

**EXHIBIT A TO
PINKBERRY FRANCHISING COMPANY
OFFERING CIRCULAR**

FRANCHISE AGREEMENT AND EXHIBITS

Franchise Agreement Number: _____

**PINKBERRY FRANCHISING COMPANY
FRANCHISE AGREEMENT**

Date of this Agreement: _____

Expiration Date: _____

Franchisor: Pinkberry Franchising Company

Franchisee: _____

In a number of places in this Franchise Agreement, you are asked to initial certain items to show that they have been fully discussed with you, and read, understood and agreed to by you. Initialing those areas does not lessen the importance of other areas or mean they're not fully enforceable. Please initial below and at all other points indicated.

Your Initials: _____ / _____

1. INTRODUCTION.

1.1 Introduction.

A. We have developed methods of operating Pinkberry Stores which provide a health conscious themed, relaxed and simple, environment specializing in natural frozen yogurt with fresh fruit and other toppings, and offer a choice of yogurt, yogurt drinks and related products and services. We refer to these businesses as "Traditional Pinkberry Stores."

B. To simplify this Agreement and make it easier to read and understand, we have defined certain terms used in this Agreement in Article 22. When you see a capitalized word, or if you do not understand the meaning of a particular pronoun reference, look at Article 22 to see whether the term has been defined. Capitalized words that are not defined in Article 22 are defined in the section where they first appear.

C. You applied for a franchise to own and operate a Traditional Pinkberry Store and your application has been approved by us in reliance on the information you gave us.

D. Your Pinkberry Store franchise is a licensing arrangement, awarded under specific terms and conditions. You must comply fully with this Agreement and the Manuals in order to use the Pinkberry Store, Marks, System and other Intellectual Property.

E. You agree that it is critical to you, us and each Franchisee for the System to be flexible to respond to commercial opportunities and challenges. An inability to change the System could adversely affect all Pinkberry Store Franchisees. You, therefore, agree and anticipate that the Manual and the

System may be changed by us, from time to time in our Business Judgment. You agree to comply with the Manuals and the System as they are changed by us.

F. Every detail of your Pinkberry Store Franchised Business is important — not only to you, but to us and to all Pinkberry Store Franchisees — to increase and maintain the value of the Marks and the businesses associated with them. Therefore, during the Term of this Agreement, you must at all times develop, maintain and operate your Pinkberry Store Franchised Business in accordance with each Pinkberry Store System Standard, as modified and supplemented by us from time to time in our Business Judgment, and understand that such changes may require additional investments and/or changes by you in operations and other areas of your Franchised Business.

G. Without your commitment to the System and to fulfill each of the obligations detailed in this Agreement, we would not form this franchise relationship with you.

2. AWARD OF FRANCHISE.

2.1 Award of Franchise; Term, Your Basic Commitment.

A. We are pleased to award you a franchise to operate a single Traditional Pinkberry Store at a single location in the Territory and to be approved by us, and to use the Marks and the Pinkberry Store System in the operation of that Traditional Pinkberry Store. If this Agreement is awarded in connection with a new franchise, the franchise is awarded for a term of five years, commencing on the date of this Agreement; but if the lease or sublease for the Premises is terminated or expires before the end of such franchise term (and no substitute location has been consented to by us in writing and occupied by you before the termination/expiration of such lease/sublease), we can Terminate this Agreement as of the termination/expiration of such lease/sublease.

B. If this Agreement is awarded in connection with your acquisition of an existing franchised Traditional Pinkberry Store then the Term of this Agreement will, at our option, either:

1) end on the expiration date of the franchise agreement granted to the party from whom you acquired the franchise; or

2) be for the Term provided in Section 2.1 (A);

in each case subject to earlier termination upon termination/expiration of the relevant lease/sublease as described in Section 2.1 (A), above. The applicable Expiration Date is noted on the first page of this Agreement.

C. If this Agreement is awarded in connection with the grant of a successor franchise, then the Term of this Agreement will be governed by the successor provisions of the franchise agreement under which you operated during the initial term (which is now expired). The applicable Expiration Date is noted on the first page of this Agreement.

D. The Franchise awarded to you by this Agreement is to operate the Pinkberry Store and to use the Marks and the System only for purposes of conducting a business in accordance with the provisions of this Agreement, the Manuals and other communications from us. You must not conduct the business of the Pinkberry Store, use the Marks and/or distribute the Products/Services from any location other than the Premises, or for any purpose other than as approved by us in writing. You must not conduct any activities from the Premises other than the operation of your Pinkberry Store without our prior written consent. You will not engage in any other business or activity that may conflict with your obligations under this Agreement or reduce the Gross Revenue of your Pinkberry Store.

2.2 Territory.

A. Subject to our rights as set forth anywhere in this Agreement and for its term; we will not enter into a Franchise Agreement licensing a Traditional Pinkberry Store, or open a Franchisor-owned Traditional Pinkberry Store, inside the area described in Exhibit 2.2. The Territory population may vary depending upon the characteristics related to the particular Territory in our Business Judgment. Should boundaries of any zip code designated on the Territory Schedule change due to political re-districting, or other such action, your Territory will be deemed the same geographic boundaries as those designated for that zip code on the Commencement Date of this Agreement. Your rights in the Territory are exactly (and only) as expressly set forth in this Section 2.2. Except for the location of a Traditional Pinkberry Store within the Territory, you have no right to exclude, control or impose conditions on the location or operation of present or future Pinkberry Store (or any other brand) units or distribution channels of any type, franchised or Pinkberry Store-owned, regardless of their location or proximity to the Premises. The Franchise does not grant you any rights with respect to other and/or related businesses, products and/or services, in which we or any Franchisor Related Persons/Entities may be involved, now or in the future.

B. We and the Franchisor-Related Persons/Entities expressly reserve all other rights, and can (along with anyone we designate):

- 1) own and/or operate ourselves, and/or authorize others to own and/or operate:
 - a) any kind of business in the Territory, except for a Traditional Pinkberry Store, whether or not using the Pinkberry Store Marks and System; and
 - b) any kind of business outside of the Territory, including without limitation, a Traditional Pinkberry Store, whether or not using the Pinkberry Store Marks and System;
- 2) sell Pinkberry Store brand (or any other brand) Products and Services (whether or not competitive), to customers located anywhere (including within the Territory) using any channel of distribution other than a Traditional Pinkberry Store located in the Territory;
- 3) develop or become associated with other concepts (including dual branding and/or other franchise systems), whether or not using the Pinkberry Store System and/or the Marks, and award franchises under such other concepts for locations anywhere;
- 4) acquire, be acquired by, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with units located anywhere. Such transactions may include (but are not limited to) arrangements involving competing outlets and brand conversions (to or from the Pinkberry Store Marks and System). Such transactions are expressly permitted under this Agreement, and you agree to participate at your expense in any such conversion as instructed by us.

C. You understand that a "Traditional Pinkberry Store is defined in Article 22. The term does not include non-Traditional Pinkberry Store or other distribution opportunities. A non-Traditional Pinkberry Store concept may include (but is not limited to) limited square footage outlets like an "express" unit or a kiosk; units housed within other retail facilities, such as a department store, airport, hotel or casino; Internet sites and/or direct mail operations.

D. Our current policy is to allow you and other Pinkberry Store Franchisees to accept orders from any customer located anywhere, but we can change this policy in our Business Judgment. You agree to comply with any policy changes.

E. Exhibit 2.2 will state if the location and Territory for your Traditional Pinkberry Store has not been identified by the date of this Agreement. If applicable, we will identify the Territory on a

document to be initialed by you and us within 48 hours from our notice to you of our acceptance of the location for your Traditional Pinkberry Store. **If:**

- 1) you disagree with such Territory; and
- 2) you provide us with written notice of your disagreement within 48 hours of your receipt of the Territory boundaries; and
- 3) you and we fail to arrive at a mutually acceptable Territory definition; then,

we will cancel all of our obligations under this Agreement and receive from you (and each Affiliate of yours) a General Release. The Post Termination Provisions of this Agreement will survive such cancellation.

F. If you are not in Good Standing, we can reduce, eliminate or otherwise modify your territorial rights. We do not make any representation or assurance that you can or will achieve such performance minimums contained in this Agreement.

2.3 E-Commerce/Email Business and Special Accounts - Current Policies.

A. Your use of the Internet, World Wide Web, and other electronic or other means of marketing and distribution of goods and/or services can be restricted by us in our Business Judgment. You will not market or sell through such venue(s) or any channel of distribution other than your Traditional Pinkberry Store without our written permission, which we can grant, condition or deny in our Business Judgment. You agree not to deal with Special Account(s), as we may specify from time to time.

B. We, the Franchisor-Related Persons/Entities and anyone we designate may offer/provide any Products and/or Services or otherwise through the Internet, World Wide Web, direct mail and/or other similar venues (no matter where the Customer is located), whether or not in connection with any use of the Marks and/or System.

2.4 Essential Personnel.

The person(s) named below are of crucial importance to the Franchised Business, the franchise would not have been awarded in the absence of their involvement with the Franchised Business and the Franchisee (as specified below) and, if with respect to any of them, one or more of them is no longer holding the position(s) listed, or has had his or her equity interest in the Franchisee reduced, we can, in our Business Judgment, elect to cancel all of your rights and our obligations under this Agreement within 30 days after receipt of written notice of such change. You will execute a General and Unlimited Release and Indemnity in favor of us (and all affiliated persons/entities) of and from any and all claims and/or obligations, of any nature whatsoever, however arising, known or unknown, and your post-termination obligations, including but not limited to those of indemnity, confidentiality and non-competition, will survive such cancellation of this Agreement.

<u>Name</u>	<u>Position</u>	<u>Equity Ownership Percentage</u>
_____	_____	_____ %
_____	_____	_____ %

I have read Sec. 2.1, 2.2, 2.3 and 2.4, understand them, and agree with them.

Your Initials: _____ / _____

3. DEVELOPMENT AND OPENING OF YOUR PINKBERRY STORE

3.1 Site Selection.

A. You must have a site acceptable to us within 3 months from the date of this Agreement, receive the opening notice from us described in Section 3.6, below, and do everything necessary for your Pinkberry Store to open for business within 6 months from the date of this Agreement. You must not operate a Pinkberry Store, use any of the Marks from or at any location, or make any commitments about a site until you have our written site acceptance. We will not unreasonably withhold our acceptance. Acceptance by us of any location is not a recommendation, approval or endorsement of such site. We make no representations or warranties as to the success of any site or as to any other matter of any kind relating to the site.

B. If you fail to acquire a site within the time provided in 3.1 (A), above, then we can Terminate this Agreement.

C. If, in our Business Judgment, you were not able to acquire a site within the time provided in the Territory due to special circumstances within the Territory, then we may offer you an alternate Territory and amend this Agreement accordingly. In those special circumstances, which shall only occur in our Business Judgment, the payment of the Initial Franchise Fee will be credited against the payment for the new Territory, but only if you sign a General Release and a Franchise Agreement Amendment document acceptable to us.

C. All matters related in any way to your site are your sole responsibility, regardless of any assistance we may choose to provide. You are responsible for obtaining any architectural and engineering services required for your facility and for ensuring its compliance with local law. Neither we, nor any Franchisor-Related Persons/Entity, nor any other person or company associated with us will have any liability for any site-related matter. You agree not to make any claims against us and/or any of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC with regard to such matters.

3.2 Lease of Premises.

A. You agree to submit any lease and all site-related documents to us for our review prior to their execution by you. You will use commercially reasonable efforts to arrange for the inclusion of provisions in the Lease Addendum or other appropriate site-related documents which:

1) Obligate the lessor to provide us on request with sales and other operations information related to your Pinkberry Store;

2) Permit you to operate your Pinkberry Store in accordance with this Agreement and the Manuals;

3) Provide that the Premises will be used only for the operation of a Pinkberry Store, and prohibit you from assigning or modifying any of your lease rights, or extending the term without our prior written consent;

4) Require the lessor to concurrently provide us with a copy of any written notices (whether of default or otherwise) to you under the lease and give us the right to cure any default if we so choose;

5) Provide us with a right to take assignment and possession of your Pinkberry Store, without the lessor's consent or any additional consideration. If we exercise this right, we will not have any liability for any obligations incurred prior to our occupancy. You agree to take whatever actions are necessary to accomplish such assignment and will, when you sign this Agreement, also sign the Collateral Assignment of Lease attached as Exhibit 3.2. If you lose your lease rights to the Premises in connection with any bankruptcy, the lessor will, on our request, enter into a new lease with us on essentially the same terms as the terminated lease;

6) Provide that the lessor consents to the use of the Marks, Trade Dress and other aspects of the System, as modified from time to time, and gives us the right to enter the premises during normal business hours for purposes of inspection to take steps to protect the Marks and Trade Dress and/or prevent/cure any default.

You will not execute a lease or sublease, or any modification or amendment, without our prior written consent, which we can grant, condition or withhold in our Business Judgment. You must deliver a copy of the signed lease or sublease to us within 5 days after it is signed.

3.3 Pinkberry Store Design Standards. You agree to comply with any standards, specifications and other requirements (the "Design Standards") that we furnish you for design, decoration, layout, equipment, furniture, fixtures, signs and other items for your Pinkberry Store. Any changes from plans provided by us must be submitted to us for our consent, which may be provided in our Business Judgment. Your compliance with the Design Standards does not release you from your obligations to ensure that your Pinkberry Store is designed, constructed and operated in compliance with all local, state, and federal laws, including (without limitation) the Americans with Disabilities Act ("ADA"). You agree to execute and deliver to us an ADA Certification in the form attached to this Agreement as Exhibit 3.3 before you open your Pinkberry Store to confirm and certify that your Pinkberry Store and any proposed renovations comply with the ADA and other requirements.

3.4 Development for Your Pinkberry Store. You must select and employ a licensed contractor approved by us as our design and construction information and requirement are Confidential Information and a part of our Intellectual Property.

3.5 Equipment, Furniture, Fixtures and Signs. You will use only Designated Equipment and suppliers approved by us in the development and operation of your Pinkberry Store as we may require. We and/or our Affiliates may be such approved suppliers.

3.6 Pinkberry Store Opening. You will open your Pinkberry Store for business immediately upon our notice to you that:

- A. all of your pre-opening obligations have been fulfilled;
- B. pre-opening training has been completed;
- C. all amounts due us (and/or any Affiliate) have been paid; and
- D. copies of all insurance policies (and payment of premiums), leases/subleases and other required documents have been received.

3.7 Grand Opening Program - Initial Launch - Marketing. You agree to spend at least \$2,000 on a grand opening marketing program. We will furnish advice and guidance to you with respect to such program that you agree to follow. It is recommended that you budget to spend an additional \$2,000 per month on an Initial Launch Program of marketing for the first three months after your Grand Opening. We will furnish advice and guidance to you with respect to such program.

3.8 Relocation of Pinkberry Store Premises. Any relocation:

- A. must be to a location within the Territory (unless waived by us);
- B. requires our prior written consent, which we can grant, condition or withhold in our Business Judgment (and which may be withheld, in any case, if you are not in Good Standing);
- C. will be at your sole expense; and
- D. will require that you (and each Affiliate and owner of yours) sign a General Release.

If your Pinkberry Store is damaged, condemned or otherwise rendered unusable, or if, in your and our judgment, there is a change in the character of the location of your Pinkberry Store sufficiently detrimental to its business potential to warrant its relocation, you agree to relocate your Pinkberry Store.

4. COMPUTER HARDWARE AND SOFTWARE SYSTEMS.

A. You must purchase, use, maintain and update at your expense the point of sale, software, computer and other systems (including point of sale and back office systems) meeting our specifications, as we may modify them. You agree to maintain your systems online to allow us access to system data and information. You agree to comply with our then-current Terms of Use and Privacy Policies and any other requirements regarding all computer and other systems, including Internet usage. Supplier and/or licensor charges for use, maintenance, support and/or updates of and to the required systems are payable by you upon receipt.

B. Neither we nor any of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC will have any liability and/or obligation (and neither you, nor any Affiliate of yours, will make any claims) about any failures, errors or any other occurrences relating to any computer or system hardware or software without an express written warranty from us, even if recommended or specified by us.

5. TRAINING AND GUIDANCE.

5.1 Training.

A. You and each Pinkberry Store manager must successfully complete our initial training program before operating your Pinkberry Store. The Initial Franchise Fee covers an initial training program for either one or two individuals, who must include you and the initial Pinkberry Store manager, who may be you. There is no reduction or refund of any part of the Initial Franchise Fee if one individual attends the initial training program. We can charge a reasonable fee for training of additional and/or subsequent managers. We can choose to eliminate or shorten training for persons previously trained or with comparable experience.

B. The initial training program will be at a time and place, and for such period, as we specify in our Business Judgment. You will be responsible for all travel, living, incidental and other expenses for you and your personnel attending the initial training program and any other voluntary or mandatory training programs, seminars or meetings, unless otherwise agreed to by us in writing. We can charge a tuition fee for any optional training programs.

C. If we, in our Business Judgment, determine that you have not successfully completed (or are not making satisfactory progress in) your initial training, we can either: (a) require that a substitute manager complete the training, or (b) Terminate this Agreement and you and your Affiliates will return the Manuals and sign a General Release and a document acceptable to us that preserves the Post

Termination Provisions of this Agreement. On performance of all of your obligations to us under this subsection, we will release you from your obligations to: (a) operate the Pinkberry Store which is the subject of this Agreement and (b) pay royalties and Marketing Fund contributions relating to periods after the date of Termination.

D. You and your manager must attend additional and/or refresher training programs, including national and regional conferences, conventions and meetings, as we may reasonably require to correct, improve and/or enhance your operations, the System and its members. In addition, we can require successful completion of training by your personnel as specified by us from time to time.

5.2 Guidance and Assistance. We will provide guidance in the operation of your Pinkberry Store. This guidance can be furnished in whatever manner we consider appropriate in our Business Judgment, including electronically, in writing or telephonically, through training programs and/or on-site consultations, among other methods. We may (but are not required to) provide on-site consultations at your Pinkberry Store, based on notice, availability of personnel and your payment of reasonable travel, food, incidental and lodging expenses. We can elect to charge a reasonable fee for any such on-site consultations. If we believe in our Business Judgment that your operations warrant it, we can require that a manager or other person designated by us (and compensated by you) be placed in your Pinkberry Store to supervise its day-to-day operations until operations meet System standards.

5.3 Manuals. During the Term of this Agreement, we will loan you (or allow you electronic or other access to) one copy of the Manuals. If we advise you that all or part of the Manual or other specifications, standards and operating procedures are posted on a Website, you agree that it is your responsibility to monitor the Website for any changes, additions or deletions in the information provided. You will continuously comply, at your sole expense, with all provisions of, and additions/ deletions/ changes to, the Manuals. Any such additions/deletions/changes will take precedence over all prior communications. Mandatory specifications, standards and operating procedures prescribed from time to time by us in the Manuals, or otherwise communicated to you electronically or otherwise, are a part of this Agreement. In the event of a dispute, the master Manuals maintained at our office will control. The Manuals and the information and data that they contain will at all times remain our sole and exclusive property. It is your sole responsibility to establish, with respect to your employees, appropriate personnel and security-related policies and procedures (provided that we always have the right to terminate your rights by declaring a breach under this Agreement for conduct by you which threatens the goodwill associated with the Marks.) You and we acknowledge and agree that we neither dictate nor control labor or employment matters for you and your employees, including (but not limited to) hiring, firing and/or discipline of employees, nor control the manner and means by which they carry out their duties. You and we agree that neither of us are, or will be deemed to be, a joint employer with the other and you will indemnify us with respect to any such or similar claims against us.

6. MARKS.

6.1 Goodwill and Ownership of Marks. You have a non-exclusive right to use the Marks and only as expressly authorized by us under this Agreement. We have all rights in and to the Marks. All goodwill belongs exclusively to us, and you will not obtain any goodwill in the Marks as a result of this Agreement, your operation of the Franchise or for any other reason. Any unauthorized use of the Marks is a breach of this Agreement and an infringement of our proprietary rights. You agree that if you breach any obligation regarding the Marks, we would have no adequate remedy at law and that we will be entitled to equitable relief. You will not oppose, or engage in any acts or omissions inconsistent with, our rights in and to the Marks. This Agreement applies to all trademarks, service marks and other commercial symbols that we authorize you to use throughout its term.

6.2 Limitations and Use of Marks. You will use the Marks as the sole identification for your Pinkberry Store. You will not use any Mark, or modified version or derivative of a Mark, or any other mark or form of commercial identification confusingly similar to the Marks or Trade Dress, as part of any

business or trade name or in any other manner not expressly authorized by us in advance and in writing. Prior to adoption and/or use, any proposed corporate and/or trade name must be approved by us in our Business Judgment. You will give such trademark and other notices (including notices of independent ownership) as we direct and will, at your expense, obtain fictitious or assumed name registrations as may be required under law. You will display the Marks as required by us and will not use the Marks so as to negatively affect their goodwill. You will not use any Mark in connection with the performance or sale of any unauthorized services or products or at any location or in any other manner not expressly authorized in writing by us.

6.3 Notification of Infringements and Claims. You will take such actions as we consider important in our Business Judgment to protect the Marks. You will not take any action that jeopardizes our interests in, or the validity or enforceability of, the Marks. You agree to immediately notify us of any apparent or actual infringement of, or of any challenge to your use of, the Marks. You will not communicate with any third party with respect to such a claim. We will take such action as we deem appropriate in our Business Judgment. As owner of the Marks, we have the exclusive right to control any settlement, litigation or proceeding arising out of or related to any such matters.

6.4 Discontinuance of Use of Marks. You agree to comply at your expense with any directions from us to discontinue, modify, substitute or add Marks. We cannot and do not make any guaranty that a modification, discontinuance or otherwise will not be required for any reason. In such event, we will have no liability or obligation to you. You agree to make no claim in connection with any modification, discontinuance or other action, and/or with any dispute regarding the Marks. There is always a possibility that there might be one or more businesses using a name and/or marks similar to ours and with superior rights. We urge you to research this possibility, using telephone directories, local filings and other means, prior to signing any documents or making any payments or commitments

7. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION.

7.1 Independent Contractor. You will always identify yourself to all persons and in all dealings of your Pinkberry Store as an independent owner under a Pinkberry Store franchise, clearly indicating that your Franchised Business is separate and distinct from our business. You will include notices of independent ownership on such forms, business cards, stationery, advertising, signs and other materials as we require from time to time. Subject to the requirements of this Agreement and the Manuals, you will have complete operational control of your business, including the right to hire and fire each employee.

7.2 No Liability for Acts of Other Party. You will not represent that your and our relationship is other than that of independent Franchisor and Franchisee. Neither you nor we will have any liability under any acts, omissions, agreements or representations made by the other that are not expressly authorized in writing.

7.3 Taxes. Payment of all taxes related to your Franchised Business is your sole responsibility. We have no liability for any taxes on the sales made and/or business conducted by you (except for any taxes we are required by law to collect from you with respect to purchases from us).

7.4 Responsibility, Indemnity, etc.

A. You will indemnify and hold us and all of the Franchisor-Related Persons/Entities, the Marketing Fund and the FAC harmless from all fines, suits, proceedings, claims, demands, actions, losses, damages, costs, fees (including attorneys' fees and related expenses) and/or any other liability of any kind or nature, however arising, growing out of or otherwise connected with and/or related to any act, error and/or omission of yours (including, but not limited to, your ownership and/or management of your Pinkberry Store and/or any transfer of any interest in this Agreement or your Pinkberry Store). We will have the right to control all litigation, and defend and/or settle any claim, against and/or including us

and/or the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC, or affecting our and/or their interests, in such manner as we deem appropriate in our Business Judgment, without affecting our rights under this indemnity.

B. Any goods and/or services provided by us, the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC and/or any "approved" person/company/referral are provided without any warranties, express or implied, **THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE BEING EXPRESSLY DISCLAIMED**, absent a specific written warranty expressly provided in connection with a particular item or service.

I have read Sec. 7.4, understand it, and agree with it.

Your Initials: _____ / _____

7.5 Disclosure. We can disclose, in offering circulars and other places we designate, and/or as required by law, any information relating to your Pinkberry Store, including your name, any address and/or phone number(s), revenues, expenses, results of operations and/or other information. Any disclosure by us will be for reasonable business purposes.

8. CONFIDENTIAL INFORMATION; EXCLUSIVE RELATIONSHIP.

8.1 Confidential Information - Non-Disclosure and Non-Use.

A. "Confidential Information" includes all information (current and future) relating to the operation of a Pinkberry Store or the System, including, among other things, all: (i) Manuals, training, techniques, processes, policies, procedures, systems, data and know how regarding the development, marketing, operation and franchising of Pinkberry Store; (ii) designs, specifications and information about Products and Services, and (iii) all information regarding customers and suppliers, including any statistical and/or financial information and all lists.

"Confidential Information" is not intended to include any information that:

- 1) is or subsequently becomes publicly available other than by breach of any legal obligation,
- 2) was known by you prior to you becoming an Pinkberry Store Franchisee, or
- 3) became known to you other than through a breach by you of a legal obligation.

You agree that we own and control all domain names and URLs ("Uniform Resource Locator") relating to any Pinkberry Store Franchised Businesses, as well as all information, lists and data related to past, present and future customers of your Pinkberry Store Franchised Business. Your only interest in any of this proprietary and/or Confidential Information is the right to use it pursuant to this Agreement. You have the burden of proof and of going forward in any dispute between you and us involving the proprietary or confidential nature of any information.

B. Both during the Term of this Agreement and for 5 years after the end of the Term (except for trade secrets, which are subject to your permanent obligation), you agree:

- 1) to use the Confidential Information only for the operation of your Pinkberry Store Franchised Business under a Pinkberry Store Franchise Agreement;

- 2) to maintain the confidentiality of the Confidential Information;
- 3) not to make or distribute, or permit to be made or distributed, any unauthorized copies of any portion of the Confidential Information;
- 4) not to alter, appropriate, use or distribute any Pinkberry Store Equipment designs or specifications, or any substantially similar designs or specifications; and
- 5) to implement all prescribed procedures for prevention of unauthorized use or disclosure of the Confidential Information.

However, notwithstanding the foregoing, if an item is not merely confidential Information but constitutes a trade secret under applicable law, the above obligations will apply without any time limit.

C. You agree to disclose to us all ideas, techniques, methods and processes relating to a Pinkberry Store which are conceived or developed by you and/or your employees. We will have the perpetual right to use, and to authorize others to use, such ideas, etc., without payment to you.

D. You will cause each of your employees, agents, principals and Affiliates to sign a form of confidentiality agreement containing substantially the same provisions as are set forth in this Section and as may be approved by us. You will provide us copies of the same upon request.

E. If your Pinkberry Store is to be located and/or operated within, in conjunction with, or as part of another business, you will first arrange for the other business and its personnel (as specified by us) to enter into appropriate arrangements to protect our Intellectual Property and other interests, including (but not limited to) signing of agreements with us regarding non-competition, confidentiality, non-solicitation of employees and customers and indemnity/insurance arrangements.

8.2 Exclusive Relationship, Restrictions on Similar Businesses During Franchise Term and After Transfer, Termination, Expiration, etc.

A) In Term Restrictions: During the Term of this Agreement and any successor franchise, neither you, nor any Affiliate of yours, nor any shareholder, member or partner of yours (if you are or become a business entity), nor any Immediate Family member of any of the foregoing, will:

- 1) have any direct or indirect interest anywhere in any Similar Business, or in any entity awarding franchises or licenses or establishing joint ventures or other business enterprises for the operation of Similar Businesses; or
- 2) perform any services anywhere as an employee, agent, representative or in any capacity of any kind for any Similar Business, or for any entity awarding franchises or licenses or establishing joint ventures to operate Similar Businesses; or
- 3) employ or try to employ any employee of ours, of a Franchisor-Related Person/Entity or of any other Pinkberry Store Franchisee, without providing notice to the respective employer and obtaining their prior written consent.

If you violate Section 8.2 (A) 3 during or after the Term of this Agreement, then our remedies will include (but not be limited to) payment to us by you of \$75,000, such amount having been mutually agreed on by you and us in view of the extreme difficulty in accurately determining the damages suffered as a result of such breach.

B. Post Term Restrictions: For 2 years after the later of the following terminating events: (i) any transfer and/or Termination of this Agreement; (ii) the expiration of this Agreement (if a Successor

franchise or renewal term is not granted); and/or (iii) the date on which you stop operating your final Pinkberry Store or using the Marks and/or System, all of the persons and entities named in Section 8.2 (A), above, you:

1) will not accept or solicit any person, firm or company that has been a Pinkberry customer during the period 12 months prior to termination, nor try to divert any such customers from any Pinkberry Store or Pinkberry enterprise of any kind (including any operations owned by any Franchisor-Related Persons/Entity); and

2) will be subject to all of the restrictions stated in Section 8.2 (A), above, with respect to Similar Businesses located, and/or services to be performed, in the Territory and in the marketing area of any Pinkberry Store ("Marketing Area"). For the purposes of this Agreement, a Marketing Area for a Franchisee-operated Pinkberry Store is the Territory defined by such Franchisee's franchise agreement. For a Pinkberry Store owned by us or an Affiliate, or if a Franchisee does not have a designated Territory, the Marketing Area is defined as the geographic area within a 25 mile radius of such Pinkberry Store. However, the 2 year period following such terminating event will be extended for one additional year if, during the first 2 years a Pinkberry Store is located in a portion of your former Pinkberry Store Marketing Area. You and we intend to provide any such newly established Pinkberry Store a reasonable period of time in which to launch its operations in a new market without unfairly being competitively disadvantaged by having a party familiar with and experienced in the Pinkberry Store System operating in the same Marketing Area.

3) You are responsible for learning whether or not a particular location is within a Pinkberry Store Marketing Area by providing us a written request for such information. Any and all determinations that we make regarding the Marketing Area will be final and binding on you.

4) You and we have expressly bargained and agreed that it is your obligation under this Agreement to ensure the compliance of each of the persons identified in Section 8.2 (A), with the restrictions described in this Section 8.2. The foregoing notwithstanding, we will use reasonable judgment in evaluating whether or not the conduct of an Immediate Family member warrants our exercising any rights under this provision, considering your actual relationship to such member and his/her activities, among other factors. The restrictions of this Section do not apply to the ownership of shares of a Similar Business (of a class of securities listed on a stock exchange or traded on the over-the-counter market) which represent less than 3% of the number of shares of that class issued and outstanding.

5) You and we share a mutual interest in ensuring compliance with the limitations on competition described in this Section 8.2. A Pinkberry Store Franchisee's non-compliance with these restrictions would damage you, us and other Pinkberry Store Franchisees and unfairly limit reasonable expansion alternatives open to us and Pinkberry Store System members. You acknowledge and agree that such protections can enhance the value of the Pinkberry Store System to you as a Franchisee, represent a reasonable balancing of your and our respective interests and have been expressly bargained for. You confirm that you possess valuable skills unrelated to the Franchised Business and have the ability to be self-supporting and employed regardless of the competitive restrictions described in this Section 8.2. You and we also acknowledge that the restrictions of this Article 8 will not generally prevent you from practicing a lawful profession, trade, or business and are limited to the express restrictions on solicitation of customers and operation of a Similar Business in certain limited geographical areas as detailed herein.

6) If you violate any of the foregoing restrictions, our remedies will include (but not be limited to) the right to obtain equitable relief and to receive all profits generated in connection with the operation of any Similar Business until the date you cease to violate such restrictions. All competitive restrictions will be extended for the length of time that any breach of the Post Termination Obligations is ongoing. If any of the restrictions of this Section are determined to be unenforceable to an extent because of excessive duration, geographic scope, business coverage or otherwise, they will be reduced

to the level that provides the greatest protection to us and the Pinkberry Store System, but which is still enforceable, notwithstanding any choice of law or other provisions in this Agreement to the contrary.

I have read Sec. 8.1 and 8.2, understand them, and agree with them.

Your Initials: _____ / _____

9. FEES.

9.1 Initial Franchise Fee, Releases, etc.

A. An Initial Franchise Fee of \$40,000.00 is fully earned by, and payable to, us on signing of this Agreement. The fee is entirely nonrefundable (as are all amounts paid to us and/or any of the Franchisor-Related Persons/Entities). The Initial Franchise Fee (and other amounts charged) may not be same for all franchisees, depending on prior relationship, number of franchises awarded and other factors.

B. If you and we have, or have had, a pre-existing franchise relationship prior to the execution of this Agreement, the language of the General Release attached as Exhibit 1.2 is incorporated in and effective upon the signing of this Agreement, excepting only those claims solely related to the offer and sale of this Franchise where such releases are expressly prohibited by applicable law.

C. As a condition to the occurrence of any of the following events (the "Events"), you and/or any affiliate/owner of yours will sign a General Release, excluding only (where such releases are expressly prohibited by applicable law) those claims solely related to the offer and sale of the new Franchise:

- 1) the awarding of any future, additional or other franchise;
- 2) the renewal of this franchise and/or awarding of a successor franchise;
any assignment or transfer (as defined in this Agreement) by you and/or any affiliate/owner of you; and/or
- 3) any other event described in this Agreement as being conditioned in whole or in part upon such a General Release (as defined in Article 22.)

If we fail to request or obtain from you any General Release(s), at the occurrence of any of the foregoing Events, then the occurrence of the Event itself will constitute the grant of such General Release.

D. You and we have agreed on these provisions considering that: (i) the releases to be provided in the future will be effective as of future dates only, (ii) the release requirement generally is triggered by a discretionary choice made by you to receive various future benefits (e.g. an award of an additional, successor, assignment franchise, etc.), and (iii) you providing a release to us (and we informing you of possible known claims by us) is a practical business approach if you and/or we propose to change, extend, expand or otherwise modify our relationship at a future date. You and we agree that setting mutual expectations for the receipt of such future releases and assenting to grant them now is more productive than being surprised by such requirements at a later point in our relationship.

9.2 Internet Service Fee. You may be required to pay an internet fee pursuant to section 11.3 (c) below.

9.3 Royalty - Percentage and Minimum, Payment Dates.

A. **Royalty.** You must pay us without offset, credit or deduction of any nature, a monthly Royalty Fee equal to 3% of the Gross Revenues or the then prevailing Monthly Minimum (as defined below) whichever is greater. The Royalty Fee will be paid and reported monthly as specified in section 12.2 below or as otherwise prescribed in the Manuals from time to time. Minimum and/or percentage royalties are to be paid by the tenth day after each royalty period. Royalty payments are due commencing with the royalty period in which you open your Pinkberry Store or 180 days after the Effective Date of this Agreement, whichever is earlier. The current royalty period is a calendar month, but the time covered by a royalty period may be changed by us in our Business Judgment to any other period. If such change is made, any amounts, including minimums, which are paid based on, or calculated in relation to, a royalty period will be appropriately adjusted, as will any related matters. You must use your best efforts to maximize Gross Revenues.

B. **Minimum Royalties.** We may choose in our Business Judgment to require you to pay the Minimum Royalties for Pinkberry Store Franchises. The Minimum Royalties will be implemented and become effective upon 30 days written notice to you. The Minimum Royalties shall not be implemented until there are at least 10 Pinkberry Store Franchises open and operating for a period of at least 6 months.

PERIOD OPEN*	MINIMUM ROYALTIES (ADJUSTED EVERY 6 MONTHS)
Less than Six Months	5% of PUA**
6 months or more	6% of PUA**

*Measured from the earlier of: actual opening date, or the date by which the Store is required to be open.

**“PUA” or “Per Unit Average”: The average Gross Revenues for all Pinkberry Store Franchises in the United States during the most recent 6 month period before the measuring date.

C. We can require that various Designated Equipment, Products and/or Services only be supplied by us, a Franchisor-Related Person/Entity and/or a designee of ours and we and/or one or more Franchisor-Related Person/Entities may derive additional revenues (and possibly profits) as a result of your purchases of such Designated Equipment, Products/Services. You and we have agreed on the foregoing royalty rates based, in part, on your commitment not to use and/or obtain any such Designated Equipment, Products and/or Services from any source other than the source we require. The possibility of such arrangements, and your and our mutual expectations that you will faithfully observe your obligations to purchase such items as provided herein, and that the provisions of this subsection will be fully enforceable, form part of the underlying financial and business model on which your relationship with us, and the economic provisions of this Agreement, including Royalty rates, are based.

9.4 Electronic Funds Transfer. You must participate in our then-current electronic funds transfer and reporting program(s). All royalties owed and any other amounts designated by us must be received or credited to our account by pre-authorized bank debit by end of business on the 10th day after a royalty period. You authorize us to debit your account by an amount equal to the minimum continuing royalty if a royalty payment is not received when due, and to collect the balance of any amounts owed in accordance with this Agreement. Any such non-payment or late payment of the actual amount due is a breach of this Agreement. We can also require that any amounts owed or to be owed to us and/or any of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC be paid by charges against your credit card, and you must provide us with appropriate authorizations on our request.

9.5 Interest and Late Fees on Late Payments and/or Reports. All amounts you owe us and/or our Affiliates bear interest at the highest applicable legal rate for open account business credit, but not to exceed 1.5% per month. Additionally, we can require you to pay an administrative late fee of \$50.00 for each late report and/or late payment. The foregoing amount is subject to inflation adjustment under Section 9.7, but will not exceed any applicable legal restrictions. If we experience repeated late payments by you, then we can require you to pay all amounts by cashier's check.

9.6 Application of Payments, Set-Offs etc. As to you and/or any Affiliate of yours, we can:

A. apply any payments received to any past due, current, future or other indebtedness of any kind in our Business Judgment, no matter how payment is designated by you, except that Marketing Fund contributions may only be credited to the Marketing Fund;

B. set off, from any amounts that may be owed by us, any amount owed to us or any marketing fund; and

C. retain any amounts received for your account (and/or that of any Affiliate of yours), whether rebates from suppliers or otherwise, as a payment against any amounts owed to us.

We can exercise any of the foregoing rights in connection with amounts owed to or from us and/or any Franchisor-Related Person/Entity.

9.7 Inflation Adjustments. Amounts specified as being subject to inflation adjustment may be adjusted by us annually in our Business Judgment in proportion to the changes in the Consumer Price Index (U.S. Average, all items) maintained by the U.S. Department of Labor (or any successor index) as compared to the previous year. We will notify you of any such percentage adjustment.

9.8 Mandatory Convention Attendance, Possible Fee. You are required to attend all meetings designated by us as mandatory (including without limitation the Pinkberry Store annual convention), unless otherwise excused by us. One management-level individual must attend on behalf of each of your Pinkberry Stores. We will not charge any attendance fee for one person per Pinkberry Store for each mandatory meeting. You will bear all other costs of attendance.

10. YOUR PINKBERRY STORE — IMAGE AND OPERATION.

10.1 System Compliance, Regular Upgrading.

A. You agree to operate your Pinkberry Store in full compliance with the then-current Pinkberry Store System and the Manuals. You agree to promptly comply at your expense with all then-current requirements, standards and operating procedures relating to every aspect of a Pinkberry Store and its operations (including without limitation, use of specified equipment, Products and Services, computer hardware and software; supplier programs and operating systems; signs, logos, designs and advertising/marketing materials and forms; website designs and formats), including upgrading of your Pinkberry Store and its operations, etc.

B. You must maintain your Pinkberry Store at your expense, according to all Pinkberry Store standards for new Pinkberry Stores and promptly undertake all changes as are required by us from time to time in our Business Judgment. If you fail to do so, we can do so on your behalf. You agree to reimburse us within 10 days of our delivery of an account statement. You will not make any alterations to your Pinkberry Store or its appearance as originally approved by us without our prior written approval.

C. You agree at your sole expense, that you and your employees will wear then-current Pinkberry Store career apparel.

10.2 Designated Equipment, Products, Services and/or Suppliers.

A. Your Pinkberry Store must purchase, use and offer such Designated Equipment, Products and Services, as are specified by us from time to time. We can designate single or multiple suppliers for any given item or service and may concentrate purchases with one or more suppliers in our Business Judgment. Such suppliers may include, and may be limited to, us and/or companies affiliated with us. You will not offer or deal with any products or services not approved by us. If we disapprove a particular item, you will not use it.

B. Designation of a supplier may be conditioned on factors established by us in our Business Judgment, including without limitation performance relating to frequency of delivery, standards of service, and payment or other consideration to us or parties designated by us. We can approve, or revoke or deny approval, of particular items or suppliers in our Business Judgment.

C. You can request the approval of an item, service or supplier by notifying us in writing and submitting such information and/or materials we request. We can require you to pre-pay any reasonable charges connected with our review and evaluation of any proposal. We will notify you of our decision within a reasonable time.

D. You will not make any claims against us with respect to any supplier and/or related Products/Services (and/or our designation of, or our relationship with, any supplier/Products/Services). Claims by you with respect to any supplier-related and/or similar matters will be made only against the supplier in question. You must provide us with written notice prior to taking any action in connection with such a claim. We will use diligent efforts to assist you in resolving any disputes with suppliers approved and/or designated by us. We have the right to audit any supplier to review both the supplier's relationship with us and the quantity and frequency of goods ordered and delivered to you.

10.3 Purchasing Cooperative. We can require that you join and make required purchases/leases through a Pinkberry Store purchasing cooperative or other entity designated by us. Such entity may adopt its own bylaws, rules, regulations and procedures, subject to our consent in our Business Judgment. We can require each such entity to submit monthly and annual financial statements, and can require that the annual financial statements be audited, all at the expense of such cooperative. Your failure to timely pay amounts due to, or comply with the bylaws, rules, regulations and procedures of such cooperative is a breach of this Agreement. We can offset against amounts we owe to you the amount of your unpaid cooperative obligations.

10.4 Compliance with Laws and Ethical Business Practices.

A. You will operate your Pinkberry Store in full compliance with all applicable laws, ordinances and regulations. Among other things, you will not engage in any illegal discriminatory practices. We make no representations or assurances as to what (if any) licenses, permits, authorizations or otherwise will be required in connection with your Pinkberry Store. It is your sole responsibility to identify and obtain all authorizations necessary to your operation. You will maintain high standards of honesty, integrity, fair dealing and ethical conduct in your business activities. You will notify us in writing within 5 days of the commencement of any proceeding and/or of the issuance of any governmental order or action impacting you and/or your Pinkberry Store.

B. You agree to comply and/or assist us in our compliance efforts, as applicable, with any and all laws, regulations, Executive Orders or otherwise relating to antiterrorist activities, including without limitation, the U.S. Patriot Act, Executive Order 13224, and related U.S. Treasury and/or other regulations. In connection with such compliance efforts, you agree not to enter into any prohibited transactions and to properly perform any currency reporting and other activities relating to your Franchised Business as may be required by us or by law. You are solely responsible for ascertaining what actions must be taken by you to comply with all such laws, orders and/or regulations, and

specifically acknowledge and agree that your indemnification responsibilities as provided in Section 7.4 pertain to your obligations hereunder.

C. In circumstances designated by us in the Manuals, or where otherwise reasonably required by us, you will give those customers who have made complaints appropriate refunds or otherwise deal with such complaints as we reasonably direct, you and we agreeing that such responses to customer complaints are a vital element in maintaining and enhancing the goodwill associated with the Marks. Policies and procedures (including, but not limited to, refunds and credits) adopted by us for Pinkberry Stores owned and/or operated by us and/or our Affiliates will be conclusively presumed to be reasonable.

D. In the marketing and operation of your Pinkberry Store you must use each of, and only, the contracts, waivers and/or other forms and/or materials as are designated by us from time to time. We may provide you with template or sample forms of such items but it is your responsibility to have all such items which are to be used with prospective and/or actual clients/customers reviewed, at your expense, by an attorney licensed to practice law in the state(s) where your Pinkberry Store will be located and/or operate, for compliance with all applicable state legal requirements. We make no warranty or representation that any contracts, waivers and/or other forms and/or materials, whether supplied by us or otherwise, are in compliance with the laws of any particular state(s). Prior to opening, and prior to use of any such items to be used with prospective and/or actual clients/customers, you must provide us, at your expense, with a letter from such attorney to us indicating that he/she has completed such review and that such items to be used with prospective and/or actual clients/customers meet, or have been modified to comply with, all applicable state legal requirements.

I have read 10.4, understand it, and agree with it.

Your Initials: _____ / _____

10.5 Management and Personnel of Your Pinkberry Store, Training.

A. You must keep us advised, in writing, of all management and non-management personnel involved in the operation or otherwise of your Pinkberry Store. Your Pinkberry Store must be personally managed on a full-time basis by a person who has successfully completed mandatory training and met then-current standards as specified by us.

B. You are solely responsible for the hiring and management of your Pinkberry Store employees, for the terms of their employment and for ensuring their compliance with any training or other employment related requirements established by us from time to time in our Business Judgment. We require that you ensure that your employees execute covenants of confidentiality and non solicitation, indemnification for you and for us, in a form substantially similar to the form provided by Franchisor from time to time, provided that such covenants must be approved by your local counsel as enforceable and applicable under the law of your State.

C. We have the right to deal with the manager regarding routine operations and reporting requirements. You must ensure that our records for your Pinkberry Store managers/supervisors are kept current.

10.6 Insurance.

A. You will maintain in force policies of insurance issued by carriers approved by us covering various risks, as specified by us from time to time. We can specify the types and amounts of

coverage required under such policies and require different and/or additional kinds of insurance at any time, including excess liability insurance. Each insurance policy must:

- 1) name us and our Affiliates as additional named insureds;
- 2) contain a waiver of all subrogation rights against us, our Affiliates and any successors and assigns; and
- 3) provide 30 days' prior written notice to us of any material modifications, cancellation, or expiration of such policies.

B. If you fail to maintain required insurance coverage, we can obtain such insurance coverage on your behalf. You will pay us on demand any costs and premiums incurred by us.

C. Current insurance requirements include the following and are subject to change by us:

- 1) comprehensive general liability insurance against claims for bodily and personal injury, death and property damage caused by, or occurring in conjunction with, your Pinkberry Store;
- 2) all risk property and casualty insurance for the replacement value of your Pinkberry Store and all associated items;
- 3) business interruption insurance providing for continued payment of all amounts due us and/or any Affiliate of ours under this Agreement, and
- 4) Workers Compensation insurance, according to statute.

10.7 Program Participation. We can condition your participation in any program, or your receipt of any Pinkberry Store System benefits, on your being in Good Standing.

10.8 Continued Payment of Royalties, etc. During Closure. You must immediately notify us of any closure of your Pinkberry Store for any reason and submit a plan for re-opening. All financial obligations of yours to us or to any Franchisor-Related Person/Entity (including royalties) will remain in effect during such closure period. Any such closure not authorized and/or excused by us will be a default of this Agreement, entitling us to all remedies available hereunder, at law and in equity.

10.9 Customer Satisfaction, Quality Controls, etc. We can institute various programs for auditing customer satisfaction and/or other quality control measures. We can require you to pay for such program costs. You agree to request your customers to participate in any surveys performed by or on behalf of us, using forms prescribed by us from time to time.

10.10 Franchisee Advisory Council and Selection. We can, in our Business Judgment, elect to form a Franchisee Advisory Council ("FAC") to provide Input to us. The FAC will consist of Franchisees in Good Standing, each of whom will represent their distinct geographical region (the "Region"). Each FAC member will be elected by a majority of Pinkberry Store franchisees in Good Standing within his/her respective Region. The geographical area of each Region will be established by us, with due consideration given to achieving a representative group of Pinkberry Store franchisees for each Region. The number of Regions and their respective boundaries will be subject to adjustment from time to time to reflect growth and franchisee population changes, among other appropriate factors. Each Pinkberry Store Franchisee will be entitled to one vote. We will have the right to appoint one representative to participate in all FAC meetings and activities as a non-voting participant.

The FAC may adopt its own bylaws, rules, regulations and procedures, subject to our consent. While we are not required to do so (except as stated in this Agreement), any matter we submit for FAC

approval for which approval is granted, will be binding on you.

11. MARKETING.

11.1 Marketing Fund.

A. We can, in our Business Judgment, elect to establish an advertising, publicity and marketing fund (the "Marketing Fund") to promote Pinkberry Store and the Brand. You must contribute to the Marketing Fund 2% of Gross Revenue per royalty period, subject to inflation adjustment. Such percentage will be calculated and payable at the same time and in the same manner as percentage and minimum royalties.

B. We have sole discretion over all matters relating to the Marketing Fund, operational, marketing or any other matter (consistent with its purposes and the provisions of this Agreement). The Marketing Fund may be used for (among other things) product development; signage; creation; production and distribution of marketing, advertising, public relations and other materials in any medium, including the Internet; administration expenses; brand/image campaigns; media; national, regional and other marketing programs; activities to promote current and/or future Pinkberry Store and the Brand; agency and consulting services; research; any expenses approved by us and associated with FAC or other Franchisee advisory groups. Among other things, Marketing Fund Contributions may be used for web site development/operation and to pay Internet, Intranet, URL, 800 or similar number, and other charges, fees and/or expenses. A brief statement regarding the availability of Pinkberry Store franchises may be included in advertising and other items produced using the Marketing Fund.

C. We and/or any Franchisor-Related Persons/Entities can provide goods, services, materials, etc. (including administrative services and/or "in-house advertising agency" services) and be compensated and/or reimbursed for the same by the Marketing Fund, provided that any such compensation must be reasonable in amount. We can arrange for goods, services, materials, etc. (including administrative services) to be provided by independent persons/companies and all related costs, fees, etc. will be paid by the Marketing Fund. While we are not required to do so (except as stated in this Agreement), any matter we submit for FAC approval for which approval is granted, will be binding on you.

D. The Marketing Fund will be accounted for separately and may be used to pay all administrative and other costs of the Marketing Fund related to its activities and purposes and/or as authorized by the relevant Franchise Agreements. All taxes of any kind incurred in connection with or related to the Marketing Fund, its activities, contributions to the Marketing Fund and/or any other Fund aspect, whether imposed on us, the Marketing Fund or any other related party, will be the sole responsibility of the Marketing Fund. We will prepare financial statements for the Marketing Fund annually, which will be furnished to you upon written request. Such statements may be audited and any related accounting/auditing costs will be paid by the Marketing Fund. Funds in the Marketing Fund must be expended, prior to termination of the Marketing Fund, only for the purposes authorized by the relevant Franchise Agreement(s). No profit, gain or other benefit will directly accrue to us from the Marketing Fund. All interest earned on monies contributed to, or held in, the Marketing Fund will be remitted to the Marketing Fund and will be subject to the restrictions of the relevant Franchise Agreement(s).

E. Financial management of the Marketing Fund will be our sole responsibility. We can, in our Business Judgment, do any of the following:

1) compensate ourselves and/or any Franchisor-Related Person/Entity for salaries, administrative costs, overhead and other expenses incurred in Marketing Fund related programs/activities, including but not limited to production, research, insurance, and collection expenses, as well as any legal expense related to the activities and purposes of the Marketing Fund (consistent with the provisions of this Agreement);

- 2) charge the Marketing Fund for attorneys' fees and other costs related in any way to claims against us and/or any of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC, regarding the Marketing Fund. However, we will be required to reimburse the Marketing Fund for any attorneys' fees and/or costs paid by the Marketing Fund in connection with any action in which we are finally found to have acted unlawfully or to be guilty of wrongdoing with respect to the Marketing Fund;
- 3) spend in any fiscal year an amount greater or less than the aggregate contributions to the Marketing Fund in that year, and the Marketing Fund may borrow from us or other lenders to cover deficits of the Marketing Fund or cause the Marketing Fund to invest any surplus;
- 4) collect for remission to the Marketing Fund any advertising or promotional amounts offered by any supplier based upon franchisee purchases. Any such contributions, whether or not made with respect to purchases by you, will not count toward your required Fund contributions;
- 5) pay the advertising, marketing, public relations and related costs involved in any co-branding, dual franchising or other such multi-sponsor programs;
- 6) revise marketing and other programs, and/or make expenditures from the Marketing Fund, to take account of cultural and other differences (and/or we can delegate management of a portion of the Marketing Fund in connection therewith);
- 7) defer, waive and/or compromise claims for current/future contributions to, and/or claims against or with respect to, the Marketing Fund and fund the same with the Marketing Fund;
- 8) take legal or other action against any Franchisee in default of their obligations to the Marketing Fund;
- 9) merge the Marketing Fund with any marketing fund otherwise established for Pinkberry Stores for use as described in this Section 11.1, so long as the restrictions of the relevant Franchise Agreement(s) continue to apply to contributions made by Franchisees under such arrangements;
- 10) maintain Marketing Fund assets in one or more accounts designated as "trust accounts" for purposes of protecting such assets from claims of third-party creditors (however, such action will not be deemed to create any "trust," "fiduciary relationship" or similar special arrangement);
- 11) incorporate the Marketing Fund or operate it through an entity separate from us, which is subject to all rights and duties of ours relating to the Marketing Fund;
- 12) take such other actions in connection with the Fund as we consider to be appropriate and as are consistent with the provisions of this Section 11.1.

F. You acknowledge and agree that we have no obligation to ensure that expenditures by the Marketing Fund are or will be proportionate or equivalent to contributions to the Marketing Fund by Pinkberry Stores operating in any geographic area, or that any Pinkberry Store will benefit directly, indirectly or in proportion to its contribution to the Marketing Fund. We have no obligation to cause other Pinkberry Stores to contribute to the Marketing Fund or engage in local marketing, and we can permit a Franchisee to make direct advertising expenditures in place of contributions to the Marketing Fund. You understand that some Pinkberry Store Franchisees may have Marketing Fund obligations that are different from yours, if any. However, all Pinkberry Stores owned by us will make contributions to the Marketing Fund as if they were subject to the then-current form of Franchise Agreement.

G. Neither we (nor any of the Franchisor-Related Persons/Entities, including the Marketing Fund and/or the FAC) will be liable for any act or omission in connection with the Marketing Fund which is consistent with this Agreement or which is done in subjective good faith. You and we expressly agree that none of the relationships with you in connection with the Marketing Fund are in the nature of a "trust," "fiduciary" or similar special arrangement.

H. Subject to the express requirements of this Agreement that your contributions will only be spent as authorized herein, you agree that we can deny access to any and all programs and/or materials created by, and benefits of, the Marketing Fund to you and to any Franchisees who are not in Good Standing.

11.2 Your Participation in the Marketing Fund. You agree to participate in all Marketing Fund programs. You have the right to set your own prices, except that we can specify maximum prices for goods or services to the greatest degree permitted by law. You must fully honor all coupons, price reduction and other promotions/programs as directed by us. The Marketing Fund may furnish you with marketing, advertising and promotional materials; however, we can require that you pay the cost of producing, shipping and handling for such materials.

11.3 Your Local Pinkberry Store Marketing Activities.

A. You must spend for local advertising and promotion of your Pinkberry Store each royalty period 2% of Gross Revenue, subject to inflation adjustment as set forth in Section 9.7. If we request it, you will submit verification of your expenditures in a form prescribed by us in our Business Judgment. Appropriate local advertising expenditures may include, but are not limited to, classified telephone directory listings and advertising. Discounts and/or products or services given without charge will not be considered to meet your local advertising obligation under this Section.

B. Your advertising must be in good taste and conform to ethical and legal standards and our requirements. You may not use coupons at any time. Samples of all advertising and promotional materials (and any use of the Marks and/or other forms of commercial identification) for any media, including the Internet, World Wide Web or otherwise, must be submitted to us for our review and consent prior to use, which approval we can condition or withhold in our Business Judgment. You agree not to use any materials or programs disapproved by us at any time in our Business Judgment and you must use all materials and programs designated by us as mandatory. We can require that a brief statement regarding the availability of Pinkberry Store franchises be included in advertising used by you and/or that brochures regarding purchase of Pinkberry Store franchises be displayed in your Pinkberry Store.

C. Any use of the Internet, World Wide Web or other electronic media by you in connection with your Pinkberry Store will be as specified by us in our Business Judgment from time to time, whether in the Manuals or otherwise. Among other things, we can require that any such use be through us, using a designated Internet/Intranet Service Provider (which can be us or an Affiliate), and that all pages be accessed through a designated site and/or meet our specifications. In such an event, we can require you to pay by credit card, bank autodraft, or other method required by us, an Internet/Intranet Service Fee of \$50 per month, which we can collect in advance on an annual or other basis. Such Fee is subject to annual adjustment by us.

12. STORE RECORDS AND REPORTING.

12.1 Bookkeeping, Accounting and Records, Cash Register, Computer and Other Systems. You must obtain and maintain at your sole expense accounting, sales, reporting and records retention systems conforming to any requirements prescribed by us from time to time, including electronic systems with online access for us. Such systems may include, but are not limited to, electronic cash register, computer and point of sale systems, and software programs, and may have components only

available from us, a Franchisor-Related Person/Entity and/or designated suppliers. We reserve the right to use, and to have full access to, all cash register, computer and any other systems, and the information and data they contain. We can charge a reasonable fee for the license, modification, maintenance or support of software or any other goods and/or services that we furnish to you in connection with any of the systems.

12.2 Reports, Financial Statements and Tax Returns.

A. You will provide to us such information regarding the sales and operation of your Pinkberry Store, and in such form and format, as we specify from time to time in our Business Judgment. We can elect to obtain such information through a variety of methods, including direct online access, facsimile transmissions and written copies. Current information requirements include, but are not limited to, the following, and are subject to change by us:

- 1) Sales and operations reports for each royalty period, which are due at the same time as the corresponding royalty payment; and
- 2) within 45 days after the end of each fiscal year, an unaudited fiscal year-end balance sheet and income statement for your Pinkberry Store, prepared in accordance with generally accepted accounting principles, and verified and signed by you;
- 3) retention of all records of or relating to your Pinkberry Store, including all income, sales and other tax returns, for the Term of this Agreement and one year thereafter.

B. You agree to provide such other data, information and supporting records for your Pinkberry Store as we reasonably may request from time to time, including without limitation, copies of your sales tax returns and those portions of your income tax returns relating to your Pinkberry Store. We can require you to provide us, at your expense, with an annual audited financial statement prepared by a certified public accountant.

13. INSPECTIONS AND AUDITS.

13.1 Our Inspections, etc. We and/or our agents will have the right, at any time during business hours, and without prior notice to you, to:

- A. inspect your Pinkberry Store and related activities and items and record the same;
- B. remove samples for testing and analysis;
- C. interview personnel;
- D. interview customers;
- E. conduct inventories; and
- F. confer with the staffs of government agencies with respect to matters related to the Franchised Business and to share any information in our possession, as we deem appropriate in our Business Judgment.

You will cooperate fully in connection with such matters. We can require you or an individual designated by us to meet at our headquarters or other location designated by us, for the purpose of discussing and reviewing your Pinkberry Store's operations, financial performance and other matters.

13.2 Audit. We and/or our agents will have the right at any time during business hours, and without prior notice to you, to inspect and/or audit business records relating in any way to your Pinkberry Store and the books and records of any person(s), corporation or partnership which holds, or does business with, the Franchise. Such business records may include, but are not limited to, bookkeeping and accounting records, sales and income tax records and returns, cash register tapes, invoices, and deposit receipts. Our right to audit includes the right to access all cash registers, computers and other equipment by electronic means. You will cooperate fully with such an audit. Notwithstanding any provision to the contrary in this Agreement or otherwise, our audit rights will continue in effect for two years after the termination, expiration, transfer or otherwise of this Agreement and/or any successor franchise.

13.3 Gross Revenue Understatements. If any inspection or audit discloses an understatement of Gross Revenue, you must pay to us the royalties and marketing contributions due on the understated amount, plus interest, from the date originally due until the date of payment. We can require you to reimburse us for the cost of the inspection or audit, including, without limitation, the charges of any independent accountants, and related travel and per diem charges for our and their employees, if:

A. any inspection or audit is necessary because of your failure to timely furnish required information/reports; or

B. Gross Revenue is understated for any period by more than 2%.

In addition to all other remedies and rights of ours hereunder or under applicable law, we may Terminate this Agreement if:

C. Gross Revenue is understated for any period by more than 5%; or

D. any understatement is determined by us to be intentional.

14. TRANSFER.

14.1 Transfers by Us. This Agreement, and any or all of our rights and/or obligations under it, are fully transferable by us in our Business Judgment, in whole or in part, without your consent; provided that any such transferee appears at the time of the transfer to have financial resources reasonably appropriate to fulfill its obligations under this Agreement. For the purposes of this Section 14.1, we will be entitled to rely upon financial statements provided to us by the transferee. If we transfer this Agreement, only the transferee will have obligations to you and our obligations (and those of any of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC) will be extinguished.

A. You specifically acknowledge and agree that we can:

1) be sold and/or we can sell any or all of our intellectual property and/or other assets (including the Marks);

2) go public;

3) engage in a private or other placement of some or all of our securities;

4) merge, acquire other entities and/or assets (competitive or not);

5) be acquired by a competitive or other entity;

6) and/or undertake any refinancing, leveraged buy-out and/or other transaction.

You agree that we will have no liability to you resulting from our entering into any transactions permitted hereunder. We also may, on a permanent or temporary basis, delegate any or all of our duties to another company to perform. In such event, you will look only to such other company for the performance of such duties.

14.2 Transfers by You.

A. The rights and duties created by this Agreement are personal to you (or your owners, if the Franchisee is a Business Entity). We have awarded the Franchise relying on the individual integrity, ability, experience and financial resources of you or such owners. Therefore, neither this Agreement, the Franchise, the Franchisee nor your Pinkberry Store, (or any interest in, or the assets of, any of them) can be transferred without our prior written approval. Any transfer or attempted transfer without our approval is null and void.

B. The term "transfer" includes (but is not limited to) any voluntary or involuntary assignment, sale, gift, pledge or any grant of any security or other interest (whether partial or whole, or direct or indirect), by you (or your owners, if the Franchisee is a Business Entity).

A transfer also includes the following events:

- 1) any transfer of ownership of capital stock or any partnership or similar interest;
- 2) any merger, consolidation or issuance of additional securities representing an ownership interest in the Franchisee;
- 3) any sale of voting stock of the Franchisee or of any security convertible to voting stock;
- 4) any transfer in a corporate or partnership dissolution, divorce, insolvency proceeding or otherwise by operation of law;
- 5) any transfer of any interest in any revenues, profits, or assets of your Pinkberry Store and which is not in the ordinary course of business; or
- 6) any transfer to a business entity and/or a trust or similar entity.

A transfer of ownership, possession or control of your Pinkberry Store, or of its assets, can only be made with a transfer of the Franchise. Any transfer in the event of death or disability will be governed by Section 14.5.

14.3 Conditions for Approval of Any Transfer.

A. All of the following conditions must be met prior to, or concurrently with, the effective date of any transfer. We can waive any condition in our sole and absolute discretion.

- 1) You must be in compliance with this Agreement, the Manuals, all other agreements between you and us (including any of our respective Affiliates), and all leases/subleases with any party, and the transferee must expressly assume all obligations under all such agreements; and
- 2) The transferee and its owners must meet our then-current requirements for new franchisees, including but not limited to business experience, aptitude and financial resources; and

3) You must meet all payment and reporting obligations under the Franchise Agreement and any other agreements between you and us (and any of our respective Affiliates). Promissory notes will be accelerated and paid in full; and

4) All obligations to third parties in connection with your Pinkberry Store must be satisfied or assumed by the transferee; and

5) Your Pinkberry Store and its operations must have been brought into full compliance with the Manuals and specifications and standards then-applicable for new Pinkberry Store; and

6) At our option, the transferee must successfully complete, or agree to complete, our training program for new franchisees; and

7) The transferee must, at our option, (a) agree to be bound by all the terms and conditions of this Agreement for the remainder of the Term, or (b) execute our then-current form of Franchise Agreement and ancillary documents (including lease/subleases and guarantees) as are then customarily used by us in the award of franchises for Pinkberry Store (which may, among other things, provide for higher royalties, advertising fund/marketing contributions and materially different rights and obligations than are provided in this Agreement and may not include the terms of any amendments or addenda to this Agreement); provided, however, that no Initial Franchise Fee will be required (in our sole discretion, we may require the transferee to sign a Franchise Agreement and other documents for the full term then being offered and pay the pro rated initial fee as provided in Article 9, above, in addition to any transfer or other fees.) The term of such new Franchise Agreement will, at our option, be either for the balance of the Term of this Agreement or for the full term generally awarded to new franchisees as of the time of the transfer; and

8) The transfer must be completed in compliance with the terms of any applicable leases and other agreements and with all applicable laws, including but not limited to licensing and operations-related laws and/or laws governing franchise sales; and

9) You or the transferee must pay us with your application for a transfer a non-refundable transfer fee of 20% of the then-current Initial franchise fee (minimum of \$8,000), subject to inflation adjustment as provided in Section 9.7, above

10) You and each of your owners and/or Affiliates, and the transferee (and each owner and/or Affiliate of the transferee), must sign a General Release; and

11) Any grant of a security or similar interest in connection with a transfer (which grant may or may not be permitted by us in our Business Judgment), will be subordinated to our rights and the rights of any Franchisor Related Person/Entity under the Franchise Agreement or any other agreement; provided that we can refuse to allow you or anyone else to grant or receive a pledge, mortgage, lien or any security or similar interest in and/or to the Franchise or the Franchised Business (or any of its assets) if, after having expended commercially reasonable efforts in discussions with lenders or other applicable parties, we are unable in our Business Judgment to obtain appropriate protections for our rights under this Agreement and/or for Pinkberry Store System interests; and

12) You must agree with the transferee not to compete after the transfer in accordance with restrictions acceptable to us and substantially similar to those described in Section 8.2 (B), above, to the maximum extent permitted by law. We will be named a third party beneficiary of such agreement; and

13) We can (but are not required to) withhold or condition our consent to any transfer in our Business Judgment, particularly if we believe that the terms of transfer jeopardize the economic

viability of the franchise or based on other circumstances of the transfer, and/or if we would not normally directly award a franchise in such a situation.

B. You agree that we can (but are not required to) discuss with you and/or the proposed transferee any matters related to any transfer and/or proposed transfer at any time which we consider to be appropriate in our Business Judgment without liability (including our opinion of the terms of sale, performance of your franchise, etc.). You expressly consent to any such discussions by us.

C. Neither you nor any transferee will rely on us to assist in the evaluation of the terms of any proposed transfer. You acknowledge and agree that an approval of a proposed transfer will not be deemed to be an approval of the terms, nor any indication as to any likelihood of success or economic viability.

14.4 Additional Conditions for Transfer to a Business Entity. We will consent to a transfer from you to a Business Entity entirely owned by you and formed for the sole purpose of operating the Pinkberry Store if the conditions described in 14.3, above, and the following conditions are met. Such a transfer will not relieve you of your obligations under this Agreement. You will remain jointly and severally liable to us for your and the Business Entity's obligations.

1) The Business Entity's stock certificates (and/or other applicable evidences of ownership and all documents of formation/governance) must recite that any ownership interest in the Business Entity is restricted by the terms of this Agreement; and

2) You must have (and continue to maintain) management control and ownership of at least 51% of the Business Entity and personally manage its affairs; and

3) The individual Franchisee (or, if the Franchisee is a partnership, at least one of the partners) must be and remain the chief executive officer, chief operating officer or chief financial officer and meet our then-current training requirements. If the Franchisee is or becomes a corporation, LLC, partnership or other business entity, the chief executive officer, chief operating officer or chief financial officer of such entity must always meet all of our then-current training and other standards; and

4) The transferee must enter into an approved form of assignment in which the Business Entity assumes all of the Franchisee's obligations under this Agreement and any other agreements with us and/or a Franchisor-Related Person/Entity, and any other documents we can require as provided in 14.3 (A) 7, above; and

5) All current and future owners of the Business Entity must agree in writing to comply with this Agreement and any other agreements with us and/or any Franchisor-Related Persons/Entities, including the Marketing Fund. We can, at our option and in our Business Judgment, require any and all owners to jointly and severally guarantee (in a written form approved by us) any such obligations of the Business Entity under any such agreements. The current approved form of Owner's Guaranty is attached as Exhibit 1 to this Agreement; and

6) No public offerings of debt or equity ownership in the transferee entity can be conducted, and no shares of any type issued, without obtaining our prior written consent; and

7) We can require that each of the present and/or future shareholders, directors, and/or officers execute confidentiality and non-competition agreements with terms substantially similar to those described in Sections 8.1 and 8.2, respectively.

8) In any event, we can withhold or condition our consent to any transfer as we deem appropriate in our Business Judgment, based on the circumstances of the transfer or otherwise.

14.5 Death or Disability of Franchisee.

A. If the Franchisee, or if the owner of the Franchisee with a controlling interest, dies or is permanently disabled, then his or her interest in this Agreement, the Franchise and/or the Franchisee will be transferred to a third party subject to all of the provisions of this Article 14. A "permanent disability" occurs if you are not able to personally, actively participate in the management of your Pinkberry Store for 6 consecutive months. Any transfer under this Section must be completed within 6 months from the date of death or permanent disability. If no transfer occurs, the Franchise will automatically terminate at the end of such period, unless a written extension is granted by us in our Business Judgment.

B. We can (but are not required to) operate the Franchised Business on your behalf and at your expense in the event of your death, disability or absence. We can pay ourselves a reasonable amount for our management services and other costs. We will use reasonable efforts and business judgment in managing the business, but will in all cases be indemnified by you (and/or your estate) against any costs and/or liabilities related in any way to our management and the operation of the Franchised Business. We are expressly authorized by you to manage in good faith and on terms that we consider appropriate in our Business Judgment, including payment of any past, current and/or future obligations to us or to any other creditor out of assets and/or revenues of the Franchised Business.

14.6 Effect of Consent to Transfer. Our consent to a transfer is not a waiver of any claims we may have against you, and you are not relieved of any obligations to us or any Franchisor-Related Persons/Entities and/or the Marketing Fund (including any defaults by any transferee). Any dispute regarding any proposed or completed transfer will be resolved through the dispute resolution provisions of this Agreement. Neither we nor any Franchisor-Related Persons/Entities, or the Marketing Fund and/or the FAC, will have any liability to you or any proposed or actual transferee in connection with our examination and/or possible consent or withholding of consent involving any transfer or proposed transfer, or our exercise of any right of ours, which is consistent with this Agreement. You agree to indemnify and hold us harmless from any liability to you, the proposed transferee or otherwise.

14.7 Our Right of First Refusal.

A. We have a right of first refusal regarding any proposed transfer subject to this Agreement, excluding only those transfers which are subject to Section 14.4. For each non-excluded proposed transfer, you will provide us with a true and complete copy of the offer received by you (and any ancillary agreements), and the conditions to transfer described in Sections 14.3 and 14.4, as applicable, will be met. The offer and the price and terms of purchase must apply only to an interest in this Agreement, the Franchise, your Pinkberry Store or the Franchisee. Any value attributable to the goodwill of the Marks, Pinkberry Store System elements, Confidential Information or any other assets, tangible or intangible, related to the Pinkberry Store Brand and System will be excluded from the purchase price, but goodwill related solely to the value of your Pinkberry Store as a going business will be included, if we are purchasing your Pinkberry Store as a going business.

B. We will give you written notice of our decision to exercise our right of first refusal within 30 days from the date of our receipt of the offer and ancillary documents. If any of the assets to be purchased do not meet the standards we then apply to new Pinkberry Stores, or if you are in default, we can require that the Pinkberry Store be brought into compliance and any defaults cured before the 30-day period begins. We can substitute cash for any form of payment proposed in such offer and will have a reasonable period of time in which to prepare for the close of the transaction, generally 60 days. The purchase price to be paid by us will be the price specified in the proposed transfer, less the value attributable to the goodwill of the Marks, Pinkberry Store System elements, Confidential Information or any other assets, tangible or intangible, related to the Pinkberry Store brand and System. We will be entitled to purchase any interest subject to all Customary Representations, Warranties and Agreements. We can require that the closing of the sale be through an escrow. You and we will comply with any applicable bulk sales and/or similar laws, and you will maintain all insurance policies until the date of

closing. We will have the right to set off against any amount of money payable by us all amounts due from you and/or your Affiliates to us and/or our Affiliates. We will also have the right, in our Business Judgment, to pay any amount otherwise payable to you directly to your creditors in satisfaction of your obligations. If you violate any of your obligations that expressly or by their nature survive this Agreement, we will not be obligated to pay any amount otherwise due or payable to you thereafter. In connection with such purchase, you and each transferor (and your respective Affiliates) will sign a General Release.

C. If we do not exercise our right of first refusal, you or your owner can complete the sale to such purchaser on the exact terms of such offer, subject to the conditions of this Article 14. If there is a material change in the terms of the sale, we will have an additional right of first refusal on the same terms and conditions as are applicable to the initial right of first refusal. Our rights under this or any other Section are fully assignable.

15. SUCCESSOR FRANCHISE.

15.1 Your Rights.

A. If you are awarded this Agreement for the initial term of your franchise, then this Agreement Terminates at the expiration of the initial term. At that time, subject to the provisions of this Article 15, you will be eligible to be awarded a Successor franchise. The Successor Franchise Agreement may (and probably will) differ materially from this one in financial and other ways and terms. The Successor term will be for successive 5 year periods but if the lease or sublease for the Premises is terminated or expires before the end of such Successor term (and no substitute location has been consented to by us in writing and occupied by you before the termination/expiration of such lease/sublease), we can Terminate the Successor agreement as of the termination/expiration of such lease/sublease.

B. If we (1) make an announcement (at any time) that we have made a determination that continued franchising (on a national, regional or other basis) is not appropriate in our Business Judgment and that we do not intend to continue to regularly award franchises and maintain a franchise program for Pinkberry Stores in your state, and (2) do not open or award franchises for Pinkberry Stores in your state for 12 months after the date of such announcement, (provided that we can award renewal or successor franchises where an older form of Franchise Agreement or otherwise requires us to do so, and/or continue to service existing Franchisees under outstanding agreements), then we will not be required to offer you any Successor franchise, or renewal or similar rights and will have no liability or obligation to you with respect thereto. You agree that if any statute or court decision requires "good cause" (or any similar standard) for non-renewal, compliance by us with the provisions of this subsection will be considered to be good cause.

C. You agree that these provisions are commercially reasonable because commercial and other developments may make further participation in franchising by you or us inappropriate. Therefore, just as you have the option to not accept a Successor franchise, we have the option to no longer award Successor or other franchises, or grant renewals, in the circumstances discussed in this Agreement.

15.2 Notice of Election.

A. You must give us written notice of election to obtain the Successor franchise not less than 6 months, but not more than 12 months, before the expiration of the initial term of this Agreement. Within 90 days after our receipt of the notice, we will give to you in writing:

1) any reasons which could cause us to not award the Successor franchise, including any deficiencies requiring correction; and

2) our then-current requirements relating to the image, appearance, decoration, furnishing, equipping, stocking and programs for a Pinkberry Store (collectively, the "specifications and standards then-applicable for new Pinkberry Store and with the Manuals").

B. If you are subject to a Correction Process under Section 16.5 when (1) you provide us with notice of your intent to obtain a Successor franchise, or (2) the Successor franchise would be awarded, then we can, in our Business Judgment, choose to defer the award of any Successor franchise until you have successfully complied with the applicable Pinkberry Store System Standards and Financial Standards.

15.3 Conditions to the Award of a Successor Franchise. Any award of the Successor franchise must meet all of the following conditions, together with the then-current standards applicable to Successor franchisees, each of which are agreed to be reasonable:

A. You (and each Affiliate of yours) must be in Good Standing; and

B. Your Pinkberry Store and its operations must fully comply with all specifications and standards then-applicable for new Pinkberry Store and with the Manuals by the expiration of this Agreement; and

C. You must present evidence satisfactory to us that you have the right to remain in possession of your Pinkberry Store for the duration of the Successor franchise. If you fail to maintain possession of your Pinkberry Store, or in our Business Judgment your Pinkberry Store should be relocated, you must have obtained our consent to and secured substitute premises by the expiration date of this Agreement. Such premises must comply with all specifications and standards then-applicable for new Pinkberry Store and with the Manuals; and

D. You (and each Affiliate of yours) must have paid all amounts owed to us, any Franchisor-Related Persons/Entities and/or the Marketing Fund; and

E. You must have executed our then-current form of Franchise Agreement and related documents then customarily used by us (with appropriate modifications to reflect the fact that the Franchise Agreement to be awarded relates to a single Successor franchise as contemplated by this Agreement). You will not be required to pay the then-current Initial Franchise Fee, and we will not be required to provide you any site location, initial training or other "start-up" services in connection with the award of any Successor franchise; and

F. You must have complied with our then-current qualification and training requirements. We can require your personnel to successfully complete any retraining program(s), at such times and location(s) as we then specify. There will be no charge for any retraining program(s), but you will be responsible for all travel, meals, lodging and other expenses of your personnel; and

G. You (and each owner and/or Affiliate of yours) must have executed a General Release, except for any claims exclusively related to the successor franchise (where expressly so required by applicable law); and

H. You must have paid us a successor fee equal to 20% of our then-current Initial Franchise Fee for a first franchise (but not less than \$8,000, which minimum amount is subject to adjustment as described in Section 9.7). The fee must be received from you at the time of your election and is non-refundable unless we do not grant a Successor agreement to you.