cooperative's contribution rate on an annual basis and to disapprove a rate of less than 1% of Gross Sales.

(3) Franchisee agrees (i) to join, participate in, and actively support any Area Cooperative established in the Store's DMA, and (ii) to make contributions to each Area Cooperative on the payment schedule adopted by the Area Cooperative's members and at the contribution rate approved by Company. Franchisee's contributions to the Area Cooperative will be in addition to Franchisee's contributions to the Ad Fund.

9. Concerning the Internet.

(a) Internet Website.

(1) Company plans to establish and maintain an Internet Website that provides information about the Marble Slab Creamery System and the products and services that Stores offer. Company will have sole discretion and control over the Website's design and contents, except that Company will attempt to configure the site to accommodate the pages that Section 9(a)(2) describes. Company will have no obligation to maintain the Website indefinitely, but may dismantle it at any time without liability to Franchisee.

(2) Company anticipates that the Website will include a series of interior pages that identify participating Stores by name, address, telephone number and e-mail address. At Franchisee's request and upon Franchisee's execution of a Terms of Use agreement in a form provided by Company, Company will, technology permitting, include at the Website one or a series of interior pages devoted to information about Franchisee's Store. The page(s) must be developed by Franchisee, at Franchisee's expense, with a template that Company provides and will be subject to Company's approval prior to posting as to form, content and programming quality. Franchisee will not have the capability to modify its page(s) except in coordination with Company's Webmaster and in compliance with Company's policies and procedures.

(3) Franchisee agrees to contribute a reasonable amount toward the cost of the Website's development, maintenance and further development, which amount may not exceed \$25 per month. Company will set the contribution amount in March of each year, and Franchisee will pay one quarter of its annual contribution quarterly within 30 days after Company sends Franchisee an invoice for the contribution. Any balance of a quarterly payment that remains unpaid 30 days after the invoice date will bear interest from that date until paid at the rate of 12% per annum (or, if less, the highest rate permitted by applicable law). In addition or alternatively, Company may use part of the Ad Fund contributions that Company collects under Section 8(a) to maintain and further develop the Website.

(4) If Franchisee fails to pay when due any fees or other amounts payable to Company under this Agreement, Company may temporarily disable Franchisee's Web page(s) until such time as Franchisee pays its outstanding obligation in full.

(5) Franchisee will have no right, license or authority to use any of the Marks on or in connection with the Internet, except as stated in and permitted by this Section 9(a).

(b) Marble Slab Creamery Intranet.

(1) Company may, at its option, establish and maintain a so-called Intranet through which members of the Marble Slab Creamery network of Stores may communicate with each other and through which Company may disseminate updates to the Operations Manual and other confidential information. Company will have no obligation to maintain the Intranet indefinitely, but may dismantle it at any time without liability to Franchisee.

(2) Company will establish policies and procedures for the Intranet's use. These policies, procedures and other terms of use will address issues such as (a) restrictions on the use of abusive, slanderous or otherwise offensive language in electronic communications; (b) restrictions on communications between or among Franchisees that endorse or encourage breach of any Franchisee's Franchise Agreement; (c) confidential treatment of materials that Company transmits via the Intranet; (d) password protocols and other security precautions; (e) grounds and procedures for Company's suspending or revoking a Franchisee's access to the Intranet; and (f) a privacy policy governing Company's access to and use of electronic communications that franchisees post on the Intranet. Company expects to adopt and adhere to a reasonable privacy policy. However, Franchisee acknowledges that, as administrator of the Intranet, Company can technically access and view any communication that any person posts on the Intranet. Franchisee further acknowledges that the Intranet facility and all communications that are posted to it will become Company's property, free of any claims of privacy or privilege that Franchisee or any other person may assert.

(3) Upon receipt of notice from Company that the Intranet has become functional, Franchisee agrees to purchase and install all necessary additions to the Store's Information System and to establish and continually maintain electronic connection with the Intranet that allows Company to send messages to and receive messages from Franchisee. Franchisee's obligation to maintain connection with the Intranet will continue until the Franchise Agreement's expiration or termination (or, if earlier, until Company dismantles the Intranet). Franchisee's failure to comply with this Section 9(b)(3) will constitute a material breach of the Franchise Agreement on account of which Company may terminate the Franchise Agreement unless Franchisee cures the breach within 10 days after notice from Company.

(4) Franchisee agrees to contribute a reasonable amount, not to exceed \$25 per month, toward the cost of the Intranet's maintenance and further development. Company will set the contribution amount in March of each year and Franchisee will pay one quarter of its annual contribution quarterly within 30 days after Company sends Franchisee an invoice for the contribution. Any balance of a quarterly payment that remains unpaid 30 days after the invoice date will bear interest from that date until paid at the rate of 12% per annum (or, if less, the highest rate permitted by applicable law).

(5) If Franchisee fails to pay when due any amount payable to Company under the Franchise Agreement, or if Franchisee fails to comply with any policy or procedure governing the Intranet, Company may temporarily suspend Franchisee's access to any so called chat room, bulletin board, list serve or similar feature the Intranet includes until such time as Franchisee fully cures the breach.

10. Royalties.

In consideration for Franchisee's continuing use of the Marks and the System, Franchisee agrees to pay Company continuing royalties equal to a percentage of Gross Sales determined in accordance with the following schedule:

<u>Number of Stores in Operation</u>	<u>Royalty Rate</u>
One	6.0%
Two to Five	5.5%
Six to Ten	4.5%
Eleven or more	4.0%

(a) To be counted as a "Store in Operation", a Store must be open for commerce with the general public and Franchisee or the owners of a majority of Franchisee's equity must own at least a majority interest in the entity that operates the Store.

(b) Royalties and Ad Fund contributions under Section 8(a) will be payable weekly without notice or demand each week with respect to Franchisee's Gross Sales for the week ending on the preceding Sunday. Until Company implements an automatic debit program, royalties will be payable by mail and transmitted in an envelope postmarked not later than Tuesday of the week a payment is due. Company reserves the right to establish an automatic debit program under which Company will be able to collect Franchisee's royalty payments by drafting Franchisee's bank account. When Company notifies Franchisee that it is ready to implement an automatic debit program, Franchisee agrees to authorize Company and its bank to debit Franchisee's account directly by signing and delivering an Authorization Agreement for Preauthorized Payments substantially in the form attached to this Agreement as Exhibit D. By notice in writing to all franchisees, Company may from time to time change the payment interval, the payment date and the manner of payment. If Franchisee fails to report Gross Sales for any time period as described in Section 7(d)(22) hereof, Company will calculate Franchisee's royalty and other periodic payments based on Gross Sales on the basis of 150% of Gross Sales for either (i) the last such time period in which Franchisee reported Gross Sales, or (ii) such time period during the immediately preceding calendar year, whichever is greater, and will draft Franchisee's account accordingly. Adjustments in the royalties and other payments actually due will be calculated and settled within 10 days after Franchisee furnishes the required Gross Sales information.

(c) Franchisee will not be entitled to withhold payment of royalties on account of Company's breach or alleged breach of its obligations under this Agreement; Company's performance under this Agreement constitutes no part of the consideration for Franchisee's obligation to pay royalties.

11. Term and Renewal.

(a) The term of this Agreement will begin on the Effective Date and end on the date the franchise expires. The franchise will begin on the Store's Opening Date and continue for a primary term of 10 years, ending on the 10th anniversary of the Opening Date, subject to earlier termination in accordance with Sections 16 and 17.

(b) If, upon the expiration of the franchise's 10-year primary term, Franchisee is in full compliance with Franchisee's agreements and obligations under this Agreement, Franchisee will have the option to renew the franchise for an additional term of 10 years by (1) notifying Company of Franchisee's intention to renew not earlier than 180 days nor later than 90 days before the primary term's scheduled expiration date, (2) signing Company's then current renewal form of Franchise Agreement (which will define Franchisee's subsequent renewal rights), (3) not later than 30 days before the primary term's scheduled expiration date, completing the remodeling, refurbishing and modernizing of the Store's interior and exterior, including its furniture, fixtures, signs, equipment, Information System and Trade Dress, to conform to the standards Company then stipulates, and (4) paying Company a renewal fee equal to 20% of the then current franchise fee for a first Store.

(c) Franchisee's failure or refusal to comply with any of the three conditions to renewal stated in Section 11(b), each of which Franchisee acknowledges to be reasonable and material, will be interpreted as a conclusive, irrevocable election on Franchisee's part not to renew the term of the franchise.

(d) The relationship between Company and Franchisee during the renewal period will be governed by the provisions of Company's then current renewal form of Franchise Agreement, including those pertaining to royalties, advertising, competitive protection and concept modifications. Whether or not Franchisee actually signs a then current renewal form of Franchise Agreement, Franchisee will be conclusively presumed to have assented to and to have agreed to be bound by its terms by continuing to operate the Store for one day past the primary term's expiration date.

(e) If Franchisee does not qualify to renew, or elects not to renew, the franchise, Company will permit Franchisee to transfer the franchise to a qualified purchaser in accordance with Section 13. If, in the exercise of diligent, good faith efforts by Franchisee, the transfer cannot be completed before the franchise's scheduled expiration date, Company may, in its sole discretion, extend the franchise's term from month-to-month for so long as Company believes that Franchisee is continuing to make a conscientious effort to negotiate and complete a transfer. If Company allows Franchisee to extend in order to complete a transfer, Franchisee will operate the Store during the interim period in accordance with Company's then current form of Franchise Agreement.

(f) If Franchisee does not qualify to renew, or elects not to renew, the franchise and it therefore expires, immediately after expiration, Franchisee must comply with the requirements of Section 17(a), and Company will have the rights and remedies provided in Sections 17(a) through 17(j).

12. Use of Intellectual Property.

(a) **Marks and Copyrighted Materials.** Franchisee acknowledges that Company is authorized by law to prevent the unauthorized use of the Marks, to control the quality of goods and services associated with the Marks, and to control the copying and distribution of the Copyrighted Materials. Recognizing the importance to Company and other members of the Marble Slab Creamery franchise system of the protection and preservation of the Marks and Copyrighted Materials, Franchisee agrees to perform and abide by the following provisions:

(1) Franchisee acknowledges that Company is the lawful and rightful owner of each and all of the Marks and the Copyrighted Materials, that Franchisee's interest in the Marks and the Copyrighted Materials is solely that of a licensee, and that all uses of the Marks and the Copyrighted Materials by Franchisee will be attributed to Company for purposes of trademark and copyright law. Franchisee unconditionally disclaims any ownership interest in any of the Marks and the Copyrighted Materials.

(2) Franchisee will not use "Marble Slab", "Marble Slab Creamery" or any abbreviation, acronym or variation of those words as part of its name or as part of the name of any corporation, limited liability company, partnership or other business entity in which Franchisee owns or holds an interest. However, Franchisee may, if required by law, file an assumed name or fictitious name certificate to the effect that Franchisee is operating the Store under a trade name that includes the Marble Slab Creamery service mark.

(3) Franchisee will not use any of the Marks or the Copyrighted Materials in connection with the advertisement, promotion, sale or distribution of any merchandise not listed in Company's authorized Store merchandise list, or of any service not customarily offered by Stores. Specifically, Franchisee will not use menus, guest checks, carry-out containers, discount coupons, labels or other materials bearing the Marble Slab Creamery trademark, service mark or logo to advertise, promote, sell or distribute any unapproved merchandise, product or service.

(4) Franchisee will not copy, distribute or otherwise disseminate any of the Copyrighted Materials in violation of the restrictions and limitations imposed by this Agreement.

(5) Franchisee will not use any of the Marks or the Copyrighted Materials in connection with the development or operation of any Store (except the one covered by this Agreement) until Company and Franchisee have both signed a Franchise Agreement for the additional Store.

(6) Franchisee will (i) adopt and use all additional trade names, trademarks, brand names, copyrighted materials, slogans, commercial symbols and logos Company develops from time to time, (ii) use all the Marks in the precise form Company prescribes, and (iii) observe reasonable Company directions regarding the use, copying and distribution of the Copyrighted Materials, the presentation of the Marks and the manner of the Marks' display and use. Franchisee will promptly abandon and discontinue the use of any Mark or Copyrighted Materials that Company judges to be obsolete or no longer characteristic of the image Stores should project. Franchisee will submit to Company all paper goods, packaging, advertisements and promotional materials not furnished by Company for its approval prior to use.

(7) Franchisee will not use any of the Marks on any goods and/or for any services otherwise than in compliance with specifications Company issues from time to time, and with such other quality control measures that Company may adopt to promote and defend the goodwill associated with the Marks.

(8) Franchisee will not knowingly permit, and will promptly report to Company, any apparently unauthorized use of a Mark and any apparently unauthorized use or copying of any Copyrighted Materials by any person, or the use by any person of a trade name, trademark, service mark or symbol that might be construed as an infringement of any Mark or as unfair competition or passing-off at common law, and will actively cooperate with the Company

in the investigation of infringement claims and in discovery and trial proceedings related to infringement actions. Company reserves the right to make the final determination of infringement or other unlawful use, to conduct all legal proceedings relating to the Marks and the Copyrighted Materials, and to compromise or settle all infringement claims.

(9) At no time will Franchisee make any written or oral admission that a Mark or any of Company's copyrights is in any way invalid or infringes the rights of any person or is open to any other form of attack, but will promptly notify Company of any allegation of invalidity or infringement of which Franchisee becomes aware. Company intends to defend its rights in the Marks and the Copyrighted Materials vigorously, but does not warrant to Franchisee that Company's ownership of any of them is incontestable or that they do not infringe or conflict with the rights of any third party.

(10) Upon the expiration or termination of the franchise, Franchisee will immediately discontinue all further uses of the Marks and Copyrighted Materials and will take appropriate action to remove the Marks from the premises in which the Store is located, to cancel any advertising relating to Franchisee's use of the Marks or the Copyrighted Materials, including yellow pages listings, and to cancel or withdraw any assumed or fictitious name filings covering Franchisee's use of Company's trade name. Franchisee acknowledges and agrees that failure or refusal to comply fully with these requirements will constitute willful trademark and copyright infringement.

(b) **The System, Trade Secrets and Operations Manual.** Franchisee acknowledges that the System and the Trade Secrets belong exclusively to Company and that the ideas and information in the Operations Manual are Company's sole and exclusive property. Franchisee further acknowledges that the unauthorized disclosure or use of any confidential element of the System, any Trade Secret or any other information the Operations Manual contains may adversely affect the business, competitive position and goodwill of Company and its franchisees. Accordingly, Franchisee agrees to perform and abide by the following provisions and restrictions, each of which will survive the expiration or termination of this Agreement and will be perpetually binding upon Franchisee.

(1) Franchisee will hold the elements of the System, the Trade Secrets and the contents of the Operations Manual in strict confidence, will not disclose any Trade Secret or any operating or management procedure to any person or business entity other than Franchisee's Manager and bona fide employees of the Store to whom such disclosure is necessary in relation to their job duties, and will instruct and routinely remind Franchisee's employees that the System, the Trade Secrets and the contents of the Operations Manual are confidential and may not be disclosed or appropriated. If Franchisee is a corporation, it will not disclose any element of the System, any of the Trade Secrets or the contents of the Operations Manual, or make the Operations Manual available, to any shareholder, director or officer of Franchisee other than its Manager and other senior executive officers, if any, who are actively and regularly involved in the Store's management. If Franchisee is a partnership or limited liability company, it will not disclose any element of the System, any of the Trade Secrets or the contents of the Operations Manual, or make the Operations Manual available, to any general or limited partner or to any member of Franchisee other than its Manager and other general partners and equity owners, if any, who are actively and regularly involved in the Store's management.

(2) Franchisee will not use any element of the System, any of the Trade Secrets or the operating, management or marketing procedures the Operations Manual contains in connection with the operation of any establishment or enterprise other than the Store, and will promptly discontinue use of the System, the Trade Secrets and the operating, management and marketing procedures the Operations Manual contains upon the expiration or termination of the franchise.

(3) Franchisee will not, without Company's prior written consent, copy or permit any person to copy or reproduce any part of the Operations Manual and any other printed, graphic or audio/visual item designated by Company as containing Trade Secrets or otherwise permit their use or inspection by any person other than Franchisee, the Manager, bona fide employees of the Store to whom such disclosure is necessary in relation to their job duties, and authorized Company representatives.

(4) Franchisee acknowledges and agrees that the version of the Operations Manual on file in Company's offices constitutes the standard, official version for purposes of resolving any question or dispute concerning the Operations Manual's contents.

(5) Franchisee will obtain from each of Franchisee's Managers, supervisors and managerial level employees of the Store a confidentiality agreement that is valid and enforceable under the laws of the state in which the Store operates and that imposes the restrictions and limitations of this Section 12(b) on each such individual for the longest period applicable law permits. Each confidentiality agreement will designate Company as a third party beneficiary and will entitle Company to enforce its provisions directly against the signatory Manager, supervisor or manager.

(6) Franchisee will keep the Operations Manual and any other printed, graphic or audio/visual item designated by Company as containing Trade Secrets in the Store at all times and will promptly return them to Company upon the expiration or termination of the franchise.

(7) Franchisee expressly acknowledges that all employee training materials (including video cassettes and CD-ROM disks) and all computer programs developed by Company or in accordance with its specifications contain information, embody procedures or facilitate business practices that are proprietary to Company and constitute Trade Secrets.

(c) Internet Domain Name and Intranet Network.

(1) Franchisee acknowledges that Company is the lawful, rightful and sole owner of the www.marbleslab.com and www.marbleslabcreamery.com domain names, and unconditionally disclaims any ownership interest in that phrase or any colorably similar Internet domain name. Franchisee agrees not to register any Internet domain name in any class or category that contains the words Marble Slab Creamery or any combination, abbreviation, acronym or variation of those word.

(2) If and when Company develops an Intranet network through which Company and its franchisees can communicate by e-mail or similar electronic means, Franchisee agrees to use the facilities of the Marble Slab Creamery Intranet in strict compliance with the standards, protocols and restrictions Company includes in the Operations Manual. Franchisee especially recognizes the crucial importance of a user's not transmitting confidential information,

documents or data via the Marble Slab Creamery Intranet without first encrypting the transmission with the encryption program Company adopts. Franchisee also recognizes the importance of a user's refraining from making derogatory, defamatory or libelous statements in an Intranet transmission.

13. Transfers.

(a) **Limitations on Transfer.** Franchisee acknowledges that the integrity of the Marble Slab Creamery Store concept and the stability of the Marble Slab Creamery Store franchise system depend on the business qualifications, financial capabilities, honesty and integrity of Company's franchisees. Franchisee further acknowledges that Company's lack of opportunity to evaluate and approve each potential franchisee's qualifications and the terms of each proposed transfer could irreparably damage the Marble Slab Creamery franchise system. Consequently, Franchisee agrees not to sell, assign, transfer, give away, pledge, mortgage or otherwise dispose of any interest in the Store, the franchise or Franchisee's rights under this Agreement without Company's prior written consent. If Franchisee is a business entity, any sale, transfer or other disposition of an equity interest in Franchisee that results in a Change of Control will be considered a transfer covered by and subject to the terms and conditions of this Section 13. Any transfer lacking Company's prior written consent or that otherwise violates the restrictions in this Section 13 will be ineffective against Company and will constitute a default under Section 16(c)(2). Under no circumstances will Company consent to a transfer of this Agreement or an interest in the Store before the Store opens for business.

(b) **Conditions to Voluntary Transfer of Rights.** Company's consent to a voluntary disposition of Franchisee's interest in the franchise or under this Agreement will not be unreasonably withheld, provided that:

(1) At the time of transfer, Franchisee is in full compliance with Franchisee's obligations under this Agreement, including payment of all monetary obligations due Company.

(2) The proposed transfer or other disposition involves the complete disposition of the franchise, and Franchisee relinquishes the franchise and related rights under this Agreement in writing.

(3) Franchisee returns the Operations Manual and all Copyrighted Materials to Company.

(4) The transferee meets Company's standards for qualifying as a new Store Franchisee.

(5) Franchisee furnishes Company a copy of the contract of sale, including price and payment terms, and Company, in its sole discretion, determines that the transferee will be able to satisfy any debt obligations to Franchisee and still derive a reasonable profit from the Store's operation.

(6) The transferee provides Company pro forma profit and loss and cash flow projections for the 24 months following the transfer (including provision for principal and interest on any obligations payments to Franchisee). These projections must demonstrate to Company's reasonable satisfaction that the transferee can operate the Store without experiencing

a loss or negative cash flow. If these projections, as adjusted to take into account factors Company points out, indicate that the transferee may experience a loss or negative cash flow, but Franchisee and the transferee prevail upon Company to approve the transfer anyway, the transferee must waive any claims against Company related to Company's approval of an economically questionable transaction.

(7) The transferee executes then current forms of Franchise Agreement (which will limit the term of the transferee's franchise to the unexpired term of Franchisee's franchise), Assignment of Telephone Number(s), Authorization Agreement for Preauthorized Payments, and other collateral agreements Company may then require.

(8) The transferee provides Company a waiver and release with respect to liability for any financial data, earnings claims, representations and other information Franchisee or its representatives provided the transferee.

(9) Each holder of an equity interest in the transferee executes a Guaranty and Acknowledgment (a "Guaranty") in the form appended to this Agreement.

(10) The transferee and the transferee's Manager satisfactorily complete Company's training program.

(11) Company receives a \$5,000 transfer fee from the transferor.

(12) If Company agrees to release Franchisee or any other person from further liability under this Agreement or under a Guaranty, Franchisee and each such other person must also give Company an unconditional, general release of all claims they may have against Company and its affiliates.

(c) **Involuntary Transfers.** No involuntary transfer or partitioning of Franchisee's interest in the franchise or under this Agreement, whether in connection with a bankruptcy, foreclosure, divorce or other proceeding, will be effective against Company unless and until the transferee (1) furnishes Company a signed Guaranty under which the transferee agrees to be jointly and severally liable for the payment of Franchisee's monetary obligations under this Agreement, whether or not such obligations are then delinquent, (2) agrees in writing to be personally bound by the confidentiality provisions and restrictive covenants in this Agreement, and (3) unless the transfer encompasses Franchisee's total interest in the franchise and under this Agreement, irrevocably designates and appoints Franchisee to be the transferee's agent and attorney-in-fact with whom Company may deal for all purposes expressed in or contemplated by this Agreement.

(d) **Conditions to Equity Transfer.** Company's consent to a voluntary or involuntary sale, assignment or transfer of an equity interest that results in a Change of Control will not be unreasonably withheld, provided that:

(1) At the time of transfer, Franchisee is in full compliance with its obligations under this Agreement, including payment of all monetary obligations due Company.

(2) Each proposed transferee of an equity interest in a Franchisee that is a business entity meets Company's standards for qualifying as a new Store Franchisee and delivers a signed Guaranty to Company.

(3) Except as expressly provided in Section 13(f), if the transfer results in a Change of Control, the transferees comply with Sections 13(b)(5), 13(b)(6), 13(b)(8), 13(b)(9), 13(b)(10), and 13(b)(11).

(4) If Company agrees to release Franchisee from further liability under this Agreement or its owners from further liability under a Guaranty, Franchisee and each of its owners must also give Company an unconditional, general release of all claims they may have against Company and its affiliates.

(e) **Waiver of Interference Claims.** Franchisee acknowledges that Company has legitimate reasons to evaluate the qualifications of potential transferees and to analyze and critique the terms of their purchase contracts with Franchisee. Franchisee also acknowledges that Company's contact with potential transferees for the purpose of protecting its business interests will not constitute improper or unlawful conduct. Franchisee expressly authorizes Company to investigate any potential transferee's qualifications, to analyze and critique the proposed purchase terms with the transferee, and to withhold consent to economically questionable transactions. Franchisee waives any claim that action Company takes in relation to a proposed transfer to protect its business interests constitutes tortious interference with contractual or business relationships.

(f) **Special Transfers.**

(1) If Franchisee is an individual person or a general partnership who at any time advises Company that Franchisee wants to assign the franchise to a newly formed Business Entity in which Franchisee will own a 100% voting equity interest (and, if Franchisee is a general partnership, with share or member interest ownership in the new Business Entity apportioned substantially the same as were the partnership interests), Company will consent to the assignment upon its receipt of such documentation and information concerning the Business Entity and its equity owners as Company may reasonably request. The required documentation will include, without limitation, (i) a certified list of the Business Entity's owners (designating the amount and percentage of stock or membership interests each equity owner owns), (ii) a Guaranty signed by each holder of an equity interest in the Business Entity, and (iii) an express assumption by the Business Entity of Franchisee's obligations under this Agreement. If Franchisee properly notifies Company of its intent to make the transfer and promptly signs and returns the Guaranties, the assumption agreement and the other documentation Company requires, Company will waive payment of a transfer fee and its right of first refusal under Section 13(g). Franchisee will be eligible to effect a transfer under this Section 13(f)(1) only if, at the time of the proposed transfer, Franchisee is either an individual person, a general partnership by formal agreement or a general partnership by operation of law.

(2) If Franchisee is a Business Entity and if transfers contemplated by this Section 13(f)(2) would not individually or cumulatively result in a Change of Control, Company will consent to assignments and transfers of ownership interests among Franchisee's original stockholders, partners or members upon its receipt of such documentation and information concerning the assignment or transfer and the resulting ownership of Franchisee as Company

may reasonably request. The required documentation will include, without limitation, a Guaranty signed by each holder of an equity interest in Franchisee who has not previously signed a Guaranty. If Franchisee properly notifies Company of its equity owners' intent to make the transfer and each equity owner promptly signs and returns a Guaranty (if required) and the other documentation Company requires, Company will waive payment of a transfer fee and its right of first refusal under Section 13(g). If Company agrees to release any retiring stockholder, partner or member from further liability under a Guaranty, the retiring stockholder, partner or member must also give Company an unconditional, general release of any claims the stockholder, partner or member may have against Company. Franchisee's equity owners will be eligible to effect transfers under this Section 13(f)(2) only if, at the time of the proposed transfer, the same people or Business Entities who owned 100% of the equity interests that Franchisee initially issued are still Franchisee's only equity owners.

(3) If Franchisee is an individual person, Franchisee may make a transfer to a Business Entity under Section 13(f)(1) and simultaneously or later transfer a cumulative total of not more than 49% of the Business Entity's stock or member interests to any combination of the original Franchisee's spouse, natural or adopted children or an *inter vivos* (lifetime) trust created for the benefit of Franchisee's spouse and/or children. Company will consent to the transfer upon its receipt of such documentation and information concerning the transfer and the resulting ownership of the Franchisee's stock or units of beneficial ownership as Company may reasonably request. The required documentation will include, without limitation, (i) a certified list of the Business Entity's equity owners (designating the amount and percentage of stock or units of beneficial ownership each equity owner owns), and (ii) a Guaranty signed by each holder of the entity's equity who has not previously signed a Guaranty. If Franchisee properly notifies Company of its his or her intent to make the transfer and each new equity owner promptly signs and returns a Guaranty (if required) and the other documentation Company requires, Company will waive payment of a transfer fee and its right of first refusal under Section 13(g). This Section 13(f)(3) applies only to transfers by the original Franchisee and will not be available for subsequent transfers of ownership interests in the Business Entity.

(4) If Franchisee is a Business Entity and if transfers contemplated by this Section 13(f)(4) would not individually or cumulatively result in a Change of Control, each of Franchisee's equity owners may transfer a cumulative total of not more than 49% of his or her ownership interest in Franchisee to any combination of the person's spouse, natural or adopted children or an *inter vivos* trust created for the benefit of the person's spouse and/or children. Company will consent to the transfer upon its receipt of such documentation and information concerning the transfer and the resulting ownership of Franchisee as Company may reasonably request. The required documentation will include, without limitation, (i) a certified list of the Franchisee's equity owners (designating the amount and percentage of stock or member interests each person owns), and (ii) a Guaranty signed by each holder of Franchisee's equity who has not previously signed a Guaranty. If Franchisee properly notifies Company of its equity owners' intent to make a transfer and each new equity owner promptly signs and returns a Guaranty (if required) and the other documentation Company requires, Company will waive payment of a transfer fee and its right of first refusal under Section 13(g).

(5) Any transfer that does not meet all of the eligibility requirements set forth in one of the preceding subsections of this Section 13(f) will be subject to all the requirements of Section 13(d).

(g) **Right of First Refusal.** Notwithstanding Sections 13(b), 13(c) or 13(d), Franchisee may not voluntarily or involuntarily transfer or otherwise dispose of any interest in the franchise or permit the sale, assignment or transfer of an equity interest of 50% or more in Franchisee without first offering in writing to sell the interest to Company upon the terms and conditions, including price and payment terms, that are recited in a bona fide written offer the proposed seller obtains. Franchisee must furnish Company with a copy of the written offer, together with (1) a recent balance sheet of the Store (or of Franchisee if it is a business entity), (2) copies of Franchisee's building and equipment leases, (3) a schedule of notes and trade accounts then payable by Franchisee, and (4) copies of any other information that Franchisee or the proposed seller furnishes to the offeror. Company will have 30 days following its receipt of Franchisee's written offer and related information to accept or reject it, and at least 30 additional days to consummate the purchase.

(h) **Purchase Upon Franchisee's Death or Disability.**

(1) This Section 13(h) applies only if (i) an individual Franchisee, a general partner owning a 50% or greater profits interest in a partnership Franchisee, or a beneficial owner owning 50% or more of the outstanding capital stock or units of beneficial ownership of a corporate or limited liability company Franchisee dies or becomes disabled during the term of the franchise, and (ii) the death or disability results in a change in executive-level responsibility for managing the franchised business.

(2) During the first 120 days after the death or disability occurs, Company will evaluate the new management's willingness and ability to operate the Store in compliance with this Agreement. By the end of the 120-day evaluation period, Company will decide whether the new management is qualified to manage the Store and will notify management of its decision. As conditions to continuing the franchise relationship, each new owner of Franchisee's equity must furnish Company a signed Guaranty, and any deficiency in Franchisee's compliance with the requirements of this Agreement must be cured. Further, Company may require the new management to attend and satisfactorily complete the training program provided under Section 6(a)(6).

(3) If any of the conditions stated in Section 13(h)(2) are not satisfied, or if Company decides that the new management has not adequately demonstrated its business qualifications or commitment to the franchise relationship, the owners of the franchise will have 120 days after delivery of Company's notice to sign a binding contract to sell the franchise to a buyer approved by Company in accordance with, and in a transaction structured to comply with, Section 13(b) or 13(d), whichever is applicable. The proposed sale will be subject to Company's right of first refusal under Section 13(g).

(4) If any of the franchise's owners fail to sign a binding contract of sale before the 120-day selling period expires, or (i) if a contract is signed, but the proposed sale is not concluded within 30 days after Company relinquishes its option under Section 13(g), Company will have an additional option during the next 30 days to purchase the interest in the franchise or in the Franchisee the deceased or disabled person held at the date of death or disability. The purchase price for the interest will be its fair market value, determined through negotiations or by appraisal. Unless otherwise agreed by the parties, the purchase price will be payable in cash at closing. If Company delivers written notice of its intention to exercise the

option within the 30-day period, the option will be considered effectively exercised whether or not the purchase is actually consummated within the 30-day period.

(5) If the parties fail to agree on a purchase price for the interest within 21 days after delivery of Company's notice, the issue will be submitted as promptly as possible to a group of three appraisers who are experienced in valuing similar franchises, one of whom will be selected by Company, another by the decedent's estate, and the third by the first two appraisers. All parties agree to submit to such appraisal proceedings, to be bound by the decision of a majority of the appraisers and to share payment of the appraisers' fees and expenses equally.

(i) **Assignment by Company.** Company may assign this Agreement and its rights and obligations as franchisor of the Marble Slab Creamery franchise system to any assignee who, in Company's sole judgment and discretion, is capable of performing Company's obligations under this Agreement in a reasonably competent manner. Nothing in this Agreement will be interpreted to place any restrictions on the issuance, sale or transfer of any shares of Company's capital stock.

14. Interest on Delinquent Accounts.

If Franchisee fails to make any royalty, Ad Fund contribution or trade account payment to Company within five business days after it is due, the amount payable will bear interest from the date it became due through the date of payment at the lesser of (i) 2% in excess of the prime commercial rate of interest reported in the Wall Street Journal (Southwestern edition), adjustable daily, or (ii) the highest lawful rate of interest permitted by applicable Texas and federal law. Nothing in this Agreement will obligate Franchisee or any guarantor of Franchisee's obligations to pay, or entitle Company to collect, interest in excess of the maximum rate applicable law permits. If, for any reason, Company charges or receives interest in excess of the maximum rate permitted by applicable law, the excess will be applied as a payment against the principal amount of Franchisee's other obligations under this Agreement. If no other obligations are due, Company will promptly refund the excess payment to the party that paid it.

15. Store Relocation.

(a) If the lease for the Store expires or is terminated on account of a condemnation or casualty before the end of the franchise's term, Franchisee may move the Store to a new location, subject to payment of a relocation fee in accordance with Section 15(b). Franchisee may relocate the Store for reasons other than a lease expiration or termination on account of condemnation or casualty only with Company's permission, which Company may withhold in its discretion. In all cases, the new location (i) must be chosen in accordance with the site selection procedures outlined in Sections 6(a) and 7(b), (ii) must be in the original Store's general trade area (as determined by Company in its sole judgment), and (iii) may in no case infringe another Store's protected Trade Area.

(b) The relocation fee will be 50% of the then current franchise fee for a first Store, which Franchisee must pay before Company approves the site for the relocation Store.

(c) When Company approves the location for the new Store, Company will prepare a new Exhibit B to this Agreement that describes the new Store's Approved Location and Trade Area. The new Exhibit B will replace the original Exhibit B to this Agreement for all purposes of

this Agreement, including that of identifying the area in which Franchisee will enjoy competitive protection pursuant to Section 4.

(d) If Franchisee loses possession of the original Store's premises because the lease expired by its terms, or on account of condemnation proceedings, Franchisee must initiate the relocation procedure in time to lease, build-out and open the new Store for business within 15 days after the original Store closes. If Franchisee's lease is terminated on account of a fire or other casualty, Franchisee must initiate the relocation procedure in time to lease, build-out and open the new Store for business within 120 days after the lease for the original Store terminates.

16. Default.

(a) If any event or condition listed in this Section 16 (an "Event of Default") occurs, Franchisee will be in default under this Agreement; the occurrence of an Event of Default is not predicated on notice of default by Company. Company's failure to take prompt action with respect to a particular Event of Default will not constitute a waiver of that or any subsequent Event of Default.

(b) Following are Events of Default that Franchisee (or another responsible party) may cure by taking appropriate remedial action within a prescribed time after Company demands remedial action. Unless Franchisee (or another responsible party) cures such an Event of Default before the end of the indicated remedial period, Company may terminate the franchise or take any of the other actions Section 17 permits. If the Event of Default is cured to Company's satisfaction before Company gives Franchisee notice of termination, Company will not proceed under Section 17.

(1) Franchisee fails to obtain possession of the Approval Location in accordance with Section 7(b), to construct and open the Store in compliance with Sections 7(c), 7(d)(1), or 7(d)(5), or to complete Company's training program or train the Store's staff in accordance with Section 7(d)(3). REMEDY - Franchisee must complete any unfulfilled requirement within 15 days after Company notifies Franchisee in writing of the action to be taken.

(2) Franchisee fails to fulfill any requirement, to perform any obligation, or to observe any restriction set forth in Sections 5, 7(a), 7(d)(1), 7(d)(2), 7(d)(4), 7(d)(6) through 7(d)(9), 7(d)(11) through 7(d)(14), 7(d)(16), 7(d)(17), 7(d)(19) through 7(d)(21), 7(d)(25), or 7(d)(26). REMEDY - Franchisee must correct any element of noncompliance within 30 days after Company notifies Franchisee in writing of the remedial action to be taken.

(3) Franchisee fails to pay any trade obligation due to a vendor with whom Company or any of its affiliates does business, as a result of which the vendor withholds or threatens to withhold the sale of goods or services, or withdraws or threatens to withdraw the availability of normal trade terms, to Company, any Company affiliate or another franchisee. REMEDY - Franchisee must pay the obligation in full within 10 days after Company makes written demand for payment, unless Franchisee is actively contesting the amount or validity of the vendor's claim in good faith and promptly furnishes Company a statement of the reasons Franchisee is withholding payment and the action Franchisee is taking to resolve the dispute. So long as Company concurs that Franchisee is actively contesting the claim in good faith,

Franchisee may continue withholding payment of the disputed amount until the dispute is resolved.

(4) Franchisee fails to take appropriate action to correct any condition noted as a deficiency in any QSC Inspection report within 15 days after receiving a copy of the report. REMEDY - Franchisee must initiate appropriate corrective action within five business days after Company notifies Franchisee in writing of the condition to be corrected and must complete the corrective action within a reasonable time.

(5) Franchisee fails to submit when due a financial statement required by Section 7(d)(25) or a certificate required by Section 7(d)(29), or to furnish a tax return required by Section 7(b)(23) promptly after Company requests it. REMEDY - Franchisee must submit the financial statement, certificate or tax return within 10 days after Company makes written demand upon Franchisee for its submission.

(6) Franchisee fails to fulfill any requirement or to perform any obligation set forth in Section 8 with respect to advertising and promotions (other than a failure to make Ad Fund contributions, which are covered by Section 16(c)(1)). REMEDY - Franchisee must correct the failure or breach within 30 days after Company gives Franchisee written notice specifying the default.

(7) Franchisee or any other person bound under Section 23 attempts to hire an employee of Company or another franchisee in violation of Section 7(d)(10); fails or refuses to honor a request for indemnification under Section 7(d)(27); breaches any restriction or obligation set forth in Section 9 or any related Terms of Use agreement; breaches any covenant or obligation set forth in Sections 12(a), 12(b)(5), or 12(b)(6), or otherwise makes any unauthorized use of a Mark, an item of Copyrighted Materials or an element of the System. REMEDY - The breaching party must remedy the breach, honor the request or permanently cease the unauthorized use within 10 days after Company makes written demand upon Franchisee to take specified curative action.

(8) Franchisee asserts a claim to any Marble Slab Creamery domain name, any Mark, any item of Copyrighted Materials or any element of the System adverse to Company's interests. REMEDY - Franchisee must unconditionally withdraw the claim within 10 days after Company makes written demand that Franchisee do so.

(9) The lease for the Store expires or is terminated and Franchisee fails to relocate the Store in accordance with Section 15. REMEDY - Franchisee must reopen the Store in another approved location within 15 days after Company makes written demand that Franchisee do so.

(10) Franchisee knowingly engages in any activity or business practice that Company reasonably considers detrimental to the goodwill and public image of the Marble Slab Creamery franchise system. REMEDY - Franchisee must permanently cease the activity or business practice within 10 days after Company makes written demand upon Franchisee to cease any activity specified in the notice.

(c) Following are Events of Default that Franchisee can cure only by taking voluntarily remedial action of the indicated character before Company gives Franchisee notice of termination or, with respect to the second Event of Default, a transfer occurs.

(1) Franchisee fails to pay in full when due any royalty or Ad Fund fee payment in accordance with Section 10(b), any Ad Fund contribution in accordance with Section 8, or any trade account (including shipping charges) payable to Company or its affiliates. ACTION - Franchisee must make payment in full, with interest as provided in Section 14, before Company gives Franchisee notice of termination.

(2) Franchisee or any other person bound under Section 23 either (i) fails to observe or comply with the requirements of Section 13 in connection with any sale, assignment or transfer, or (ii) makes a material representation in any transfer request or document in support of a transfer request. ACTION - Franchisee must correct all elements of non-compliance, including misrepresentations, before the sale, assignment or transfer is completed (including correction of misrepresentations in time for Company to have a reasonable opportunity to consider and act on the corrected information).

(3) Franchisee fails to purchase or lease an Approved Location for the Store within 18 months after the Effective Date or to open the Store for commerce with the general public within 24 months after the Effective Date.

(d) Following are Events of Default that are irreversible and cannot be cured; Franchisee will have no opportunity to cure these Events of Default.

(1) Franchisee or any other person bound under Section 23 breaches the non-competition covenant in Section 19 or the covenants concerning use of the System, the Operations Manual or the Marble Slab Creamery Intranet in Sections 12(b)(1), 12(b)(2), 12(b)(3), or 12(c)(2).

(2) Franchisee sells the Store's assets or transfers possession of its premises in violation of Section 7(d)(28), or abandons the Store. Franchisee will be conclusively presumed to have abandoned the Store if Franchisee fails to open it for retail trade during normal business hours on more than three consecutive days or on more than four of any 10 consecutive days, in either case excluding periods the Store is undergoing major renovations or remodeling in accordance with a schedule Franchisee has worked out with Company.

(3) Franchisee or any other person bound under Section 23 tampers with or disables the Store's Information System or Company's ability to access them, or refuses to permit Company to conduct a QSC Inspection permitted under Section 7(d)(18), an audit permitted under Section 7(d)(24) or a financial records inspection permitted under Section 7(d)(25), or to electronically poll the Store's Information System in accordance with Section 7(d)(22).

(4) Franchisee intentionally revokes the direct debit authorization agreement Section 10(b) requires, or closes the account to which the authorization agreement applies without first having established another royalty payment account and having signed and delivered to Company a new Authorization Agreement for Preauthorized Payments on a form acceptable to Company and its bank.

(5) Company decides not to exercise the additional option provided in Section 13(h)(4) with respect to the sale of the franchise by a deceased Franchisee's heirs.

(6) Franchisee and/or any person bound under Section 23 commits or allows to occur two or more Events of Default in any 12-month period, whether or not the Events of Default are related types of default and whether or not they are cured.

(7) Franchisee or any guarantor of Franchisee's monetary obligations to Company becomes insolvent, admits in writing the inability to pay the monetary obligations of Franchisee or the guarantor as they mature, is adjudicated a bankrupt, voluntarily files a petition for liquidation or reorganization under any provision of the United States Bankruptcy Code, makes an assignment for the benefit of creditors or takes any other action pursuant to any federal or state insolvency statute.

(8) A receiver or trustee is appointed for all or a substantial part of Franchisee's assets, or a judgment for an amount in excess of \$5,000 is entered against Franchisee that Franchisee does not pay or cannot stay within 30 days after the judgment is entered.

17. Termination; Other Remedies.

(a) If Franchisee commits or allows an Event of Default to occur and does not cure it before the related remedial period, if any, expires, Company may at its sole discretion, but subject to compliance with applicable statutory notice and/or hearing requirements, either terminate the franchise and Franchisee's rights under this Agreement or compel Franchisee to sell the Store in accordance with Section 17(d). Upon termination or expiration of the franchise, Franchisee's right and privilege to use the Marks, the Copyrighted Materials, the Trade Secrets and all components of the Operations Manual will absolutely and unconditionally cease. Franchisee will immediately:

(1) discontinue use of the Marks, the Copyrighted Materials, the System and the Trade Secrets;

(2) return to Company the entire Operations Manual and any other printed, graphic or audio/visual item designated by Company as containing Trade Secrets;

(3) remove from the Store's premises all interior and exterior Marble Slab Creamery signs and other uses of the Marks; and

(4) alter the Store's interior to remove all Trade Dress items and otherwise eliminate the distinctive features of the Store concept.

(b) Upon the franchise's termination or expiration, Company may immediately file with Franchisee's local telephone company all Assignments of Telephone Number(s) that Franchisee provided Company in accordance with Section 7(d)(4), and may instruct the telephone company to transfer use and control of the Store's telephone number(s) to Company or its designee. Franchisee irrevocably constitutes and appoints Company and its designees as Franchisee's agent and attorney-in-fact to effect the transfer of the Store's telephone number(s), including authority to execute and deliver on Franchisee's behalf any Transfer of Service

Agreement the telephone company requires, and to revoke any call-forwarding or similar instructions Franchisee has given the telephone company. Company will have no liability to Franchisee on account of or arising from any action it authorizes or takes to effect the transfer of the Store's telephone number(s) in accordance with this Section 16(b). In addition, Company will be entitled to injunctive or similar relief, without bond, against Franchisee and any other person bound under Section 23 to enforce compliance with these requirements.

(c) If Franchisee does not comply with the requirements of Section 17(a) within seven days after the franchise's termination or expiration, Company may, at Franchisee's expense, enter the Store's premises and effect Franchisee's compliance with all of that Section's requirements, including removal and storage of Franchisee's signs, and alteration or removal and storage of Trade Dress items. Franchisee irrevocably constitutes and appoints Company and its designees as Franchisee's agent and attorney-in-fact to effect compliance with Section 17(a)'s requirements, and Company will have no liability to Franchisee, in trespass or otherwise, on account of or arising from any action it authorizes or takes to effect Franchisee's compliance. In addition, Company will be entitled to injunctive or similar relief, without bond, against Franchisee and any other person bound under Section 23 to enforce compliance with these requirements.

(d) In lieu of immediately terminating the franchise in accordance with Section 17(a), Company may order Franchisee to sell the Store and transfer Franchisee's rights under this Agreement to a purchaser designated by or acceptable to Company. After Company orders Franchisee to sell the franchised business, Franchisee will have no further right or opportunity to remedy a default or to reinstate Franchisee's right to continue operating the Store. Except for Company's right to approve a proposed purchaser's financial and business qualifications and to ensure that all royalties, Ad Fund contributions and other amounts due Company are paid at the closing of the sale, Franchisee will be entitled to establish and negotiate the terms of sale. If Franchisee does not negotiate definitive terms of sale with a qualified purchaser, either designated by Company or located by Franchisee and approved by Company, within 90 days after Franchisee receives Company's demand to sell, or does not consummate the sale within 45 days after negotiations are completed, Company may terminate the franchise under Section 17(a) without further notice.

(e) In addition to the preceding rights and remedies (and in lieu of immediately exercising its rights under Section 17(a)), Company may notify each supplier of Base Mix and other proprietary products and merchandise that Franchisee is no longer authorized to purchase these items or any paper goods imprinted with any of the Marks, and that sales of such merchandise to Franchisee must therefore be discontinued until further notice from Company.

(f) In addition to the preceding rights and remedies, Company may recover all royalties, Ad Fund contributions and trade obligations due Company, plus interest under Section 14, with or without terminating the franchise. If any such obligation is referred to an attorney for collection or is collected in whole or in part through a judicial proceeding, Franchisee agrees to pay Company's reasonable attorneys' fees and costs of collection, plus a reasonable charge for the staff and administrative time Company expends to enforce its claims.

(g) In addition to the preceding rights and remedies, Company may cancel Franchisee's account on the Marble Slab Creamery Intranet network and deny Franchisee further access to communication via the Intranet, with or without terminating the franchise.

(h) In addition to the preceding rights and remedies, Company may obtain injunctive relief, without bond, against Franchisee and/or any other person bound under Section 22 restraining the unauthorized or violative use of any Mark, item of Copyrighted Materials or Trade Secret, with or without terminating the franchise.

(i) In addition to the preceding rights and remedies, Company may recover damages from Franchisee and any other person bound under Section 23 for the unauthorized use of any Mark and/or Trade Secret or the unauthorized use, copying or distribution of any item of Copyrighted Materials, and for any loss of customer or future Franchisee goodwill in the Store's Trade Area.

(j) In addition to the preceding rights and remedies, Company will have an option (but no obligation) to purchase all or any part of the Store's signs, equipment, fixtures and useable inventory from Franchisee for 60 days after the franchise expires or is terminated. The purchase price for signs and equipment will equal their net book value (cost, less depreciation) or fair market value, whichever is lower; the purchase price for useable inventory will equal its invoiced cost to Franchisee. The purchase price will be payable in cash (except that Company may assume any note or lease covering signs, equipment or fixtures). Franchisee agrees to provide Company the information necessary to establish the purchase price, to sign and deliver to Company a bill of sale or an assignment of lease, and otherwise to cooperate with Company in its taking title to and delivery of the items Company purchases. If Franchisee fails or refuses to comply with its obligations under this Section during the option period, Company's option will be extended until 15 days after Franchisee complies.

NOTE: Termination of the franchise will ordinarily become effective upon Company's delivery of written notice of termination to Franchisee. However, if (1) an Event of Default occurs, and (2) before Company delivers notice of default and/or notice of termination, a voluntary or involuntary petition is filed under any chapter of the United States Bankruptcy Code by, on behalf of, or against Franchisee, and (3) the Event of Default remains unremedied at the time the bankruptcy or reorganization petition is filed, no notice of default or termination will be required. Instead, if Franchisee files a voluntary petition for liquidation or reorganization under the United States Bankruptcy Code, termination will automatically become effective the instant a petition is signed by or on behalf of Franchisee. If an involuntary petition is filed, termination will automatically become effective the instant the petition is submitted to the clerk of the Bankruptcy Court for filing.

18. Liquidated Damages.

(a) If after (1) the expiration of the franchise in accordance with Section 11, or (2) the termination of the franchise by Company in accordance with Section 17, Franchisee continues to use any of the Marks or element of the System in connection with the continued operation of the Store or otherwise, then, in addition to any other remedies available to Company at law or in equity, Company will be entitled to collect from Franchisee, and Franchisee agrees to pay a weekly royalty for such use of the Marks and/or the System equal to 150% of the royalties that Franchisee would otherwise have been obligated to pay under Section 10.

(b) If Franchisee unilaterally repudiates and surrenders the franchise before the expiration of its term and, within 24 months after the date of termination, directly or indirectly commences operation of a quick service food business that serves ice cream as a primary menu

item, then, in addition to any other remedies available to Company at law or in equity, Company will be entitled to receive throughout the entire remaining term of the franchise, and Franchisee agrees to pay, a weekly fee equal to 10% of the competing operation's revenues, measured in accordance with the definition of Gross Sales in the Glossary attached to this Agreement.

(c) If Franchisee directly or indirectly opens or participates in the ownership or operation of a business in violation of the covenant not to compete expressed in Section 19, then, in addition to any other remedies available to Company at law or in equity, Company will be entitled to receive throughout the term of the covenant, and Franchisee agrees to pay, a weekly fee equal to 10% of the competing operation's revenues, measured in accordance with the definition of Gross Sales in the Glossary attached to this Agreement.

(d) If Franchisee disposes of the Store's operating assets or premises in violation of Section 7(d)(28) and the purchaser refuses to sign a Franchise Agreement for the continued operation of the Store as a Marble Slab Creamery Store, then, in addition to any other remedies available to Company at law or in equity, Company will be entitled to receive, and Franchisee agrees to pay, a sum equal to the royalties Company would otherwise have received during the remaining term of the franchise, discounted to present value. In calculating the royalties Company would otherwise have received, Franchisee will be deemed to have earned annual Gross Sales for the balance of the franchise term equal to (i) one third of the Store's Gross Sales for the 36 months preceding the date on which the disposition occurs or, (ii) if the Store has operated for less than 36 months at the time the disposition occurs, an amount determined by dividing the Store's aggregate Gross Sales during the entire period it operated by the number of full months the Store operated, and multiplying the result by 12.

19. Covenant Against Competition.

(a) In consideration of Company's providing operations and management training to Franchisee and disclosing to Franchisee the System and other Trade Secrets, Franchisee covenants and agrees that, during the term of this Agreement and for two years after its expiration or termination, Franchisee will not own or operate, directly or indirectly, or accept employment by or hold an interest in any quick service food business that serves ice cream as a primary menu item, except as a franchisee of Company.

(b) During the term of this Agreement, Franchisee's covenant not to compete will apply universally; for the two-year period after the franchise expires or is terminated, Franchisee's covenant will apply in the DMA in which the Store is located and in each other DMA in which a Company-owned or franchised Store is then operating or under development. For purposes of calculating the duration of the two-year period, any time during which Franchisee is in violation or breach of the covenant will be excluded.

(c) Franchisee acknowledges that Franchisee's covenant not to compete is reasonable and necessary to protect the business and goodwill of the Marble Slab Creamery franchise system and to avoid misappropriation or other unauthorized use of the System and Company's other Trade Secrets.

(d) Franchisee acknowledges and confirms that Franchisee possesses the education, training and experience necessary to earn a reasonable livelihood apart from operating a business that serves ice cream as its principal product.

20. Partial Invalidity.

The provisions of this Agreement are severable, and if any provision is held illegal, invalid or unenforceable, the holding will not affect the legality, validity or enforceability of any other provision. Any illegal, invalid or unenforceable provision will be reformed to the minimum extent necessary to render it legal, valid and enforceable and, as so reformed, will continue in full force and effect.

21. Notices.

All notices or demands required or permitted under this Agreement will be in writing and will be deemed delivered when deposited with the United States Postal Service, first class postage prepaid, certified or registered mail, return receipt requested, addressed, if to Company, to 3100 South Gessner, Suite 305, Houston, Texas 77063, Attn. President; and if to Franchisee, initially to the address shown in the signature block of this Agreement and, after the Store opens, to the address of the Approved Location. Either party may at any time change the address to which notices are to be sent by giving the other at least 10 days' prior notice in accordance with this Section 20.

22. Status of Parties.

This Agreement is not intended to create, and will not be interpreted or construed as creating, a partnership, joint venture, agency, employment, personal services, fiduciary or other "special" relationship between Company and Franchisee, and no representation to the contrary will be binding upon Company.

23. Binding Effect.

This Agreement will be binding upon and inure to the benefit of Company and Franchisee and their respective successors, assigns, executors, heirs and personal representatives. If Franchisee is, or subsequently transfers the franchise to, a business entity, each holder of an equity interest in Franchisee will also be personally and individually bound by the provisions of Sections 7(d)(10), 7(d)(24), 7(d)(27), 7(d)(28), 12, 13, 19 and 24 of this Agreement.

24. Law Governing; Dispute Resolution.

(a) Except as otherwise stipulated in Sections 24(d) and 24(e), or unless expressly prohibited by the franchising statutes of the state in which the Store is located, this agreement will for all purposes be governed by and interpreted and enforced in accordance with the Internal laws of the state of Texas, except that its choice of law and conflict of law rules will not apply.

(b) The parties agree to use their best efforts to resolve and settle by direct, private negotiation any claim, controversy or dispute (a "Dispute") that arises under or in relation to this Agreement or that concerns the relationship created by this Agreement.

(c) If the parties cannot resolve and settle a Dispute by private negotiation within 60 days after one party gives the other written notice that a Dispute exists, the parties mutually agree to submit the Dispute to non-binding mediation, as follows:

(1) Mediation will occur in Houston, Texas before a single mediator, using the facilities and mediation rules of a professional dispute-resolution organization selected by Company and reasonably acceptable to Franchisee (the "Mediation Organization"). If the parties cannot agree on a Mediation Organization, they will use the facilities and mediation rules of the National Franchise Mediation Program.

(2) The parties will jointly select a mediator from the panel of mediators maintained by the Mediation Organization. The mediator must be either a retired judge or a person experienced in business format franchising or franchise law who has no prior social, business or professional relationship with either party. If the parties are unable to agree on a mediator within 30 days after the Dispute is submitted to mediation, the Mediation Organization will select a mediator who possesses the indicated qualifications.

(3) The parties will share the mediation filing fee equally, but will otherwise separately bear their own costs and expenses (including legal fees) of participating in the mediation process. Each party agrees to send at least one representative to the mediation conference who has authority to enter into binding contracts on that party's behalf. Each party further agrees to sign a confidentiality agreement that exempts the mediator from disclosing, orally or in writing, any information the other party discloses to the mediator in confidence at any stage of the mediation process.

(4) If either party fails or refuses to participate in mediation in accordance with this Section 24(c), the other will be entitled to immediately submit the Dispute to binding arbitration in accordance with Section 24(d).

(d) If the parties cannot fully resolve and settle a Dispute through mediation within 30 days after the mediation conference concludes, all unresolved issues involved in the Dispute will be submitted to binding arbitration, as follows:

(1) Either party may make a demand for arbitration.

(2) Arbitration proceedings will be conducted in Houston, Texas before a single arbitrator, using the facilities and commercial arbitration rules of the Mediation Organization or another professional dispute-resolution organization selected by Company and reasonably acceptable to Franchisee (the "Arbitration Organization"). If Company selects an Arbitration Organization other than the Mediation Organization and Franchisee reasonably objects to Company's choice, the parties will use the American Arbitration Association's facilities and commercial arbitration rules.

(3) The Arbitration Organization's expedited arbitration procedure will apply to the arbitration proceedings. To the greatest extent permitted by law, Company and Franchisee waive the application of all rules of discovery and evidence the Arbitration Organization's expedited procedure does not expressly make applicable.

(4) The parties will jointly select an arbitrator from the panel of arbitrators maintained by the Arbitration Organization. The arbitrator must be either a retired judge or an attorney experienced in the practice of franchise law who has no prior social, business or professional relationship with either party and who agrees to follow and apply the express

provisions of this Agreement in determining his or her award. If the parties are unable to agree on an arbitrator within 30 days after the arbitration demand is filed, the Arbitration Organization will select a arbitrator who possesses the indicated qualifications.

(5) The arbitrator's award will be final and binding on all parties, and neither party will have any right to contest or appeal the arbitrator's award except on the grounds expressly provided by the United States Arbitration Act (the "Arbitration Act"). The party who demands arbitration will pay the arbitration filing fee, but the parties will otherwise separately bear their own costs and expenses (including legal fees) of participating in the arbitration process. Responsibility for the arbitrator's fees and expenses will be determined as part of the arbitrator's award.

(6) The procedures contemplated by and the enforceability of this Section 24(d) will be governed by the Arbitration Act and will be interpreted and enforced in accordance with United States federal judicial interpretations of the Arbitration Act.

(e) Notwithstanding Sections 24(c) and 24(d), Company will not be obligated to mediate or arbitrate any claim arising from Franchisee's alleged infringement of the Marks or the Copyrighted Materials, or other alleged misappropriation of Company's intellectual property. The parties agree that any action based on infringement of any of the Marks or Copyrighted Materials, or misappropriation of Company's other intellectual property will be governed by and interpreted and enforced in accordance with the United States Trademark (Lanham) Act or the United States Copyright Act (whichever applies to the particular action), and will be litigated in any federal District Court sitting in Harris County, Texas. The parties further agree to submit to the jurisdiction and venue of any such federal District Court and that service of process by certified mail, return receipt requested, will be sufficient to confer *in personam* jurisdiction over them in connection with any intellectual property litigation.

(f) Further, notwithstanding Sections 24(c) and 24(d), Company will not be obligated to mediate or arbitrate any claim arising from Franchisee's failure to pay when due any royalty or other monetary obligation to Company. The parties agree that any action to collect any sums that Franchisee owes Company will be litigated in any federal or state District Court sitting in Harris County, Texas. The parties further agree to submit to the jurisdiction and venue of any such federal or state District Court and that service of process by certified mail, return receipt requested, will be sufficient to confer *in personam* jurisdiction over them in connection with any collection litigation.

25. Waiver of Subrogation and Other Rights of Recovery.

If Franchisee sustains a loss by reason of fire, flood or other casualty of a type typically covered by a fire and extended coverage insurance policy or another policy that Franchisee is obligated to carry under this Agreement (including protection against theft, burglary and vandalism), and such fire, flood or other casualty is caused wholly or partially by Company's acts or omissions, Franchisee agrees to look solely to the proceeds of Franchisee's insurance policy or policies for reimbursement of the loss, and neither Franchisee nor any insurance carrier will be entitled to recover damages against Company by way of direct action, subrogation, assignment of claims or otherwise. Franchisee waives all such rights of recovery by Franchisee and by any insurer or other third party. Franchisee agrees to notify each insurer from which it obtains fire and extended coverage and other casualty insurance of the waiver this provision contains.

26. Condition Precedent.

If Franchisee is a business entity, this Agreement will not be binding on Company and no franchise will be granted unless and until each holder of an equity interest in Franchisee executes and delivers a Guaranty and Acknowledgment in the form appended to this Agreement.

27. Miscellaneous.

(a) The term "Franchisee" includes the plural as well as the singular, the masculine and feminine genders and corporations, partnerships, limited liability companies and other business entities, as well as individuals.

(b) Except as provided in Section 8(a)(2), this Agreement may not be amended, modified or rescinded, or any performance requirement waived, except by a written document signed by Company and Franchisee. The parties expressly agree that this Agreement may not be amended or modified, or any performance standard changed, by course of dealing or inference from a party's conduct. This provision does not apply to changes in the Operations Manual, which Company may modify unilaterally.

28. Franchisee's Acknowledgments.

(a) Franchisee acknowledges and agrees that this Agreement, together with any duly executed amendment or addendum attached to this Agreement, contains the entire agreement between the parties with respect to Franchisee's franchise for the Store, and that it supersedes any prior or contemporaneous agreements between the parties, written or oral, with respect to the franchise for the Store. _____ [FRANCHISEE'S INITIALS]

(b) Franchisee confirms and acknowledges that no written or oral agreements, promises, commitments, undertakings or understandings were made to or with Franchisee that are not expressly set forth in this Agreement and any duly executed amendment or addendum attached to this Agreement. _____ [FRANCHISEE'S INITIALS]

(c) Franchisee confirms and acknowledges that, except for the Item 19 Earnings Claim included in the Franchise Offering Circular Company delivered to Franchisee, no person representing Company made any oral, written or visual claim, presentation or representation to Franchisee that stated or suggested that Franchisee's Store might attain any actual, projected or forecasted level of sales, income or profits. _____ [FRANCHISEE'S INITIALS]

(d) Franchisee confirms and acknowledges that no representation, warranty, guaranty or promise other than those expressly set forth in this Agreement and in the Franchise Offering Circular Company delivered to Franchisee was made by Company or any other person to induce Franchisee to sign this Agreement. Franchisee recognizes that neither Company nor any other party can guarantee Franchisee's business success or state the exact costs of opening and operating a Store, and that such success and costs will depend primarily upon Franchisee's own efforts and business ability. Franchisee also recognizes that any new business venture is speculative. _____ [FRANCHISEE'S INITIALS]

(e) Franchisee acknowledges that no document that Section 27(b) requires will be binding on Company unless it is signed on Company's behalf by its President or a Vice President. _____ [FRANCHISEE'S INITIALS]

(f) Franchisee acknowledges that this Agreement creates an arm's length commercial relationship that cannot and will not be transformed into a fiduciary or other "special" relationship by course of dealing, by any special indulgences or benefits that Company bestows on Franchisee, or by inference from a party's conduct. _____ [FRANCHISEE'S INITIALS]

MARBLE SLAB CREAMERY, INC.

FRANCHISEE

By: _____

Signature, if an individual

Title: _____

Franchisee's name, printed

Date: _____ *

Date: _____

(Corporate, partnership and limited liability company franchisees must complete the following)

By: _____

Title: _____

Franchisee's address for notices is: _____

Franchisee's Manager is: _____

* Considered the Effective Date of this Agreement.

GLOSSARY OF TERMS

The following terms are used in the preceding Franchise Agreement (“Agreement”) with the meanings assigned in this Glossary.

“**Ad Fund**” has the meaning assigned in Section 8(a).

“**Affiliate**” means a Person who controls, is controlled by or is under common control with another Person.

“**Base Mix**” means the mix that Store operators use to produce Marble Slab Creamery® brand ice cream. Independent dairies prepare the Base Mix under license from Company for the right to use Company’s proprietary formula for the Base Mix.

“**Business Entity**” means a corporation, a general or limited partnership or a limited liability company.

“**Catering**” means the delivery and service of ice cream, complementary menu items and party favors to school events, charity functions, community festivals, business gatherings, private parties and similar events. No Catering engagement may continue for more than 30 days.

“**Change of Control**” means a transaction or series of transactions that results in a change in the right or authority to set policy for and/or manage the business and affairs of Franchisee. A Change of Control may occur by transfer of equity interests, by contract or by change in a Business Entity’s Charter Documents.

“**Charter Documents**” means a corporation’s articles of incorporation, by-laws and shareholders agreement (if any); a partnership’s partnership agreement and, in the case of a limited partnership, its articles of limited partnership; a limited liability company’s articles of association and regulations or operating agreement; and comparable governing documents of any other type of business entity.

“**Copyrighted Materials**” refers to and includes all versions, variations and adaptations of the following materials in tangible form, either produced by Company, produced on its behalf as works for hire, or derived from works produced by or on behalf of Company: (i) all manuals used in a Store’s development, operation and marketing activities, including but not limited to the Operations Manual, (ii) training materials (including printed, audio, video or electronic materials), (iii) Store plans and specifications that are works for hire, (iv) menu board designs and graphics, (v) product identification posters and photographs, (vi) advertising and marketing materials, (vii) labels, forms and reports provided by Company, (viii) any computer software developed by Company or as works for hire for use in the operation of Stores, and (ix) any other materials protected by copyright law or marked or identified by Company as protected by copyright.

“**DMA**” means Designated Market Area, an advertising term that Neilson Rating Service uses to demarcate the primary coverage of broadcast and print media in given markets. The boundaries of a particular DMA will be determined by reference to television coverage.

“Effective Date” means the date Company signs the Agreement, as indicated in its signature block.

“Gross Sales” means the aggregate revenues the Store receives from the sale of, or the provision of services with respect to, ice cream, frozen yogurt, Mixins, beverages, other menu items and other merchandise, whether for cash or on credit, and whether at the Store, at the site of a Catering activity, or at or from any other location, less applicable sales taxes Franchisee collects and remits, and valid coupon credits and employee discounts deducted from revenues initially recorded as Gross Sales, but without deduction of any other costs or expenses whatsoever.

“Information System” means the electronic system an operator uses to collect, compute, store and report a Store’s Gross Sales, other financial data and operating information, such as cash registers, computers, peripheral equipment and related software programs.

“Internet” means and includes the Internet, the World Wide Web and any similar means or instrumentality of electronic communication.

“Manager” means an individual appointed by Franchisee to supervise and manage all aspects of the Store’s day-to-day operations and with whom Company and its staff may deal exclusively for purposes of administering and coordinating the franchise relationship. Franchisee’s first Manager is identified beneath the signature block of the Agreement.

“Marks” refers to and includes (i) the Marble Slab Creamery service mark and logo, (ii) the Marble Slab Creamery trade name, (iii) the elements and components of a Store’s Trade Dress, and (iv) any and all additional or different trade names, trademarks, service marks, logos and slogans that Company adopts to identify the Marble Slab Creamery franchise system and the products and services Stores offer.

“MEP” means mechanical, electrical and plumbing.

“Mixins” means nuts, fruit, candy pieces, cookies and other condiments that Stores blend with ice cream to create distinctive Marble Slab Creamery brand treats.

“Opening Date” means the date the Store first opens for commerce with the general public, as indicated in the notice that Franchisee must furnish to Company in accordance with Section 7(d)(5).

“Operations Manual” means and collectively includes all manuals, policy statements, directives, bulletins and memoranda that contain prescribed or recommended specifications, standards, procedures, policies and advice relating to a Store’s operation and management and to marketing the products Stores serve, including Company’s Manual of Operating Procedures, its Advertising Kit and its Memo Book. The Operations Manual discloses the principle elements of Company’s proprietary System, and its contents are and will remain Company’s exclusive property.

“Person” means an individual or a Business Entity.

“QSC Inspections” means physical, on-site inspections of a Store to determine the degree to which its operation satisfies Company’s quality, service and cleanliness standards.

“Special Outlet” means a facility for vending freshly dipped ice cream located in a sports arena, park or stadium; a convention center or exhibition hall; a movie theater; an airport, bus terminal or train station; a hotel or resort; a hospital; an amusement park or fair ground; a military base; a state or national park; and a college or university campus. Under no circumstances will a facility for vending freshly dipped or bulk pack ice cream located in a supermarket, hyperstore, grocery store or convenience store qualify as a Special Outlet.

“Store” means a retail establishment at a fixed (permanent) location that operates on a year-round basis under the Marble Slab Creamery trade name and System. The term does not include any type of installation in a Special Outlet.

“System” means the compilation of operating procedures, marketing concepts, management techniques, and communications methods and procedures that Company has developed or adopted to govern the operation of Stores, the marketing of their products and services, and the methods of communication between and among Company and Store operators.

“Trade Area” means a geographical area around the Store, the configuration and boundaries of which Company will prescribe in its discretion at the time Company and Franchisee agree on an Approved Location for the Store.

“Trade Dress” means decorative, non-functional components of a Store that provide the establishment a distinctive, memorable appearance.

“Trade Secrets” means the components of the System, the contents of the Operations Manual and of all employee training materials and computer programs developed by Company or in accordance with its specifications, and any other confidential information that Company imparts to Franchisee with respect to a Store’s operation or management, whether through the Operations Manual or otherwise.

GUARANTY AND ACKNOWLEDGMENT

The undersigned (whether one or more, herein called "Guarantors") jointly and severally, absolutely and unconditionally guarantee to Marble Slab Creamery, Inc., its successors and assigns ("Company"):

- (1) The faithful and punctual performance of each and every duty and obligation of the Franchisee under the Franchise Agreement;
- (2) The payment in full when due of all royalties, Ad Fund contributions and trade accounts payable by the Franchisee to Company;
- (3) The payment in full when due of all contributions payable by the Franchisee to any Area Cooperative that the Franchisee may join pursuant to Section 8 of the Franchise Agreement; and
- (4) The payment in full when due of any and all amounts for which the Franchisee may become obligated pursuant to Sections 13, 14, 15, 18 and 24 of the Franchise Agreement.

The monetary obligations described in clauses (2) through (4) above are called "Debts".

This is a continuing Guaranty and applies to all Debts for or with respect to which the Franchisee may become obligated, whether during the initial term of the franchise, any renewals or extensions thereof, or, with respect to Debts described in clause (4) above, after the franchise's expiration, termination or cancellation. This Guaranty will be binding upon each Guarantor's heirs, executors, administrators, guardians, successors and assigns, and under no circumstances will any Guarantor's obligations under this Guaranty be released or extinguished without Company's written consent and release or until all Debts have been paid in full, whether or not a Guarantor's interest in the Franchisee is transferred, sold or otherwise surrendered.

Guarantors expressly waive demand and diligence on the part of the Company in the collection of any of the Debts and agree to all extensions that may be granted to the Franchisee by Company. Company will be under no obligation to notify Guarantors of any sales or extensions of credit to the Franchisee in reliance on this Guaranty, or of the failure of the Franchisee to pay any of the Debts when due, or to use diligence in preserving the liability of any person on the Debts or in bringing suit or in taking other action to enforce collection of the Debts.

If the Franchisee's status should change through merger, consolidation or otherwise, this Guaranty will cover the Debts of the Franchisee under its new status, according to the terms of this Guaranty.

Company will not be required to pursue or exhaust any remedies against the Franchisee, to foreclose its interest in any collateral now or hereafter held by Company as security for the payment of the Debts, to terminate the Franchise Agreement or to take any other action before requiring payment under this Guaranty. Without in any manner impairing or diminishing the obligations of Guarantors under this Guaranty, Company may elect to pursue any legal or

equitable remedy available against the Franchisee or against any collateral held by Company, even though the exercise by Company of such remedy results in loss to Guarantors of any right of subrogation or right to proceed against the Franchisee for reimbursement.

If the Franchisee is not liable on any of the Debts because the act of their creation is *ultra vires*, or if the officers or persons incurring any of the Debts acted in excess of their authority, and therefore the Debts cannot be enforced against the Franchisee, Guarantors will nevertheless be liable under this Guaranty.

If any payment by the Franchisee to Company is held to be a preference under the United States Bankruptcy Code, or if for any other reason Company is required to refund such payment or pay the amount thereof to any other person, such payment by the Franchisee will not constitute a discharge of Guarantors from any liability under this Guaranty, and Guarantors agree to pay such amount to Company upon demand.

Each Guarantor represents that he or she has received compensation or other consideration from the Franchisee adequate to support this Guaranty's enforcement as a legally binding obligation.

Each Guarantor agrees that this Guaranty is to be performed by Guarantors in Houston, Harris County, Texas, that this Guaranty will be deemed to be a contract made under the laws of Texas and that this Guaranty and the rights of the parties hereto will be governed by, interpreted in accordance with, and enforced under Texas law. Guarantors agree to pay Company's reasonable attorney's fees if this Guaranty is placed in the hands of an attorney for collection, or if it is collected through a proceeding in any court.

The provisions of Sections 7(d)(10), 7(d)(24), 7(d)(27), 7(d)(28), 12, 13, 19 and 24 of the Franchise Agreement are incorporated into this Guaranty and Acknowledgment by this reference. Each Guarantor acknowledges the contents of and agrees to be personally bound by the restrictions, limitations and obligations set forth in each of those Sections to the same extent as though Guarantors were the Franchisee.

GUARANTORS' SIGNATURES

Signature: _____
Name Printed: _____
Street Address: _____
Telephone Number: _____

Signature: _____
Name Printed: _____
Street Address: _____
Telephone Number: _____

Signature: _____
Name Printed: _____
Street Address: _____
Telephone Number: _____