

Sample Franchise Agreement

Article 1 Introduction

1.1 The SYSTEM.

SHOPPE COMPANY has through the investment of considerable time and money developed a unique and distinctive system of high quality ice cream shops (the "SYSTEM") operated in association with the MARKS prominently featuring the sale of HAAGEN-DAZS® PRODUCTS and menu items prepared with HAAGEN-DAZS® PRODUCTS. The SYSTEM includes proprietary and distinctive products, product specifications, ingredients, menu items, recipes, techniques, training methods, production methods, operating methods, designs and decor, uniform apparel, color schemes, furnishings, marketing materials, promotional strategies, and customer service requirements (the "SYSTEM STANDARDS"), all of which may be modified from time to time by SHOPPE COMPANY, and which are directed toward promoting HAAGEN-DAZS® PRODUCTS in a manner that will enhance the good will associated with the MARKS and the SYSTEM.

1.2 FRANCHISEE'S Desire to be Part of the SYSTEM.

FRANCHISEE desires to be part of the SYSTEM and to establish, own and operate a HAAGEN-DAZS® SHOP at the SHOP PREMISES, subject to and in accordance with all of the terms and conditions of this AGREEMENT, and in adherence and conformity to the SYSTEM STANDARDS.

1.3 SHOPPE COMPANY'S Desire to Grant FRANCHISE.

SHOPPE COMPANY desires to grant FRANCHISEE a franchise to establish and operate a HAAGEN-DAZS® SHOP at the SHOP PREMISES, subject to the terms and conditions of this AGREEMENT, and conditioned upon FRANCHISEE'S continual adherence and conformity to the SYSTEM STANDARDS.

1.4 Agreement of the Parties.

Consistent with these introductory Sections, and in consideration of the mutual promises and covenants contained in this AGREEMENT, SHOPPE COMPANY and FRANCHISEE agree to be bound by the terms of this AGREEMENT.

Article 2 Certain Definitions

For the purposes of this AGREEMENT, the following terms shall have the following meanings:

2.1 HAAGEN-DAZS® PRODUCTS.

"HAAGEN-DAZS® PRODUCTS" means Haagen-Dazs® brand ice cream, sorbet, frozen yogurt, other frozen dessert products and other food items, manufactured under a license from the owner of the MARKS, for distribution and sale in association with the MARKS, as modified, added to, or deleted from time to time by SHOPPE COMPANY.

2.2 HAAGEN-DAZS® SHOP.

"HAAGEN-DAZS® SHOP" means a retail ice cream store operated as part of the SYSTEM, either directly by SHOPPE COMPANY, or under a written franchise agreement granted by SHOPPE COMPANY.

2.3 MARKS.

"MARKS" means the Haagen-Dazs name and trademarks, service marks, logos, trade dress, and other commercial symbols.

2.4 NOTICE.

"NOTICE" means a communication satisfying the requirements of Article 20.

2.5 SHOP.

"SHOP" means the HAAGEN-DAZS® SHOP established and operated by FRANCHISEE under the terms of this AGREEMENT. For the purposes of determining compliance with the SYSTEM STANDARDS, "SHOP" also includes any facility, whether or not a part of the SHOP PREMISES, where SHOPPE COMPANY permits FRANCHISEE to store, handle or display food, or other items, which are sold or used at the SHOP.

Article 3 Site Selection, SHOP construction, and EXCLUSIVE TERRITORY

The terms and conditions of Exhibits A, B, C, and D to this AGREEMENT (respectively "EXHIBIT A", "EXHIBIT B", "EXHIBIT C", and "EXHIBIT D") form a part of this AGREEMENT, and are incorporated into this AGREEMENT to the same extent as if fully set forth under this Article 3.

3.1 Site Selection Process; Designation of SHOP PREMISES.

If this AGREEMENT was issued in connection with a NEW HAAGEN-DAZS® SHOP, then the SHOP PREMISES will be designated under the terms of EXHIBIT A. If this AGREEMENT was issued in connection with a SUCCESSIVE TERM FRANCHISE, then the SHOP PREMISES are designated on EXHIBIT D.

3.2 Shop Design and Construction.

FRANCHISEE will adhere to SHOPPE COMPANY'S procedures and requirements for the design and construction of the SHOP, as more particularly described by EXHIBIT B.

(a) In the case of a NEW HAAGEN-DAZS® SHOP, FRANCHISE will diligently construct the SHOP at the SHOP PREMISES, if and after SHOPPE COMPANY designates the SHOP PREMISES in accordance with EXHIBIT A, time being of the essence.

(b) In the case of a SUCCESSIVE TERM FRANCHISE, FRANCHISEE shall completely remodel the SHOP, within one year from the COMMENCEMENT DATE identified on EXHIBIT D, time being of the essence.

(c) FRANCHISEE shall not commence (or recommence) operations at the SHOP unless and until SHOPPE COMPANY determines that the SHOP reasonably conforms to the plans and specifications approved by SHOPPE COMPANY in accordance with EXHIBIT B.

3.3 EXCLUSIVE TERRITORY.

The parties acknowledge and agree that the EXCLUSIVE TERRITORY, if any, will be determined by SHOPPE COMPANY in accordance with EXHIBIT C.

(a) In the case of a NEW HAAGEN-DAZS® SHOP, SHOPPE COMPANY will provide FRANCHISEE with written information sufficient to determine the EXCLUSIVE TERRITORY, if any, using a document similar to EXHIBIT D, or some other form of written communication SHOPPE COMPANY considers appropriate, when SHOPPE COMPANY designates the SHOP PREMISES in accordance with EXHIBIT A.

(b) In the case of a SUCCESSIVE TERM FRANCHISE, information sufficient to determine the EXCLUSIVE TERRITORY, if any, is set forth on EXHIBIT D.

Article 4 Grant

4.1 The "FRANCHISE."

Subject to the provisions of this AGREEMENT, SHOPPE COMPANY hereby grants FRANCHISEE the personal, limited right and license (the "FRANCHISE") to, during the TERM, operate the SHOP, at the SHOP PREMISES, in association with the MARKS, and in compliance with the SYSTEM STANDARDS.

4.2 No Right to Relocate, or Conduct Sales Away from the SHOP.

This AGREEMENT does not grant FRANCHISEE any right to relocate the SHOP. This AGREEMENT does not grant FRANCHISEE any right to sell any goods or services associated with the MARKS or the SYSTEM, except on a retail basis from the SHOP. Without limiting the foregoing, this AGREEMENT does not grant FRANCHISEE any right to engage in wholesale sales, mail order sales, catalog sales, special events sales, catering, internet-based sales (e-Commerce), or any other sale to a customer who is not physically present in the SHOP at the time of purchase. If SHOPPE COMPANY from time to time permits FRANCHISEE to engage in any sales away from the SHOP, then those sales shall not result in any enlargement of the EXCLUSIVE TERRITORY, and FRANCHISEE shall fully adhere to

SHOPPE COMPANY'S requirements and policies pertaining to those sales away from the SHOP, which shall be deemed to be a part of the SYSTEM STANDARDS to which FRANCHISEE shall adhere.

Article 5 Commencement, TERM and Renewal

5.1 The "TERM."

The term of the FRANCHISE (the "TERM") will commence on the "COMMENCEMENT DATE" determined under this Article 5, and will end on the EXPIRATION DATE determined under this Article 5; unless this AGREEMENT is sooner cancelled or terminated in accordance with its provisions.

5.2 NEW HAAGEN-DAZS® SHOP.

Each of the provisions of this Section 5.2 applies if, and only if, this AGREEMENT was entered into in contemplation of a NEW HAAGEN-DAZS® SHOP.

5.2.1 COMMENCEMENT DATE.

The COMMENCEMENT DATE will be the day the SHOP first opens for business.

5.2.2 Commencement of Operations.

FRANCHISEE shall exert its best efforts to open the SHOP on or before the day that is exactly 3 years from the date of this AGREEMENT (appearing on the top of the COVER SHEET) (the "OUTSIDE OPENING DATE").

5.2.3 EXPIRATION DATE.

The EXPIRATION DATE is the day immediately before the tenth anniversary of:

- (a) the COMMENCEMENT DATE; or
- (b) the OUTSIDE OPENING DATE; whichever is earlier.

5.2.4 Failure to Open by OUTSIDE OPENING DATE.

Irrespective of the cause of any delay, if FRANCHISEE fails to open the SHOP for business by the OUTSIDE OPENING DATE, then, SHOPPE COMPANY shall have the absolute right to elect to:

- (a) permit FRANCHISEE additional time to open SHOP under this AGREEMENT, provided however that the EXPIRATION DATE shall remain the same; or
- (b) require FRANCHISEE to enter into SHOPPE COMPANY'S most current form of franchise agreement in replacement of this AGREEMENT, and permit FRANCHISEE additional time to open Shop, in which case SHOPPE

COMPANY may at its election require that the EXPIRATION DATE remain the same, or may extend the EXPIRATION DATE; or

(c) cancel this AGREEMENT and return the FRANCHISE FEE paid by FRANCHISEE under Article 7, less \$5,000, which SHOPPE COMPANY shall have an absolute right to retain, in which case SHOPPE COMPANY shall have no further obligations to FRANCHISEE under this AGREEMENT.

5.2.5 Renewal Opportunity.

FRANCHISEE shall have the opportunity to continue the operation of the SHOP during a second 10-year term (the "RENEWAL TERM"), subject to and conditioned upon each and every one of the following provisions:

5.2.5.1 Written Request for Grant of RENEWAL TERM.

If FRANCHISEE desires to continue to operate the SHOP for the RENEWAL TERM, then FRANCHISEE must in writing, at least 180 days before the EXPIRATION DATE, but no more than 270 days before the EXPIRATION DATE, request that SHOPPE COMPANY issue its then current standard form franchise agreement for renewal terms (a "RENEWAL AGREEMENT"), contemplating a single ten-year franchise term for the SHOP, at the SHOP PREMISES. FRANCHISEE acknowledges and agrees that terms of a RENEWAL AGREEMENT, including the amount of the ROYALTY payable during the RENEWAL TERM, may be substantially different from the terms of this AGREEMENT, and may be substantially different from the terms of the standard form franchise agreement that SHOPPE COMPANY is then issuing in connection with a new HAAGEN-DAZS® SHOP.

5.2.5.2 Operation in Compliance with SHOPPE COMPANY Requirements.

SHOPPE COMPANY shall have no obligation to issue a RENEWAL AGREEMENT to FRANCHISEE, unless FRANCHISEE meets each and every one of the following conditions, each of which FRANCHISEE agrees is reasonable.

- (a) FRANCHISEE shall have continuously been, during the last 2 years of the TERM, current in its financial obligations to SHOPPE COMPANY, SHOPPE COMPANY'S affiliates, and SHOPPE COMPANY'S designated suppliers, under this AGREEMENT, and under any other agreement existing between SHOPPE COMPANY and FRANCHISEE.
- (b) FRANCHISEE shall have continuously, during the last 2 years of the TERM, operated the SHOP, as well as any other HAAGEN-DAZS® SHOP in which FRANCHISEE has an interest, in accordance with SHOPPE COMPANY'S operational requirements; and, in particular, during such time period shall have received only passing scores during any operational audit or inspection, irrespective of whether a non-passing score resulted in a NOTICE of default, and irrespective of whether deficiencies identified were timely corrected.
- (c) FRANCHISEE shall have, during the last 2 years of the TERM, consistently operated the SHOP in accordance with each of the terms of this AGREEMENT and the SHOP OPERATIONS MANUAL, and, during such period, shall not

have been declared to be in default of any of the terms of this AGREEMENT, or any other franchise agreement existing between SHOPPE COMPANY and FRANCHISEE.

(d) FRANCHISEE shall have, during the last 2 years of the TERM, consistently participated in all marketing promotions conducted by SHOPPE COMPANY.

(e) FRANCHISEE shall meet SHOPPE COMPANY'S then current financial requirements for the grant of a RENEWAL TERM, which may require that FRANCHISEE demonstrate the financial ability to continue to operate the SHOP, and to timely remodel the SHOP to the extent required by SHOPPE COMPANY under Section 5.2.5.2(g), or the RENEWAL AGREEMENT.

(f) If required by SHOPPE COMPANY, then FRANCHISEE shall have, during the last year of the TERM, caused its DESIGNATED SHOP MANAGER to attend SHOPPE COMPANY'S training program, irrespective of any prior training and experience.

(g) If required by SHOPPE COMPANY, then FRANCHISEE shall have, during the last year of the TERM, completely remodeled the SHOP in accordance with SHOPPE COMPANY'S procedures to bring the SHOP into conformity with SHOPPE COMPANY'S then current design and operational requirements.

5.2.5.3 RENEWAL AGREEMENT Execution.

If SHOPPE COMPANY issues a RENEWAL AGREEMENT to FRANCHISEE, then FRANCHISEE must timely execute that RENEWAL AGREEMENT in accordance with SHOPPE COMPANY'S then current requirements. FRANCHISEE will not be required to pay an initial franchise fee to enter into the RENEWAL AGREEMENT.

5.3 SUCCESSIVE TERM FRANCHISE.

Each of the provisions of this Section 5.3 applies if, and only if, this AGREEMENT is for a SUCCESSIVE TERM FRANCHISE.

5.3.1 COMMENCEMENT DATE.

The COMMENCEMENT DATE is set forth on the EXHIBIT D.

5.3.2 EXPIRATION DATE.

The EXPIRATION DATE is the day immediately before the tenth anniversary of the COMMENCEMENT DATE.

5.3.3 No Opportunity to Renew.

FRANCHISEE acknowledges and agrees that this AGREEMENT confers no right to continuation, renewal, or a subsequent franchise agreement on or after the EXPIRATION DATE.

5.4 Limitation on Conditional Renewal Opportunity.

FRANCHISEE understands and agrees that, except as set forth in Section 5.2.5, which Section applies solely in the case of a NEW HAAGEN-DAZS® SHOP, this AGREEMENT confers no right to continuation, renewal, or a subsequent franchise agreement on or after the EXPIRATION DATE, and SHOPPE COMPANY shall not have any obligation to continue its relationship with FRANCHISEE in connection with the SHOP after the EXPIRATION DATE. If FRANCHISEE enters the LEASE for a tenancy extending beyond the TERM, or enters into an extension of the LEASE, a new lease for the SHOP PREMISES, or any other commitment related to the SHOP, for a period after the TERM, then FRANCHISEE shall be doing so at its own risk.

Article 6 SHOPPE COMPANY'S Obligations

Except as explicitly set forth in this Article 6, or explicitly contemplated by a particular provision of this AGREEMENT, SHOPPE COMPANY has no obligations to FRANCHISEE under this AGREEMENT.

6.1 Plans and Specifications.

In connection with the initial construction of the SHOP, or a remodel of the SHOP if required by Sections 3.2(b) or 11.15, SHOPPE COMPANY shall, at no charge, provide FRANCHISEE or FRANCHISEE'S architect with standard criteria for the design and configuration of a typical HAAGEN-DAZS® SHOP, including exterior and interior design and layout, fixtures, furnishings, equipment and signage, which FRANCHISEE shall, at FRANCHISEE'S expense, adapt to conform to the characteristics of the SHOP PREMISES in accordance with the terms of EXHIBIT B.

6.2 Training.

Before the initial opening of the SHOP, SHOPPE COMPANY shall, at no charge to FRANCHISEE, provide initial training for the DESIGNATED SHOP MANAGER and up to one additional person in accordance with Section 11.3.1.

6.3 SHOP OPERATIONS MANUAL.

During the TERM, SHOPPE COMPANY shall at no charge loan one copy of the SHOP OPERATIONS MANUAL to FRANCHISEE in accordance with Article 10.

6.4 Final Inspection.

At a mutually convenient time agreed upon sufficiently in advance of the initial opening of the SHOP, SHOPPE COMPANY shall, at no charge to FRANCHISEE, inspect the SHOP to determine that it reasonably conforms to the plans and specifications approved by SHOPPE COMPANY under the procedures described by EXHIBIT B.

6.5 Opening Assistance.

Before and in connection with the initial opening of the SHOP, SHOPPE COMPANY shall, at no charge, provide FRANCHISEE with such pre-opening and opening assistance and guidance as SHOPPE COMPANY deems appropriate. If FRANCHISEE is a NEW FRANCHISEE, then the assistance provided by SHOPPE COMPANY under this Section 6.5 will include the physical presence of one or more SHOPPE COMPANY representatives for a total of at least five person-days (based on an 8-hour work day) before, during, and/or just after the SHOP first opens for business.

6.6 Ongoing Source of HAAGEN-DAZS® PRODUCTS and Other Products.

During the TERM, SHOPPE COMPANY will designate a source from which FRANCHISEE shall purchase HAAGEN-DAZS® PRODUCTS, and will designate or approve sources for other items purchased by FRANCHISEE in connection with the operation of the SHOP, as more particularly described under Section 11.7.

6.7 Ongoing Advice and Assistance.

During the TERM, SHOPPE COMPANY shall, at no charge, from time to time provide FRANCHISEE with such advisory assistance, information, techniques, data, and instructional materials concerning the sale of items from the SHOP, operation of the SHOP, marketing programs applicable to the SYSTEM, local marketing of the SHOP, and adherence to the SYSTEM STANDARDS as SHOPPE COMPANY deems advisable.

Article 7 Initial Fees

7.1 The "FRANCHISE FEE."

FRANCHISEE shall pay an initial franchise fee (the "FRANCHISE FEE") to SHOPPE COMPANY, for the right to enter into this AGREEMENT and in consideration of the FRANCHISE, in an amount determined as follows:

(a) If this AGREEMENT grants the Franchise to a New FRANCHISEE for a New Haagen-Dazs® Shop, then the full amount of the FRANCHISE FEE is \$30,000. The FRANCHISE

FEE is due in two installments. The first installment, in the amount of \$10,000, must be paid upon FRANCHISEE'S signing of this AGREEMENT. The second installment, in the amount of \$20,000, must be paid within 15 days following SHOPPE COMPANY'S designation of the SHOP PREMISES under the terms of EXHIBIT A.

(b) If this AGREEMENT grants the Franchise to an Existing FRANCHISEE for a New Haagen-Dazs® Shop, then the full amount of the FRANCHISE FEE is \$15,000. The FRANCHISE FEE is due in two installments. The first installment, in the amount of \$10,000, must be paid upon FRANCHISEE'S signing of this AGREEMENT. The second installment, in the amount of \$5,000, must be paid within 15 days following SHOPPE COMPANY'S designation of the SHOP PREMISES under the terms of EXHIBIT A.

(c) If this AGREEMENT grants a Successive Term Franchise, then the full amount of the FRANCHISE FEE shall be \$10,000, which is due and payable upon FRANCHISEE'S signing of this AGREEMENT.

7.2 Failure to Timely Pay Second Installment of FRANCHISE FEE.

If FRANCHISEE fails to timely pay the second installment of the FRANCHISE FEE, if required under Section 7.1(a) or 7.1(b), then SHOPPE COMPANY shall have the absolute right to declare this AGREEMENT void, retain the first installment of the FRANCHISE FEE paid by FRANCHISEE, and shall otherwise have no remaining obligations to FRANCHISEE under this AGREEMENT.

7.3 FRANCHISE FEE is Nonrefundable.

The FRANCHISE FEE is nonrefundable except to the extent specifically described in Sections 5.2.4(c), and 7.4, and Sections 4.4(a) and Article 5 of EXHIBIT A.

7.4 Partial Refund Upon Failure To Satisfy Initial Training Requirement.

If the initial DESIGNATED SHOP MANAGER fails to complete training to the satisfaction of SHOPPE COMPANY, in accordance with Section 11.3.1, then SHOPPE COMPANY will give FRANCHISEE an opportunity to designate a different initial DESIGNATED SHOP MANAGER under Section 11.2, who must complete training to the satisfaction of SHOPPE COMPANY before the SHOP first opens for business. If the second initial DESIGNATED SHOP MANAGER also fails to complete training to the satisfaction of SHOPPE COMPANY, or FRANCHISEE declines the opportunity to have a second initial DESIGNATED SHOP MANAGER attend SHOPPE COMPANY'S training program, then SHOPPE COMPANY may cancel this AGREEMENT. If SHOPPE COMPANY cancels this AGREEMENT under this Section 7.4, then SHOPPE COMPANY shall refund the FRANCHISE FEE (to the extent already paid by FRANCHISEE), less \$5,000, which amount SHOPPE COMPANY shall have an absolute right to retain, and SHOPPE COMPANY shall have no further obligations to FRANCHISEE under this AGREEMENT.

Article 8 GRAND OPENING Program

8.1 Optional GRAND OPENING.

FRANCHISEE may, but shall have no obligation to, conduct a grand opening event (the "GRAND OPENING").

8.2 Participation by SHOPPE COMPANY.

If this AGREEMENT contemplates a NEW HAAGEN-DAZS® SHOP, and the GRAND OPENING satisfies each of the criteria set forth in Section 8.2.1, then SHOPPE COMPANY will financially participate in the GRAND OPENING, by providing FRANCHISEE with goods, services, and/or money, as determined solely by SHOPPE COMPANY, having a combined monetary value equal to V4 of the GRAND OPENING expenditures approved by SHOPPE COMPANY and actually made by FRANCHISEE, up to a maximum financial participation by SHOPPE COMPANY in the amount of \$2,000.

8.2.1 **Grand Opening Criteria.**

In order for FRANCHISEE to become entitled to SHOPPE COMPANY'S financial participation in connection with the GRAND OPENING, FRANCHISEE must:

- (a) at least 30 day prior to the GRAND OPENING, submit a proposed GRAND OPENING plan to SHOPPE COMPANY, detailing the marketing elements being proposed by FRANCHISEE, and the anticipated expenditures for each;
- (b) within 90 days from the COMMENCEMENT DATE, conduct the GRAND OPENING over the course of no more than 3 consecutive days, during the SHOP'S normal business hours, consistent with the GRAND OPENING plan approved by SHOPPE COMPANY; and
- (c) spend at least \$3,000 toward GRAND OPENING marketing expenditures approved by SHOPPE COMPANY.

8.2.2 **Excluded Items.**

Unless SHOPPE COMPANY specifically commits otherwise, in writing, FRANCHISEE'S labor costs, food costs, other overhead costs, expenditures required by the LANDLORD, and discounts offered during the GRAND OPENING will not be considered in determining whether FRANCHISEE met the \$3,000 threshold required by Section 8.2.1(b); or in determining SHOPPE COMPANY'S financial participation commitment under Section 8.2; even if specifically identified by FRANCHISEE in the GRAND OPENING plan approved by SHOPPE COMPANY.

Article 9 **Continuing Fees**

9.1 **"GROSS SALES" Defined.**

"GROSS SALES" means:

- (a) all revenue derived from the sale, at regular selling prices before any discounts or allowances, of any food, merchandise, and services, from the SHOP;
- (b) all income of every kind and nature related to the SHOP, FRANCHISE, and/or MARKS, even if derived from sales or activities not permitted by this AGREEMENT;
- (c) the fair value of any non-monetary consideration received by FRANCHISEE for any food, merchandise, and services, from the SHOP, which are bartered, traded or otherwise exchanged by FRANCHISEE for valuable goods or services; and
- (d) all proceeds of any business interruption insurance policies related to the SHOP or FRANCHISE.

Specifically excluded from "GROSS SALES" are:

(x) the incidental sale of gift cards (or any similar redemption device), if authorized by SHOPPE COMPANY; provided however that goods and services purchased with gift cards (or any similar redemption device) shall be included in GROSS SALES, to the same extent as if paid for with cash;

(y) sales taxes, excise taxes, or other taxes added to the selling price of any item or service, if actually collected from customers and transmitted to a governmental taxing authority; provided however any tax rebate, allowance, of discount shall be part of GROSS SALES to the extent received, taken, or realized by FRANCHISEE;

(z) any extraordinary sale of equipment or fixtures used in the SHOP.

9.2 Charge Sales.

Each charge sale or credit sale shall be included in "GROSS SALES" at the time the sale is made, without regard to whether payment is actually collected.

9.3 Sales Away from the SHOP.

This AGREEMENT does not permit FRANCHISEE to sell any food, merchandise or services away from the SHOP. If FRANCHISEE is authorized by SHOPPE COMPANY, or without such authorization, sells food, merchandise or services associated with the MARKS away from the SHOP, then the revenues from those sales will be part of FRANCHISEE'S GROSS SALES, and FRANCHISEE shall comply with the procedures established by SHOPPE COMPANY to ensure that any such GROSS SALES are properly captured by the POS SYSTEM, or otherwise reported to SHOPPE COMPANY under Section 9.4.

9.4 Reporting GROSS SALES.

FRANCHISEE shall accurately report its GROSS SALES and such other information as SHOPPE COMPANY requires, on a weekly basis, or some other periodic basis specified from time to time by SHOPPE COMPANY, using a form prescribed by SHOPPE COMPANY, supported by whatever documentation SHOPPE COMPANY reasonable requires. Unless SHOPPE COMPANY specifies otherwise, FRANCHISEE will report its GROSS SALES every Monday, reflecting sales for the preceding week. In lieu of requiring FRANCHISEE to report GROSS SALES, SHOPPE COMPANY may determine FRANCHISEE'S GROSS SALES based on data SHOPPE COMPANY obtains from the POS SYSTEM under Section 11.20.2.

9.5 Estimating GROSS SALES.

If FRANCHISEE at any time fails to timely report its GROSS SALES, then in addition to any other remedies that SHOPPE COMPANY may have under this AGREEMENT, SHOPPE COMPANY will have the right to in good faith estimate FRANCHISEE'S GROSS SALES, multiply the good faith estimate of GROSS SALES by 125% to arrive at an adjusted estimate of GROSS SALES, and invoice and collect amounts due from FRANCHISEE on the basis of the adjusted estimate of GROSS SALES. If FRANCHISEE, within 30 days following SHOPPE COMPANY'S invoicing or otherwise notifying FRANCHISEE that SHOPPE COMPANY has estimated FRANCHISEE'S GROSS SALES under this Section 9.5,

reports its GROSS SALES for the period that had not been timely reported, then the parties will reconcile any difference between the amount reported and the adjusted estimate of GROSS SALES; otherwise the adjusted estimate of GROSS SALES will become final and binding. FRANCHISEE agrees that this provision is reasonable, and that the adjusted estimate of GROSS SALES shall be deemed liquidated damages, and not a penalty, based on the difficulty of accurately estimating GROSS SALES based on prior reporting periods.

9.6 "ROYALTY."

FRANCHISEE shall pay SHOPPE COMPANY a continuing fee {the "ROYALTY"}, equal to four percent (4%) of GROSS SALES, for the continuing right to operate the SHOP in association with the MARKS and the SYSTEM.

9.6.1 Reporting ROYALTY.

FRANCHISEE shall accurately report the total ROYALTY that SHOPPE COMPANY became entitled to receive at the same time that FRANCHISEE must report its GROSS SALES under Section 9.4, and for the same reporting period.

9.6.2 When Due.

Unless SHOPPE COMPANY establishes a different due date under Section 9.6.3, ROYALTY payments are due at the same time FRANCHISEE report its GROSS SALES under Section 9.4.

9.6.3 ROYALTY Payments

SHOPPE COMPANY may from time to time modify the requirements and system for payment and collection of the ROYALTY. By way of example, but not limitation:

- (a) SHOPPE COMPANY may periodically invoice FRANCHISEE for the ROYALTY due, taking into account any prepayment made under Section 9.6.4, in which case the ROYALTY will not be delinquent as long as it is paid in accordance with the terms of the respective invoice; provided however that in the event FRANCHISEE fails to timely pay the ROYALTY invoiced, or fails to timely report GROSS SALES, thus impeding the ROYALTY invoicing process, then FRANCHISEE shall be deemed to have failed to timely pay the ROYALTY as of when FRANCHISEE was required to report its related GROSS SALES.
- (b) SHOPPE COMPANY may direct FRANCHISEE to pay the ROYALTY at the same time that FRANCHISEE must report the ROYALTY payable to SHOPPE COMPANY under Section 9.6.1.
- (c) SHOPPE COMPANY may automatically deduct the ROYALTY from a financial account maintained by FRANCHISEE, using an electronic funds transfer ("EFT") process in accordance with Section 9.9.

9.6.4 Prepayment of ROYALTY.

SHOPPE COMPANY may require FRANCHISEE to prepay the ROYALTY when FRANCHISEE purchases HAAGEN-DAZS® PRODUCTS, using a formula identical to that used to calculate the royalty paid by other SYSTEM franchisees, or some other formula determined by SHOPPE COMPANY to reasonably approximate the ROYALTY that FRANCHISEE must pay.

9.6.5 Treatment of Overpayments.

SHOPPE COMPANY will periodically, and no less often than quarterly, reconcile amounts it became entitled to receive from FRANCHISEE for the ROYALTY, with the ROYALTY prepayments made by FRANCHISEE under Section 9.6.4. If a reconciliation under this Section 9.6.5 establishes that FRANCHISEE overpaid the ROYALTY due for the period reconciled, then SHOPPE COMPANY will at its option issue a payment or credit to FRANCHISEE in the amount of the overpayment. In the case of a credit, the credit may be used toward amounts due or that become due to SHOPPE COMPANY or its affiliates, as determined by SHOPPE COMPANY. SHOPPE COMPANY shall have the absolute right to delay the reconciliation process to the extent of reporting delays by FRANCHISEE. SHOPPE COMPANY may also delay issuing any payment or credit if SHOPPE COMPANY has issued an Audit NOTICE to FRANCHISEE under Section 9.6.5, and thereafter diligently proceeds to audit FRANCHISEE'S books and records. At its option, SHOPPE COMPANY may include amounts payable by FRANCHISEE for LOCAL MARKETING CONTRIBUTIONS under Section 9.8.2 in the reconciliation process.

9.7 "GENERAL MARKETING CONTRIBUTION."

FRANCHISEE shall pay a continuing fee (the "GENERAL MARKETING CONTRIBUTION") to be used by SHOPPE COMPANY as more particularly described below.

9.7.1 Amount of GENERAL MARKETING CONTRIBUTION.

For each year of the TERM, FRANCHISEE shall pay a GENERAL MARKETING CONTRIBUTION determined in accordance with the following formula, provided, however, that in no event shall the GENERAL MARKETING CONTRIBUTION be less than \$3,000 per year. The GENERAL MARKETING CONTRIBUTION shall be adjusted each year from an original base of \$1,000, to which \$25 shall be added or subtracted for each full 3.0 change during the previous calendar year in the U.S. Bureau of Labor Statistics Consumer Price Index, For All Urban Consumers, U.S. City Average ("1967" equals 100) from a base of 196.7. If publication of the Index referred to above is terminated, then SHOPPE COMPANY shall be entitled to designate

and use another Index to calculate fluctuations in the GENERAL MARKETING CONTRIBUTION. The GENERAL MARKETING CONTRIBUTION shall be prorated for the first and last years of TERM if less than full calendar years.

9.7.2 When Due.

FRANCHISEE shall pay GENERAL MARKETING CONTRIBUTIONS promptly, in accordance with the terms of invoices from SHOPPE COMPANY or its designee. At least 1/12th of the annual GENERAL MARKETING CONTRIBUTION shall be paid each month.

9.7.3 Use of GENERAL MARKETING CONTRIBUTION.

The GENERAL MARKETING CONTRIBUTION together with amounts collected from other SYSTEM franchisees, will be added to a fund (the "MARKETING FUND") used, as determined solely by SHOPPE COMPANY, for advertising, sales promotions, research and public relations related to the SYSTEM. SHOPPE COMPANY may select advertising and promotional materials, programs, media, and advertising and other agencies for and to which expenditures from the MARKETING FUND are made. Expenditures or benefits derived by FRANCHISEE from the MARKETING FUND may not and need not be in proportion to FRANCHISEE'S contributions. SHOPPE COMPANY may compensate itself and/or its affiliates out of the MARKETING FUND for the reasonable expense of administering and promoting advertising and sales promotion programs. SHOPPE COMPANY is not obligated to maintain the MARKETING FUND in a segregated financial account, shall not be deemed a trustee of the MARKETING FUND, and shall not be deemed be a fiduciary by virtue of its control over the MARKETING FUND.

9.8 "LOCAL MARKETING CONTRIBUTION."

FRANCHISEE shall pay a continuing fee (the "LOCAL MARKETING CONTRIBUTION"), equal to one percent (1%) of GROSS SALES, to be used by SHOPPE COMPANY as more particularly described below.

9.8.1 Reporting LOCAL MARKETING CONTRIBUTION Due.

FRANCHISEE shall accurately report the total LOCAL MARKETING CONTRIBUTION due, for the period required to be reported, at the same time that FRANCHISEE must report its GROSS SALES under Section 9.4.

9.8.2 LOCAL MARKETING CONTRIBUTION Payments.

LOCAL MARKETING CONTRIBUTION payments shall be paid at the same time ROYALTY payments must be paid under Section 9.6.2, and in accordance with the same procedures instituted by SHOPPE COMPANY under Section 9.6.3.

9.8.3 Use of LOCAL MARKETING CONTRIBUTION.

LOCAL MARKETING CONTRIBUTIONS will be directed toward local marketing activities that SHOPPE COMPANY reasonably believes to be of benefit to FRANCHISEE. Without limitation. SHOPPE COMPANY may spend LOCAL MARKETING CONTRIBUTIONS directly, make them available for cooperative marketing, or make them available to FRANCHISEE on a reimbursement basis for costs incurred by FRANCHISEE in connection with local marketing activities specified in advance by SHOPPE COMPANY, and undertaken directly by FRANCHISEE. If SHOPPE COMPANY makes the LOCAL MARKETING CONTRIBUTIONS collected available to FRANCHISEE on a reimbursement basis, and FRANCHISEE fails to meet the conditions for reimbursement within the time limits established from time to time by SHOPPE

COMPANY, then the LOCAL MARKETING CONTRIBUTIONS collected by SHOPPE COMPANY and not otherwise utilized in accordance with this Section shall be considered part of the MARKETING FUND, and subject to any use permitted by Section 9.7.3. SHOPPE COMPANY may use or make available the LOCAL MARKETING CONTRIBUTIONS collected for local marketing activities undertaken within time frames before and after the due date of

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FRANCHISEE'S LOCAL MARKETING CONTRIBUTION, as determined by SHOPPE COMPANY from time to time, and communicated to FRANCHISEE.

9.9 Electronic Funds Transfer (EFT).

If required by SHOPPE COMPANY at any time during the TERM, then FRANCHISEE shall promptly take all necessary steps, including completing and signing necessary authorization forms, to enable:

- (a) SHOPPE COMPANY or its designee to electronically deduct, from a financial account maintained by FRANCHISEE, any amounts that become payable to SHOPPE COMPANY under this Article 9, or otherwise under this AGREEMENT;
- (b) SHOPPE COMPANY'S affiliates, or their respective designee, to electronically deduct, from a financial account maintained by FRANCHISEE, any amounts that become due to such affiliates under this AGREEMENT, in connection with FRANCHISEE'S purchases of HAAGEN-DAZS® PRODUCTS, or otherwise.

FRANCHISEE shall be responsible for any fees and charges assessed by FRANCHISEE'S financial institution in connection with transactions within this scope of this Section 9.9.

9.10 No Rights of Set-Off.

FRANCHISEE may not reduce any payment required to be made to SHOPPE COMPANY under this Article 9, on account of any money SHOPPE COMPANY owes FRANCHISEE under this AGREEMENT, or otherwise.

9.11 Late Payment.

To compensate SHOPPE COMPANY (or its affiliates) for the loss of use of funds that FRANCHISEE must pay SHOPPE COMPANY (or its affiliates) under this AGREEMENT, the principal portion of any payment that FRANCHISEE does not make to SHOPPE COMPANY (or its affiliates), when due, shall bear interest from the due date until paid at, the lesser of eighteen percent (18%) per annum or the highest contract rate of interest allowed by the law of the state where the SHOP is located. To compensate SHOPPE COMPANY (or its affiliates) for the administrative expenses incurred in connection with delinquent obligations (unless prohibited by law), SHOPPE COMPANY may also require FRANCHISEE to pay a late charge equal to ten percent (10%) of each payment that is late. SHOPPE COMPANY (and its affiliates) shall also be entitled to recover the costs and expenses, including reasonable attorneys' fees, incurred in collection of past

due amounts. FRANCHISEE shall also be responsible for payment of any bank charges, late fees, penalties, or similar charges incurred by SHOPPE COMPANY (or its affiliates) as a result of any dishonored bank check, stop payment order, electronic funds debit rejection, or similar occurrence in connection with any amount payable under this AGREEMENT. Without limiting the foregoing, the provisions of this Section 9.11 will apply to FRANCHISEE'S purchase of HAAGEN-DAZS® PRODUCTS from SHOPPE COMPANY'S affiliates.

Article 10 Confidential Manual and Information

10.1 "SHOP OPERATIONS MANUAL" Defined.

The "SHOP OPERATIONS MANUAL" is a copyrighted manual of procedures, business information, confidential and proprietary information, and trade secrets pertaining to the SYSTEM, and forming a substantial portion of the SYSTEM STANDARDS.

10.2 Ownership. Possession and Control of SHOP OPERATIONS MANUAL.

The SHOP OPERATIONS MANUAL shall at all times remain the property of SHOPPE COMPANY. One copy of the SHOP OPERATIONS MANUAL will be loaned to FRANCHISEE for use only in connection with the SHOP. The SHOP OPERATIONS MANUAL must be kept in a secure place in the SHOP at all times. FRANCHISEE may not disclose the contents of the SHOP OPERATIONS MANUAL, in whole or in part, to any person other than FRANCHISEE'S employees as may be necessary to discharge

FRANCHISEE'S obligations under this AGREEMENT. FRANCHISEE may not use the SHOP OPERATIONS MANUAL or its contents, in whole or in part, for any purpose other than to discharge its obligations under this AGREEMENT. Except as expressly permitted by SHOPPE COMPANY, FRANCHISEE may not copy or disseminate the SHOP OPERATIONS MANUAL, in whole or in part, and must implement reasonable security measures directed to accomplishing the requirements of this Section 10.2.

10.3 Revisions to SHOP OPERATIONS MANUAL.

SHOPPE COMPANY reserves the right to add to, revise or rescind various portions of the SHOP OPERATIONS MANUAL periodically, and FRANCHISEE shall implement such changes when made, even if additional investment or expenditures are required. FRANCHISEE shall keep FRANCHISEE'S copy of the SHOP OPERATIONS MANUAL current, and shall destroy superseded provisions of the SHOP OPERATIONS MANUAL. If there is a conflict between FRANCHISEE'S copy of the SHOP OPERATIONS MANUAL and the master copy of the SHOP OPERATIONS MANUAL maintained by SHOPPE COMPANY, then the master copy maintained by SHOPPE COMPANY shall control.

10.4 Confidential Information.

FRANCHISEE acknowledges that SHOPPE COMPANY will from time to time provide FRANCHISEE with information that is confidential in nature, and that if disclosed to third parties might adversely impact the ability of SHOPPE COMPANY

or SYSTEM franchisees to remain competitive. FRANCHISEE agrees that, unless otherwise determined by SHOPPE COMPANY, the marketing strategies and programs developed by SHOPPE COMPANY shall be treated as confidential until publicly disseminated in accordance with the instructions of SHOPPE COMPANY. FRANCHISEE shall not disclose any confidential information to any person other than FRANCHISEE'S employees as may be necessary to discharge FRANCHISEE'S obligations hereunder, and FRANCHISEE agrees not to use any such confidential information for any purpose other than to discharge its obligations under this AGREEMENT.

Article 11 System standards

FRANCHISEE shall, at all times during the TERM, continuously and faithfully operate the SHOP in full compliance with the SYSTEM STANDARDS.

11.1 **SHOP OPERATIONS MANUAL.**

In order to protect and enhance the reputation and good will associated with the MARKS and the SYSTEM, and to maintain SYSTEM uniformity and the SYSTEM STANDARDS. FRANCHISEE shall at all times conduct the operations of the SHOP in accordance with the SHOP OPERATIONS MANUAL.

11.2 **DESIGNATED SHOP MANAGER.**

FRANCHISEE shall at all times have a person designated as having primary responsibility for the day to day operation of the SHOP (the "DESIGNATED SHOP MANAGER") in accordance with this AGREEMENT and the SYSTEM STANDARDS, who shall be reasonably acceptable to SHOPPE COMPANY (including, but not limited to, the requirement that such individual possess sufficient experience in the management of a retail business, as determined by SHOPPE COMPANY in its sole discretion), and who has successfully completed the SHOPPE COMPANY training program and continues to satisfy the training requirements under Section 11.3. Unless FRANCHISEE has more than one HAAGEN-DAZS® SHOP, or is a professional food service operator in the sole judgment of SHOPPE COMPANY, the DESIGNATED SHOP MANAGER must be an individual who, separately, or with others, is the FRANCHISEE under this AGREEMENT, or if the FRANCHISEE consists of no natural persons, then an officer, director, senior level employee of FRANCHISEE, or an individual who has personally guaranteed FRANCHISEE'S obligations under this AGREEMENT.

11.3 **Training.**

In order to safeguard the MARKS and the SYSTEM STANDARDS, FRANCHISEE shall at all times employ an adequately trained staff to properly operate the SHOP in accordance with the SYSTEM STANDARDS.

11.3.1 **initial Training**

SHOPPE COMPANY shall at the same time provide training for the first DESIGNATED SHOP MANAGER and, if desired by FRANCHISEE, or necessary in order for FRANCHISEE to satisfy the best efforts requirements under Section 11.4, one other person selected by FRANCHISEE and reasonably acceptable to SHOPPE COMPANY, in the principal aspects of

establishing and operating a HAAGEN-DAZS® SHOP, the handling of HAAGEN-DAZS® PRODUCTS, and the preparation and sale of HAAGEN-DAZS® SHOP menu items. Specific training procedures and requirements are set forth in the SHOP OPERATIONS MANUAL. This AGREEMENT is issued on the condition that the initial DESIGNATED SHOP MANAGER, and any person FRANCHISEE later desires to make the DESIGNATED SHOP MANAGER, completes training to the satisfaction Of SHOPPE COMPANY.

11.3.2 Successive Term FRANCHISE Refresher Training.

In the case of a Successive Term FRANCHISE, this AGREEMENT is issued on the additional condition that, if required by SHOPPE COMPANY, then the current DESIGNATED SHOP MANAGER or another person selected by FRANCHISEE and acceptable to SHOPPE COMPANY shall successfully complete training by a date determined by SHOPPE COMPANY, notwithstanding any prior training and experience.

11.3.3 Ongoing Training.

If required by SHOPPE COMPANY, then the DESIGNATED SHOP MANAGER shall attend and complete mid-TERM training, to the satisfaction of SHOPPE COMPANY, at a time after the fifth year of the TERM reasonably determined by SHOPPE COMPANY.

11.3.4 Remedial Training.

In lieu of declaring a default under this AGREEMENT, or terminating this AGREEMENT for material breach, or at the same time as declaring a default under this AGREEMENT, SHOPPE COMPANY shall have the absolute right to direct FRANCHISEE by NOTICE to have the DESIGNATED SHOP MANAGER attend training directed toward curing specific operational deficiencies. SHOPPE COMPANY shall have no obligation to offer training as an alternative to declaring a default or terminating this AGREEMENT. FRANCHISEE may be required to reimburse SHOPPE COMPANY for the reasonable costs of remedial training provided by SHOPPE COMPANY under this Section 11.3.4.

11.3.5 Expenses of Attendance at Training.

FRANCHISEE is solely responsible for travel and living expenses in connection with any training provided by SHOPPE COMPANY under this AGREEMENT, as well as any wages and salaries payable to FRANCHISEE'S employees while attending training.

11.4 Best Efforts.

The DESIGNATED SHOP MANAGER shall furnish personal full time and attention and best efforts to the day to day management and operation of the SHOP in accordance with the requirements of this AGREEMENT. Without limiting the foregoing, the DESIGNATED SHOP MANAGER must maintain a physical presence at the SHOP at least 40 hours each week during hours of operation, provided however that this requirement may be satisfied by the combined time spent

at the SHOP during hours of operation by the DESIGNATED SHOP MANAGER and one or more other individuals, satisfactory to SHOPPE COMPANY, who have successfully completed SHOPPE COMPANY'S training program.

11.5 SHOP Employees.

The SHOP shall be staffed with qualified, competent employees trained by the DESIGNATED SHOP MANAGER, and who are employed solely by FRANCHISEE and not by SHOPPE COMPANY. FRANCHISEE is solely responsible for hiring and discharging employees of the SHOP, and setting their wages and terms of employment. FRANCHISEE shall comply with all applicable laws and regulations, including, but not limited to, workers' compensation laws. FRANCHISEE shall require employees to wear such uniforms or attire as SHOPPE COMPANY prescribes periodically, and otherwise comply with the ongoing SYSTEM STANDARDS. All employment related documents, including, without limitation, employment applications, schedules, job descriptions, and pay checks, must clearly identify FRANCHISEE, and not SHOPPE COMPANY, as the employer, and shall not contain any of the MARKS.

11.6 Operations and Product Standards.

Unless SHOPPE COMPANY specifically permits otherwise, in writing, FRANCHISEE shall offer for sale from the SHOP the entire menu prescribed periodically by SHOPPE COMPANY for the SYSTEM. FRANCHISEE may prepare and sell from the SHOP only the products and services that SHOPPE COMPANY approves periodically for sale by SYSTEM franchisees, and no other products, services, or business may be offered or conducted at or from the SHOP. FRANCHISEE will at all times maintain an inventory of food and drink products and other supplies adequate to satisfy customer demand for products and services required to be sold at the SHOP. FRANCHISEE will employ only such supplies, ingredients, recipes, formulas and products, and shall offer products for sale only in such portions, appearance and packaging, as SHOPPE COMPANY periodically designates. FRANCHISEE will adhere to the requirements for food storage, handling, preparation, merchandising, presentation, display and sale, and daily SHOP operations, described in the SHOP OPERATIONS MANUAL or otherwise communicated by SHOPPE COMPANY. If FRANCHISEE fails to conduct its business in accordance with the requirements of this Section 11.6, then, without limiting the rights of SHOPPE COMPANY under this AGREEMENT. SHOPPE COMPANY may, without terminating this AGREEMENT, temporarily suspend FRANCHISEE'S right to operate under this AGREEMENT, or temporarily or permanently suspend FRANCHISEE'S right to sell certain products under this AGREEMENT, so long as such suspension is reasonably related to FRANCHISEE'S failure to comply with the requirements of this Section 11.6, bringing FRANCHISEE into compliance with this Section 11.6, or the health or safety of the public.

11.7 Sources of Supply.

In order to safeguard the integrity of the MARKS, and to maintain the uniformity and quality of items associated with the SYSTEM, FRANCHISEE shall only purchase food, supplies, fixtures, equipment, furnishing, signs and other items for use in the SHOP in accordance with the following provisions.

11.7.1 HAAGEN-DAZS® PRODUCTS.

FRANCHISEE acknowledges that the HAAGEN-DAZS® PRODUCTS used in, and offered and sold from the SHOP, as authorized by SHOPPE COMPANY from time to time, are manufactured using proprietary recipes and processes, and are an inseparable and essential element of the FRANCHISE. In order to protect the interests of SHOPPE COMPANY, the owner of the MARKS, and their respective licensees, and to ensure the quality, uniformity, and distinctiveness of the HAAGEN-DAZS® PRODUCTS, FRANCHISEE agrees to purchase its entire requirements of HAAGEN-DAZS® PRODUCTS, from SHOPPE COMPANY, or the supplier designated by SHOPPE COMPANY, at prices, determined by SHOPPE COMPANY or its designated supplier, and which may result in revenues and profits, directly or indirectly, to SHOPPE COMPANY, the designated supplier, and the owner of the MARKS, all of whom FRANCHISEE agrees are entitled to receive such revenues and profits.

11.7.2 Other Food and Beverage Products.

FRANCHISEE shall purchase only food and beverage products (other than the HAAGEN-DAZS® PRODUCTS purchased in accordance with Section 11.7.1) that have been approved in advance by SHOPPE COMPANY, in writing, in the SHOP OPERATIONS MANUAL or otherwise, originating from sources that have demonstrated to the reasonable continuing satisfaction of

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SHOPPE COMPANY that they are able to manufacture the products to the standards and specifications of SHOPPE COMPANY. Unless SHOPPE COMPANY requires FRANCHISEE to purchase any approved product from a particular distributor, FRANCHISEE may purchase approved products from any reputable distributor.

11.7.3 Supplies and Equipment.

FRANCHISEE shall only purchase paper goods, packaging, fixtures, equipment, signs, uniforms, and other supplies for use in the SHOP that have been approved in advance by SHOPPE COMPANY, from sources that have been approved in advance by SHOPPE COMPANY. SHOPPE COMPANY will, when appropriate, as determined solely by SHOPPE COMPANY grant a manufacturer of certain approved items a license to print specified text and the MARKS on those items, in the manner and format established periodically by SHOPPE COMPANY. FRANCHISEE shall not use paper goods, packaging, fixtures, equipment, signs, uniforms, and other supplies at the SHOP which do not bear the text and the MARKS required by SHOPPE COMPANY, in the manner and format required and approved in advance by SHOPPE COMPANY.

11.7.4 Procedures for Seeking Approval of Suppliers and Products.

Other than with respect to the HAAGEN-DAZS® PRODUCTS, and any other branded food and beverage items sold or used in the SHOP, if FRANCHISEE desires to purchase a product that is not approved, but which FRANCHISEE believes

to conform to SHOPPE COMPANY'S specifications, then FRANCHISEE shall submit a written request for approval to SHOPPE COMPANY with any documentation that SHOPPE COMPANY may reasonably require to determine conformity to the relevant specifications. SHOPPE COMPANY shall have the right to require that its representatives be permitted to inspect the proposed supplier's facilities, and that samples from the supplier be delivered to SHOPPE COMPANY or its designee for evaluation and testing. The reasonable costs of evaluation and testing shall be paid by FRANCHISEE. Within 90 days after receipt of the request, and the completion of any evaluation and testing required by SHOPPE COMPANY, SHOPPE COMPANY will notify FRANCHISEE of its decision in writing. Approval shall not be unreasonably withheld, but SHOPPE COMPANY may withhold its approval for any good reason, including that, in the opinion of SHOPPE COMPANY, a sufficient number of products conforming to the same specification have already been approved.

11.7.5 **Vendor Rebates.**

SHOPPE COMPANY shall have the right to periodically enter into agreements with vendors, suppliers and distributors, who provide products and services to FRANCHISEE, contemplating the payment of a rebate or other consideration to SHOPPE COMPANY on account of FRANCHISEE'S purchases. SHOPPE COMPANY will have the right to use rebates, and other monetary consideration received, for any purpose for which it may use the GENERAL MARKETING CONTRIBUTION under Section 9.7.3. or for any other purpose SHOPPE COMPANY desires, without regard to whether such purpose is of any direct or indirect benefit to FRANCHISEE.

11.8 **Mandatory Participation in Marketing Programs.**

FRANCHISEE acknowledges that FRANCHISEE'S participation in promotions and marketing programs established by SHOPPE COMPANY is important to enhance the value, recognition, and reputation of the MARKS and the SYSTEM. FRANCHISEE covenants and agrees that FRANCHISEE shall participate in those promotions and marketing programs established from time to time by SHOPPE COMPANY that are appropriate to the SHOP, as determined by SHOPPE COMPANY, provided however that FRANCHISEE shall have the right and obligation to decline to participate in all or any part of any promotion or marketing program, which, due to the laws applicable to the SHOP, would render FRANCHISEE'S participation unlawful.

11.9 **Compliance with Laws. Health & Safety Requirements.**

FRANCHISEE shall fully, strictly and faithfully comply with all laws (including, but not limited to, statutes, ordinances, regulations, and governmental orders) affecting FRANCHISEE'S operation of the SHOP; in particular, FRANCHISEE shall operate and maintain the SHOP and its premises in strict compliance with all applicable health, sanitation, fire and safety codes and requirements. If any law affecting FRANCHISEE'S operation of the SHOP sets a standard that is different than the SYSTEM STANDARDS, then FRANCHISEE shall satisfy the higher standard; if FRANCHISEE perceives any law affecting FRANCHISEE'S operation of the SHOP to conflict with the SYSTEM STANDARDS, then FRANCHISEE shall notify SHOPPE COMPANY in writing, identifying the specific law and SYSTEM STANDARDS requirement, so that SHOPPE COMPANY may determine how to resolve the perceived conflict.

11.10 Remedying Food Safety Concerns.

If any food item dispensed at the SHOP is adulterated, or does not comply with applicable law or regulations, or fails to be maintained in accordance with the requirements described in this AGREEMENT or in the SHOP OPERATIONS MANUAL, then, FRANCHISEE shall immediately close and suspend operations at the SHOP, destroy all contaminated or adulterated products and eliminate the source of contamination, remedy all unsanitary conditions at the SHOP, and reopen for business only after an inspection by SHOPPE COMPANY and laboratory analysis from samples obtained for that purpose by SHOPPE COMPANY evidence compliance with all applicable governmental requirements and the SYSTEM STANDARDS. This remedy is in addition to, and not in lieu of, other rights or remedies that SHOPPE COMPANY has for FRANCHISEE'S breach of this AGREEMENT.

11.11 SHOP Inspections.

In order to safeguard the MARKS and determine compliance with the SYSTEM STANDARDS, SHOPPE COMPANY representatives shall have the absolute right to enter, remain in, and inspect the SHOP whenever SHOPPE COMPANY deems it appropriate. SHOPPE COMPANY representatives may, without prior notice to FRANCHISEE, interview FRANCHISEE'S employees and customers, take photographs, video, and similar recordings, examine, evaluate and take representative sample of the foods, beverages, and other products stored, sold or used at the SHOP. SHOPPE COMPANY shall have the right to use all interviews, photographs, video, and other recordings for any reason SHOPPE COMPANY deems appropriate, including in advertising, marketing and other promotional materials. FRANCHISEE will not be entitled to, and hereby expressly waives, any right that it might otherwise have to be compensated for the use of interviews, photographs, video, and other recordings by SHOPPE COMPANY, its advertising agencies, or other SYSTEM franchisees.

11.12 Correcting Deficiencies.

FRANCHISEE shall at its own expense promptly, and within any period reasonably specified by SHOPPE COMPANY, correct any violation of the SYSTEM STANDARDS. If, during an inspection, SHOPPE COMPANY identifies a violation of the SYSTEM STANDARDS that:

- (a) is a reoccurrence of a previously identified violation of the System Standards, occurring at the Shop within the preceding 12 months; or
- (b) is a continuation of a previously identified violation of the System Standards, which FRANCHISEE failed to correct within the period specified by SHOPPE COMPANY; or
- (c) is the same as a violation of the System Standards that, within the preceding 12 months, was identified by SHOPPE COMPANY at another Haagen-Dazs® Shop in which FRANCHISEE has an interest, and in relation to which the corrective period specified by SHOPPE COMPANY ended before the inspection of the Shop;

then SHOPPE COMPANY may require FRANCHISEE to reimburse SHOPPE COMPANY for the costs of a subsequent inspection of the SHOP, conducted to determine whether the reoccurring or continuing violation of the SYSTEM STANDARDS has been cured, at the rate of \$100.00 per hour of the SHOPPE COMPANY representative's time (including travel time) plus travel and related expenses. This remedy is

in addition to, and not in lieu of, other rights or remedies that SHOPPE COMPANY has for FRANCHISEE'S breach of this AGREEMENT.

11.13 Immediate Removal of Non-Conforming Items.

SHOPPE COMPANY shall have the absolute right to direct the immediate removal of any item present in the SHOP that does not conform to the SYSTEM STANDARDS. Without compensating FRANCHISEE, SHOPPE COMPANY shall have the absolute right to confiscate, discard, or destroy any food, beverages, equipment, supplies, advertising, marketing, point of sale materials, signage, and any other items that do not conform to the SYSTEM STANDARDS. This remedy is in addition to, and not in lieu of, other rights or remedies that SHOPPE COMPANY has for FRANCHISEE'S breach of this AGREEMENT.

11.14 Repair and Renovation.

FRANCHISEE shall repair, rehabilitate, refurbish, modernize, renovate and upgrade the SHOP periodically to maintain it in a clean, attractive and orderly condition, to provide efficient, high-quality service to the public, and to conform to ongoing SYSTEM STANDARDS and specifications applicable generally to HAAGEN-DAZS® SHOPS, as periodically revised by SHOPPE COMPANY. FRANCHISEE must obtain the prior written approval of SHOPPE COMPANY if any efforts to be taken under this Section

11.14 will result in a temporary halt of operations, or will at any time result in a change to the equipment layout, finish materials, or any other aspect of the design of the SHOP. FRANCHISEE shall be solely responsible, irrespective of whether FRANCHISEE has obtained any approval from SHOPPE COMPANY, to make certain that the SHOP is accessible to the fullest extent required by the Americans with Disabilities Act, and conforms to any applicable local building codes and other laws and regulations. Without limiting the foregoing, FRANCHISEE shall, unless required to do so more quickly by SHOPPE COMPANY in any particular instance, repair any improper condition of the SHOP PREMISES, or the equipment or furnishings in the SHOP PREMISES, within 30 days after first being identified by FRANCHISEE or SHOPPE COMPANY.

11.15 Remodeling.

In addition to the continuing obligations identified in Section 11.14, if required by SHOPPE COMPANY, then FRANCHISEE shall completely remodel the SHOP so as to bring it into substantial compliance with the then current design and other operational requirements of SHOPPE COMPANY, in accordance with EXHIBIT B, provided however that SHOPPE COMPANY will not require FRANCHISEE to remodel the SHOP more than once during any 5-year period.

11.16 Equipment and Technology Upgrades.

During the TERM, FRANCHISEE shall make any equipment upgrades and additions, including upgrades and additions reflecting new technologies adopted by SHOPPE COMPANY, within 90 days of NOTICE from SHOPPE COMPANY. The foregoing obligation is in addition to any requirements to upgrade the POS SYSTEM imposed by or under Section 11.20.3.

11.17 Sales and Product Mix Reporting Requirements.

FRANCHISEE shall upon request periodically provide SHOPPE COMPANY with any and all requested information related to FRANCHISEE'S sales, costs, earnings and related items. FRANCHISEE acknowledges that SHOPPE COMPANY may request this information be provided monthly, and occasionally more often, and in some instances FRANCHISEE may be required to track certain information not regularly tracked by FRANCHISEE.

11.18 Projecting Requirements of HAAGEN-DAZS® PRODUCTS & Other Products.

At the request of SHOPPE COMPANY, FRANCHISEE shall periodically project sales, costs, and product requirements. FRANCHISEE shall endeavor to project quantities of products needed, including quantity of each of the HAAGEN-DAZS® PRODUCTS, and the anticipated timing of such need. FRANCHISEE acknowledges that this information is important to SHOPPE COMPANY so that it or its designated supplier may project quantities of HAAGEN-DAZS® PRODUCTS to manufacture. Notwithstanding the purpose for requiring this information from FRANCHISEE, or the accuracy of FRANCHISEE'S projections,

under no circumstances shall FRANCHISEE'S compliance with this Section 11.18 be deemed to require SHOPPE COMPANY or its designated supplier to sell FRANCHISEE the projected quantities of any particular HAAGEN-DAZS® PRODUCTS.

11.19 Hours of Operation.

FRANCHISEE shall keep the SHOP open and in normal operation during the days and hours SHOPPE COMPANY from time to time specifies in the SHOP OPERATIONS MANUAL or otherwise approves in writing. FRANCHISEE shall conspicuously post on or within the SHOP PREMISES, at a location visible to consumers during the SHOP'S operational and non-operational hours, and acceptable to SHOPPE COMPANY, the SHOP'S normal hours of operation; and FRANCHISEE shall keep the SHOP open and in normal operation during the days and hours posted.

11.20 POS SYSTEM.

To ensure the efficient management and operation of the SHOP, and the reporting of data and information to SHOPPE COMPANY, FRANCHISEE shall, at its own expense, install, and during the TERM shall properly maintain in good working order, a computerized point of sale system (the "POS SYSTEM") consisting of one or more cash registers, a modem, software, cables, a dedicated telephone line (or alternative communications line designated by, or permitted

by SHOPPE COMPANY), and other accessories and peripheral equipment, all of which must be approved by SHOPPE COMPANY in the SHOP OPERATIONS MANUAL or otherwise in writing. Unless SHOPPE COMPANY in writing permits otherwise, the equipment making-up the POS SYSTEM shall be purchased only from a source designated by SHOPPE COMPANY; and initially programmed and from time to time reprogrammed only by someone designated by SHOPPE COMPANY, which requirements FRANCHISEE agrees are reasonable in order to reasonably maintain POS SYSTEM uniformity among various HAAGEN-DAZS® SHOPS.

11.20.1 Collecting POS INFORMATION.

FRANCHISEE shall at all times use the POS SYSTEM to accurately, consistently, and completely capture, record, and structure all data and information that SHOPPE COMPANY prescribes in the SHOP OPERATIONS MANUAL or otherwise (the "POS INFORMATION").

11.20.2 SHOPPE COMPANY Access to POS INFORMATION.

FRANCHISEE agrees that SHOPPE COMPANY will have the absolute right to retrieve, electronically and manually, any or all of the POS INFORMATION that SHOPPE COMPANY deems necessary or appropriate, or desires. FRANCHISEE may retrieve the POS INFORMATION at intervals and times SHOPPE COMPANY determines, and without any advance notice to FRANCHISEE. FRANCHISEE shall assist SHOPPE COMPANY in initially establishing electronic access to the POS INFORMATION, and shall thereafter, as required by SHOPPE COMPANY, from time to time provide further assistance in connection with the retrieval of the POS INFORMATION.

11.20.3 Updates, Modifications, and Replacements.

FRANCHISEE shall update or replace software used by the POS SYSTEM, as directed by SHOPPE COMPANY. FRANCHISEE shall make, or at SHOPPE COMPANY'S direction shall permit someone else to make, any programming changes required from time to time by SHOPPE COMPANY. SHOPPE COMPANY may, at any time, but not more frequently than once every three years, require FRANCHISEE to update or replace the entire POS SYSTEM to bring it into conformity with SHOPPE COMPANY'S then current approved POS SYSTEM. FRANCHISEE will accomplish the required updates, replacements, changes and other modifications within the timeframes SHOPPE COMPANY specifies.

11.20.4 SHOPPE COMPANY'S Ownership and Use of POS Information

FRANCHISEE agrees that all POS INFORMATION provided to SHOPPE COMPANY, whether electronically retrieved or otherwise received, will become SHOPPE COMPANY'S property and

may be used by SHOPPE COMPANY in any manner SHOPPE COMPANY considers appropriate, provided however that SHOPPE COMPANY will not share POS INFORMATION with other SYSTEM franchisees without FRANCHISEE'S permission, unless presented in a manner that would not reasonably enable the other SYSTEM franchisees to associate the POS INFORMATION to the SHOP.

11.20.5 Other Requirements

If SHOPPE COMPANY requires, then in connection with software for the POS SYSTEM, FRANCHISEE will enter into, and abide by, any software licensing agreements with SHOPPE COMPANY or a third-party software publisher or vendor. If SHOPPE COMPANY requires, then FRANCHISEE will at its own expense subscribe to a regular maintenance program for the POS SYSTEM.

11.21 Acceptance of Credit and Debit Cards

The POS SYSTEM shall include equipment, software, and anything else necessary to make the POS SYSTEM capable of accepting, and FRANCHISEE shall accept, credit cards and debit cards specified by SHOPPE COMPANY, and similar redemption devices specified by SHOPPE COMPANY, that enable purchases to be made without the physical exchange of currency; and FRANCHISEE shall, at its own expense, subscribe to any related processing services designated by SHOPPE COMPANY.

11.22 Gift Card Program

FRANCHISEE shall at its own expense participate in any gift card program (or similar gift redemption device program) established by SHOPPE COMPANY, which may involve the issuance and acceptance of gift cards (or other gift redemption devices) through the POS SYSTEM, and may require FRANCHISEE to obtain additional equipment as part of its POS SYSTEM.

11.23 Coupons and Discount Offers.

FRANCHISEE will not issue coupons except those that have been approved by SHOPPE COMPANY in accordance with Section 13.5. Coupons issued by FRANCHISEE will clearly identify the SHOP, and any other HAAGEN-DAZS® SHOP, if any, where they are redeemable, and will state that they are not redeemable at any other HAAGEN-DAZS® SHOP. If FRANCHISEE elects to accept any coupons issued by SHOPPE COMPANY, which are redeemable at participating HAAGEN-DAZS® SHOPS, then FRANCHISEE will honor the redemption policies established from time to time by SHOPPE COMPANY. FRANCHISEE is solely responsible for determining whether any discounts or other terms of sale offered by FRANCHISEE, coupons issued by FRANCHISEE, and coupons accepted by FRANCHISEE, including those issued by SHOPPE COMPANY, comply with applicable laws, including local dairy laws.

11.24 Promotional Materials.

FRANCHISEE acknowledges that FRANCHISEE and other SYSTEM franchisees may benefit from the promotion of HAAGEN-DAZS® PRODUCTS, HAAGEN-DAZS® SHOPS and the SYSTEM. FRANCHISEE acknowledges that certain

supplies used in the SHOP (e.g. ice cream cone wrappers; napkins; sundae and beverage cups; etc.) and point of sale communication materials displayed or used in the SHOP (e.g. brochures, posters; etc.), in addition to displaying the MARKS, may, at the determination of SHOPPE COMPANY, display information about HAAGEN-DAZS® PRODUCTS, HAAGEN-DAZS® SHOPS and the SYSTEM that may be of interest to consumers, including information relating to HAAGEN-DAZS® SHOP franchise opportunities. If requested by SHOPPE COMPANY, then FRANCHISEE will post, display, or make available to consumers, in a manner reasonably determined by SHOPPE COMPANY information relating to HAAGEN-DAZS® PRODUCTS, the SYSTEM, including if requested by SHOPPE COMPANY, the addresses of other HAAGEN-DAZS® SHOPS, and HAAGEN-DAZS® SHOP franchise opportunities.

11.25 Access to Email & Internet; Consent to Communication Medium. FRANCHISEE acknowledges that the world wide web, internet, intranet, extranet, email, and similar medium are becoming an increasingly accepted and normal way of communicating. FRANCHISEE

further acknowledges that SHOPPE COMPANY may from time to time desire to communicate with FRANCHISEE using any of the foregoing medium. Therefore, FRANCHISEE shall at all times, before and during the TERM, have ready access to a computer (at the SHOP, FRANCHISEE'S home, or some other convenient location) with internet access and a reasonably current web browser, and:

- (a) maintain an email address to which SHOPPE COMPANY may send electronic communications; keep SHOPPE COMPANY apprised of FRANCHISEE'S current email address; regularly check, at a frequency specified by SHOPPE COMPANY, which may be every day, for email communications from SHOPPE COMPANY;
- (b) timely respond to email communications from SHOPPE COMPANY, which, unless a different time-period is specified, will mean within 72 hours from receipt;
- (c) in the event SHOPPE COMPANY establishes an intranet, extranet, or other means of posting information on a web site or similar on-line medium, then regularly check, at a frequency specified by SHOPPE COMPANY, which may be every day, for information communicated by SHOPPE COMPANY.

Except in the case of a NOTICE, FRANCHISEE hereby consents to receiving any communication or information contemplated by AGREEMENT in any manner contemplated by this Section 11.25, which communication or information shall be deemed communicated upon sending electronically to the email address designated by FRANCHISEE for such purpose, or upon posting on any web site or other on-line medium maintained by SHOPPE COMPANY for such purpose.

11.26 Prompt Payment of Obligations.

FRANCHISEE acknowledges that FRANCHISEE'S payment practices can impact the willingness of third parties to do business with, and extend credit to, other SYSTEM franchisees; the good will associated with the MARKS; and FRANCHISEE'S ability to operate the SHOP in accordance with the SYSTEM STANDARDS. Therefore FRANCHISEE shall

timely pay all obligations and liabilities due and payable to vendors, suppliers, distributors, the LANDLORD, and other parties to whom FRANCHISEE incurs obligations in connection with the FRANCHISE.

11.27 Significant Event Notifications.

FRANCHISEE will keep SHOPPE COMPANY informed of any fact, matter or circumstance that has a significant bearing on FRANCHISEE'S ability to continue to operate the SHOP in accordance with this AGREEMENT and the SYSTEM STANDARDS. Without limiting the preceding requirement, FRANCHISEE shall promptly, and in no event more than 7 days after FRANCHISEE becomes aware of any of the following situations related to the SHOP, provide NOTICE to SHOPPE COMPANY of the circumstances, and provide SHOPPE COMPANY with copies of pertinent documents, and any other information SHOPPE COMPANY requires:

- (a) Any notice of default received with respect to the SHOP PREMISES from the LANDLORD, a rental agent, mortgagee, or lender.
- (b) Any claims, lawsuits, or other legal proceedings, asserted or brought by any consumer, employee, governmental agency, or anyone else.
- (c) Any governmental inspections, notices, claims, reports, warnings, or citations.
- (d) Any fires, robberies, injuries, or similar events occurring on or at the SHOP PREMISES.
- (e) Any other matters, including those not related to the SHOP, that could impair the good will associated with the MARKS or the SYSTEM.