

Failure by you and/or your owners to timely complete such requirements will be deemed an election by you not to obtain the successor franchise.

16. TERMINATION OF THE FRANCHISE.

16.1 Defaults with No Right to Cure. This Agreement will automatically Terminate upon delivery of our written notice of Termination to you in compliance with Article 20 (without further action by us and without opportunity to cure) if you (or any of your owners):

A. fail to timely meet the site selection, development, opening and other requirements provided in this Agreement, any other Franchise Agreement, any Area Development Agreement, or otherwise;

B. abandon or fail to operate your Pinkberry Store for more than 7 consecutive calendar days, or lose the right to possession of the premises and do not relocate your Pinkberry Store in accordance with this Agreement;

C. make any material misrepresentation or omission in your application for the Franchise, including (but not limited to) failure to disclose any prior litigation or criminal convictions (other than minor traffic offenses);

D. are judged bankrupt, become insolvent, make an assignment for the benefit of creditors, fail to pay your debts as they become due, or a petition under any bankruptcy law is filed by or against you (or any of your owners) or a receiver or other custodian is appointed for a substantial part of the assets of your Pinkberry Store;

E. are convicted of, or plead no contest to, a felony, or to any crime or offense that is likely to adversely affect the reputation of the Franchisee or any owner, your Pinkberry Store, us or the goodwill associated with the Marks;

F. engage in any misconduct which unfavorably affects the reputation of the Franchisee or any owner, your Pinkberry Store, us or the goodwill associated with the Marks (including, but not limited to, child abuse, health or safety hazards, drug or alcohol problems, or permitting unlawful activities at your Pinkberry Store);

G. make, or attempt to make, an unauthorized "transfer" as defined in this Agreement or surrender control without our prior written approval;

H. make an unauthorized use of the Marks or any unauthorized copy, use or disclosure of any Confidential Information;

I. violate any of the In Term or Post Term Restrictions against competition provided in Section 8.2, above (or any other person identified therein commits such a violation);

J. commit any act or omission of fraud or misrepresentation, whether with respect to us, any of the Franchisor-Related Persons/Entities and/or the Marketing Fund and/or any third party, including (but not limited to) any misrepresentation of Gross Revenue;

K. have 5 or more material customer complaints with respect to your Pinkberry Store in any 12 month period, whether or not resolved. Complaints which unfavorably reflect on the reputation of the Franchisee or any owner, your Pinkberry Store, us or the goodwill associated with the Marks, including but not limited to: health and/or safety issues, customer service matters, product quality, legal compliance, and others, will be conclusively regarded as material – other complaints can be material depending on the circumstances;

L. fail to permit or cooperate with us or our designee in any audit or inspection or fail to retain (or to produce on request) any records required to be maintained by you.

16.2 Defaults with Right to Cure. This Agreement will automatically Terminate on delivery of our written notice of Termination to you in compliance with Article 20 (without further action by us and without further opportunity to cure beyond that set forth in this Section):

A. 10 Day Cure. If within 10 calendar days after delivery of our written notice to you, you (or any of your owners) do not cure any:

- 1) failure to maintain required insurance;
- 2) failure to correct any condition that, in our reasonable judgment, might pose a danger to public health and/or safety;
- 3) failure to report accurately Gross Revenue or fail to submit any other report due under this Agreement or any lease/sublease in accurate and complete form and when required;
- 4) failure to make payments of any amounts due us, any Franchisor-Related Person/Entity, any designee of ours and/or any supplier/creditor of yours);
- 5) failure to maintain any bank account, which is to be used for pre-authorized bank debits for amounts to become due us, or any of our affiliates or designees, as open and funded sufficiently to meet all reasonably anticipated debits and charges; provided that you can close any such account if (a) you provide us with 30 days' prior written notice, (b) immediately establish and adequately fund a replacement account, (c) execute and deliver to us and the bank all documents reasonably requested by us and/or the bank with respect to the new account so as to, among other things, allow us to make debits as authorized by this Agreement or otherwise, and (d) comply with all other reasonable requirements and procedures of ours.
- 6) failure to comply with any of the dispute resolution provisions of this Agreement.

With respect to subsections 16 (A) 1 and/or 16 (A) 2 above, we can require you to immediately cease all operations until such defaults are fully cured.

B. 30 Day Cure. If within 30 calendar days after delivery of our written notice to you, you (or any of your owners) do not cure any:

- 1) default under the lease or sublease for your Pinkberry Store within the applicable cure period set forth in the lease or sublease. If the applicable cure period set forth in the lease or sublease is less than 30 days, then that applicable cure period will apply;
- 2) delinquency in your obligations to taxing authorities, landlords, equipment lessors, suppliers or others;
- 3) failure to comply with any other provision of this Agreement, any other agreement with us and/or any Affiliate of ours, or any specification, standard or operating procedure or rule in the Manuals or otherwise prescribed by us in writing which does not provide for a shorter notice period.

If a default under this Section 16.2 (B) cannot reasonably be corrected within 30 days, then you must undertake diligent efforts within the 30-day period to come into full compliance. On our request, you must furnish proof acceptable to us of such efforts and the date full compliance will be achieved. In any

event, all such defaults must be fully cured within 60 days after delivery to you of the initial written notice to you of Termination.

16.3 Repeated Defaults. This Agreement will automatically Terminate upon delivery of our written notice of Termination to you in compliance with Article 20 (without further action by us and without opportunity to cure) if you or any Affiliate has committed 2 or more applicable defaults within any 12 consecutive months, or 3 or more applicable defaults within any 24 consecutive months. An "applicable default" is a single breach of any obligation under this Agreement and/or the Manuals, or under any other agreement with us and/or any of our Affiliates, whether or not such default is cured, or is the same as or similar to a prior event of default.

16.4 Cross-Defaults. Any default by you (or any owner or Affiliate of yours) under this Agreement can be regarded by us as a default under any other agreement between us (or any Franchisor-Related Persons/Entities and/or the Marketing Fund) and you (or any owner or Affiliate of yours). Similarly, any default by you (or any owner or Affiliate of yours) under any other agreement or any other obligation between us (or any Franchisor-Related Persons/Entities and/or the Marketing Fund) and you (or any owner or Affiliate of yours) can be regarded as a default under this Agreement. Any default by you (or any owner or Affiliate of yours) under any lease, sublease, loan agreement, or security interest relating to the Franchised Business can be regarded as a default under this Agreement, regardless of whether or not any such agreements are between you (or any owner or Affiliate of yours) and us (or any Franchisor-Related Persons/Entities).

16.5 Performance Standards.

A. You and we have a shared interest in your Pinkberry Store not performing below Pinkberry Store System Standards, or failing to achieve an appropriate level of Gross Revenue, and we would not have entered into this franchise relationship if we had anticipated that you would not meet these Performance Standards. "Performance Standards" includes both Pinkberry Store System Standards and Financial Standards as described below.

B. Pinkberry Store System Standards. "System Standards" are the criteria we establish, and can modify, in our business Judgment, from time-to-time through the Manuals or other written means, relating to the operation, marketing and otherwise of Pinkberry Stores. You and we agree that your meeting all System Standards is critical to the success of your Pinkberry Store, that of the Pinkberry Store system as a whole and to the maintenance of the goodwill and value associated with the Pinkberry Store brand, since the failure of any Pinkberry Store to meet System Standards requirements would reflect negatively on all Pinkberry Stores, and undermine customer confidence and positive brand recognition. We can, therefore, in our Business Judgment, choose to evaluate your Pinkberry Store for compliance with Pinkberry Store System Standards using various methods (including, but not limited to, inspections, field service visits, customer comments/surveys and secret shopper reports). So as to be consistent and fair, in conducting such an evaluation we will use the same methods and scoring system then in use by us for evaluating any Pinkberry Store owned and/or operated by us and/or our Affiliates. Your Pinkberry Store will be assigned System Standards Scores for categories being scored at that time. Your scores will be compared with the average score in each such category achieved by all Pinkberry Stores in the United States (including those franchised and/or owned and/or operated by us and/or our Affiliates), or such other geographic area as we reasonably believe to be appropriate for evaluation purposes.

C. Pinkberry Store Financial Standards. You and we agree that an adequate level of financial performance is also critical to the success of the Pinkberry Store system. Understanding that, you and we jointly believe that use of arbitrary financial performance standards might be inappropriate and that a better way to evaluate unit-level financial performance is to apply a comparative standard, comparing the financial performance of your Pinkberry Store with that of other Pinkberry Stores. Therefore, we can, in our Business Judgment, compare your Gross Revenue with the then-current

“Financial Standard”. If we make such an election with respect to your Pinkberry Store, we won’t do it any more frequently than as of every six months. The Financial Standard will be determined as follows:

PERIOD OPEN*	FINANCIAL STANDARDS (ADJUSTED EVERY 6 MONTHS)
Less than Three Years	50% of PUA**
Three Years or More, But Less Than Four Years	65% of PUA**
Four Years or More	75% of PUA**

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

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

D. We reserve the right to make reasonable revisions to elements of the Financial or System Standards upon 6 months’ written advance notice to you. Such revisions can include, but are not limited to, changes in PUA percentages, measurement periods or geographical areas.

E. We can (but are not required to) implement the correction process described in Section 16.5 (F), below, if your:

- 1) System Standards Score in a scored category is lower than the average System Standards Score; or
- 2) Gross Revenue for the applicable measurement period does not equal the then-current Financial Standard.

As noted below, the correction process includes our attempts to help you meet all applicable standards, but since your Pinkberry Store is your business, it’s ultimately your responsibility to meet those standards.

F. Correction Process

1) To allow an appropriate period of time for you and us to work together to help you resolve any Performance standards issues, if we notify you of your failure to meet the then-current average System Standards Score in a scored category and/or the applicable Financial Standard, then you will have six months from our delivery of written notice to you to meet all applicable Financial and System Standards.

2) Since it’s in your and our mutual interest to have you resolve any Performance Standards issues, we will reasonably cooperate with and assist you in your efforts to meet your performance objectives. Our assistance may include, but is not limited to, on-site consultations, meetings at our headquarters, and/or retraining activities or programs at designated locations. You are responsible for any costs associated with such activities, including travel, meals, lodging and any other related expenses and will participate in the those additional activities, programs, etc., on our request. Among other things, we can:

a) require you and/or your manager to attend and successfully complete a re-training seminar at our then-current headquarters, with you to pay all related travel, meals, lodging and incidental expenses, or

b) send a trainer to your location to present a re-training seminar, which you and your manager must successfully complete, with you to pay us a \$500 per day retraining fee (maximum: \$1,500), subject to inflation adjustment.

G. If, at the end of the six month Correction Period, your Pinkberry Store does not meet the average Pinkberry Store System Standards score for any category and/or the then-applicable Financial Standards, then we can elect to Terminate this Agreement. You will have 90 days after the end of the six month Correction Period to complete a sale of your franchise to a third party if:

1) You provide us, within 10 days of the expiration of the six month Correction Period, with (a) a written notice of your desire to sell your franchise, and (b) a General Release signed by you and each of your owners and Affiliates; and

2) Any such transfer meets all requirements of this Agreement, including those provided in Section 14.3, above.

H. If you do not provide us with the items described in Section 16.5 (G) 1, above, or complete an authorized sale within the 90 day period provided in Section 16.5 (G), above, then we can Terminate this Agreement immediately upon delivery of written notice to you in accordance with Article 20, below.

I. Nothing in this Section is intended to limit or diminish in any way any rights or remedies provided us under this or any other agreement, at law or in equity. The fact that any correction process may be ongoing will not prevent us from exercising any such rights and/or remedies, including any right to Terminate this Agreement for another default under this or any other agreement.

16.6 Non-Exclusive Remedies. Whenever we have a right to Terminate this Agreement, we (and any Franchisor-Related Person/Entity) will have all remedies allowed at law and in equity. No right or remedy which we and/or any Franchisor-Related Person/Entity may have under this Agreement or otherwise (including Termination) is exclusive, and we and/or any Franchisor-Related Person/Entity may pursue any rights and/or remedies available at law and/or in equity. If we have the right to Terminate this Agreement, we can elect in our Business Judgment to cancel any and/or all of your territorial or similar rights (including, but not limited to, any rights of first refusal), whether arising under this Agreement or in any other manner or document.

16.7 No Equity on Termination, etc. Your rights regarding the Franchise are controlled by the provisions of this Agreement. You will have no equity or any other continuing interest in the Franchise, any goodwill associated with it, or any right to compensation or refunds at the expiration and/or Termination of the Franchise.

16.8 Extended Cure Period. Notwithstanding anything to the contrary in this Agreement, we reserve the right to grant to you in our Business Judgment an extended cure period for any breach. You acknowledge that our decision to grant such an extended cure period will not operate as a waiver of any of our rights and that we can choose to condition such any such an extension upon the signing of a General Release by you, each owner and Affiliates of yours.

16.9 Management of the Pinkberry Store After Issuance of Notice of Default.

A. If we issue a notice of default, we will have the right (but not the obligation) to manage your Pinkberry Store until you have cured all defaults. All revenues received by the Pinkberry Store while

we (or our designee) are managing it will be kept in a separate fund. All Pinkberry Store expenses, including compensation, travel and living expenses for our appointed manager, may be paid out of such fund. We will be paid \$500 per day as a management fee (subject to adjustment as provided in Section 9.7). If such fund is insufficient to pay Pinkberry Store expenses, we will notify you. You must, within 5 business days, deposit such amounts as will be required by us to attain a reasonable fund balance.

B. Operation of the Pinkberry Store by us during any such period will be on your behalf; provided that we will only have a duty to use reasonable efforts and will not be liable to any creditor of yours or for any debts, losses or obligations incurred by the Pinkberry Store. This Section 16.9 will not limit our right to Terminate this Agreement as herein provided or affect any of our indemnity or other rights under this Agreement.

16.10 Our Right To Discontinue Supplying Items Upon Default. If we deliver a notice of default to you, we and/or each Franchisor-Related Persons/Entity have the right to (a) require that you pay C.O.D. (i.e., cash on delivery) or by certified check for goods/services and/or (b) stop selling and/or providing any goods/services to you, including the support services described in Section 5.2, until you have cured all defaults. No such action by us and/or any Franchisor-Related Persons/Entity shall be a constructive termination of this Agreement, change in competitive circumstances or similarly characterized, and you agree that you will not be relieved of any obligations under this Agreement because of any such action.

16.11 Prompt Notice of Claims by You. You understand that you are not permitted to terminate this Agreement for any default committed by us, except as permitted by applicable law. If you claim that such a default exists (or that you have any other basis for terminating your obligations and our rights under this Agreement or making any other claim against us), you must give us written notice and 30 days to cure; any action by you to terminate will not proceed until we have had such notice and an opportunity to cure. If we cannot reasonably cure within such 30 day period, and we are diligently continuing efforts to cure, then we will have 90 days to cure; provided that:

A. any dispute regarding our withholding consent with respect to a proposed transfer by you, or any other dispute in which delay may cause you significant harm or loss, may be immediately processed as provided in Section 19.1; and

B. any claim for equitable relief with respect to a dispute under Section 19.1 (H) will not be subject to this Section 16.11. Any applicable statutes of limitations will be tolled during such 30 and 90-day periods.

17. RIGHTS AND OBLIGATIONS ON TRANSFER, TERMINATION AND/OR EXPIRATION OF THE FRANCHISE.

17.1 Payments of All Amounts Owed, etc. You must pay all royalties, marketing contributions and all amounts of any kind owed to us and/or any Franchisor-Related Persons/Entities, and the Marketing Fund, within 10 days after the Termination or expiration of the Franchise, or from a later date when the amounts due can be determined.

17.2 Intellectual Property, Confidential Information, Trade Dress, etc. After any Transfer, Termination or expiration of the Franchise:

A. You agree to immediately and permanently discontinue your Pinkberry Store business and any use of the Intellectual Property and/or the Confidential Information, as defined in Article 22, and will not use any similar or derivative marks, or materials, or colorable imitations of any of the Intellectual Property in any medium or manner or for any purpose;

B. You must return to us or (at our option) destroy all software, Manuals, forms, materials, signage and any other items containing any Intellectual Property or Marks, or otherwise identifying or relating to a Pinkberry Store (to the extent they have not been assigned in connection with an authorized Transfer);

C. You must take such actions as may be required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark which have not been assigned in connection with an authorized Transfer;

D. You must remove from the Premises any distinctive signage, physical and/or structural features associated with the Trade Dress of Pinkberry Store, so that the Premises are clearly distinguished from other Pinkberry Stores and do not create any public confusion (to the extent they have not been assigned in connection with an authorized Transfer);

E. You agree not to identify yourself, or any business you may operate or in which you may become involved, or to advertise or promote yourself in any manner, as a present or former Pinkberry Store franchisee;

F. You must furnish to us within 30 days satisfactory evidence of your compliance with the obligations described in this Section 17.2 and in Section 17.3, below. If you operate any business using any of the Intellectual Property, Marks, Confidential Information or any aspect of the System, our remedies will include (but not be limited to) recovery of the greater of (1) all profits earned by you in the operation of such business, or (2) all royalties, advertising contributions and other amounts which would have been due if this Agreement remained in effect with you.

17.3 Telephone and Other Directory Listings, Internet Sites.

A. You understand and agree that we own all telephone numbers, domain names, Internet addresses/sites and/or other communications services links (collectively, the "Numbers"), and any related directory listings/advertising, used in connection with the operation of your Pinkberry Store. We can, in our Business Judgment, require you to sign an assignment of such Numbers prior to training or at another time. After any Termination and/or expiration of the Franchise, you must promptly transfer, call-forward, discontinue or otherwise deal with the Numbers and any related directory listings/advertising as we direct. You agree to sign any documents and/or pay any amounts required by a telephone/communication services provider as a condition to our exercising any rights under this Section. By signing this Agreement, you irrevocably appoint us your attorney in fact to take any such actions regarding the Numbers and any related directory listings/advertising if you do not do so yourself within 10 days after the Termination or expiration of this Franchise. Such companies may accept this Agreement as conclusive evidence of our exclusive rights in such Numbers and related directory listings, web pages and advertising/marketing.

B. If we choose at any time to be direct billed by a provider for any account for the Numbers and/or directory listings/advertising, you agree to pay us all amounts due such providers within 10 days of our written notice to you. If you fail on 2 or more occasions to pay any such amounts to us when due, then we can require you to maintain a deposit with us in an amount reasonably determined by us based upon usage history and other relevant factors.

17.4 Continuing Obligations.

A. All obligations and rights which expressly or by their nature survive the Transfer, Expiration or Termination of this Agreement will continue in full force and effect until they are satisfied or by their nature expire (including but not limited to indemnity, non-competition and confidentiality rights and

obligations; obligations to pay and the provisions of Articles 19 and 21). These obligations continue notwithstanding any rejection of this Agreement in a bankruptcy proceeding or otherwise.

B. "Non-competition, non-solicitation, non-hire/engagement, non-use, confidentiality, and protection of the Marks and indemnity/hold harmless obligations, and all other Post Termination Provisions provided in this Agreement will survive the expiration and/or Termination of this Agreement according to their terms."

I have read Sec. 17.1-17.4, understand them, and agree with them.

Your Initials: _____ / _____

18. GRANT OF SECURITY INTEREST.

For valuable consideration, as security for the payment of all amounts owing or to be owed by you (and/or any Affiliate of yours) to us (and/or any Affiliate of ours) under this Agreement or any other agreements, and your performance of all obligations thereunder, you hereby grant to us a security interest in all proceeds of your Pinkberry Store and in all of the assets, including equipment, furniture, fixtures and signs, used by, at or in connection with, your Pinkberry Store and its related business and (the "Collateral"). You will not remove the Collateral or any portion thereof without our prior written consent. You represent and warrant that the security interest granted is prior to all other security interests in the Collateral except for (i) bona fide purchase money security interests and (ii) the security interest granted to a third party in connection with your original financing for your Pinkberry Store, if any. In connection with any request for our approval of a security interest, we will make commercially reasonable efforts to accommodate reasonable lender's requirements, including the subordination of our interests to the lender's and/or lessor's, as applicable, in our Business Judgment, bearing in mind the interests of the borrower, lender, ourselves and the System. On the occurrence of any event entitling us to Terminate this Agreement or any other agreement between the parties, or if we reasonably determine that we are not assured that your (and/or any Affiliates') obligations will be timely and fully paid and/or performed, we will have all the rights and remedies of a secured party under the Uniform Commercial Code of the State in which your Pinkberry Store is located, including, without limitation, the right to take possession of the Collateral. You must execute and deliver to us financing statements and/or such other documents as we reasonably deem necessary to perfect our interest in the Collateral within 10 days of your receipt of such documents from us.

I have read Art. 18, understand it, and agree with it.

Your Initials: _____ / _____

19. DISPUTE AVOIDANCE AND RESOLUTION.

For the purposes of this Article 19, "you" will be deemed to include your owners, Affiliates and their respective employees, and "we" will be deemed to include "Franchisor-Related Persons/Entities."

19.1 MEDIATION AND MANDATORY BINDING ARBITRATION, WAIVER OF RIGHT TO TRIAL IN COURT, etc. You and we believe that it is important to resolve any disputes amicably, quickly, cost effectively and professionally and to return to business as soon as possible. You and we have agreed that the provisions of this Article 19 support these mutual objectives and, therefore, agree as follows:

A. **Claim Process:** Any litigation, claim, dispute, suit, action, controversy, or proceeding of **any type whatsoever** including any claim for equitable relief and/or where you are acting as a "private attorney general," suing pursuant to a statutory claim or otherwise, between or involving you and us on whatever theory and/or facts based, and whether or not arising out of this Agreement, ("Claim") will be processed in the following manner, you and we each expressly waiving all rights to any court proceeding, except as expressly provided below at Section 19.1 (H).

1) First, discussed in a face-to-face meeting held within 30 days after either you or we give written notice to the other proposing such a meeting.

2) Second, if not resolved, submitted to non-binding mediation for a minimum of 4 hours before (a) Franchise Arbitration and Mediation, Inc. ("FAM") or its successor (or an organization designated by FAM or its successor), (b) any other mediation organization approved by all parties, or (c) by Judicial Arbitration and Mediation Service ("JAMS") or its successor (or an organization designated by JAMS or its successor), if FAM cannot conduct such mediation and the parties cannot agree on a mediation organization. We will pay the costs of the first 4 hours of any mediation, and no mediation is required to extend beyond such 4 hour period. Any mediation/arbitration (and any appeal of arbitration) will be conducted by a mediator/arbitrator experienced in franchising. Any party may be represented by counsel and may, with permission of the mediator, bring persons appropriate to the proceeding.

3) Third, submitted to and finally resolved by binding arbitration before and in accordance with the arbitration rules of FAM or its successor (or an organization designated by FAM or its successor); provided that if such arbitration cannot be heard by any such organizations, then the arbitration will be conducted before and in accordance with the arbitration rules of JAMS or its successor (or an organization designated by JAMS or its successor); provided that, in any case, arbitration may be filed prior to a face-to-face meeting and/or mediation, with such face-to-face meeting and/or mediation to follow as quickly thereafter as possible. All arbitrators must be experienced in franchising. On election by any party, arbitration and/or any other remedy allowed by this Agreement may proceed forward at the same time as mediation. Judgment on any preliminary or final arbitration award will be final and binding, and may be entered in any court having jurisdiction (subject to the opportunity for appeal as contemplated below). The arbitrator's award will be in writing. On request by either party, the arbitrator will provide to all disputants a reasoned opinion with findings of fact and conclusions of law and the party so requesting will pay the arbitrator's fees and costs connected therewith.

4) Fourth, a final award by an arbitrator (there will be no appeal of interim awards or other interim relief), may be appealed within 30 days of such final award. Appeals will be conducted before a 3-arbitrator panel appointed by the same organization as conducted the arbitration, each member of which must be experienced in franchising. The arbitration panel will not conduct any trial de novo or other fact-finding function. Such panel's decision will be in writing, may be entered in any court having jurisdiction and will be binding, final and non-appealable. On request by either party, the arbitration panel will provide to all disputants a reasoned opinion with findings of fact and conclusions of law and the party so requesting will pay the arbitration panel's fees and costs connected therewith.

B. **Confidentiality:** The parties to any meeting/mediation/arbitration will sign confidentiality agreements, excepting only public disclosures and filings as are required by law.

C. **Location and Attendees:** Any meeting/mediation/arbitration (and any appeal) will be conducted exclusively at a neutral location in the county in which our then-current headquarters is located, which may change from time to time, and be attended by you and us, and/or designees authorized to make binding commitments on each of our respective behalfs; provided that if any court determines that this provision is unenforceable for any reason, mediation/arbitration (and any appeal) will be conducted at a location near your unit.

D. Arbitration Authority: Arbitrators in any proceeding under this Article 19 will apply all applicable law, and a failure to apply the applicable law in accord with Section 19.14 will be deemed an act in excess of authority. The arbitrator will decide any questions relating in any way to the parties' agreement (or claimed agreement) to arbitrate, including but not limited to applicability, subject matter, timeliness, scope, remedies, claimed unconscionability and any alleged fraud in the inducement. The arbitrator may issue summary orders disposing of all or part of a claim and provide for temporary restraining orders, preliminary injunctions, injunctions, attachments, claim and delivery proceedings, temporary protective orders, receiverships and other equitable and/or interim/final relief. Each party consents to the enforcement of such orders, injunctions, etc. by any court having jurisdiction. The subpoena powers of the arbitrator with respect to witnesses to appear at the arbitration proceeding will not be subject to any geographical limitation.

E. Discovery: The disputants will have the same discovery rights as are available in civil actions under the state law selected in Section 19.14.

F. Compulsory Counter-claims: Each participant must submit or file any claim which would constitute a compulsory counter-claim (as defined by the applicable rule under the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such Claim which is not submitted or filed in such proceeding will be forever barred. In no event may offers and/or other communications made in connection with, or related in any way to, mediation, possible settlement or other resolution of a dispute be admitted into evidence or otherwise used in any arbitration or other proceeding, and any arbitration award in violation of this provision will be vacated by the arbitration appeal panel (described above) and/or any court having jurisdiction.

G. Fees and Costs: Subject to the provisions of Section 19.7, the parties will bear their own fees and costs, including attorneys' fees; provided that for matters not settled through agreement of the parties, the arbitrator may assess all, or any portion, of the fees and costs incurred in connection with any arbitration and/or appeal (but not any attorneys' fees) against the party who does not prevail.

H. Disputes Not Subject to the Mediation/Arbitration Process: Claims or disputes relating primarily to the validity of the Marks and/or any Intellectual Property licensed to you may be subjected to court proceedings or to the Process outlined in 19.1 (A), above, at our sole election; provided that only the portion of any claim or dispute relating primarily to the validity of the Marks and/or any Intellectual Property licensed to you and requesting equitable relief will be subject to court action, and any portion of such claim seeking monetary damages will be subject to the Process outlined in 19.1 (A). Any action to compel a party's compliance with Section 19.1 must be consistent with Section 19.2, below.

I. Your and Our Intentions: You and we mutually agree (and have expressly had a meeting of the minds) and expressly intend that, notwithstanding any contrary provisions of state, provincial or other law, and/or any statements in our Offering Circular required by a state/province as a condition to registration or for some other purpose:

1) all issues/disputes relating to arbitrability of issues (including whether or not any particular Claim, issue or otherwise is to be submitted to face-to-face meeting/mediation/arbitration), arbitration, waiver of jury trial, limitation of damages, venue, choice of laws, shortened periods in which to bring Claims, jurisdiction, choice-of-laws and/or the interpretation/enforcement of any of the dispute resolution-related provisions of this Agreement (including, but not limited to all of the provisions of Articles 19 and 21) will be decided by the arbitrator (together with any Claims that this, or any other, agreement, and/or their terms, were procured by fraud or uneven bargaining power, are or were unconscionable, were not subject to negotiation, or similar claims) and governed only by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the federal common law of arbitration and exclusive of state statutes and/or common law;

2) all provisions of this Agreement (including, but not limited to, Articles 19 and/or 21) will be fully enforced, including (but not limited to) those relating to arbitration, waiver of jury trial, limitation of damages, venue, choice of laws, shortened periods in which to bring Claims;

3) you and we intend to rely on federal preemption under the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and, as a result, the provisions of this Agreement will be enforced only according to its terms;

4) you and we each knowingly waive all rights to a court trial (except as expressly provided in this Agreement), understanding that arbitration may be less formal than a court or jury trial, may use different rules of procedure and evidence and that appeal is generally less available, but still strongly preferring mediation and/or arbitration as provided in this Agreement;

5) the terms of this Agreement (including but not limited to this Article 19) will control with respect to any matters of choice of law; and

6) notwithstanding the fact that a party to this Agreement is or may become a party to a court action or special proceeding with a third party or otherwise, and whether or not such pending court action or special proceeding (1) may include issues of law, fact or otherwise arises out of the same transaction or series of related transactions as any arbitration between or involving the parties to this Agreement, (2) involves a possibility of conflicting rulings on common issues of law, fact or otherwise, and (3) such pending court action or special proceeding may involve a third party who cannot be compelled to arbitrate, the agreement of the parties to this Agreement shall be enforced according to its terms and any party to this Agreement may bring an action to compel a face-to-face meeting, mediation and/or arbitration, you and we strongly preferring arbitration to court actions and wishing to have a single entity (the arbitrator) determine all issues of fact and law between or involving us, except as expressly provided otherwise in this Agreement.

19.2 Venue. Without in any way limiting or otherwise affecting your and our obligations under Section 19.1, above, you and we agree that any litigation will be held in the United States District Court encompassing our then-current headquarters (the "Proper Federal Court"). Proceedings will be held only in the Proper Federal Court, subject to the following exceptions:

A. if a basis for federal jurisdiction does not exist, then any such proceeding will be brought exclusively before a court in the most immediate state judicial district encompassing our then-current headquarters and having subject matter jurisdiction (the "Proper State Court");

B. proceedings to remove or transfer a matter to the Proper Federal Court and/or to compel arbitration as contemplated by this Agreement may be brought in the court where the applicable action is pending and/or the Proper State or Federal Court; and

C. any action primarily with respect to any real and/or personal property (including any action in unlawful detainer, ejectment or otherwise) may be brought in any court of competent jurisdiction and/or the Proper State or Federal Court.

19.3 Terms Applicable to All Proceedings, Waiver of Trial by Jury, Class Action Rights. With respect to any arbitration, litigation or other proceeding of any kind, you and we:

A. Knowingly waive all rights to trial by jury;

B. Will pursue any proceeding on an individual basis only, and not on a class-wide or multiple plaintiff basis; provided that if this provision is not enforceable for any reason, then you and we agree that with respect to any multiple plaintiff or class action, a court will supervise the procedural aspects directly related to the multiple plaintiff/class nature of the proceeding (e.g. certification of the

class, appropriateness of class representation, approval of attorneys' fees incurred on behalf of the class, approval of any settlement, etc.) and the arbitrator will decide all substantive matters related to the actual claims, including liability and damages.

19.4 Limitations on Damages and/or Remedies, Waiver of Punitive Damages. Your liability to us and/or to any of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC, for any and all claims, whenever brought, together with that of any and all Affiliates of yours, will be limited to a maximum total amount equal to the then-current level required for Federal diversity jurisdiction (currently \$75,000), plus \$1,000 for any and all claims, whenever brought, subject to inflation adjustment (liability for the present value of all payments which normally would have been owed by you if the franchise had continued in existence for its full term, together with any past due payments owed to us and/or any Affiliate, are subject to and part of such total limit); provided that there will be no limitation on indemnity obligations. Our maximum liability, together with that of any and all of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC, will also be limited to the same amount, for any and all claims, whenever brought. In any event and to the fullest extent permitted by law, you and we (and your Affiliates and the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC) each knowingly waive any right to or claim for punitive, exemplary, multiple or similar damages against the other party and agree that, in the event of any dispute, you and we (and your Affiliates and the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC) shall be limited to recovery of any actual damages sustained by the injured party, unless otherwise expressly stated in this Agreement; provided that no such waiver or limitation shall apply to amounts owed under any indemnification obligation provided in this Agreement. To the extent that any provision of this Section 19.4 is invalid or unenforceable, you and we intend that such provision shall be severed and the remainder of this Agreement shall remain in full force and effect.

19.5 Periods In Which to Make Claims. No arbitration, action or suit (whether by way of claim, counter-claim, cross-complaint, raised as an affirmative defense, offset or otherwise) by either you or us will be permitted against the other, whether for damages, rescission, injunctive or any other legal and/or equitable relief, in respect of any alleged breach of this Agreement, or any other Claim of any type, unless such party commences such arbitration proceeding, action or suit before the expiration of the earlier of:

A. 1 year after the date on which the state of facts giving rise to the cause of action comes to the attention of, or should reasonably have come to the attention of, such party; or

B. 2 years after the initial occurrence of any act or omission giving rise to the cause of action, whenever discovered.

The above periods may begin to run, and will not be tolled, even though the claiming party was not aware of the legal theories, statutes, regulations, case law or otherwise on which a claim might be based. If any federal, state or provincial law provides for a shorter limitation period than is described in this Section, then such shorter period will govern. The time period for actions for indemnity will not begin to run until the indemnified party(ies) have been found liable and any time for appeals has run in the underlying action.

19.6 Survival of Obligations.

A. Each provision of this Article 19, together with the provisions of Article 21, will be deemed to be self-executing and continue in full force and effect subsequent to and notwithstanding the expiration, Termination, rescission, or finding of unenforceability of this Agreement (or any part of it) for any reason; will survive and will govern any Claim for rescission; and will apply to and govern any Claim against, or with respect to, the Marketing Fund. Notwithstanding any bankruptcy or other proceeding, you and we wish to have the dispute avoidance and resolution provisions of this Agreement strictly enforced according to their terms.

B. Non-competition, confidentiality, protection of the Marks and indemnity/hold harmless obligations, and all other Post Termination Provisions provided in this Agreement will survive the expiration and/or Termination of this Agreement according to their terms.

19.7 Costs and Attorneys' Fees. Except as expressly provided regarding recovery of attorneys' fees as part of indemnification rights hereunder, or in this Section, or as otherwise expressly provided in this Agreement, the parties will each bear their own costs of enforcement and/or defense (including but not limited to attorneys' fees), including those matters resolved pursuant to a settlement agreement between the parties. However, if any case is summarily disposed of in an arbitration or litigation proceeding for lack of merit (such as by summary judgment or award, judgment on the pleadings, judgment n.o.v., non-suit, motion to dismiss, directed verdict or similar disposition in arbitration or court), the party bringing such case will pay for the other party's costs of enforcement and/or defense (including, but not limited to, attorneys' fees).

19.8 Binding Effect, Modification. This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns, and successors in interest, and will not be modified or supplemented except by means of a written agreement signed by both you and our President or one of our Vice Presidents. However, you and we understand and agree that changes to the Manuals made in accordance with this Agreement are binding and do not require any acceptance by you, written or otherwise, to be effective and enforceable. No other officer, field representative, salesperson or other person has the right or authority modify this Agreement, or to make any representations or agreements on our behalf, and any such modifications, representations and/or agreements will not be binding.

19.9 Our Exercise of "Business Judgment" and/or Meaning of "Sole Discretion": Express Agreement.

A. When we use the phrases "sole and absolute discretion," "sole discretion" and/or "Business Judgment," whether in this Agreement or elsewhere, and whenever we exercise a right, prescribe or forbid an act or thing, or otherwise make a choice or use discretion, you and we agree that we have the wholly unrestricted right to make decisions and/or take (or refrain from taking) actions as we deem appropriate, except that we will not act arbitrarily. We shall use our judgment in exercising such discretion based on our assessment of the interests we consider appropriate and will not be required to consider or defer to your individual interests or the interests of any other Franchisee(s). The ultimate decision-making responsibility with respect to the System must be vested in us, since you, we and all other Franchisees have a collective interest in working within a franchise system with the unrestricted flexibility to quickly adjust to changing business conditions, including but not limited to the competitive environment, new regulatory developments and emerging business opportunities. We have this right even if a particular decision/action may have negative consequences for you, a particular franchisee or group of franchisees. So long as we act in compliance with the requirements of this Agreement, we will have no liability for the exercise of our discretion in accordance with the provisions of this Agreement.

B. You and we execute this Agreement in the belief that it is the basis for a long-term business relationship and should be enforced according to its express provisions. Neither you nor we have any expectation, nor is it your or our intention or desire, that the rights and obligations set out herein will be defined or determined to be other than as expressly written, or that additional or different obligations be imposed on you or us by any court, arbitrator or otherwise which you or we have not expressly agreed to in writing. It would be contrary to your and our mutual intentions and expectations that any court, arbitrator or otherwise use any doctrine and/or rule of interpretation (such as an "implied covenant of good faith and fair dealing") to impose additional or different obligations on you or us.

19.10 Construction, etc.

A. Section and Article headings are for convenience only and do not define, limit, or construe such provisions.

B. References to a "controlling interest" are to a shareholder, membership or partnership interest, as applicable, which enables the holder(s) of such interest to determine the outcome of a decision making process for the applicable entity.

C. This Agreement will be executed in multiple copies, each of which will be deemed an original.

D. Each of us have carefully reviewed and thought about each provision of this Agreement. Therefore, you and we agree that it should be deemed to have been drafted equally and that no presumptions or inferences concerning terms or interpretation will result because we initially prepared this Agreement.

19.11 Non-Retention of Funds. Neither party has the right to offset or withhold payments of any kind owed or to be owed to the other against amounts purportedly due as a result of any dispute of any nature or otherwise, except as authorized by an arbitration award.

19.12 Severability; Substitution of Valid Provisions. Each provision of this Agreement, and any portion of any provision, is severable (including, but not limited to, any provision related to dispute resolution). Each party reserves the right to challenge any law, rule or judicial or other construction which would have the effect of varying or rendering ineffective any provision of this Agreement. To the extent that any provision of this Agreement, or any specification, standard or operating procedure prescribed by us, is invalid or unenforceable, you and we agree that such provisions will be modified or enforced to the fullest extent permissible under, and to be compliant with, governing law. This Agreement will be deemed automatically modified to comply with governing law if such law requires: (i) a greater time period for notice of the Termination of, or refusal to renew, this Agreement; or (ii) the taking of some other action not described in this Agreement. Such modifications to this Agreement will be effective only in such jurisdiction. You and we agree that the unenforceability of any provision of this Agreement will not affect the remainder of this Agreement. If any limitation on your and/or our rights (including, but not limited to, any limitation on damages, waiver of jury trial, shortened period in which to make any claim or otherwise) is held unenforceable with respect to one party, then such limitation will not apply to the other party.

19.13 Waivers; Cumulative Rights. Subject to the provisions of Section 19.5, no waiver by either party of any breach, default or unfulfilled condition under this or any other agreement between the parties will be deemed a waiver of any subsequent or other breach, default or unfulfilled condition. No waiver will be effective unless in writing and signed by an authorized representative of the signing party. The rights and remedies provided in this Agreement are cumulative. Except as expressly provided in this Agreement, no party will be prohibited from exercising any rights or remedies provided under this Agreement or permitted under law or equity.

19.14 Choice of Laws. You and we agree on the practical business importance of certainty as to the law applicable to your and our relationship and its possible effect on the development and competitive position of the System. Therefore, you and we also agree that, except with respect to the applicability of the Federal Arbitration Act, 9 U.S.C. § 1 et seq. and the effect of federal pre-emption of state law by such Act, and except to the extent governed by the United States Trademark Act and other federal laws and as otherwise expressly provided in this Agreement, this Agreement and all other matters, including, but not limited to respective rights and obligations, concerning you and us, will be governed by, and construed and enforced in accordance with, the laws of California.

You and we agree that this provision will be enforced without regard to the laws of such state relating to conflicts of laws or choice of law; except that the provisions of any law of that state regarding franchises (including, without limitation, registration, disclosure, and/or relationship laws) will not apply unless such state's jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section.

19.15 Application of Agreement to Parties and Others; Joint and Several Liability.

A. The rights and obligations of this Agreement run directly between you and us and are not intended to create any third-party beneficiary or similar rights or obligations unless specifically expressed in this Agreement; except that the protections which apply to us relating to indemnification and/or releases will also apply to any past, current and/or future Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC as if they were expressly named beneficiaries thereof.

B. We have the right to elect in our Business Judgment to not enforce (or to selectively enforce) any provision of this or any Agreement, standard or policy, whether with respect to you and/or any other franchisee or other person, in a lawful manner without liability.

C. If 2 or more persons are at any time the Franchisee or the Franchisee owners, all of their obligations and liabilities under this or any other agreement with us and/or any Franchisor-Related Persons/Entities and/or the Marketing Fund will be joint and several.

19.16 Fundamental Business Intention to Mediate and/or Arbitrate, Severability of Dispute Resolution Provisions, Federal Arbitration Act Governs, etc.

Irrespective of any statute, regulation, decisional law or otherwise, it is your and our **fundamental agreement and intention that you and we do not wish to engage in any court proceedings** (except as expressly provided for in the rare instances specified in this Agreement), viewing the dispute resolution mechanism established by this Agreement (including, particularly, mediation and binding arbitration) to be superior from a business standpoint, less expensive, faster, more confidential, more likely to generate creative business-oriented solutions and compromise, and more accommodating to our business relationship and the needs of an evolving and diverse franchise system. Therefore, if any provisions of this Article 19 are deemed by a court to be unenforceable for any reason, you and we agree and intend that such provisions will be (i) modified so as to be enforceable or (ii), if that cannot be done, severed **and, in any event, any remaining portions of this Article 19 will remain in full force and effect.** You and we agree that such remaining portions will still form an appropriate and complete dispute resolution mechanism. You and we acknowledge that your and our activities relating to the franchise relationship are in interstate commerce and that this Agreement is governed by the Federal Arbitration Act.

I have read Sec. 19.1-19.16, understand them, and agree with them.

Your Initials: _____ / _____

20. NOTICES AND PAYMENTS.

All written notices and reports to be delivered by the provisions of this Agreement or of the Manuals will be deemed so delivered when delivered by hand, immediately on transmission by facsimile transmission or other electronic system, including email or any similar means, one business day after being placed in the hands of a commercial courier service for overnight delivery, or 3 business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to us at Pinkberry, Inc., 2212 West Washington Boulevard, Los Angeles, CA90018 (or our then-current headquarters), to the attention of the President, and to you, at your Pinkberry Store. Until your Pinkberry Store has opened for business, we can send you notices at any address appearing in your application for a franchise or in our records. Any required payment or report

not actually received by us during regular business hours on the date due will be deemed delinquent. Notice to any one Franchisee, or owner of the Franchisee, will be deemed effective as to all Franchisees under this Agreement and all owners of the Franchisee(s). Any party may change its address for receipt of notices by providing prior written notice of such change to the other party.

BE SURE YOU READ THE FOLLOWING ARTICLE 21 CAREFULLY. IT IS IMPORTANT AND IT IS IN THIS AGREEMENT TO MAKE SURE THAT NEITHER YOU NOR WE HAVE ANY MISUNDERSTANDINGS.

21. ACKNOWLEDGMENTS AND REPRESENTATIONS, ENTIRE AGREEMENT, NO FIDUCIARY RELATIONSHIP, ETC.

A. You and we agree that your and our relationship is not a fiduciary or similar special relationship, but rather is an ordinary commercial relationship between independent business people with arms length dealings.

B. You acknowledge that you (and each of your owners, if you are a Business Entity) have had the opportunity and been advised by us to have this Agreement and all other documents reviewed by your own attorney, and that you have read, understood, had an opportunity to discuss and agreed to each provision of this Agreement. You agree that you have been under no compulsion to sign this Agreement.

C. You and we expressly acknowledge and agree that the provisions of Article 19, above, (whether relating to arbitration, mediation, waiver of jury trial, venue, limitations on damages, prohibition against multiple plaintiff-class actions, shortened statutes of limitation, and/or otherwise) may require you to travel to a distant location to resolve a dispute, expend additional funds, and/or raise challenges for you and/or us in prosecution of claims/actions. You and we view these provisions in the context of a diverse franchise system with both large and small, sophisticated and unsophisticated participants, and that requires uniformity and predictability. As such, you and we knowingly accept such provisions and limitations as justified by business necessities and representative of a reasonable balancing of your and our interests, and those of the System as a whole, and not as unfair or burdensome.

D. You and we agree that this Agreement contains the final, complete and exclusive expression of the terms of your and our agreement [along with concurrently signed writings, such as but not limited to, personal guarantees, Statement of Prospective Franchisee, addenda, exhibits, releases and any other related documents (collectively, the Related Documents)] and supersedes all other agreements and/or representations of any kind or nature. Any understandings, agreements, representations, or otherwise (whether oral or written) which are not fully expressed in this Agreement and the Related Documents are expressly disclaimed by you and us, including but not limited to any promises, options, rights of first refusal, guarantees, and/or warranties of any nature (excepting only the written representations made by you in connection with your application for this franchise). Neither you nor we believe it to be fair or reasonable for the other party to have to deal with allegations about understandings, representations, etc. not fully expressed in writing in this Agreement. Where this Agreement (or anything else) indicates that we (and/or any affiliate or designee of ours) may or can do something, the meaning is permissive and we (and/or the affiliate or designee of ours) will not be required to do that thing.

E. You specifically acknowledge that you have not received or relied on (nor have we or anyone else provided) any statements, promises or representations that you will succeed in the franchised business or at any location; achieve any particular sales, income or other levels of performance; earn any particular amount, including any amount in excess of your Initial Franchise Fee or other payments to us; or receive any rights, goods, or services not expressly set forth in this Agreement.

F. You represent, warrant and agree that no contingency, prior requirement, or otherwise (including but not limited to obtaining financing) exists with respect to you fully performing any or all of your obligations under this Agreement. You further represent to us, as an inducement to our entering into this franchise relationship, that you have made no misrepresentations or material omissions in obtaining the Franchise.

I have read Sec. 21 (A)- (F), understand them, and agree with them.

Your Initials: _____ / _____

G. You acknowledge that you have not received or relied on (nor have we or anyone else provided, except as may have been contained in the Uniform Franchise Offering Circular received by you):

- 1) any sales, income or other projections of any kind or nature; or
- 2) any statements, representations, charts, calculations or other materials which stated or suggested any level or range of sales, income, profits or cash flow; or
- 3) any representations as to any profits you may realize in the operations of the Franchised Business or any working capital or other funds necessary to reach any 'break-even' or any other financial level.

If any such information, promises, representations and/or warranties have been provided to you, they are unauthorized and inherently unreliable. You agree to advise us of the delivery of any such information. You must not rely upon any such information, nor will we be bound by it. We do not, nor do we attempt to, predict, forecast or project future performance, revenues or profits of any you or any franchisee. We are unable to reliably predict the performance of a Pinkberry Store even operated by us, and certainly cannot predict results for your Pinkberry Store. You understand and agree that Pinkberry Store Franchisees are separate and distinct from us and are independently owned and operated, and that while we strongly encourage you to speak with such Franchisees in connection with your evaluation of this franchise opportunity, they do not act as our agents or representatives in providing any information to you and we will have no obligations or liabilities with respect to (and you should not rely on) any information, opinions or otherwise they may provide to you.

I have read Sec. 21 (G), understand it, and agree with it.

Your Initials: _____ / _____

H. You acknowledge and agree that the success of the business venture contemplated to be undertaken by you is speculative and will be dependent on your personal efforts, and success is not guaranteed. *You further acknowledge that we have just recently begun franchising, we are not an experienced franchisor, our franchise system is relatively unproven and our business model is still under development.* You acknowledge and represent that you have entered into this Agreement and made an investment only after making an independent investigation of the opportunity, including having received a list with your Uniform Franchise Offering Circular of others currently operating, or who have operated, our franchises.

I. You acknowledge that you (and each of your owners) has received, fully read and understood, and all questions have been answered regarding, (1) a copy of our Uniform Franchise Offering Circular with all exhibits at least 10 business days prior to signing any binding documents or paying any sums (whichever occurred first), and (2) a copy of this Agreement and all other agreements complete and in form ready to sign at least 5 business days prior signing any binding documents or paying any sums (whichever occurred first).

I have read Sec. 21 (H)- (I), understand them, and agree with them.

Your Initials: _____ / _____

J. You understand, acknowledge and agree that (1) we may have offered franchises in the past, may currently be offering franchises and/or may offer franchises in the future, on economic and/or other terms, conditions and provisions which may significantly differ from those offered by this Agreement and any related documents and (2) we can, from time to time, deal with our Franchisees on differing economic and/or other terms (including making special arrangements for payments of amounts due, waiving defaults and/or otherwise) to suit individual business circumstances, in each case in our Business Judgment and without being required to offer similar terms to other Franchisees, such flexibility being a practical necessity to respond to distinct business situations.

I have read Sec. 21 (J), understand it, and agree with it.

Your Initials: _____ / _____

K. You understand that we are relying on you to bring forward in writing at this time any matters inconsistent the representations contained in this Article 21. You agree that if any of the statements or matters set forth in this Article 21 are not true, correct and complete that you will make a written statement regarding such next to your signature below so that we can address and resolve any such issue(s) at this time.

I have read Sec. 21 (K), understand it, and agree with it.

Your Initials: _____ / _____

L. You acknowledge and agree that the officers, directors, employees, and agents of the Franchisor act only in a representative capacity and not in an individual capacity, and that no other persons and/or entities other than the Franchisor has or will have any duties or obligations to you.

I have read Sec. 21 (L), understand it, and agree with it.

Your Initials: _____ / _____

22. DEFINITIONS.

The following definitions apply to terms used this Agreement:

"Affiliate" - Any person or entity which controls, is controlled by or is under common control with another person or entity; in addition, as to the Franchisee, any owner of any interest in the Franchisee or the Franchise, any employee or agent of the Franchisee, and/or any independent contractor performing functions for, or on behalf of, the Franchisee, and any entity controlled by any of the foregoing.

"Agreement" - This Franchise Agreement.

"Attorneys' Fees" - Includes, without limitation, legal fees, whether incurred in preparation of the filing of any written demand or claim, action, hearing, arbitration, or other proceeding to enforce the obligations of this Agreement, or during any such proceeding, plus all costs incurred in connection therewith.

"Brand" - The Pinkberry Store and Pinkberry™ brand, as applied to various goods and/or services as authorized by us from time to time.

"Business Entity" - Includes a corporation, partnership, joint venture, limited liability company, limited partnership, or other form of business recognized in any jurisdiction. If you are a Business Entity, then we can require each of your owners in our Business Judgment to guaranty your performance. Our current form of Owners Guaranty is attached as Exhibit 1 of this Franchise Agreement.

"Business Judgment" - Means that we are allowed to exercise our judgment however we consider to be appropriate in our sole and absolute discretion, except that we will not do so arbitrarily. You and we agree that we have the unrestricted right to make decisions and/or take (or refrain from taking) actions, (except that we will not do so arbitrarily) and we have this right even if a particular decision/action may have negative consequences for you, a particular franchisee or group of franchisees. You understand and agree that the exercise of Business Judgment is critical to our rôle as Franchisor and to our goals for its continuing improvement. This is a defined term for the purposes of this Agreement and is not intended to incorporate principles related to the application of the business judgment rule in a corporate law context.

"Customary Representations, Warranties and Agreements" - Includes commitments generally made by a transferor in connection with a transfer of a business and/or related assets, including but not limited to: representations as to ownership, condition and title to stock and/or assets, liens and encumbrances relating to the stock and/or assets, validity of contracts, and liabilities, contingent or otherwise, relating to the business/assets/entity to be acquired; full indemnification obligations and non-competition covenants by the transferor and each Affiliate, substantially similar to those required in Sections 7.4 and 8.2 of this Agreement; the delivery at closing of instruments transferring good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us in our Business Judgment), and demonstrating that all sales, transfer and/or similar taxes are to be paid by the transferor through escrow if we so require; the transfer at closing of all licenses and permits which may be assigned or transferred.

"Designated Equipment" - Equipment that meets our requirements and which you must obtain and use in the operation of your Pinkberry Store.

"Franchise" - The right to operate a single Pinkberry Store at the Premises under the terms of this Agreement.

"Franchise Advisory Council" or "FAC" - The advisory group selected (or which may be selected) in accordance with this Agreement, which will provide Input as provided in this Agreement and as we may request from time to time.

"Franchised Business" - The business operations conducted by, at or in connection with your Pinkberry Store.

“Franchisor-Related Persons/Entities” –Pinkberry Inc., Pinkberry Production Company, Iceberry, Inc, Baby Yogurt, Inc, and each and all of the following, whether past, current and/or future: each and all company(ies) and/or person(s) acting through, in concert with us and/or any of the foregoing, and/or as Affiliates of ours and/or of any of the foregoing; each and all of the Affiliates, partners, shareholders, officers, directors, agents, attorneys, accountants, and/or employees of us and/or any of the foregoing; and each and all of the predecessors, successors and/or assigns of us and/or any of the foregoing.

“General Release” - A general release, in the then-current form prescribed by us at the time such release is to be delivered, of any and all claims, liabilities and/or obligations, of any nature whatsoever, including those existing as of, and/or arising before, the date of any such release, however arising, known or unknown, whether against us and/or any or all of the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC, and whether by you, any owner of you (if you are or become a Business Entity) and/or any Affiliate of any of the foregoing. A copy of our general releasing language as currently used by us (which is subject to change) is attached as Exhibit 1.2 and is approved by you.

“Good Standing” - You are in “Good Standing” if you (and each of your owners and Affiliates) are not in default of any obligation to us and/or any of the Franchisor-Related Persons/Entities and/or the Marketing Fund, whether arising under this Agreement or any other agreement between you (and each of your owners and Affiliates) and us (and/or any of the Franchisor-Related Persons/Entities and/or the Marketing Fund), the Manuals or other System requirements (collectively, the “Obligations”); provided that you are not in Good Standing if you have been in default of any Obligations and such defaults are incurable by nature and/or part of a series of repeated defaults as defined in this Agreement.

“Gross Revenue” - Gross Revenue includes all charges and/or revenues which are, or could be, received or earned by you (and/or any Affiliate):

- 1) by, at or in connection with your Pinkberry Store;
- 2) relating to the kinds of goods or services available now or in the future through a Pinkberry Store and/or distributed in association with the Marks or the Pinkberry Store System;
- 3) relating to the operation of any Similar Business;
- 4) with respect to, any tenants and/or subtenants of yours on the Premises (including rent and other lease payments); and/or
- 5) with respect to any co-branding activities.

All sales and/or billings, whether collected or not, will be included in Gross Revenue, with no deduction for credit card or other charges. Gross Revenue does not include sales tax collected and paid when due to the appropriate taxing authority and actual customer refunds, adjustments and credits.

“Immediate Family” - With respect to any person, “Immediate Family” includes that person’s spouse and/or domestic partner and each of their respective parents, guardians, grandparents, siblings, children, grandchildren, aunts, uncles, cousins, nieces and/or nephews.

“Input” - Advice and suggestions regarding specified matters. When we receive Input from the FAC or any other franchisee group we will retain the ultimate decision-making authority and responsibility for all matters for which Input is sought. FAC (or any other franchisee group) Input, votes or other collective actions will not be binding on us unless we have otherwise agreed in writing. FAC (or any other franchisee group) approval or consent will not be required as a pre-condition to any decision and/or action we may take.

“Intellectual Property” - Includes, regardless of the form or medium involved:

- 1) all Pinkberry Store proprietary software (if any), including the data and information processed or stored thereby;

- 2) the Manuals and all other directives, policies or information we issue from time to time;
- 3) all customer relationships and information;
- 4) the Marks;
- 5) the Trade Dress;
- 6) all Confidential Information and our trade secrets; and
- 7) all other proprietary, copyrightable and/or Trade Secret information and materials developed, acquired, licensed or used by us in our operation of the System.

“Manuals” - Specifications, standards, policies and procedures prescribed by us and published to you in any media (including electronic) and which are to be followed in the operation of your Pinkberry Store as they may be changed or eliminated by us in our Business Judgment.

“Marketing Fund” - The fund established and defined under Section 11.1.

“Marks” - The trademarks, service marks and other commercial symbols now and/or in the future owned by (or licensed to) us to identify the services and/or products offered by Pinkberry Store, including (but not limited to) “Pinkberry Store”, the Trade Dress and other logos and identifiers designated by us from time to time.

“PUA” or “Per Unit Average” - The average Gross Revenue for all Pinkberry Stores during the most recent 6 month period before the measuring date.

“Post Termination Provisions” - Those promises contained in this Agreement that survive its expiration, Transfer or Termination for any reason, including, without limitation, the confidentiality, non-competition, indemnification, and dispute resolution and other provisions contained in Articles 19, 20 and 21, and all provisions related to (a) de-identification and/or return or destruction of various items and (b) audits.

“Premises” - The facility in which you will operate a single Traditional Pinkberry Store.

“Products” and “Services” - Goods, products and services designated by us from time to time for use, sale or otherwise to be provided (and/or used) at and/or from your Traditional Pinkberry Store and/or in association with the Marks.

“Similar Business” - Any enterprise that offers, is otherwise involved in, or deals with any goods, products and/or services, which are substantially similar to those goods, Products and/or Services now or in the future authorized by us to be offered at or from Pinkberry Stores (including any such enterprise and/or entity awarding franchises or licenses to operate or be involved with any such business). Our receipt of any royalties with respect to any Similar Business is not an approval of your involvement with any Similar Business.

“Special Accounts” - Classes of special customers (which may include national accounts, other large businesses, government agencies, and/or otherwise) as designated by us from time to time in our Business Judgment.

“System” - The distinctive format and method of doing business developed and used for the operation of a Pinkberry Store, and subject to change by us at any time in our Business Judgment.

“System Standards” - Standards prescribed by us in our Business Judgment from time to time, in the Manuals or elsewhere, for the operation, marketing and otherwise of Pinkberry Stores.

“Terminate” or “Termination” - “Terminate” or “Termination” when used in this Agreement means the Termination or cancellation of your rights and our obligations under this Agreement for any reason before the initial term expires. All of our rights are not cancelled on Termination since you have certain

obligations that survive the ending of the Agreement in any manner, such as, but not limited to certain promises regarding non-competition, confidentiality and indemnity. Both of us are bound by the dispute resolution provisions (Article 19) of this Agreement, even after the Agreement is ended for any reason.

“Territory” - The geographic area described in Exhibit 2.2 wherein you are authorized to operate a single Pinkberry Store Franchise Business.

“Trade Dress” - The Pinkberry Store design and image authorized by us and subject to change by us at any time and in our Business Judgment.

“Traditional Pinkberry Store” - A “Traditional Pinkberry Store” means a full, standard size, “brick and mortar” retail facility located in a free-standing building or a shopping center accessible to the general public and using the Marks and Pinkberry Store System.

“Transfer” - Defined in Section 14.2.

“Us,” “We,” “Our” or “Franchisor” – Pinkberry, Inc., a California corporation.

“Pinkberry Store” - The Traditional Pinkberry Store you are franchised to operate by this Agreement.

“You,” “Your,” or “Franchisee” - The parties signing this Agreement as Franchisee. (If there is more than one Franchisee, each is jointly and severally obligated under this Agreement and all other agreements with us, the Franchisor-Related Persons/Entities and/or the Marketing Fund). The term “you” is applicable to one or more persons or a Business Entity, as the case may be.

IN WITNESS WHEREOF, you and we have executed and delivered this Agreement in _____ counterparts on the day and year first above written.

THIS AGREEMENT WILL NOT BECOME EFFECTIVE UNLESS AND UNTIL SIGNED BY THE PRESIDENT OR A VICE PRESIDENT OF FRANCHISOR. NO FIELD REPRESENTATIVE OR OTHER PERSON IS AUTHORIZED TO EXECUTE THIS AGREEMENT FOR FRANCHISOR.

FRANCHISOR:
Pinkberry, Franchising Company, a California corporation

By: _____
Hye Kyung Hwang
Title: President

FRANCHISEE (Individual)

Signature

Signature

Printed Name

Printed Name

FRANCHISEE (Corp., LLC or Partnership)

Legal Name of Franchisee Entity

a _____
Jurisdiction of Formation Corporation, LLC or Partnership

By: _____
Name

Signature

Title

PINKBERRY FRANCHISING COMPANY.

EXHIBIT 1

**OWNER'S GUARANTY AND ASSUMPTION OF
BUSINESS ENTITY FRANCHISEE'S OBLIGATIONS**

In consideration of, and as an inducement to, the execution by Pinkberry, Franchising Company., a California corporation, ("Franchisor") of a franchise agreement of even date herewith (the "Agreement") between Franchisor and _____, a(n) _____ (state/province of formation) _____ (type of entity: LLC, LLP, corporation, etc.) (the "Business Entity Franchisee"), each of the undersigned hereby personally and unconditionally, jointly and severally:

1) guarantees to Franchisor, its Affiliates, the Franchisor-Related Persons/Entities and the Marketing Fund (as such terms are defined in the Agreement) and each of their successors and assigns, for the Term of the Agreement, and for any renewal/successor franchise term, and thereafter as provided in the Agreement, that the Business Entity Franchisee will punctually pay and perform, each and every undertaking, agreement and covenant set forth in the Agreement, as currently set forth and as amended and/or otherwise changed in the future, including any successor franchise agreement;

2) agrees to be personally bound by, and personally liable for, the breach of, each and every provision in the Agreement (including all confidentiality, non-competition, indemnity and Post Termination Provisions), as currently set forth and as amended or otherwise changed in the future, including any successor franchise agreement; and

3) agrees to be personally bound by, and personally liable for, each past, current and/or future obligation of the Business Entity Franchisee to Franchisor, its Affiliates, the Franchisor-Related Persons/Entities and/or the Marketing Fund, and each of their successors and assigns.

The undersigned intending that the guarantees and other obligations herein be unqualifiedly general and without limitation in scope, nature and/or effect. Franchisor, and/or its Affiliates, the Franchisor-Related Persons/Entities and/or the Marketing Fund, and each of their successors and assigns, need not bring suit first against the undersigned in order to enforce this guarantee and may enforce this guarantee against any or all of the undersigned as it chooses in its/their sole and absolute discretion.

Each of the undersigned waives: presentment, demand, notice of demand, dishonor, protest, nonpayment, default and all other notices whatsoever, including (without limitation): acceptance and notice of acceptance, notice of any contracts and/or commitments, notice of the creation and/or existence of any liabilities under the Agreement or otherwise and of the amounts, terms or otherwise thereof; notice of any defaults, disputes or controversies between the Franchisor and the Business Entity Franchisee or otherwise, and any settlement, compromise or adjustment thereof; any right the undersigned may have to require that an action be brought against Franchisor, Business Entity Franchisee or any other person as a condition of liability, and any and all other notices and legal or equitable defenses to which he or she may be entitled.

Each of the undersigned consents and agrees that:

- 1) his or her direct and immediate liability under this guaranty will be joint and several;
- 2) he and/or she will render any payment or performance required under the Agreement on demand if the Business Entity Franchisee fails or refuses to do so punctually;

3) such liability will not be contingent or conditioned on pursuit by Franchisor or otherwise of any remedies against the Business Entity Franchisee or any other person;

4) such liability will not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor or otherwise may from time to time grant to the Business Entity Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which will in any way modify or amend this guaranty, which will be continuing and irrevocable during the Term of the Agreement and any renewal/successor franchise term;

5) the liabilities and obligations of the undersigned, whether under this document or otherwise, will not be diminished or otherwise affected by the Termination, rescission, expiration, renewal, award of a successor franchise, modification or otherwise of the Agreement;

6) terms not defined in this document will have the meanings assigned in the Agreement; and

7) the provisions of Articles 18 through 22 of the Agreement are incorporated in and will apply to this document as if fully set forth herein and will apply to any dispute involving the Franchisor, its Affiliates, the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC and each of their successors and assigns and any of the undersigned.

In connection with such guarantee and the Franchisor (a) not requiring that the Franchise be initially awarded in the name of one or more of the Guarantors and/or (b) not requiring the payment of a full transfer fee in connection with any related transfer from the undersigned to the Business Entity Franchisee, each of the undersigned hereby grants a General Release of any and all claims, liabilities and/or obligations, of any nature whatsoever, however arising, known or unknown, against the Franchisor, its Affiliates, the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC and each of their successors and assigns.

IN WITNESS WHEREOF, each of the undersigned has here unto affixed his or her signature on the same day and year as the Agreement was executed.

GUARANTOR(S)

PERCENTAGE OF OWNERSHIP OF BUSINESS ENTITY FRANCHISEE

_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Business Entity Franchisee:

_____, a _____ corporation.

By _____

Its _____

Franchise Agreement Number: _____

PINKBERRY FRANCHISING COMPANY.

EXHIBIT 1.2

**CURRENT FORM OF
RELEASING LANGUAGE
(SUBJECT TO CHANGE BY FRANCHISOR)**

Release - General Provisions. The Franchisee(s), jointly and severally, hereby release and forever discharge each and all of the Franchisor-Related Persons/Entities (as defined below) of and from any and all causes of action, in law or in equity, suits, debts, liens, defaults under contracts, leases, agreements or promises, liabilities, claims, demands, damages, losses, costs or expenses, of any nature whatsoever, howsoever arising, **known or unknown**, fixed or contingent, past or present, that the Franchisee(s) (or any of them) now has or may hereafter have against all or any of the Franchisor-Related Persons/Entities by reason of any matter, cause or thing whatsoever from the beginning of time to the date hereof (the "Claims"), it being the mutual intention of the parties that this release be unqualifiedly general in scope and effect and that any Claims against any of the Franchisor-Related Persons/Entities are hereby forever canceled and forgiven.

THE FRANCHISEE (S) ACKNOWLEDGE THAT THEY ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

THE FRANCHISEE(S), BEING AWARE OF THIS CODE SECTION, HEREBY EXPRESSLY WAIVE ALL OF THEIR RIGHTS THEREUNDER AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT OF ANY APPLICABLE JURISDICTION, INCLUDING, WITHOUT LIMITATION, CALIFORNIA AND/OR JURISDICTIONS OF FRANCHISEE(S)' RESIDENCE AND LOCATION OF FRANCHISED UNIT.

Provided that if this Release is given in connection with the award of a franchise, then this release will not apply to Claims relating to the offer and sale of such franchise under the California Franchise Investment Law or any rule or order issued thereunder

The Franchisee(s) expressly assume the risk of any mistake of fact or fact of which they may be unaware or that the true facts may be other than any facts now known or believed to exist by Franchisee(s), and it is the Franchisee(s) intention to forever settle, adjust and compromise any and all present and/or future disputes with respect to all matters from the beginning of time to the date of this document finally and forever and without regard to who may or may not have been correct in their understanding of the facts, law or otherwise. All releases given by the Franchisee(s) are intended to constitute a full, complete, unconditional and immediate substitution for any and all rights, claims, demands and causes of action whatsoever which exist, or might have existed, on the date of this document. The Franchisee(s) represent and warrant that they have made such independent investigation of the facts, law and otherwise pertaining to all matters discussed, referred to or released in or by this document as the Franchisee(s), in the Franchisee(s) independent judgment, believe necessary or appropriate. The Franchisee(s) have not relied on any statement, promise, representation or otherwise, whether of fact, law or otherwise, or lack of disclosure of any fact, law or otherwise, by the Franchisor-Related Persons/Entities or anyone else, not expressly set forth herein, in executing this document and/or the related releases.

Franchisee(s) Initials: _____

No Assignment or Transfer of Interest. The Franchisee(s) represent and warrant that there has been, and there will be, no assignment or other transfer of any interest in any Claims that the Franchisee(s) may have against any or all of the Franchisor-Related Persons/Entities, all Claims having been fully and finally extinguished, and the Franchisee(s) agree to forever indemnify and hold the Franchisor-Related Persons/Entities harmless from any liability, claims, demands, damages, losses, costs, expenses or attorneys' fees incurred by any of the Franchisor-Related Persons/Entities as a result of any person asserting any interest in any of the Claims and/or any voluntary, involuntary or other assignment or transfer, or any rights or claims under any assignment, transfer or otherwise. It is the intention of the parties that this indemnity does not require payment by any of the Franchisor-Related Persons/Entities as a condition precedent to recovery against the Franchisee(s) under this indemnity.

Franchisee(s) Initials: _____

Attorneys' Fees. If the Franchisee(s), or anyone acting for, or on behalf of, the Franchisee(s) or claiming to have received, by assignment or otherwise, any interest in any of the Claims, commence, join in, or in any manner seek relief through any suit (or otherwise) arising out of, based upon or relating to any of the Claims released hereunder or in any manner asserts against all or any of the Franchisor-Related Persons/Entities any of the Claims released hereunder, the Franchisee(s) agree to pay all attorneys' fees and other costs incurred by any of the Franchisor-Related Persons/Entities in defending or otherwise responding to said suit or assertion directly to the Franchisor-Related Persons/Entities incurring such costs.

Franchisee(s) Initials: _____

"Franchisor-Related Persons/Entities." Franchisor, Franchisor's affiliates, any advertising fund, including the Marketing Fund, any Franchisee Advisory Group/FAC and each of the following, whether past, current or future: companies and/or persons acting through and/or in concert with us and/or with any of the foregoing; partners, shareholders, officers, directors, agents, attorneys, accountants, and/or employees of ours and/or of any of the foregoing; and predecessors, successors and/or assigns of ours and/or of any of the foregoing.

Franchisee(s) Initials: _____

Date of Releases, Joint and Several Liability. The releases granted hereunder will be deemed effective as of the date hereof. The liabilities and obligations of each of the Franchisee(s) (and any other person/entity providing releases to the Franchisor-Related Persons/Entities) will be joint and several.

Franchisee(s) Initials: _____

PINKBERRY FRANCHISING COMPANY

EXHIBIT 2.2

TERRITORY

The "Territory" is as follows:

Note: Boundary lines include only the area within the boundary line and extend only to the middle of the boundary demarcation (for example, only to the middle of a street or highway.) You have no rights under this Agreement or otherwise with respect to a facility on the other side of the boundary line, street or highway or otherwise, and no matter how close to such boundary a facility may be, regardless of the distance from, impact on, or vicinity of, your Pinkberry Store or the number of Pinkberry Store, other outlets or otherwise in any area or market. Your rights are limited as set forth in the Franchise Agreement.

FRANCHISOR:

FRANCHISEE:

Pinkberry Franchising Company.

a California corporation

Signature

Printed Name

By: _____
Hye Kyung Hwang

Signature

Title: President

Printed Name

PINKBERRY FRANCHISING COMPANY.

EXHIBIT 3.2

COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE (this "Assignment") is entered into as of _____, 200__ between _____ ("Franchisee") and Pinkberry Franchising Company., a California corporation ("Franchisor.")

Subject to the provisions hereof, the Franchisee, to secure its obligations to the Franchisor under the franchise agreement between the Franchisor and the Franchisee for the operation of a _____ franchise, dated _____, 200_ (the "Franchise Agreement"), hereby assigns, transfers and sets over unto Franchisor [and/or such person(s)/entity(ies) as Franchisor may from time-to-time designate] all of Franchisee's right, title and interest, whether as tenant or otherwise, in, to and under that certain lease (the "Lease"), a copy of which is attached to this Assignment, dated _____, 200_, between Franchisee and _____ ("Landlord"), respecting that property commonly known as _____ (the "Premises"). The Franchisor shall have no liabilities or obligations of any kind arising from, or in connection with, this Assignment, the Lease or otherwise (including, but not limited to, any obligation to pay rent and/or other amounts) until and unless the Franchisor, in its sole and absolute discretion, takes possession of the Premises pursuant to the terms hereof and expressly (and in writing) assumes the rights and obligations of Franchisee under the Lease, the Franchisor only being responsible for those obligations accruing after the date of such assumption.

The Franchisee agrees to indemnify and hold harmless the Franchisor from and against all claims and demands of any type, kind or nature made by the Landlord or any third party that arise out of or are in any manner connected with the Franchisee's use and occupancy of the Premises subject to the Lease.

The Franchisee represents and warrants to the Franchisor that the Franchisee has full power and authority to assign the Lease and its interest in the Lease.

The Franchisor will not take possession of the Premises until and unless the Franchisee defaults (and/or until there is a termination, cancellation, rescission or expiration of the Franchisee's rights) under the Lease, any sublease, the Franchise Agreement or other agreement between the Franchisee and the Franchisor (or any affiliate). In such event, the Franchisor (or its designee) shall have the right, and is hereby empowered, (but has no obligation) to take possession of the Premises, expel Franchisee therefrom, and, in such event, Franchisee shall have no further right, title or interest in or under the Lease or to the Premises, all such rights thereby passing to the Franchisor or its designee, in each case without the Landlord's further consent. The Franchisee agrees to do all acts necessary or appropriate to accomplish such assignment on the Franchisor's request. The Franchisee will reimburse the Franchisor for the costs and expenses incurred in connection with any such retaking, including, without limitation, the payment of any back rent and other payments due under the Lease (whether such payments are made by a separate agreement with the Landlord or otherwise), attorney's fees and expenses of litigation incurred in enforcing this Assignment, costs incurred in reletting the Premises and costs incurred for putting the Premises in good working order and repair.

Franchisee agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Franchisor. Throughout the term of the Franchise Agreement, Franchisee agrees that it shall elect and exercise on a timely basis all options to

extend the term, or renew or assume in bankruptcy, the Lease, unless Franchisor otherwise agrees in writing. Upon failure of Franchisee to so elect to extend or renew or assume the Lease, Franchisee hereby appoints Franchisor as its true and lawful attorney-in-fact to exercise such options in the name, place and stead of Franchisee for the sole purpose of effecting any extension, renewal or assumption, in each case for the account of the Franchisee and without any liability or obligation of the Franchisor.

Failure of the Franchisor to exercise any remedy hereunder shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Franchisor under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights and remedies which the Franchisor shall have under or by virtue of the Franchise Agreement or otherwise. The terms, covenants, and conditions contained herein shall bind the Franchisee and its successors and assigns, and inure to the benefit of the Franchisor and its successors and assigns. In the event of any dispute between the parties regarding this Assignment, or any matter related in any way to it, the dispute resolution provisions (including, but not limited to, mediation, binding arbitration, waiver of jury trial and limitation of damages) of the Franchise Agreement between the Franchisor and the Franchisee shall apply. The arbitrator in any such proceeding shall have the full power and authority to grant an appropriate award to give full effect to this Assignment, expelling the Franchisee from the Premises and awarding possession to the Franchisor, as well as granting such other relief as may be proper and fair at law and by equity. If there is more than one Franchisee, their obligations hereunder will be joint and several.

This Assignment, any memorandum hereof or any financial statement related hereto may be recorded by, and at the expense of, the Franchisor. The Franchisee hereby appoints the Franchisor as its attorney in fact to execute any and all documents and to take any and all such actions, as are necessary or appropriate to record such instrument referenced above.

Notwithstanding anything to the contrary contained herein, the Franchisee agrees to indemnify, defend and hold harmless the Franchisor with respect to all obligations and liabilities, including, without limitation, the obligations to pay all rent and other monies due under the Lease, that arise after the date of any assignment of the Lease that transpires under this Assignment; provided, however, nothing hereunder shall affect any obligations or covenants of the Franchisee owed under its Franchise Agreement with the Franchisor, including, without limitation, any post-termination covenant not to compete.

FRANCHISEE:

Signature

Signature

Printed Name

Printed Name

LANDLORD APPROVAL:

The undersigned Landlord hereby consents to and approves of the above-described Collateral Assignment of Lease by the Franchisee to the Franchisor and further agrees that immediately upon notice to the Landlord, the Franchisor shall have the right to succeed the Franchisee as the tenant under the Lease without further action or consent by any of the parties hereto; provided, however, nothing in the Assignment or in the consent and approval by the Landlord to the Assignment shall affect any other rights of the Landlord under the Lease.

LANDLORD

FRANCHISOR

By: _____

By: _____

Its _____

Its _____

PINKBERRY FRANCHISING COMPANY.

EXHIBIT 3.3

ADA AND RELATED CERTIFICATIONS

Pinkberry, Inc. ("Franchisor") and _____ ("Franchisee") are parties to a franchise agreement dated _____, 20__ (the "Franchise Agreement") for the operation of a Pinkberry Store at _____ (the "Store"). In accordance with Section 3.3 of the Franchise Agreement, Franchisee certifies to Franchisor that the Store and its adjacent areas comply with all applicable federal, state and local accessibility laws, statutes, codes, rules, regulations and standards, including but not limited to the Americans with Disabilities Act and all local zoning regulations and building codes. Franchisee acknowledges that it is an independent contractor and the requirement of this certification by Franchisor does not constitute ownership, control, leasing or operation of the Store. Franchisee acknowledges that Franchisor has relied on the information contained in this certification. Furthermore, Franchisee agrees to indemnify Franchisor and each and all of the Franchisor-Related Persons/Entities the Marketing Fund and the FAC, in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with Franchisee's compliance (or failure to comply) with the Americans with Disabilities Act, all local zoning regulations and building codes and otherwise, as well as the costs, including attorneys' fees, related to the same.

FRANCHISEE

By: _____

Printed Name: _____

Title: _____

Date: _____

PINKBERRY FRANCHISING COMPANY

EXHIBIT 8.1

PINKBERRY STORE FRANCHISEE EMPLOYEE CONFIDENTIALITY, ETC. AGREEMENT

*(Note to Franchisee: This is a form which has **not** been checked by us for compliance with local laws and should be reviewed by your attorney for your protection and to maximize enforceability. You are responsible for ensuring that the terms of the agreement used by you comply with all applicable laws, since they may vary from one state or province to another.)*

As an employee of _____ [Name of Franchisee] ("Company") and in consideration of the compensation and benefits from my employment, I agree as follows:

For purposes of this Agreement, the term Confidential Information means information of any type that the Company considers confidential and is not generally known by the public about the Company and/or the Company's Franchisor, Pinkberry, Franchising Company., and its/their business, processes, services, products, suppliers, customers, decisions, or plans, which information is used or useful in the conduct of the Company's business, or which confers or tends to confer a competitive advantage over one who does not possess it, whether or not marked confidential. Confidential Information includes recipes, business plans, customer lists, business records and files, sales and marketing reports, technical data, prices and costs, designs and formulas, software, databases, personnel and payroll records, mailing lists, accounting records, and other business information.

1. During my employment by the Company, I will not disclose or make use of any Confidential Information except as authorized by the Company and necessary for the performance of my duties as a Company employee.

2. After my employment with the Company has terminated, I will not disclose or make use of any Confidential Information for any purpose, either on my own or on behalf of another business.

3. During my employment by the Company, I will not make use of any trade secrets or other material belonging to another employer or other third party without the express approval of the Company and such employer or other third party.

4. I represent that I am not subject to any other confidentiality agreement(s) with any other party that would prevent me from performing all my assigned duties as an employee of the Company.

5. I understand and agree that the products of my labor as a Company employee shall belong solely to the Company.

6. I hereby assign to the Company all rights that I may have to any inventions, works of authorship, developments, improvements, or trade secrets that I may develop during the course of my employment.

7. I understand and agree that all works of authorship to which I contribute during my employment shall be considered "works made for hire" and shall be the sole property of the Company.

8. I will keep adequate records of all inventions and works of authorship to which I contribute during my employment, and will make such records available to the Company on request.

9. I will cooperate with the Company and do whatever is necessary or appropriate to obtain patents, copyrights, or other legal protection on projects to which I contributed, and if I am incapacitated for any reason from doing so, I hereby authorize the Company to act as my agent and to take whatever action is needed on my part to carry out this Agreement.

10. Upon termination of my employment for any reason, I will immediately assemble all property of the Company in my possession or under my control, and return it unconditionally to the Company.

11. During my employment, I will devote all of my working time and energy to the business of the Company, and will not render services to anyone outside the Company, accept competing employment, or make preparations to compete with the Company.

12. During and for a period of twelve months after my employment, I will not solicit or induce any employee or consultant of the Company to quit their employment or cease doing business with the Company, unless I am specifically authorized to do so by the Company.

13. I understand and agree that a violation of this Agreement may cause harm to the Company's reputation, customer relationships, and other aspects of its business for which an award of money damages would not be adequate. I therefore agree that the Company shall be entitled to a court order as appropriate to prevent me from violating this Agreement, in addition to any claims for money damages or other relief.

14. For purposes of enforcing this Agreement, I hereby consent to jurisdiction in the Superior Court of _____ for the County of _____ in the State of _____, as well as any other jurisdiction allowed by law. This Agreement shall be governed by the laws of the State of _____.

15. If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to recover attorneys' fees.

16. This Agreement does not guarantee me any term of employment, or limit my or the Company's right to terminate my employment at any time with or without cause.

17. This Agreement may be amended only in writing, signed by the parties. If any provision of this Agreement is invalid, all other provisions shall remain in effect.

18. This Agreement is binding on my successors and assigns, and will benefit the successors and assigns of the Company.

The parties indicate their agreement to these terms by signing below:

EMPLOYEE

FRANCHISEE COMPANY NAME

Print Name

Print Name

Sign Name

Sign Name

Dated

Dated

PINKBERRY FRANCHISING COMPANY
FRANCHISE AGREEMENT

Franchisee

Location

Date of Agreement

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