

EXHIBIT 3

**PRETZEL TIME®
FRANCHISE AGREEMENT**

BETWEEN

**PRETZEL TIME FRANCHISING, LLC
2855 East Cottonwood Parkway
Suite 400
Salt Lake City, Utah 84121
(801) 736-5600**

AND

Name(s) of Franchisee

Street

City State Zip Code

() _____
Area Code Telephone

Franchised Store:

Street

City State Zip Code

() _____
Area Code Telephone

Date of Franchise Agreement

_____, 20____

**PRETZEL TIME®
FRANCHISE AGREEMENT**

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ACKNOWLEDGEMENT ADDENDUM TO PRETZEL TIME® FRANCHISE AGREEMENT

OWNERSHIP ADDENDUM TO PRETZEL TIME® FRANCHISE AGREEMENT

GUARANTY

APPENDIX A – AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS
(DIRECT DEBITS)

PRETZEL TIME® FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the "Agreement") is between PRETZEL TIME FRANCHISING, LLC, a Delaware limited liability company, with its principal business address at 2855 East Cottonwood Parkway, Suite 400, Salt Lake City, Utah 84121 (referred to in this Agreement as "we" and like terms), and _____, a _____, whose principal business address is _____ (referred to in this Agreement as "you" and like terms).

OUR AGREEMENT WITH YOU: By signing this Agreement, you and we agree to all of the terms and provisions in this Agreement and in any exhibits, addenda and appendices to this Agreement. By signing this Agreement, you are also affirming that you understand and accept the Preambles in Article 1 of this Agreement. Finally, by signing the Acknowledgment Addendum attached hereto, you are affirming that you understand and accept all of the acknowledgments and representations contained therein.

ARTICLE 1

DEFINITIONS; PREAMBLES; AND ACKNOWLEDGMENTS

1.1 Date of Agreement. The date of this Agreement is _____, 20__.

1.2 Definitions.

(a) "Affiliate," as used in relation to us, means any person or entity that directly or indirectly owns or controls us, is directly or indirectly owned or controlled by us or is under common control with us.

(b) "Competitive Business" means any business operating, or granting franchises or licenses to others to operate, a bakery, snack food or dessert restaurant or retail outlet or any similar food service business, except for an existing bakery, snack food or dessert restaurant or retail outlet or similar food service business owned and operated by you, which has been disclosed to us in writing prior to execution of this Agreement.

(c) "Confidential Information" means any information relating to the Pretzel Time Products or the development or operation of Pretzel Time Stores, including site selection criteria; recipes and methods for the preparation of Pretzel Time Products; methods, techniques, formats, specifications, systems, procedures, sales and marketing techniques and knowledge of and experience in the development and operation of Pretzel Time Stores; marketing programs for Pretzel Time Stores; knowledge of specifications for and suppliers of certain Pretzel Time Products, materials, supplies, equipment, furnishings and fixtures.

(d) "Controlling Interest" means an interest, the ownership of which empowers the holder to exercise a material influence over the management, policies or personnel of an Entity. Ownership of 5% or more of the equity or voting securities of a corporation, limited liability company or limited liability partnership or ownership of any general partnership interest in a general or limited partnership will be deemed conclusively to constitute a Controlling Interest in the corporation, limited liability company, or partnership, as the case may be.

(e) "Entity" means a corporation, general partnership, joint venture, limited partnership, limited liability partnership, limited liability company, trust, estate or other business entity.

(f) **“Entity Owner”** means, with respect to an Entity, any shareholder owning directly or beneficially 5% or more of any class of securities of the Entity; any general partner or co-venturer in the Entity; any partner in a limited liability partnership or member in a limited liability company owning directly or beneficially 5% or more of the ownership interests in the limited liability partnership or limited liability company; the trustees or administrators of any trust or estate; and any beneficiary of a trust or estate owning, directly or beneficially, 5% or more of the interests in the trust or estate. If any Entity Owner within the scope of this definition is itself an Entity (including an Entity Owner that is an Entity Owner because of this sentence), the term “Entity Owner” also includes Entity Owners (as defined in the preceding sentence) in the Entity. It is the intent of this definition to “trace back” and include within the definition of Entity Owner all natural persons owning the requisite interests to qualify as Entity Owners.

(g) **“Gross Revenues”** means the aggregate amount of all sales of Pretzel Time Products, other items, and services made and rendered in connection with the operation of the Franchised Store (as defined in Section 2.1(a)), including sales made at or away from the Premises of your Store, whether for cash or credit, but excluding all federal, state or municipal sales, use, or service taxes collected from customers and paid to the appropriate taxing authority.

(h) **“Marks”** means the trademarks, trade names, service marks, logos and other commercial symbols which we authorize franchisees to use to identify the Pretzel Time products and/or services offered by Pretzel Time Retail Outlets, including the trademark and service mark PRETZEL TIME® and the Trade Dress (as defined in Section 1.2(o)) and the goodwill associated therewith; provided that we have the right to modify and/or discontinue the use of such trademarks, trade names, service marks, logos and other commercial symbols and the Trade Dress, and establish, in the future, additional or substitute trademarks, trade names, service marks, logos, commercial symbols or Trade Dress.

(i) **“Pretzel Time Store”** means a retail snack, dessert, and beverage outlet selling any Pretzel Time Products and other products for off-premises consumption and services specified by us. The term “Pretzel Time Store” includes carts and kiosks selling the Pretzel Time Products. We have the right to approve all carts and kiosks.

(j) **“Pretzel Time Retail Outlet”** means any store or outlet, such as a Pretzel Time Store, a mail order outlet, or an in-store bakery outlet located in a retail grocery, fast food, convenience or other retail store, which sells any of the Pretzel Time Products under the Marks or other trademarks or service marks. A Pretzel Time Retail Outlet may be owned or operated by us or our Affiliates or by franchisees or licensees of us or our Affiliates.

(k) **“Pretzel Time Products”** means products approved or required by us or our Affiliates from time to time for sale at or from Pretzel Time Retail Outlets, including hand-rolled soft pretzels of various flavors, frozen pretzels and other pretzel-related products and toppings, beverages and other products approved by us or our Affiliates; provided that we have the right to modify and/or discontinue the use of the foregoing products from time to time and include additional or substitute products.

(l) **“Pretzel Time System”** means our business formats, signs, equipment, methods, procedures, designs, layouts, and specifications, including the use of the Marks and the Trade Dress, which we have the right to modify in the future.

(m) **“Restricted Person”** means you; each of your Entity Owners, if you are an Entity; and the spouses, natural and adopted children, and siblings of any of you and your Entity Owners.

(n) “**System Standards**” means the operating procedures, standards, requirements and specifications, whether contained in the Operations Manuals or elsewhere, which we have the right to improve, further develop or modify from time to time and which are mandatory in nature so as to comprise the requirements to be followed with respect to Pretzel Time Stores and the use of the Marks in connection therewith.

(o) “**Trade Dress**” means the designs, color schemes, decor and images which we authorize and require our franchisees to use in connection with the operation of Pretzel Time Stores, which we or our Affiliates have the right to revise and further develop from time to time.

(p) “**Transfer**” means the voluntary or involuntary, direct or indirect transfer, assignment, sale, gift, pledge, mortgage, hypothecation or other disposition (including those occurring by operation of law and a series of transfers that in the aggregate constitute a Transfer) of any of your interest in this Agreement ~~<or of>~~ [your Pretzel Time Store or a substantial portion of its assets, the lease for your Pretzel Time Store or] a Controlling Interest in you.

1.3 Preambles. Pretzel Time Stores operate under distinctive business formats, systems, methods, procedures, designs, layouts and specifications, all of which we have the right to improve, further develop or modify in the future. We and our Affiliates have expended a considerable amount of time and effort in developing and refining the recipes for and the methods of preparation of Pretzel Time Products to obtain high product quality. We have the right to modify these recipes and methods of preparation, and these modifications may require you to prepare pretzels and other Pretzel Time Products from scratch mixes and to purchase flour, prepared pretzel dough or other prepared food products from us or our Affiliates, or other approved suppliers. One of our Affiliates currently owns and operates Pretzel Time Retail Outlets, and we and our Affiliates may own and operate Pretzel Time Retail Outlets in the future. We or our Affiliates own the Marks. We and our Affiliates have franchised and licensed and, in the future, have the right to continue to franchise and license others to operate Pretzel Time Retail Outlets.

ARTICLE 2

GRANT OF FRANCHISE

2.1 Franchise.

(a) Grant of Franchise. You have applied for a franchise to own and operate a Pretzel Time Store (the “**Franchised Store** or “**Store**”) at and only at _____ (the “**Premises**”). Subject to the terms and conditions of this Agreement, we grant you a NON-EXCLUSIVE franchise (the “**Franchise**”) to operate your Store at the Premises and to use the Pretzel Time System in the operation of your Store. You hereby accept the Franchise and undertake the obligation to operate your Store using the Pretzel Time System in accordance with the System Standards. The Franchise granted herein is limited to the right to operate the one Franchised Store at the Premises, and does not include an exclusive area or protected territory within which we or our Affiliates agree not to issue franchises or operate competing businesses. We and our Affiliates have the right to issue franchises or operate competing businesses for or at locations, as determined by us or our Affiliates, near the Premises. You have no right to construct or operate any additional, expanded or modified facilities on the Premises, nor any right to construct or operate a Pretzel Time Store at any location other than the Premises. In addition, you have no right to sublicense pursuant to this Agreement.

(b) Pretzel Time Products. In operating your Store, you may offer for sale only those Pretzel Time Products that we approve from time to time for you to sell at the Premises. The Pretzel Time Products that you initially are authorized to offer at your Store are explained in the Operations Manuals referred to in Section 5.2. In the future, we have the right to change or add to the Pretzel Time Products that you are authorized to offer at the Premises and notify you of such changes or additions, as we determine, through references to the Operations Manuals, bulletins and other written materials, electronic computer messages, telephonic conversations, and/or consultations at our offices or at your Store. We typically base our determination on whether you will be allowed to offer an expanded line of Pretzel Time Products on our evaluation of your compliance, over time, with the System Standards described in Section 7.1, particularly those related to quality. We do not base our determinations on sales or marketing quotas, volumes or results. Although the Pretzel Time Products sold at Pretzel Time Stores may vary from Store to Store, you may only sell those Pretzel Time Products that we authorize you to sell from your Store.

2.2 Reservation of Certain Rights. We and our Affiliates have the right to: (1) establish Pretzel Time Retail Outlets, including Pretzel Time Store franchises, licenses or businesses owned by us or our Affiliates, at any locations we deem appropriate; (2) distribute Pretzel Time Products and any other products or services through alternative channels of distribution using the Marks; and (3) establish businesses which are franchised, licensed or owned by us or our Affiliates at any locations we deem appropriate or distribute products or services through alternative channels of distribution (as described in Section 7.3) which are similar to the Pretzel Time Products under trade names, trademarks, service marks, trade dress or other commercial symbols other than the Marks.

ARTICLE 3

INITIAL TERM AND RENEWAL

3.1 Initial Term of the Franchise Agreement. The initial term of this Agreement will be 7 years, commencing on the date of this Agreement. This Agreement may be renewed as provided in Section 3.2. This Agreement may be terminated prior to expiration of its term if: (i) the lease or sublease of the Premises is terminated as provided in Section 4.2(c) and 13.1(f); (ii) the lease or sublease of the Premises expires and you are unable to obtain a replacement lease or sublease, as provided in Sections 4.2(c) and 13.1(f); or (iii) this Agreement is otherwise terminated in accordance with Article 13. References in this Agreement to the term of this Agreement mean the initial term and any properly exercised renewal term.

3.2 Renewal. If you are not in default at the time of exercise of a renewal option and at the time the prior term expires, you shall have the right to renew this Agreement for one additional 7-year term, provided that:

(a) You give us written notice of your intention to renew at least 180 days prior to expiration of the then current term;

(b) You sign our then current form of Franchise Agreement which may include different continuing fees and marketing fees, other fees and charges, and changes in performance criteria and in other terms and conditions, and our then current Renewal Addendum to such Franchise Agreement, which shall, among other things, establish that the Franchise Agreement is for a renewal term with no additional renewal rights, and contain a general release of any and all claims against us or our Affiliates and our and their respective officers, directors, attorneys, shareholders and employees;

(c) At our request, you refurbish, remodel, redecorate, and renovate your Store at the commencement of the renewal term to meet our then current standards for Pretzel Time Stores, including designs and service systems, computer and point-of-sale equipment, and Trade Dress;

(d) You have complied with all of the terms and conditions of this Agreement or any other agreement between you and us during the initial term;

(e) All monetary obligations owed by you to us, our Affiliates or your suppliers or creditors, whether pursuant to this Agreement or otherwise, have been satisfied prior to renewal, and have been paid in a timely manner throughout the initial term;

(f) You have the right to maintain the Premises for at least the duration of the renewal term and provide a copy of the lease to us; and

(g) You follow our then current renewal process, which may require you to deliver certain financial statements and other records and reports to us, attend additional training and cooperate in any audits and/or inspections we may conduct or require.

We will not charge any renewal fee in connection with any renewal under this Section 3.2. If we determine that you have met all of the conditions described above prior to the expiration date, we will provide you with an execution copy of the form of Franchise Agreement to be entered into for the renewal term. If you do not execute and return the renewal Franchise Agreement to us within 30 days of receipt, then you will be deemed to have withdrawn your notice of renewal, and this Agreement will terminate at the end of the current term.

ARTICLE 4

SITE SELECTION, LEASE OF PREMISES AND DEVELOPMENT OF YOUR STORE

4.1 Site Selection. You must obtain our written approval of the Premises before you sign a lease or sublease for or begin construction of the Premises. Our approval of the Premises is based and made in reliance upon information you furnish and representations you make to us (all of which we assume you have carefully and fully considered in selecting the Premises and proposing the Premises to us) with respect to the size, appearance and other physical characteristics of the Premises, photographs of the Premises, and demographic characteristics, traffic patterns, competition from other businesses in the area (including other Pretzel Time Retail Outlets) and other commercial characteristics (including the purchase price, rental obligations, and other lease terms). Our approval of the Premises and any information communicated to you regarding the Premises do not constitute an express or implied representation or warranty of any kind as to the suitability of the Premises for a Pretzel Time Store or for any other purpose. Our approval of the Premises indicates only that we believe that the Premises falls within our criteria as of the time period encompassing the evaluation. Both you and we acknowledge that application of criteria that have been effective with respect to other sites and premises may not predict the potential results for a specific site and that, subsequent to our approval of a site and Premises, demographic and/or economic factors, including competition from other bakery, snack food and dessert restaurants and retail outlets and similar food service businesses, included in or excluded from our criteria, could change, thereby altering the potential of a site. The uncertainty and instability of the factors included in the criteria are beyond our control and we will not be responsible to you for the failure of the Premises to meet expectations as to potential revenue or operational criteria. We may have rendered certain assistance in connection with you obtaining the Premises, including identifying one or more sites that we believe are available for development, recommending a real estate or business broker, or utilizing any information, contacts, databases and referral networks to which we may have access.

Notwithstanding any such assistance, you acknowledge that you have conducted your own diligent review of the site, and your acceptance of a Franchise for the operation of a Pretzel Time Store at the Premises is based on your own independent investigation of the suitability of the Premises.

4.2 Acquisition of the Premises.

(a) Your Obligation to Obtain Lease Unless you own the Premises, you agree to obtain any necessary lease or sublease for the Premises. We may (but are not obligated to) assist you in the process of obtaining and/or negotiating a lease or sublease for the Premises. In any event, you agree to obtain our approval of the terms of the lease or sublease for the Premises prior to your execution of the lease or sublease. You agree not to execute a lease or sublease which we have disapproved, and you must deliver a copy of the signed, approved lease to us within 15 days after its execution. Any lease or sublease must be in a form satisfactory to us. Prior to execution of the lease or sublease, you must also sign, and obtain agreement from the landlord of the Premises to sign, an addendum to the lease or sublease in a form that we provide or approve (the "Lease Addendum"). The lease, sublease or Lease Addendum must:

(i) Provide for notice to us of any default by you under the lease or sublease and provide us with a right (but no obligation) to cure the default. If we cure any default, the total amount of all costs and payments incurred by us in curing the default will be immediately due and owing to us by you;

(ii) Provide that you have the right to assign your interest under the lease or sublease to us without the lessor's or sublessor's consent;

(iii) Authorize and require the lessor or sublessor to disclose to us, upon our request, sales and other information that you furnish to the lessor or sublessor; and

(iv) Provide that we, one of our Affiliates or, in the case that clause (4) below is applicable, our assignee has the right to assume the lease or sublease:

(1) Upon expiration or termination of this Agreement, or

(2) If you fail to exercise any options to renew or extend the lease or sublease, or

(3) If you commit a default that gives the lessor or sublessor the right to terminate the lease or sublease, or

(4) If we or one of our Affiliates or our assignee purchases your Store as permitted by Section 14.5.

(b) Use of Premises Currently Under Lease to Us. If we or one of our Affiliates is currently leasing the Premises and has the right under that lease to sublease the Premises to you, and you desire to sublease the Premises from us or our Affiliate, and we or our Affiliate offer the Premises to you, then you agree to execute our then current form of sublease and, if you are an Entity, have each of your Entity Owners execute our then current form of guaranty. If we or one of our Affiliates elects to assign an existing lease to you and you desire to obtain an assignment of the existing lease, unless we otherwise agree, you agree to arrange for the release of us or our Affiliate from all obligations under the assigned lease, as of the date of the assignment, and you agree to obtain from the landlord any consents, agreements, and lease amendments as are

required so that the assigned lease satisfies the requirements of Section 4.2(a), as if the assigned lease were a third-party lease.

(c) Expiration or Termination of Lease. If a current lease or sublease will expire prior to expiration of this Agreement, you may attempt to obtain a replacement lease or sublease. We will have the right to approve any proposed replacement lease or sublease as otherwise provided in this Article. If you are unable to obtain a replacement lease or sublease that meets our approval prior to the expiration of the current lease or sublease, (i) you have the right to terminate this Agreement, subject to your observation of all notice provisions and post-term obligations set forth in this Agreement, including the continuing obligations described in Section 14.7, or (ii) we have the right to terminate this Agreement in accordance with Section 13.1(f). In addition, if the current lease or sublease is terminated for any reason prior to its expiration, we have the right to terminate this Agreement in accordance with Section 13.1(f).

(d) Effect of our Approval of Lease. Our approval of a lease or sublease for the Premises or the granting by us or one of our Affiliates of a sublease or lease assignment for the Premises does not constitute an express or implied warranty by us of the successful operation or profitability of a Pretzel Time Store operated at the Premises. The approval indicates only that we believe the Premises and the terms of the lease fall within the acceptable criteria established by us as of the time period encompassing the evaluation.

4.3 Franchised Store Development.

(a) Plans and Specifications. You are responsible for constructing and developing your Store. We will furnish you prototypical plans and specifications for a Pretzel Time Store, including requirements for exterior and interior materials and finishes, dimensions, design, image, interior layout, decor, fixtures, equipment, signs, furnishings and color scheme. You must comply with these plans and specifications. You agree to have prepared all required construction plans and specifications to suit the shape and dimensions of the Premises and to ensure that the plans and specifications comply with applicable ordinances, building codes and permit requirements and with lease requirements and restrictions. You acknowledge that construction plans must be based on the prototypical plans and specifications. You agree to submit construction plans and specifications to us for our approval before construction of your Store is commenced, and you agree to submit all revised plans and specifications to us for our approval during the course of construction. Upon completion of construction, you also agree to provide us with a set of "as built" plans and specifications. Further, you acknowledge and agree that you assume all risk relating to the construction and development of your Store, and our approval of your construction plans and specifications does not constitute an express or implied representation or warranty of any kind as to the quality of such construction or development or the success of your Store.

(b) Development Obligations. You agree to do each of the following:

- (i) Secure all financing required to develop and operate your Store;
- (ii) Obtain all required building, utility, sign, health, sanitation, business, environmental and other permits and licenses required for construction and operation of your Store;
- (iii) Construct all required improvements to the Premises and decorate your Store in compliance with plans and specifications that we approve;

(iv) Purchase and install all fixtures, furnishings, equipment and signs required for your Store in accordance with Section 4.4; and

(v) Purchase an opening inventory of Pretzel Time Products, materials and supplies.

4.4 Fixtures, Furnishings, Equipment, Signs and Computer Systems. In developing and operating your Store, you agree to do each of the following:

(a) Use only the fixtures, furnishings, equipment and signs that we require and have approved for Pretzel Time Stores as meeting our System Standards;

(b) Place or display at the Premises (interior and exterior) only the signs, emblems, lettering, logos and display materials that we approve in writing. However, we have the right to install all required signs at the Premises at your sole expense; and

(c) Use the computer equipment and operating software ("Computer System") that we specify from time to time. We have the right to require you to obtain specified computer hardware and/or software and modify specifications for and components of the Computer System from time to time. Our modification of specifications for the Computer System's components may require you to incur costs to purchase, lease and/or license new or modified computer hardware and/or software and to obtain service and support for the Computer System during the term of this Agreement. You agree to incur the costs of obtaining the computer hardware and software comprising the Computer System (or additions or modifications). Within 60 days after you receive notice from us, you agree to obtain the components of the Computer System that we designate. We have the right to independently access the information and data you collect and gather using any Computer System or other data collection equipment (such as an electronic cash register) we require for your Store.

You agree that all fixtures, furnishings, equipment, signs and computer systems used in connection with the operation of your Store will be free and clear of all liens, claims and encumbrances, except for liens, claims or encumbrances asserted by us and except for third party purchase money security interests.

4.5 Franchised Store Opening. You will not open your Store for business until:

(a) We approve your Store for opening;

(b) Pre-opening training of you and Franchised Store personnel has been completed to our satisfaction;

(c) The initial franchise fee and all other amounts then due to us have been paid in full;

(d) The lease documentation, including the Lease Addendum has been executed and all other documentation has been completed in connection with the development of your Store; and

(e) We have been furnished with copies of all insurance policies required by this Agreement and evidence of payment of premiums.

Subject to your compliance with the conditions set forth in this Section 4.5, you agree to open your Store for business within 180 days after this Agreement is signed or on or before the date specified in any lease or sublease for the Premises, whichever is earlier.

4.6 Grand Opening Promotion. You agree to conduct a grand opening advertising and promotion program for a newly developed Franchised Store for a period of at least 7 days, commencing within 30 days after the opening of your Store. You agree to spend no less than \$5,000 to promote the grand opening. The advertising and promotion will utilize the standard marketing and public relations programs and media and advertising materials that we have developed for grand opening programs. You must purchase these materials from us, and we will make them available to you upon written request, in advance of the opening of your Franchised Store. Payments for these materials are non-refundable. You may also incur expenses from other vendors and suppliers in connection with your grand opening promotion.

4.7 Relocation. Should it become necessary, on account of the condemnation of the Premises or the exercise of a relocation right by your landlord or for some other reason approved by us in writing to relocate the Store, we will consent to such relocation at a site acceptable to us provided that:

- (a) You are in full compliance with this Agreement;
- (b) You give us written notice of your desire to relocate at least 30 days prior to the date your Store will close for relocation;
- (c) You find relocated Premises that meet all of our then current site criteria for the development of new Pretzel Time Stores and obtain our written approval of the relocated Premises within 60 days after the date your Store will be closed for relocation and before you sign a lease or sublease or begin construction of the relocated Premises, and you open the relocated Store at the relocated Premises within 180 days after the date your Store closes for relocation;
- (d) You construct and develop the relocated Store in accordance with all of our then current System Standards for Pretzel Time Stores, including designs and service systems, and Trade Dress;
- (e) You have sufficient term remaining under this Agreement, or purchase from us sufficient additional term under this Agreement, to satisfy our then current policy on remaining term requirements for relocations;
- (f) You pay to us our then current relocation fee; and
- (g) At our request, you execute a general release, in a form satisfactory to us, of any and all claims against us or our Affiliates and our and their respective officers, directors, attorneys, shareholders and employees, and any other ancillary agreements we are then using for relocations, or, in the event you are required to purchase additional term as set forth in Section 4.7(e), you sign our then current form of Franchise Agreement, which may include different continuing fees and marketing fees, other fees and charges, and changes in performance criteria and in other terms and conditions, which will be effective for a period commencing on the date you sign such agreement and ending upon the expiration of the additional purchased term.

In the event we consent to a relocation of your Store, you must, upon the closure of your former Store and at your expense: (i) promptly remove from the former Store Premises any and all signs, fixtures, furniture, posters, furnishings, equipment, menus, advertising materials, stationery supplies,

forms and other articles which display any of the Marks or any distinctive features or designs associated with the System and either use them in your relocated Store or dispose of them as directed by us, and (ii) immediately make such modifications or alterations as we deem necessary to distinguish the former Store Premises from other Pretzel Time Stores so as to prevent any possibility of confusion by the public. If after consenting to a relocation of your Store you fail to comply with any of the conditions set forth in this Section 4.7, we have the right to revoke our consent to such relocation and hold you in default of this Agreement for abandonment. In addition, while your former Store is closed for relocation, you may not Transfer your interest in this Agreement, and any such transfer will constitute a breach of this Agreement and will be void and of no effect.

ARTICLE 5 TRAINING AND GUIDANCE

5.1 Training.

(a) Training for You and your Store Manager. Prior to your Store's opening, we will furnish an initial training program on the operation of Pretzel Time Stores to you (or one of your Entity Owners, if you are an Entity) and the initial store manager (if the store manager is different from you). The training program will be furnished at our designated training facility, a Pretzel Time Store owned and operated by one of our Affiliates, or any other location designated by us. You (or one of your Entity Owners) and the manager of your Store (if different from you) agree to complete all phases of the training program to our satisfaction and to participate in all other activities required to open your Store. Subsequent managers will also be required to satisfactorily complete all phases of our training program. Under no circumstances shall you permit management of the Store by a person who has not been certified by us as qualified to manage the Store by completing all phases of our training program to our satisfaction. We will furnish the initial training program to you (or one of your Entity Owners, if you are an Entity) and to the initial store manager (if different from you) free of charge if it is conducted at our training facility or a Pretzel Time Store owned and operated by one of our Affiliates; however, if we agree to provide the training at any other location, we may charge a reasonable fee to cover our costs, including living expenses during the training for our employees or agents who provide the training. We have the right to charge a fee for the training for subsequent managers, which you will be required to pay at least 10 days prior to beginning of training.

(b) Refresher Training. We have the right to require you and/or previously trained and experienced managers to attend periodic refresher courses at the times and locations that we designate. We have the right to charge fees for refresher training courses.

5.2 Operations Manuals. We will loan to you during the term of this Agreement one copy of our store operating standards manual and one copy of our products procedures manual (collectively, the "**Operations Manuals**"). We have the right, at our option, to furnish or make available to you the Operations Manuals in the form of paper copies, electronic copies on computer diskette or CD Rom, or electronic copies accessed through the Internet or other communication systems. The Operations Manuals contain mandatory and suggested specifications, standards and operating procedures, including System Standards that we prescribe for Pretzel Time Stores and contain information relating to your other obligations under this Agreement. We have the right to modify the Operations Manuals in the future to reflect changes in the image, specifications, standards, procedures, Pretzel Time Products, Pretzel Time System, and System Standards. You may not at any time copy any part of the Operations Manuals, either physically or electronically. If your copy of the Operations Manuals is lost, destroyed or significantly damaged, you will be obligated to obtain from us, at our then applicable charge, a replacement copy of the Operations Manuals.

5.3 Guidance and Operating Assistance. Although we do not have an obligation to do so, we may advise you from time to time of operating problems of your Store which come to our attention. At your request, we will furnish to you guidance and operating assistance in connection with:

- (a) Methods, standards, specifications and operating procedures utilized by Pretzel Time Stores;
- (b) Purchasing required fixtures, furnishings, equipment, signs, Pretzel Time Products, materials and supplies; and
- (c) Advertising and promotional programs.

Any guidance and assistance we furnish or make available to you will be, at our option, in the form of references to the Operations Manuals, bulletins and other written materials, electronic computer messages, telephonic conversations and/or consultations at our offices or at your Store. You agree that we will not be liable to you or any other person, and you waive all claims for liability or damages of any type (whether direct, indirect, incidental, consequential, or exemplary), on account of any guidance or operating assistance offered by us in accordance with this Section 5.3, except to the extent caused by our gross negligence or intentional misconduct. We will make no separate charge to you for such operating assistance and guidance as we customarily provide to our franchisees generally. Occasionally, we may make special assistance programs available to you, however, for which you will be required to pay the daily fees and charges that we establish.

ARTICLE 6

FEES

6.1 Initial Franchise Fee. You agree to pay us a nonrecurring initial franchise fee in the amount of \$ _____ ~~<upon>~~ [. The initial franchise fee is payable as follows: \$ _____ upon your] execution of this agreement[. with any remaining balance due on or before the date you open your Store]. This initial franchise fee will be fully earned by us when paid and is not refundable, except as provided in Section 13.3(a).

6.2 Continuing Fees. In addition to the initial franchise fee, you agree, for the entire term of this Agreement, to pay us a weekly continuing fee of 7% of your Store's Gross Revenues.

6.3 Date and Term of Payment. You agree to pay the weekly continuing fees pursuant to Section 6.2, and the marketing fees pursuant to Section 9.1, to us on or before the close of business on Wednesday of each week for the preceding week by pre-authorized electronic bank transfer from your account to our account or as otherwise directed by us. We expressly reserve the right to modify the timing and method of payment of the fees from time to time during the term of this Agreement, provided that the fees shall be payable no more frequently than weekly.

6.4 Payment By Pre-Authorized Bank Transfer. You agree to execute and complete the form Authorization Agreement attached as Appendix A to this Agreement, and/or such other documents as we may require from time to time, to authorize and direct your bank or financial institution to pay and deposit directly to our account, and to charge to your account, the amount of the continuing fees, marketing fees, and other amounts due and payable by you pursuant to this Agreement. Your authorizations will permit us to initiate debit entries and/or credit correction entries to your account for the amount of the continuing fees, marketing fees and other amounts then payable to us from you. You

agree to maintain, at all times during the term of this Agreement, a balance in your account at your bank or financial institution sufficient to allow the appropriate amount to be debited from your account for payment of the continuing fees, marketing fees and other amounts payable by you for deposit in our account. The continuing fee and marketing fee amount actually transferred from your account each week shall be based on the Gross Revenue Report you provide to us for such week, as required in Section 8.1(a). If you do not provide us with a Gross Revenue Report for any given week, we have the right to estimate in good faith your Store's Gross Revenues for the missing period and debit your account in an amount equal to the continuing fees and marketing fees that would be due based on such estimation. In making our good faith estimate, we may consider the last Gross Revenue Report that we received from you, any seasonal sales trends, and any system-wide averages and other pertinent information available to us. You are responsible for any penalties, fines or other similar expenses associated with the pre-authorized bank transfers described in this Section 6.4.

6.5 Late Fees; Interest on Late Payments. To compensate us for the increased administrative expense of handling late payments and late reports, we have the right to charge a \$100 late fee for each delinquent payment, due when the delinquent payment is due, and a \$25 late fee for each delinquent report, due when the delinquent report is due. We will continue to charge a late fee for each period that the report remains delinquent. These late fees are not interest or a penalty. They are only to compensate us for increased administrative and management costs due to your late payment or late report. The late fees are non-refundable. All continuing fees, amounts due for purchases by you from us or our Affiliates and other amounts which you owe to us or our Affiliates will bear interest from their due date until paid at a rate equal to the lesser of the highest applicable legal rate for open account business credit, or 1.5% per month, payable when the corresponding delinquent payment is made. You agree that this Section does not constitute our or our Affiliates' agreement to accept payments after they are due or a commitment by us or our Affiliates to extend credit to you or otherwise to finance the operation of your Store.

6.6 Application of Payments. Regardless of any designation by you, we have the right to apply any payments by you to any of your past due indebtedness for continuing fees, marketing fees, purchases from us or our Affiliates, interest or any other indebtedness or amounts owed to us or our Affiliates.

6.7 No Right of Offset. You have no right of "offset" and will not withhold payment, for any reason, of any continuing fees, marketing fees or any other payment due to us under this Agreement or any other agreement.

ARTICLE 7

OBLIGATIONS RELATING TO OPERATIONS

7.1 System Standards. You acknowledge and agree that the operation of your Store in accordance with the System Standards is the essence of this Agreement and is essential to preserve the goodwill of the Marks and all Pretzel Time Stores. Therefore, you agree that, at all times during the term of this Agreement, you will maintain and operate your Store in accordance with each of the System Standards. You agree that we have the right to modify the System Standards from time to time and acknowledge that the modifications may obligate you to invest additional capital in your Store and to incur higher operating costs. We agree not to obligate you to invest additional capital at a time when the investment cannot in our reasonable judgment be amortized during the remaining term of this Agreement, unless required by the lease or sublease for the Premises or applicable law.

7.2 Performance of Duties and Obligations. You will at all times faithfully, honestly and diligently perform your obligations under this Agreement and you will continuously exert your best

efforts to promote and enhance the business of your Store. You will not engage in any other business or activity that may conflict with your obligations under this Agreement.

7.3 Restrictions on Operations. You may not operate your Store at any site other than the Premises without our prior written consent. In addition, you may only offer and sell finished Pretzel Time Products that have been approved for sale, as provided in Section 2.1(b), over the counter to retail customers from your Store, and may not sell approved Pretzel Time Products or any materials, supplies, or inventory bearing the Marks at any other location or through any alternative channel of distribution without our prior written consent. Alternative channels of distribution shall include the operation of a food cart or kiosk, sales through the Internet (or any other form of electronic commerce), mail order and telephone sales. Notwithstanding the above restrictions, you may offer and sell approved Pretzel Time Products as part of off-site catering events and offer samples of approved Pretzel Time Products at or directly in front of your Store. You may not sell to anyone any materials, supplies, or inventory used in the preparation of any Pretzel Time Products. Further, you may not sell any Pretzel Time Products to any person or entity purchasing the Pretzel Time Products for resale.

7.4 Internet Use. You acknowledge that the Internet is a powerful and expanding medium through which business is conducted. You may not, however, advertise your Store or the Pretzel Time Products over the Internet (or any other form of electronic commerce) or establish a related World Wide Web Site without our prior written consent. In addition, your general conduct on the Internet (or any other form of electronic commerce) and specifically your use of the Marks is subject to the provisions of this Agreement. Further, you acknowledge that we have the right to require you to have access to the Internet from your Store Premises and submit reports, including Gross Revenue Reports, to us over the Internet in accordance with System Standards. We also have the right to require you to establish and maintain a valid email address and authorize us to communicate with you by this method at such address.

7.5 Our Right to Inspect Your Store. To determine whether you are complying with this Agreement and with all System Standards and whether your Store is in compliance with the terms of this Agreement, we and our designated agents have the right to, at any reasonable time and without prior notice to you:

- (a) Inspect the Premises;
- (b) Observe, photograph and video tape your Store's operations for such consecutive or intermittent periods as we deem necessary;
- (c) Remove samples of any Pretzel Time Products, materials or supplies for testing and analysis;
- (d) Interview personnel of your Store;
- (e) Interview customers of your Store; and
- (f) Access, inspect and copy any books, records and documents relating to the operation of your Store.

You agree to cooperate fully with us in connection with any of our inspections, observations, photographing, videotaping, product removal and interviews.

7.6 Surveys. You will present to your customers such evaluation forms as we periodically require and will participate in and request your customers to participate in any surveys performed by or on our behalf.

7.7 Entity Owners; Name Change. You agree, for the entire term of this Agreement, to identify your Entity Owners, if any, on the Ownership Addendum attached to this Agreement and send us prior notification of any change. Additionally, if you change your name, or your Entity changes its name or entity type, but no Transfer occurs as a result, you must notify us promptly following the change, provide us with any documentation we reasonably request to verify the name change, and pay us our then-current documentation fee to defray our costs associated with documenting the change.

7.8 Guaranties by Entity Owners. If you are an Entity, you represent and warrant to us that you are duly organized or formed and validly existing in good standing under the laws of the state of your incorporation or formation, are qualified to do business in all states in which you are required to qualify and have the authority to execute, deliver and carry out all of the terms of this Agreement. If you are an Entity, each of your Entity Owners must execute our current form of Guaranty attached to this Agreement prior to or upon the date of this Agreement. Any person or Entity that at any time after the date of this Agreement becomes an Entity Owner pursuant to Article 12 or otherwise must, as a condition of becoming an Entity Owner, execute our then current form of Guaranty.

7.9 Insurance.

(a) Property Insurance. You agree, at your sole cost and expense, at all times during the term of this Agreement, to keep all of your goods, fixtures, furniture, equipment, and other personal property located on your Store Premises insured to the extent of 100% of the full replacement cost against loss or damage from fire and other risks normally insured against in special cause of loss coverage. You will also maintain business income and extra expense coverage to cover loss of income and extra expense for at least one year.

(b) Liability Insurance. You agree, at your sole cost and expense, at all times during the term of this Agreement, to maintain in force an insurance policy or policies, on an occurrence basis, which will name both us and our Affiliates as additional insureds on a primary non-contributory basis, insuring against all liability resulting from damage, injury, or death occurring to persons or property in or about your Store Premises (including products liability insurance and broad form contractual liability insurance), the liability under such insurance to be not less than \$1,000,000 for one person injured, \$1,000,000 for any one accident, and \$1,000,000 for property damage. The original of such policy or policies shall remain in your possession. However you agree to give us a copy of the policy upon our request.

(c) Workers' Compensation and Employers Liability Insurance. You also agree to maintain and keep in force all workers' compensation and employers liability insurance on your employees, if any, in the following amounts:

(i) Workers Compensation: The amount required under the applicable workers' compensation laws of the state in which your Store is located.

(ii) Employers Liability: No less than \$100,000 per accident for bodily injury by accident, no less than \$100,000 per employee for bodily injury by disease and no less than a \$500,000 policy limit for bodily injury by disease.

(d) Other Insurance Policies. At your sole cost, you agree, at all times during the term of this Agreement, to maintain in force such other and additional insurance policies as a prudent franchisee in your position would maintain or as we reasonably require.

(e) Policy Requirements. The deductibles on all insurance policies required under this Section 7.9 shall not exceed \$5,000, and all insurance policies will contain provisions to the

effect that the insurance will not be canceled or modified without at least 30 days prior written notice to us and that no modification will be effective unless approved in writing by us. All such policies will be issued by a company or companies, rated "A-XII" or better by Best's Insurance Guide, responsible and authorized to do business in the state in which your Store is located, as you may determine, and will be approved by us, which approval will not be unreasonably withheld. You shall provide us with certificates of insurance for all insurance policies required under this Section 7.9 at the time you procure the insurance. You agree to send the certificates of insurance to Risk Management, Pretzel Time Franchising LLC, 2855 E. Cottonwood Parkway, Suite 400, Salt Lake City, UT 84121.

(f) Release of Insured Claims. You release and relieve us and our Affiliates, and all of our and their officers, directors, shareholders, employees, agents, successors, assigns, contractors, and invitees and waive your entire right of recovery against us and our Affiliates and all of our officers, directors, shareholders, employees, agents, successors, assigns, contractors, and invitees for loss or damage arising out of or incident to the perils required to be insured against under this Section 7.9, which perils occur in, on or about your Store Premises or relate to your business on the Premises, whether due to the negligence of us or our Affiliates or you or any of our or your related parties.

ARTICLE 8

REPORTS AND RECORD KEEPING

8.1 Accounting, Reports and Financial Statements. You agree to establish and maintain a bookkeeping, accounting, record keeping and data processing system conforming to the requirements and formats that we prescribe. You agree to furnish to us reports relating to your Store by the delivery method (including without limitation via the Internet) and in such form and content as we have the right to prescribe from time to time. These reports include, but are not limited to, the following:

(a) Gross Revenue Reports. On or before the close of business on Wednesday of each week, a report of your Store's Gross Revenues for the previous week;

(b) Monthly Financial Reports. Within 15 days after the end of calendar month, a profit and loss statement for your Store for the previous month and a year-to-date statement of financial condition as of the end of the previous month;

(c) Semi-Annual Reports. Within 15 days after the end of each 6-calendar month period, a balance sheet for your Store as of the end of that semi-annual period; and

(d) Tax Returns. Within 10 days after the returns are filed, exact copies of federal and state income, sales and any other tax returns and the other forms, records, books and other information as we have the right to periodically require.

Each report and financial statement will be signed and verified by you in the manner we specify. We have the right to disclose data derived from the sales reports to other franchisees and licensees. We also have the right to require you to have audited or reviewed financial statements prepared on an annual basis. In addition, we have the right to charge you a late fee for each delinquent report due to us, for each period that such report remains delinquent, as further described in Section 6.5.

8.2 Retention of Records. You agree to keep full, complete and proper books, records and accounts of Gross Revenues and of your operations at your Store. All the books, records and accounts will be kept in the English language and will be retained for a period of at least 3 years following the end

of each fiscal year. The books and records will include daily cash reports; cash receipts journal and general ledger; cash disbursements journal and weekly payroll register; monthly bank statements and daily deposit slips and canceled checks; tax returns (sales and income); supplier invoices; dated cash register tapes (detail and summary); semi-annual balance sheets and monthly profit and loss statements; daily production, leftover and donations records and weekly inventories; records of promotions and coupon redemptions; records of all corporate accounts; and such other records as we request.

8.3 Our Right to Audit. At any time during business hours and without prior notice to you, we and our representatives have the right to inspect and audit the business records, bookkeeping and accounting records, sales and income tax records and returns and other records of your Store as well as your books and records. You agree to fully cooperate with representatives and independent accountants hired by us to conduct any inspection or audit. If an inspection or audit discloses an understatement of your Store's Gross Revenues, you will pay to us, within 15 days after receipt of the inspection or audit report, the continuing fees due on the amount of the understatement, plus interest (at the rate and on the terms provided in Section 6.5) from the date originally due until the date of payment. Further, if inspection or audit is made necessary by your failure to furnish reports, supporting records or other information as required by this Agreement, or to furnish the reports, records or information on a timely basis, or if an understatement of Gross Revenues for the period of any audit is determined by the audit or inspection to be greater than 2%, then within 15 days after receipt of the inspection or audit report, you will reimburse us for the cost of the audit or inspection, including the charges of attorneys and any independent accountants and the travel expenses, room and board and compensation of our employees. If you fail to cooperate with our audit, or are unwilling or unable to provide us with sufficient records, including the records and reports that you are required to maintain under this Agreement, to complete the audit to our reasonable satisfaction, we may establish a reasonable estimation of your Gross Revenues based on the data available to us (which may include records regarding product purchases, percentage rent reports or other information obtained from third parties) and collect from you any estimated amount that we deem was underreported or underpaid pursuant to this Agreement. These remedies are in addition to our other remedies and rights under this Agreement or applicable law, and our right to audit will continue for 2 years following termination of this Agreement.

ARTICLE 9

MARKETING AND PROMOTION

9.1 Marketing Fees.

(a) Collection of Marketing Fees. You agree, for the entire term of this Agreement, to pay to us a weekly marketing fee of 1% to 3% of your Store's Gross Revenues. We will notify you annually of the exact percentage you must pay as a marketing fee, except for any year in which the percentage is to remain unchanged from the preceding year. We establish the percentage of Gross Revenues you must pay as a marketing fee annually, although you will not be required to pay a higher percentage than other franchisees in your market area. Marketing fees will be payable weekly by pre-authorized bank transfers, together with the continuing fees, in accordance with Sections 6.3 and 6.4. Pretzel Time Stores owned by us and our Affiliates in the same market area as you will contribute marketing fees on the same basis as you.

(b) Right to Direct Operation of the Marketing Fees Collected. Marketing fees pay for marketing programs. We will direct all marketing programs financed by the marketing fees we collect, and have the right to determine the creative concepts, materials and endorsements used and the geographic, market and media placement and allocation. You agree that we have the right to use the marketing fees we collect to meet any and all costs of maintaining, administering, directing and preparing advertising materials and marketing programs, including:

preparing and producing video, audio and advertising materials; administering and funding local, regional and multi-regional marketing programs; purchasing direct mail and other media marketing; employing advertising, promotion and marketing agencies; supporting public relations; conducting market research; implementing and testing Trade Dress and design prototypes; and other advertising, promotion and marketing activities. We have the right, at our option, to use marketing fees to prepare, furnish and/or offer for sale to you advertising, marketing and promotional formats and materials as described in Section 9.3.

(c) Accounting for the Marketing Fees Collected. The marketing fees we collect will be accounted for separately from our other funds, although we are not required to establish a separate marketing fund or bank account for such fees. We have the right to use the marketing fees we collect to defray the salaries, employee benefits, administrative costs and overhead we and our Affiliates may incur in activities related to our marketing programs, including conducting market research, preparing advertising, promotion and marketing materials and collecting and accounting for the marketing fees we collect. Upon your prior written request made within the first quarter of any calendar year, we will make available to you no later than 120 days after the end of the calendar year, an annual statement of moneys collected and costs incurred for our marketing programs. No independent audit is required in connection with this statement or the marketing fees we collect. We and our Affiliates have no fiduciary obligation to Pretzel Time franchisees with respect to the collection and expenditure of marketing fees. We have the right to create a marketing fund in the future to be operated by us or through an entity separate from us.

(d) Benefits to Individual Stores. You understand and agree that our collection expenditure of marketing fees is intended to maximize recognition of the Marks and patronage of Pretzel Time Stores. Although we will endeavor to utilize the marketing fees we collect to develop advertising and marketing materials and programs and to place advertising that will benefit all Pretzel Time Stores, we cannot ensure you that our expenditure of marketing fees in or affecting any geographic area will be proportionate or equivalent to the marketing fee contributions by Pretzel Time Stores operating in that geographic area or that any Pretzel Time Store will benefit directly or in proportion to the marketing fees it pays to us from the development of advertising and marketing materials or the placement of advertising.

9.2 Advertising and Promotional Activities by You. In addition to marketing fees, you agree that you will spend on marketing and related programs any amount that is required under your lease or sublease. Those amounts cannot be applied against the weekly marketing fees you are required to pay us. In addition, those amounts typically vary from lease to lease, and therefore, all Pretzel Time Store franchisees will not be obligated to spend the same amount on local advertising and marketing. You agree that all advertising, promotion and marketing by you will comply with the requirements of Article 10, will be completely clear and factual and not misleading, and will conform to the highest standards of ethical marketing and promotion policies which we have the right to prescribe. Prior to use, all press releases and policy statements and samples of all local advertising, marketing and related materials not prepared or previously approved by us will be submitted to us for approval. Our approval will not be unreasonably withheld. Pamphlets, brochures, cards or other promotional materials offering free Products may only be used if prepared by us, unless otherwise approved in advance by us. However, we will give favorable consideration to your use of free product cards developed by you, if the cards clearly state that they may only be redeemed at Pretzel Time Stores owned by you. If we do not give you written approval of any advertising or other promotional materials within 15 days from the date of receipt by us of the materials, we will be deemed to have disapproved the submission. You agree not to use any advertising, marketing or related materials that we have disapproved. You also agree to list your Store in the principal telephone directories distributed in your metropolitan area.

9.3 Our Advertising Materials. From time to time, we will provide you with copies of advertising, marketing and promotional formats and materials for use in your Store, which we have prepared using marketing fees we have collected from Pretzel Time Stores. You are only required to pay shipping and handling costs for these items or, if you want additional or replacement copies, our direct cost of producing such items together with any related shipping, handling and storage charges. In addition to these items, we may offer you the option of purchasing other advertising, marketing and promotional formats and materials that we have prepared and that are suitable for use at local Pretzel Time Stores. We may provide samples, copies or information explaining these items to you from time to time. If you elect to purchase any such items from us, we will provide them to you at our direct cost of producing them plus any related shipping, handling and storage charges. In addition, we have the right to develop and market special mandatory promotional items for Pretzel Time Stores and require you to maintain a representative inventory of these promotional items to meet public demand. In such case, we will make these items available to you at our direct cost plus a reasonable mark-up and any shipping, handling and storage charges. You will have the right to purchase alternative promotional items if the alternative items conform to the specifications and quality standards we establish and you obtain our prior written approval. We also have the right to conduct coupon promotions. In such case, we have the right to require you to accept coupons that are issued by us or our Affiliates and presented at your Store by your customers. You will receive certain compensation for these coupons when you tender them to us in accordance with our System Standards. You acknowledge and agree that all payments to us for the items described in this Section 9.3 are nonrefundable and cannot be applied against the weekly marketing fee you are required to pay to us. You must participate in all mandatory promotions and product roll-outs that are agreed upon by the franchisee marketing committee (if the franchisee association has established that committee or one performing a similar function) and us. If you do not place minimum orders of products and other items necessary for a mandatory promotion or product roll-out by a certain date, we have the right to send, or direct suppliers to send, an automatic shipment of a specified minimum quantity of such products and items to you, and you must accept and pay for them upon receipt.

9.4 Advertising Cooperatives. We have the right, at any time, to form, organize, maintain and otherwise make use of, and require you to participate in, local advertising cooperatives that include your Store. If we form or organize a local or regional advertising cooperative for the market that includes your Store, we have the right to require you to participate in and contribute to the advertising cooperative an amount of up to 3% of your Gross Revenues, which is in addition to your marketing fees and any lease-required advertising fees. In such case, we will notify you from time to time of the amount you must pay to the advertising cooperative and the timing of the payments, which may be as often as weekly. Each Pretzel Time Store located within your advertising cooperative, including Pretzel Time Stores owned by us or our Affiliates, will be a member of the advertising cooperative and have one vote per Store. Your advertising cooperative will be required to adopt written governing documents that meet our approval. The members of your advertising cooperative and their elected officers will be responsible for all administration of the advertising cooperative. Your advertising cooperative will be required to engage the services of a professional advertising agency, public relations firm or similar service that meets with our approval and has expertise in their market, and to have an independent CPA prepare quarterly and annual financial statements, which must be made available to us and all Pretzel Time Store franchisees in your advertising cooperative. We have the right to require local and regional advertising cooperatives to be formed, changed, dissolved or merged.

ARTICLE 10

USE OF THE MARKS AND CONFIDENTIAL INFORMATION

10.1 Ownership and Goodwill of Marks. You acknowledge that we or our Affiliates are the exclusive owners of the Marks and that your right to use the Marks is derived solely from this Agreement

and is limited to the conduct of business in compliance with this Agreement and all applicable System Standards, specifications and operating procedures that we require. Any unauthorized use of the Marks by you will constitute a breach of this Agreement and an infringement of our rights in the Marks. You agree that your usage of the Marks and any goodwill established by that use will be for our and our Affiliates' exclusive benefit. This Agreement does not confer any past, present or future goodwill or other interests in the Marks upon you, other than the right to operate a Pretzel Time Store in compliance with this Agreement. All provisions of this Agreement applicable to the Marks will apply to any additional proprietary trade and service marks and commercial symbols we or our Affiliates authorize for your use in the future.

10.2 Limitations on Your Use of Marks. You agree to use the Marks as the sole identification of your Store. You will not use any Mark as part of any corporate or trade name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to you under this Agreement), or in any modified form, nor may you use any Mark in connection with the performance or sale of any unauthorized services or products or in any other manner not expressly authorized in writing by us. You agree to display the Marks prominently at your Store, on supplies or materials designated by us and in connection with packaging materials, forms, labels and advertising and marketing materials. All Marks will be displayed in the manner we require. You agree to use the registration symbol "®" in connection with your use of the Marks that are registered. You agree to refrain from any business or marketing practice which may be injurious to our business and the goodwill associated with the Marks and other Pretzel Time Stores. You agree to give such notices of trade and service mark registrations as we specify and to obtain such fictitious or assumed name registrations as may be required under applicable law. You may not use any Mark as part of an electronic mail address or on any sites on the Internet or World Wide Web. You may not use or register the Marks as an Internet domain name.

10.3 Discontinuance of Use of Marks. We have the right to require you to modify or discontinue use of any Marks or use one or more additional or substitute trade or service marks if we determine it becomes advisable to do so at any time. In such case, you agree to comply with our directions to modify or discontinue the use of the Mark or use one or more additional or substitute trade or service marks within a reasonable time after notice from us. We will reimburse you for your reasonable direct expenses in modifying or discontinuing the use of a Mark and substituting a different trademark or service mark. However, we will not be obligated to reimburse you for any loss of goodwill associated with any modified or discontinued Mark or for any expenditures made by you to promote a modified or substitute trademark or service mark.

10.4 Notification of Infringements and Claims. You agree to immediately notify us of any apparent infringement of or challenge to your use of any Mark or claim by any person of any rights in any Mark, and you will not communicate with any person other than us or our counsel in connection with the infringement, challenge or claim. We and our Affiliates will have the right to take the action we deem appropriate and control exclusively any litigation, U.S. Patent and Trademark Office proceeding or any other administrative or court proceeding arising out of any such infringement, challenge or claim or otherwise relating to any Mark. You agree to execute any instruments and documents, render such assistance and do those things as, in the opinion of our legal counsel, may be necessary or advisable to protect and maintain our interests in any litigation or U.S. Patent and Trademark Office or other proceeding or otherwise to protect and maintain our interests in the Marks.

10.5 Our Indemnification of You. We agree to indemnify you against and to reimburse you for all damages for which you are held liable in any proceeding arising out of your authorized use of any Mark in compliance with this Agreement, provided that you have timely notified us of the claim or proceeding and have otherwise complied with this Agreement. We and our Affiliates shall control the defense of any proceeding arising out of your authorized use of any Mark.

10.6 Copyrights. We or our Affiliates claim copyrights in the Confidential Information, the Operations Manuals, our construction plans, specifications and materials, printed advertising and promotional materials and in related items used in operating the Franchise. You may use the Operations Manuals and other materials during the term of the Franchise Agreement. The provisions of Sections 10.1, 10.3, 10.4 and 10.5 relating to Marks also apply to copyrights owned by us, as if copyrights were included within the definition of Marks.

10.7 Concepts Developed by You. We and our Affiliates will have the perpetual right to own and use and authorize other Pretzel Time Stores to use, and you will fully and promptly disclose to us, all ideas, concepts, formulas, recipes, methods and techniques relating to the development or operation of a bakery, snack food or dessert restaurant or retail outlet or any similar food service business conceived or developed by you or your employees during the term of this Agreement. You may not test, offer, or sell any new products without our prior written consent.

10.8 Confidential Information. We may disclose certain Confidential Information to you in training, the Operations Manuals and in guidance furnished to you during the term of the Franchise. You are not acquiring any interest in Confidential Information, other than the right to utilize Confidential Information disclosed to you in the operation of your Store during the term of this Agreement. Your use or duplication of any Confidential Information in any other business will constitute an unfair method of competition and a violation of this Agreement. The Confidential Information is proprietary, includes our trade secrets and is disclosed to you solely on the condition that you agree:

- (a) Not to use Confidential Information in any other business or capacity;
- (b) To maintain the absolute confidentiality of Confidential Information during and after the term of this Agreement;
- (c) Not to make unauthorized copies of any portion of Confidential Information disclosed in written or other tangible form; and
- (d) To adopt and implement all reasonable procedures that we prescribe to prevent unauthorized use or disclosure of Confidential Information, including restrictions on disclosure of Confidential Information to your employees and compliance with the requirement that certain key employees execute confidentiality agreements as a condition of employment.

ARTICLE 11

COVENANTS NOT TO COMPETE

11.1 In Term Non-Compete. You agree and acknowledge that we would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among Pretzel Time Stores if franchised owners of Pretzel Time Stores or the manager of your Store were permitted to hold interests in or perform services for a Competitive Business. You also acknowledge and agree that we have granted the Franchise to you in consideration of and reliance upon your agreement to deal exclusively with us. Therefore, during the term of this Agreement, no Restricted Person and no manager of your Store will:

- (a) Have any direct or indirect interest in a Competitive Business, except other Pretzel Time Stores or other Stores operated by you under franchise agreements with us or any of our Affiliates;

(b) Perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business, except other Pretzel Time Stores or other Stores operated by you under franchise agreements with us or any of our Affiliates; or

(c) Recruit or hire any employee who, within the immediately preceding 6-month period, was employed by us or any Pretzel Time Stores operated by us, our Affiliates or another franchisee or licensee of us, without obtaining the prior written permission of us or the franchisee or licensee.

11.2 Post Term Non-Compete. Upon termination of this Agreement for any reason other than as a result of our default, you agree that, for a period of 1 year (or 3 years if we purchase your Store as provided in Section 14.5) commencing on the effective date of termination, no Restricted Person will have any direct or indirect interest as an owner, investor, partner, director, officer, employee, consultant, representative or agent or in any other capacity in any Competitive Business located or operating within (a) 1 mile of your Store, or (b) 1 mile of any Pretzel Time Retail Outlets, except Pretzel Time Stores that you operate under agreements with us or our Affiliates. You expressly acknowledge that you and the other Restricted Persons possess skills and abilities of a general nature and have other opportunities for exploiting those skills. Consequently, enforcement of the covenants made in this Section will not deprive you or any of the other Restricted Persons of their personal goodwill or ability to earn a living.

11.3 Shareholder Exception. The restrictions of Sections 11.1 and 11.2 do not apply to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 2% or less of the number of shares of that class of securities issued and outstanding.

11.4 Enforcement of Non-Competes. If any covenant in this Agreement which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but would be enforceable by reducing any part or all of the covenant, you and we agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought.

ARTICLE 12

TRANSFERS

12.1 Transfers by Us. This Agreement is fully transferable by us and will inure to the benefit of any transferee or other legal successor to our interest in this Agreement.

12.2 Restrictions on Transfers by You. Your rights and duties created by this Agreement are personal to you, and we have granted this Agreement to you in reliance upon our perceptions of the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of you and, if you are not an individual, your Entity Owners. Accordingly, you must give us written notice in a form satisfactory to us of your intention to accomplish any Transfer hereunder no less than 60 days prior to the proposed Transfer, and no Transfer will be made without our prior written approval. Any Transfer without our approval will constitute a breach of this Agreement and will be void and of no effect.

12.3 Conditions for Approval of Transfers by You. If you are in full compliance with this Agreement and provide prior written notice to us in accordance with Section 12.2, we will not unreasonably withhold our approval of a Transfer that meets all of the following requirements:

(a) Character. The proposed transferee and the individuals ultimately owning the transferee, if the transferee is an Entity, must be individuals of good moral character and otherwise meet our then applicable standards for owners of Pretzel Time Stores;

(b) Business Experience. The transferee and, if the transferee is an Entity, its Entity Owners must have sufficient business experience, aptitude and financial resources to purchase under the terms and conditions proposed, own and operate the Store and its business and comply with this Agreement;

(c) Training. The proposed transferee and/or its senior management personnel have completed to our satisfaction our then current training program for transferees after signing the franchise documents set forth herein, but prior to assuming operations of the Store;

(d) Satisfaction of Obligations. You have paid all amounts owed for purchases by you from us and our Affiliates and all other amounts owed to us or our Affiliates and third-party creditors;

(e) Execution of Assignment and Assumption Agreement. You and your transferring Entity Owners, if you are an Entity, the transferee and its Entity Owners, if the transferee is an Entity, and us have entered into our then current form of assignment and assumption agreement, pursuant to which (i) the transferee has agreed to be bound by and has expressly assumed all of the terms and conditions of this Agreement for the remainder of its term, (ii) the transferee's Entity Owners, if any, have executed our then current form of guaranty, and (iii) you and your Entity Owners, if any, have agreed to release us and our Affiliates and our and their respective officers, directors, employees and agents from any and all claims;

(f) Execution of New Agreement at Our Option. In addition to entering into our then current assignment and assumption agreement, at our option, the transferee has executed our then current form of Franchise Agreement for a term equal to the remainder of current term of this Agreement and any additional term purchased in accordance with Section 12.3(n), and if the transferee is an Entity, each Entity Owner of the transferee has executed our then current form of guaranty;

(g) Payment of Transfer Fees. You or the transferee has paid our then current transfer fee for a Franchise Agreement, a portion of which may be a non-refundable deposit that you must pay to us when you submit your request for our consent to the Transfer. However, we will not charge a transfer fee if the Transfer is among existing Entity Owners of you and the identity of all Entity Owners remains the same following the Transfer, and we reserve the right to charge a reduced fee in certain circumstances, including a Transfer to a wholly-owned corporation under Section 12.4;

(h) Approval of Terms of Transfer. We have approved the material terms and conditions of the Transfer, including, without limitation, the price and terms of payment. However, our approval of a Transfer does not ensure the transferee's success as a Pretzel Time Store franchisee nor should the transferee rely upon our approval of the Transfer in determining whether to acquire your Store;

(i) Subordination. If you (or your Entity Owners) finance any part of the sale price of the transferred interest, you and the Entity Owners have agreed that all obligations of the transferee under any promissory notes, agreements or security interests reserved by you (or your Entity Owners) will be subordinate to the transferee's obligations to us and our Affiliates;

(j) Non-Competition Agreement. Each Restricted Person has executed a non-competition agreement in our favor and in favor of the transferee agreeing that, for a period of 3 years commencing on the effective date of the transfer, no Restricted Person will acquire or hold any direct or indirect interest as an owner, investor, partner, director, officer, manager, employee, consultant, representative or agent, or in any other capacity, in a Competitive Business located within (i) 1 mile of your Store, or (ii) 1 mile of any Pretzel Time Retail Outlet, except Pretzel Time Stores that you operate under agreements with us or our Affiliates. The restrictions of this Section 12.3(j) will not apply to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 2% or less of the number of shares of that class of securities issued and outstanding;

(k) Landlord Consent. If consent is required, the lessor of the Premises consents to the assignment or sublease of the Premises to the transferee;

(l) Non-Use of Marks. You and your Entity Owners have agreed that you and they will not directly or indirectly at any time or in any manner (except with respect to Pretzel Time Stores owned and operated by you or them) identify yourself or themselves or any of their businesses as a current or former Pretzel Time Store, or as a franchisee, licensee or dealer of us or our Affiliates, use any Mark, any colorable imitation of any of the Marks or other indicia of a Pretzel Time Store in any manner or for any purpose or utilize for any purpose any trade name, trade or service mark or other commercial symbol that suggests or indicates a connection or association with us or our Affiliates;

(m) Refurbishment. You or the transferee has agreed to any refurbishment of the Store required by us to bring the Store in compliance with the then current System Standards and Trade Dress;

(n) Sufficient Term. You have sufficient term remaining under this Agreement, or the transferee has agreed to purchase from us, pursuant to our then-current term pre-purchase agreement, sufficient additional term under this Agreement to satisfy our then current policy on remaining term requirements for transfers;

(o) Licensed Escrow Professional. You and the transferee, at your cost, use a licensed escrow professional or other qualified third party acceptable to us to conduct the closing of the Transfer. We have the right to require that all documents and fees payable to us shall be deposited into escrow prior to the time that your transferee attends our training program, together with escrow instructions in form and content satisfactory to us providing for a final closing of the Proposed Transfer after the transferee successfully completes all required training; and

(p) Other Conditions. You and your transferring Entity Owners, if you are an Entity, have complied with any other conditions that we reasonably require from time to time as part of our transfer policies.

In connection with any assignment permitted under this Section 12.3, you will provide us with all documents to be executed by you and the proposed transferee at least 30 days prior to execution.

12.4 Transfer to a Wholly-Owned Corporation. If you are in full compliance with this Agreement, you will have the right to transfer your rights in this Agreement to a corporation which will conduct no business other than the business contemplated by this Agreement, which you actually manage and in which you maintain management control and own and control 100% of the equity and voting power of all issued and outstanding capital stock. Transfers of shares of such corporation will be subject to the provisions of Section 12.2 and Section 12.3. Even though a transfer is made under this Section,

you will remain personally liable under this Agreement as if the transfer to such corporation had not occurred. The articles of incorporation, by-laws and other organizational documents of the corporation will recite that the issuance and assignment of any interest in the corporation is restricted by the terms of this Article 12, and all issued and outstanding stock certificates of such corporation will bear a legend reciting or referring to these restrictions.

12.5 Our Right of First Refusal.

(a) Submission of Offers to Us. If you or one or more of your Entity Owners desires to make a Transfer, you or the Entity Owner will obtain a bona fide, executed written offer and an earnest money deposit (in the amount of 5% or more of the offering price) from a responsible and fully disclosed purchaser and will immediately submit to us a true and complete copy of such offer, which will include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price and a list of the owners of record and beneficially of any offeror that is an Entity and the individuals ultimately owning or controlling the offeror. If the offeror or an owner of the offeror is a publicly-held Entity, you will also submit to us copies of the most current annual and quarterly reports of the publicly-held Entity. To be a valid, bona fide offer, the proposed purchase price will be denominated in a dollar amount. The offer must apply only to an interest in this Agreement or a Controlling Interest in you and may not include an offer to purchase any other property or rights of you or your Entity Owners. However, if the offeror proposes to buy any other property or rights from you or your Entity Owners under a separate, contemporaneous offer, the price and terms of purchase offered to you or your Entity owners for the interest in this Agreement or the Controlling Interest in you will reflect the bona fide price offered for that interest and will not reflect any value for any other property or rights.

(b) Our Right to Purchase. We will have the right, exercisable by written notice delivered to you or your Entity Owners within 30 days from the date of delivery of an exact copy of the offer to us, to purchase the interest in this Agreement or such Controlling Interest in you for the price and on the terms and conditions contained in the offer. However we have the right to substitute cash for any form of payment proposed in the offer, our credit will be deemed equal to the credit of any proposed purchaser, and we will have not less than 60 days to close the purchase. Without regard to the representations and warranties demanded by the proposed purchaser, if any, we will have the right to purchase the interest, receiving from you all customary representations and warranties given by the seller of the assets of a business or equity interest in an Entity, as applicable, including representations and warranties as to ownership, condition of and title to assets, absence of liens and encumbrances relating to the ownership interest and assets, and validity of contracts and liabilities affecting the assets being purchased, contingent or otherwise.

(c) Non-Competition Restriction. If we exercise our right of first refusal, you and each other Restricted Person agree that, for a period of 3 years commencing on the date of the closing, no Restricted Person will acquire or hold any direct or indirect interest as an owner, investor, partner, director, officer, manager, employee, consultant, representative or agent, or in any other capacity, in a Competitive Business located within (i) within 1 mile from your Store, or (ii) 1 mile of any other Pretzel Time Retail Outlet, except Pretzel Time Stores that you operate under agreements with us or our Affiliates. The restrictions of this Section will not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 2% or less of the number of shares of that class of securities issued and outstanding. If we exercise our right of first refusal, you and your Entity Owners further agree that you will abide by the restrictions of Section 12.3(l).

(d) Non-Exercise by Us of Our Right of First Refusal. If we do not exercise our right of first refusal, you (or your Entity Owners) may complete the sale to such purchaser pursuant to and on the terms of such offer, subject to our approval as provided in Sections 12.2 and 12.3. However, if the sale to the purchaser is not completed within 120 days after delivery of the offer to us, or if there is a material change in the terms of the sale, our right of first refusal will be extended for 30 days after the expiration of the 120-day period or after the material change in the terms of the sale.

12.6 Death or Permanent Disability. If you are an individual, upon your death or permanent disability or, if you are an Entity, upon the death or permanent disability of an individual owner of a Controlling Interest in you, the executor, administrator, conservator or other personal representative of that person will transfer his interest in this Agreement or his Controlling Interest in you within a reasonable time, not to exceed 6 months from the date of death or permanent disability, to a third party approved by us. A transfer under this Section, including, without limitation, transfer by devise or inheritance, will be subject to all of the terms and conditions for Transfers contained in Sections 12.2 and 12.3, and unless transferred by gift, devise or inheritance, subject to the terms of Section 12.5. Failure to dispose of such interest within the specified period of time will constitute a breach of this Agreement. For purposes of this Agreement, the term “**permanent disability**” will mean a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent you or an owner of a Controlling Interest in you from supervising the operation of your Store for a period of 6 months from the onset of such disability, impairment or condition.

12.7 Effect of Consent to Transfer. Our consent to a Transfer will not constitute a waiver of any claims we may have against the transferor nor be deemed a waiver of our right to demand full compliance by the transferee with the terms or conditions of this Agreement.

12.8 Preparation of a Financial Report by You. We have the right to require you to prepare and furnish to a prospective transferee and/or us such financial reports and other data relating to your Store and its operations as we deem necessary or appropriate for the prospective transferee and/or us to evaluate the Store and the proposed transfer. You agree that we have the right to confer with prospective transferees and furnish them with information concerning your Store and proposed transfer without being held liable to you, except for intentional misstatements made to any such transferee. Any such information furnished by us to prospective transferees is for the sole purpose of permitting the transferees to evaluate your Store and the proposed transfer and shall not be construed in any manner or form whatsoever as earnings claims or claims of success or failure.

12.9 Public or Private Offerings. No information respecting us or our Affiliates or the operation of the Pretzel Time System shall be included in any registration statement, prospectus or similar offering circular or memorandum, unless you have submitted the proposed offering materials to us for our consent and we have consented to such materials in writing. If we, in our sole discretion, object to any reference to us or our Affiliates or the Pretzel Time System in any offering materials, such materials shall not be used unless and until our objections are withdrawn. Our written consent to any offering materials shall not imply or constitute our approval with respect to the sale of the securities, the offering materials submitted to us or any other aspect of the offering. We assume no responsibility whatsoever for any offering. To cover the expenses we incur in connection with reviewing and consenting to any offering materials you submit to us, you must pay to us our then current fee or \$7,500, whichever is greater. You, the underwriters and all participants in the registration must fully indemnify us with respect to the registration, make clear in any offering materials that we are not participating in or endorsing the offering, and use our name only as directed by us.

ARTICLE 13

DEFAULT AND TERMINATION

13.1 Your Defaults. You will be in default under the terms of this Agreement if any of the following occur:

(a) Insolvency. You file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, or are adjudicated a bankrupt or make an assignment for the benefit of creditors or admit in writing your inability to pay your debts generally as they become due, or if a petition or answer proposing the adjudication of you as a bankrupt or your reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law is filed in any court and you consent to or acquiesce in the filing thereof or such petition or answer is not discharged or denied within 60 days after the occurrence of any of the foregoing, or if a receiver, trustee or liquidator of you or of all or substantially all of your assets or your interest in this Agreement is appointed in any proceeding brought by you, or if any such receiver, trustee or liquidator is appointed in any proceeding brought against you and is not discharged within 60 days after the occurrence thereof, or if you consent to or acquiesce in such appointment (any such event described in this Section 13.1(a) being referred to as an “**Insolvency Event**”);

(b) Unauthorized Transfer. A Transfer occurs in violation of the provisions of Article 12;

(c) Misstatements and other Adverse Developments. You (or, if you are an Entity, any Entity Owner of you) have made any material misrepresentation or omission in your application for the rights conferred by this Agreement, are convicted by a trial court of or plead no contest to a felony or to any other crime or offense that may adversely affect the goodwill associated with the Marks, or if you engage in any conduct which may adversely affect the reputation of any Pretzel Time Store or the goodwill associated with the Marks;

(d) Unauthorized Use of Marks or Confidential Information. You or an Entity Owner of you make any unauthorized use of the Marks or any unauthorized use or disclosure of Confidential Information;

(e) Abandonment. You abandon or fail actively to operate your Store for 3 consecutive days unless your Store has been closed for a purpose approved in advance by us in writing or because of fire, flood or other casualty or government order;

(f) Breach of Lease; Loss of Right of Possession. You are in breach of any of your obligations under your lease or sublease of the Premises or you lose the right to possession of the Premises;

(g) Failure to Comply with Certain System Standards and Health Requirements. You fail or refuse to comply with System Standards relating to the cleanliness or sanitation of your Store or violate any health, safety or sanitation law, ordinance or regulation;

(h) Understatements of Gross Revenues. You understate your Store’s Gross Revenues in any report or financial statement by an amount greater than 2%;

(i) Failure to Make Payments. You or any of your Affiliates fail to make payments, when due, of any amounts due to us or our Affiliates under this Agreement or any other agreement with us or our Affiliates;

(j) Failure to Pay Taxes. You fail to pay any federal or state income, sales or other taxes due with respect to your Store's operations unless you are in good faith contesting your liability for the taxes;

(k) Failure of Inspection. You fail to achieve a passing score reasonably established by us on two consecutive announced or unannounced store inspections conducted by us or our agents;

(l) Other Breaches. You fail to comply with any other provision of this Agreement or any System Standard;

(m) Repeated Breaches. You fail on 2 or more separate occasions within any period of 12 consecutive months or on 3 occasions during the term of this Agreement to submit when due reports or other data, information or supporting records or to pay when due the continuing fees or other payments due to us or our Affiliates or otherwise fails to comply with this Agreement, whether or not the failures to comply are corrected after notice thereof is delivered to you;

(n) Financing Defaults. You default with respect to any of your obligations to us or any other lender under any financing provided to you in connection with this Franchise Agreement or a purchase of Franchised Store assets; or

(o) Default of any Other Agreement. You default in the performance or observance of any of your obligations under any other agreement with us or our Affiliates.

13.2 Our Right to Terminate if You Default. We have the right to terminate this Agreement in accordance with the following provisions:

(a) Immediate Termination With No Opportunity to Cure. You will have no right or opportunity to cure any of the defaults described in Sections 13.1(a), 13.1(b), 13.1(c), 13.1(d), 13.1(e), 13.1(f), 13.1(j), 13.1(m) or 13.1(n) and, upon the occurrence of one of these defaults, this Agreement will terminate effective immediately on our issuance of written notice of termination.

(b) Immediate Termination After 48 Hours to Cure. You will have 48 hours after written notice of default to cure a default relating to your failure to comply with certain System Standards and health requirements, as described in Section 13.1(g). If you fail to cure or only partially cure such a default within the 48-hour cure period, we will have good cause to terminate this Agreement and such termination will be effective immediately upon on our issuance of written notice of termination.

(c) Immediate Termination After 10 Days to Cure. You will have 10 days from the date of written notice of default to cure a default relating to your failure to make payments, as described in Section 13.1(i). If you fail to cure or only partially cure such a default within the 10-day cure period, we will have good cause to terminate this Agreement and such termination will be effective immediately upon on our issuance of written notice of termination.

(d) Termination After Opportunity to Cure. Except as otherwise provided in Sections 13.2(a), 13.2(b) and 13.2(c): (i) you will have 30 days from the date of written notice of default to cure any default under this Agreement or, if the default cannot reasonably be cured within 30 days from the date of written notice of default, provide proof acceptable to us of efforts which are reasonably calculated to correct the default within a reasonable time, which will in no event be more than 30 days from the date of written notice of default; (ii) your failure to fully cure a default within the applicable cure period will provide us with good cause to terminate this Agreement; (iii) the termination will be accomplished by mailing or delivering to you written notice of termination that will identify the grounds for the termination; and (iv) the termination will be effective 30 days after the date of written notice of termination.

(e) Other Rights and Remedies. If you cure any default after the applicable cure period has expired, we still have the right to terminate this Agreement. In any event, our right to terminate this Agreement is in addition to whatever other rights and remedies are available to us. Without limiting the foregoing, we reserve the right to interrupt your product shipments or ordering privileges instead of or in addition to exercising our right to terminate this Agreement, or require you to sign our then-current form of Franchise Agreement if we choose to rescind our termination of this Agreement. We also reserve the right to establish reasonable conditions that you must satisfy to cure any default, such as requiring you to pay for a year of monthly Store inspections if you commit a default relating to Section 13.1(k).

(f) Effect of Other Laws. The provisions of any valid, applicable law or regulation prescribing permissible grounds, cure rights or minimum periods of notice for termination of this Franchise will supersede any provision of this Agreement that is less favorable to you than such law or regulation.

13.3 Our Right to Terminate in Certain Other Circumstances.

(a) Failure to Complete Training. If you or your initial store manager fails to complete all phases of the initial training program to our satisfaction, we will have the right to terminate this Agreement effective upon delivery of notice of termination to you. If we terminate the Agreement as permitted by this provision, we will refund to you the initial franchise fee less all reasonable expenses incurred by us in connection with (i) the preparation of this Agreement and all related agreements, (ii) the grant of the Franchise, (iii) approval of the Premises, (iv) selection of the Premises, and (v) any other services performed by us in connection with the establishment and development of your Store. However, in no event will the refund exceed 50% of the initial franchise fee. The refund will be delivered to you upon execution of all releases, waivers and other agreements necessary to terminate the relationship between you and us.

(b) Failure to Open Your Store for Business. If you fail to open your Store for business in compliance with Section 4.5, we will also have the right to terminate this Agreement effective upon delivery of notice of termination to you. No refund of the initial franchise fee will be made in these circumstances.

13.4 Your Right to Terminate if We Default. We will be in default under this Agreement if we materially breach a provision contained herein. Our failure to either cure such a default within 30 days from the date of a written notice of default delivered to us or, if such default cannot reasonably be cured within 30 days, to provide proof to you of efforts which are reasonably calculated to cure such default within a reasonable time (which will in no event be more than 60 days after notice), will give you good cause to terminate this Agreement; provided you are in compliance with this Agreement. Termination will be accomplished by delivering to us written notice of termination, which notice will

state the grounds for the termination and will be effective 10 days after delivery to us. Your right to terminate this Agreement is in addition to whatever other rights and remedies are available to you.

13.5 Assumption of Management. If you are in default of this Agreement for abandonment (as described in Section 13.1(e), we have the right, at our option, to enter the Premises and assume the management of your Store for any period of time we deem appropriate. If we assume management of your Store, we will appoint a manager who will maintain Store operations. All funds from the operation of your Store during the period of management by our appointed manager will be kept in a separate fund, and all expenses of your Store, including compensation, other costs, and travel and living expenses of our appointed manager, will be charged to such fund. As compensation for such management services, we will charge such fund 10% of the Gross Revenues of your Store during the period of our management. Operation of your Store during any such period will be on your behalf, provided that we will have a duty only to utilize our good faith effort and will not be liable to you for any debts or obligations incurred by your Store or to any of your creditors for any merchandise, materials, supplies or services purchased by your Store during any period in which your Store is managed by our appointed manager. You will maintain in force for your Store all insurance policies required by this Agreement. Our right to assume management of your Store pursuant to this Section 13.5 is in addition to and does not affect our right to terminate this Agreement under Section 13.2.

ARTICLE 14

POST TERM OBLIGATIONS

14.1 Reversion of Rights. You agree that upon termination or expiration of this Agreement, all of your rights to use the Marks and all other rights and licenses granted herein and the right and license to conduct business under the Marks at your Store and on the Premises shall revert to us without further act or deed of any party. All right, title and interest of you in, to and under this Agreement shall become our property.

14.2 Payment of Amounts Owed to Us and Others following Termination or Expiration. You agree to pay us within 15 days after the date of termination or expiration of this Agreement, or such later date as the amounts due to us are determined, the continuing fees, marketing fees, amounts owed for purchases by you from us or our Affiliates, interest due on any of the foregoing and all other amounts owed to us or our Affiliates which are then unpaid.

14.3 Discontinuance of the Use of the Marks following Termination or Expiration. You agree that, upon termination or expiration of this Agreement, you will:

(a) Not directly or indirectly at any time or in any manner (except with respect to other Pretzel Time Stores owned and operated by you) identify yourself or any business as a current or former Pretzel Time Store, or as a franchisee, licensee or dealer of us or our Affiliates, use any Mark, any colorable imitation of a Mark or other indicia of a Pretzel Time Store in any manner or for any purpose or utilize for any purpose any trade name, trade or service mark or other commercial symbol that suggests or indicates a connection or association with us or our Affiliates;

(b) Deliver to us all signs, sign-faces, sign-cabinets, marketing materials, forms, invoices and other materials containing any Mark or otherwise identifying or relating to a Pretzel Time Store and allow us, without liability, to remove all such items from your Store;

(c) Take such action as may be required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark;

(d) If we do not purchase your Store as provided in Section 14.5, make the changes to the exterior and interior appearance of your Store to distinguish the Trade Dress as are reasonably required by us;

(e) Deliver all materials and supplies identified by the Marks in full cases or packages to us for credit and dispose of all other materials and supplies identified by the Marks within 30 days after the effective date of termination of this Agreement;

(f) Notify the telephone company and all telephone directory publishers of the termination of your right to use any telephone and telecopy numbers and any regular, classified or other telephone directory listings associated with any Mark and to authorize transfer of those rights to us, or at our direction, our designee. You agree that, as between you and us, we have the right to and interest in all telephone and telecopy numbers and directory listings associated with any Mark. You authorize us and appoint us and any of our officers as your attorney in fact, to direct the telephone company and all telephone directory publishers to transfer any telephone and telecopy numbers and directory listings relating to your Store to us, or our designee, should you fail or refuse to do so, and the telephone company and all telephone directory publishers may accept such direction or this Agreement as conclusive of our exclusive rights in the telephone and telecopy numbers and directory listings and our authority to direct their transfer; and

(g) Furnish us, within 30 days after the effective date of termination, with evidence satisfactory to us of your compliance with the obligations in this Section 14.3.

You agree that if you fail to fulfill any of the obligations contained in this Section 14.3 upon termination or expiration of this Agreement, we have the right, at our option, to perform such obligations at your expense.

14.4 Discontinuance of Use of Confidential Information following Termination or Expiration. You agree that, upon termination or expiration of this Agreement, you will immediately cease to use any Confidential Information disclosed to you pursuant to this Agreement in any business or otherwise and you will return to us all copies of the Operations Manuals and any other confidential materials which we have loaned to you.

14.5 Our Option to Purchase Franchised Stores.

(a) Option to Purchase. Upon termination or expiration of this Agreement other than as a result of our default and if no successor franchise agreement has been executed, we or our assignee will have the right, at our option, exercisable by giving written notice thereof within 60 days from the date of such termination or expiration, to acquire from you the inventory of Pretzel Time Products, materials, and supplies that are in good and saleable condition and not obsolete or discontinued (the "Inventory") and the equipment, furnishings, signs, and the other tangible assets of your Stores (collectively, with the Inventory, the "Assets"). We will have the right to assign this option to purchase and our rights under this Section 14.5. We will be entitled to all customary warranties and representations in connection with our purchase, including, without limitation, representations and warranties as to ownership, condition of and title to the Assets, no liens and encumbrances on the Assets, and validity of contracts and agreements and liabilities benefiting us or affecting the Assets, contingent or otherwise.

(b) Purchase Price. The purchase price for the Assets will be equal to the greater of:

(i) The sum of the book value of your Store's Assets, other than Inventory, amortized on a straight-line basis over a 7 year period, plus the lesser of cost and the then-current wholesale market value of the Inventory, or

(ii) The product of your Store's average cash flow for the 2 most recently completed fiscal years, multiplied by 2. "Cash flow" means your Store's Gross Revenues less all Franchised Store-related costs (i.e., cost of goods sold, labor, occupancy and other Franchised Store expenses) as well as annual administrative costs of \$15,000, continuing fees and marketing fees, but not including interest and depreciation.

We will have the right to set off against and reduce the purchase price by any and all amounts owed by you to us or our Affiliates. We have the right to exclude from the Assets purchased any equipment, furnishings, signs, and usable inventory of Pretzel Time Products, materials, or supplies of your Stores that we have not approved as meeting our standards for Pretzel Time Stores, and the purchase price will be reduced by the replacement cost of such excluded items which are required in the operation of your Stores being purchased.

(c) Payment of Purchase Price. The purchase price will be paid in cash at the closing of the purchase, which will take place no later than 90 days after your receipt of our notice of exercise of this option to purchase your Stores, at which time you will deliver instruments transferring to us good and merchantable title to the Assets purchased, free and clear of all liens and encumbrances and with all sales and other transfer taxes paid by you, and with all licenses or permits of your Stores which may be assigned or transferred. If the closing of the purchase does not occur within the 90-day period because you fail to act diligently in connection with the purchase, the purchase price will be reduced by 10%. The purchase price will be further reduced by 10% per month for each subsequent month you fail to act diligently to consummate the purchase. Prior to closing, you and we will comply with the applicable Bulk Sales provisions of the Uniform Commercial Code as enacted in the state where your Store is located.

(d) Lease of Premises. In connection with the purchase of the Assets of a Franchised Store, you will also deliver to us an assignment of the lease for your Store Premises (or, if assignment is prohibited, subleases for the full remaining term and on the same terms and conditions as your lease). If you own the Premises of your Store, you agree to lease the Premises to us pursuant to the terms of our standard lease, for a term of 5 years with two successive 5-year renewal options at fair market rental during the initial and renewal terms.

(e) Interim Management. If we exercise the option to purchase your Store, pending the closing of such purchase, we have the right to appoint a manager to maintain the operation of your Store or, at our option, require you to close your Store during such time period without removing any assets. If we appoint a manager to maintain the operation of your Store pending closing of such purchase, all funds from the operation of your Store during the period of management by our appointed manager will be kept in a separate fund, and all expenses of your Store, including compensation, other costs, and travel and living expenses of our appointed manager, will be charged to such fund. As compensation for such management services, we will charge such fund 10% of the Gross Revenues of your Store during the period of our management. Operation of your Store during any such period will be on your behalf, provided that we will have a duty only to utilize our good faith effort and will not be liable to you for any debts or obligations incurred by your Store or to any of your creditors for any merchandise, materials, supplies or services purchased by your Store during any period in which your Store is managed by our appointed manager. You will maintain in force for your Store all insurance policies required by this Agreement until the date of closing.