Exhibit 10.7  
  
  
  
 FRANCHISE AGREEMENT  
   
   
 BETWEEN  
   
   
 FRIENDLY'S RESTAURANTS FRANCHISE, INC.  
 0000 Xxxxxx Xxxx  
 Xxxxxxxxx, XX 00000  
   
 AND  
   
 FRIENDCO RESTAURANTS, INC.  
 0000 Xxxxxxx Xxxxxxxxx  
 Xxxxxxx, Xxxxxxxx 00000  
   
   
 DATED  
   
 July \_\_\_\_\_ , 1997  
   
   
   
   
 FOR  
   
 [RESTAURANT STREET ADDRESS]  
   
 [STATE, CITY]  
  
  
  
  
  
  
  
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 FRANCHISE AGREEMENT  
  
  
 THIS FRANCHISE (the "Agreement") is made and entered into as of \_\_\_\_\_,   
19\_\_\_ (the "Agreement Date"), by and between FRIENDLY'S RESTAURANTS,   
FRANCHISE, INC., a Delaware corporation, whose principal address is 0000   
Xxxxxx Xxxx, Xxxxxxxxx, XX 00000 and FRIENDCO RESTAURANTS, INC. whose   
principal address is 0000 Xxxxxxx Xxxxxxxxx, Xxxxxxx, Xxxxxxxx 00000. For   
purposes of simplicity, we will sometimes refer to Friendly's as "us", "we"   
or the "Company," and we will sometimes refer to you as "you" or "Franchisee."  
  
1. INTRODUCTION AND GRANT OF FRANCHISE  
  
 A. Introduction  
  
 Through expenditure of considerable time, skill, effort and money, we   
have developed a system for establishing, operating and franchising   
distinctive, high quality restaurants ("Friendly's Restaurants") serving the   
public under the name "Friendly's." A Friendly's Restaurant consists of all   
structures, facilities, appurtenances, grounds, landscaping, signs,   
furniture, fixtures, equipment and entry, exit, parking and other areas   
commonly associated with such a restaurant. The approved food, beverage and   
other products served and sold by Friendly's Restaurants (the "Products") for   
consumer consumption and not for resale are prepared in accordance with our   
standards, specifications and secret recipes. Friendly's Restaurants are   
established pursuant to our plans and specifications for construction,   
conversion, remodeling, decorating, equipment and layout, and are operated in   
accordance  
  
  
  
  
with our distinctive business formats, construction plans, inspection and   
consultation programs, signs, equipment, layouts, methods, specifications,   
standards, recipes (including ice cream and other frozen dessert and related   
toppings recipes), confidential information, trade secrets, operating   
procedures, training programs and materials, guidance, policy statements and   
related materials, designs, advertising, publicity, and marketing programs   
and other materials (which we may modify from time to time) (collectively,   
the "System"). We own, use, promote and license certain trade names,   
trademarks, service marks and other commercial symbols, and applications   
related thereto, including but not limited to "Friendly's" and "Friendly's   
Restaurants" (collectively, the "Marks"), and the confidential information,   
copyrights, and business format and related property rights which comprise   
the System. We may change, modify or improve the System from time to time to   
enhance the operations of Friendly's Restaurants. All improvements and   
additions you, we or anyone else makes to the System, whenever made or used   
in connection with the system, will inure to us and become our sole property.   
We grant, to qualified persons, franchises to own and operate Friendly's   
Restaurants pursuant to the System selling the Products and services we   
authorize and approve.  
  
 X. Xxxxx of Franchise  
  
 (1) Grant. You have applied for a franchise to own and operate a   
Friendly's Restaurant (the "Restaurant") at, and only at, the location known   
as: (the "Premises") and we have approved your application in reliance upon   
all of the   
  
  
  
  
representations and warranties you have made to us in connection with this   
Agreement, including but not limited to the information contained in your   
application for a franchise and, if the Restaurant is newly constructed and   
equipped, the representations and warranties you made to us in the Commitment   
Agreement between you and us dated \_\_\_\_\_\_\_\_\_\_\_\_, 19 \_\_ . Subject to the   
provisions of the Agreement, and in reliance on such representations and   
warranties, we hereby grant to you, effective upon the execution of this   
Agreement, a franchise (the "Franchise") to operate a Friendly's Restaurant   
at the Premises, and to use the System and the Marks in operating the   
Restaurant, for a term of twenty (20) years, beginning on the date of   
completion, expiration or termination of the Development Agreement between   
you and us dated July 10, 1997, unless this Agreement is sooner terminated as   
provided in Section 14 of this Agreement. Termination or expiration of this   
Agreement will constitute a termination or expiration of the Franchise.   
Except as otherwise provided in the Development Agreement, you may not   
conduct your business pursuant to this Agreement from any location other than   
the Premises except upon our approval of your application for change of   
location, and the payment of the then current change of location fee.  
  
 (2) Best Efforts. You agree that you will at all times faithfully,   
honestly and diligently perform your obligations under this Agreement and   
that you will continuously exert, during the full term of this Agreement,   
your best reasonable efforts   
  
  
  
  
to promote and enhance the business of the Restaurant and the goodwill of the   
Marks and the System.  
  
 (3) Operation. You agree that you will continuously, from the date you   
open the Restaurant for business to the public, operate, occupy and do   
business in the Restaurant, 7 days a week, 365 days a year during the hours   
of 6:00 a.m. to 11:00 p.m. weekdays, and to 12:00 midnight on weekends (it   
being understood that the Restaurant may be closed for business while any   
repairs or refurbishments are being undertaken and that different hours of   
operation may be approved by the Vice President of Operations of the Company)   
and to operate the Restaurant in a manner reasonably calculated to produce   
the maximum volume of gross sales (as defined in Section 7C of this   
Agreement) and to help establish and maintain a high reputation for the   
Restaurant, unless the Restaurant is in the process of being replaced   
pursuant to the provisions of any applicable Development Agreement.  
  
 C. Rights Reserved by Company  
  
 We retain the right, subject to the exercise of good faith, in our sole   
and absolute discretion, to: (1) operate and grant to others the right to   
operate, Friendly's Restaurants or other restaurants using the System or the   
Marks at such locations which may include locations within the Trade Area (as   
defined in Section 16A, unless an exclusive territory has been granted   
pursuant to a Development Agreement, in which case the terms of the   
  
  
  
  
Development Agreement will apply) and on such terms and conditions as we deem   
appropriate; (2) operate, and grant to others the right to operate   
restaurants under other trade names, trademarks, service marks and commercial   
symbols different from the Marks, notwithstanding the fact that such   
restaurants may be the same as or similar to a Friendly's Restaurant; and (3)   
sell the Products or other products identified by the Marks or by other   
trademarks in any channel of distribution.  
  
2. TRAINING  
  
 Prior to the execution of this Agreement, we have furnished you and your   
Restaurant Managers (each as hereinafter defined) training in the operation   
of a Friendly's Restaurant. We will require similar training for all   
successors to such persons. No person shall be permitted to supervise the   
Restaurant until the training has been completed. The training program will   
include classroom instruction and field training and will be furnished at our   
training facility and/or at a Friendly's Restaurant, and will last for such   
duration as we determine to be necessary.  
  
 Your Restaurant Managers must complete the training program to our   
reasonable satisfaction. If we, in our sole discretion, determine that any   
of such persons are unable to complete the training program satisfactorily,   
upon our request you agree to hire, as soon as practicable, a replacement who   
must complete our training program to our reasonable satisfaction. We may   
also offer such refresher or supplemental training programs to you and such   
persons as we, from time to time, deem appropriate at such places as we   
designate.  
  
  
  
  
By giving you prior written notice, we will have the right to require   
attendance at any refresher or supplemental training program by you or any of   
such persons.  
  
 No tuition charge will be made for required initial training programs.   
You will be responsible for the travel, local transportation, lodging and   
meal expenses, and compensation of yourself and your Restaurant Managers   
incurred while attending the training program and any refresher or   
supplemental training programs we offer to you or require you or such persons   
to attend. Reasonable charges may be made by us for training materials and   
we may require you to purchase certain equipment to be used in such training.  
  
3. GUIDANCE  
  
 A. Guidance and Assistance  
  
 We will furnish guidance to you with respect to:  
  
 (1)preparation, packaging, sale and delivery of Products authorized for   
sale at Friendly's Restaurants;   
  
 (2)development, preparation and packaging of new Products we develop for  
sale at Friendly's Restaurants;  
  
 (3)specifications, standards and operating procedures utilized by   
Friendly's Restaurants, and any modification thereof;  
  
 (4)approved equipment, furniture, furnishings, signs, food products,  
operating materials and supplies;  
  
 (5)development and implementation of local advertising and promotional  
programs; and  
  
  
  
  
  
  
 (6)general operating and management procedures of Friendly's Restaurants.  
  
In our discretion, we will furnish this guidance and assistance to you in the   
form of our confidential operations manual, bulletins, written reports and   
recommendations, electronic mail or other written or electronic materials   
(all of which are hereinafter referred to as the "Operations Manual"),   
inspection reports for the Restaurant, refresher training programs and/or   
telephonic consultations at our offices or at the Restaurant. If you   
request, we will furnish additional guidance and assistance relative to the   
operation of the Restaurant at per diem fees and charges we establish from   
time to time. If special training of Restaurant personnel or other   
assistance in operating the Restaurant is requested by you, and must take   
place at the Restaurant, all our expenses for such training, including a per   
diem charge and travel, local transportation, lodging and meal expenses for   
our personnel, must be paid by you.  
  
 B. Operations Manual  
  
 We will loan to you during the term of the Franchise one (1) copy of the   
Operations Manual which may consist of multiple parts and/or volumes. The   
Operations Manual will contain mandatory and suggested specifications,   
standards and operating procedures that we prescribe from time to time for   
Friendly's Restaurants and information relative to your obligations under   
this Agreement and in the operation of a Friendly's Restaurant. We may   
modify the Operations Manual from time to time to reflect changes in the   
specifications, standards and operating procedures of Friendly's Restaurants,   
to disclose information  
  
  
  
  
  
concerning new Products and services which we may develop for sale at   
Friendly's Restaurants, to specify types, brands and models of equipment   
which you must utilize to produce and sell such new Products and services,   
and to specify changes in the decor, format, image, Products, services and   
operation of a Friendly's Restaurant. You must keep your copy of the   
Operations Manual current by immediately inserting all modified pages we   
furnish to you and destroying the then obsolete pages. In the event of a   
dispute relative to the contents of the Operations Manual, the master copies   
we maintain at our principal office will be controlling. You may not at any   
time copy any part of the Operations Manual, disclose any part of it to   
employees or others not having a need to know its contents for purposes of   
operating the Restaurant, or permit its removal from the Restaurant without   
our prior approval. In the event a new version of the Operations Manual is   
provided to you, you must immediately return the then obsolete version to us.   
 To the extent the Operations Manual contains any specification, standard or   
operating procedure concerning the operation of the Restaurant, such   
provision shall be deemed to be incorporated into this Agreement, unless such   
provision conflicts with applicable laws or ordinances.  
  
4. MARKS  
  
 A. Goodwill and Ownership of Marks  
  
 You acknowledge that we have the right to license the Marks, that the   
Marks are represented to be valid, and that your right to use the Marks is   
derived solely from this Agreement (and the Trademark License Agreement if   
applicable) and is limited to your operation of the Restaurant pursuant to   
and in compliance with this Agreement and all  
  
  
  
  
  
applicable standards, specifications and operating procedures we prescribe   
from time to time during the term of the Franchise. Any unauthorized use of   
the Marks by you will constitute a breach of this Agreement and may   
constitute an infringement of our rights in and to the Marks. You   
acknowledge and agree that all of your usage of the Marks and any goodwill   
established by your use of the Marks will inure to our exclusive benefit, and   
that this Agreement does not confer any goodwill or other interests in the   
Marks upon you (other than the right to operate a Friendly's Restaurant in   
compliance with this Agreement). All provisions of this Agreement applicable   
to the Marks will apply to any other trademarks, service marks and commercial   
symbols we later develop, authorize and license you to use.  
  
 B. Limitations on Franchisee's Use of Marks  
  
 You agree to use the Marks as the sole trade identification of the   
Restaurant. You must also identify yourself as the independent owner of the   
Restaurant in the manner we reasonably prescribe. You must not use any Xxxx   
as part of any corporate or trade name or with any prefix, suffix or other   
modifying words, terms, designs or symbols (other than logos and additional   
trade and service marks we license to you under this Agreement), or in any   
modified form, nor may you use any Xxxx in connection with the performance or   
sale of any unauthorized services or products or in any other manner we have   
not expressly authorized in writing. You must prominently display the Marks   
in the manner we reasonably prescribe at the Restaurant, on menus and in   
connection with advertising and marketing materials. You must not employ any   
of the Marks in signing contracts, applications for licenses or permits, or   
in any manner that may imply our responsibility for,   
  
  
  
  
  
or result in our liability for, any of your indebtedness or obligations, nor   
may you use the Marks in any way not authorized herein. You further agree to   
give such notices of trade and service xxxx registrations as we specify, and   
you must obtain such fictitious or assumed name registrations as may be   
required under applicable law.  
  
 C. Notification or Infringements and Claims  
  
 You agree to immediately notify us of any apparent infringement of or   
challenge to your use of any Xxxx, or claim by any person of any rights in   
any xxxx. You agree not to communicate with any person other than us, your   
counsel and our counsel in connection with any such infringement, challenge   
or claim. We will have sole discretion to take such action as we deem   
appropriate in connection with any infringement, challenge or claim, and the   
right to exclusively control any settlement, litigation or U.S. Patent and   
Trademark Office or other proceeding arising out of the alleged infringement,   
challenge or claim or otherwise relating to any Xxxx. You agree to execute   
any and all instruments and documents, render such assistance and do such   
acts and things as may, in the opinion of our counsel, be necessary or   
advisable to protect and maintain our interest in any litigation or other   
proceeding or to otherwise protect and maintain our interest in the Marks.  
  
 D. Discontinuance of Use of Marks  
  
 If it becomes advisable at any time in our reasonable judgment to modify   
or discontinue use of any Xxxx and/or for the Restaurant to use one (1) or   
more additional or substitute trade or service marks, you agree, at your   
expense, to comply with our directions  
  
  
  
  
  
to modify or otherwise discontinue the use of such Xxxx, and/or use one (1) or  
more additional or substitute trade or service marks, within a reasonable time  
after we give you notice.  
  
 E. Indemnification of Franchisee  
  
 We agree to indemnify you against, and to reimburse you for, and to our   
option, to defend you against, all damages for which you are held liable in   
any proceeding arising out of your use of the marks "Friendly's" and   
"Friendly's Restaurant", pursuant to and in compliance with this Agreement,   
and for all costs you reasonably incur in the defense of any such claim   
brought against you or in any such proceeding in which you are named as a   
party, including reasonable attorney's fees, provided that you have timely   
notified us of such claim or proceeding and you have otherwise substantially   
complied with this Agreement. We have the right to approve any counsel   
employed by you in the defense of any such claim, and in the event we elect   
to defend any such claim, the fees and expenses of any separate counsel   
employed by you shall not be reimbursable.  
  
5. RELATIONSHIP OF PARTIES/INDEMNIFICATION  
  
 A. Independent Contractors  
  
 It is understood and agreed that this Agreement does not create a   
fiduciary relationship between you and us, that we and you are and shall be   
independent contractors, and that nothing in this Agreement is intended to   
make either you or us a general or special agent, legal representative,   
joint venturer, partner or employee of the other for any purpose   
  
  
  
  
  
or to grant either you or us the right to direct or supervise the daily   
affairs of the other. You agree to identify yourself conspicuously in all   
dealings with customers, suppliers, public officials, Restaurant personnel   
and others as the owner of the Restaurant under a franchise granted by us.   
You also agree to place such other notices of independent ownership on forms,   
business cards, stationery, advertising and other materials as we may require   
from time to time. You acknowledge that no agreement we make with any third   
party is for your benefit. Neither we nor you will interfere with each   
other's contractual relations.   
  
 B. No Liability for Acts of Other Party  
  
 You agree that you will not employ any of the Marks in signing any   
contract, check, legal obligation, application for any license or permit, or   
in a manner that may imply that we are responsible, or which may result in   
liability to us for, any of your indebtedness or obligations. You further   
agree not to use the Marks in any way not expressly authorized by this   
Agreement. Except as expressly authorized in writing, neither we nor you may   
make any express or implied agreements, warranties, guarantees or   
representations, or incur any debt in the name of or on behalf of the other,   
or represent that our relationship is other than franchisor and franchisee,   
and neither we nor you will be obligated by or have any liability under any   
agreement or representations made by the other that are not expressly   
authorized in writing. We will not be obligated for any damages to any person   
or property directly or indirectly arising out of the operation of the   
Restaurant or your business.  
  
  
  
  
  
 C. Taxes  
  
 You agree that except for taxes which we are required to collect from you   
in connection with items you purchase from us, we will have no liability for   
any sales, use, service, occupation, excise, gross receipts, income, property   
or other taxes, whether levied upon you, the Restaurant, your property, use   
or the royalty fees which you pay to us, in connection with the sales made or   
business conducted by you. Payment of all such taxes will be your   
responsibility.  
  
 D. Indemnification   
  
 You agree, during and after the term of the Agreement, to indemnify,   
defend and hold us, our affiliated entities, and their and our shareholders,   
directors, partners, officers, employees, agents, representatives, successors   
and assignees harmless against and reimburse the Indemnities for all claims,   
obligations and damages descried in Section 5B, any and all claims arising   
out of the use of the Marks in any manner not in accordance with this   
Agreement and all losses, liabilities, claims, taxes, demands, damages,   
causes of action, governmental inquiries and investigations, costs and   
expenses, including reasonable attorneys' and accountants' fees,   
consequently, directly and indirectly incurred, arising from, as a result of,   
or in connection with the operation of the Restaurant or any of your actions,   
errors, omissions, breaches or defaults under this Agreement or any acts or   
omissions alleged or proven to be a result of your negligence or willful   
misconduct. Except as provided above, Friendly's and you shall indemnify,   
defend and hold each other harmless from laims, demands and causes of action   
asserted against the indemnitee by any person for personal  
  
  
  
  
injury or death or for loss of or damage to property and resulting from the   
indemnitor's active or passive negligence or willful misconduct. Where such   
injury, death, loss or damage is the result of joint active or passive   
negligence or willful misconduct, the duty of indemnification shall be in   
proportion to the allocable share of the joint active or passive negligence   
or willful misconduct. For purposes of this indemnification, "claims" shall   
mean and include all obligations, actual and consequential damages, expenses,   
losses, costs and other liabilities reasonably incurred in the defense of any   
claim against the Indemnities, including without limitation reasonable   
accountants', attorneys' and expert witness fees, costs of investigation and   
proof of facts, court costs, other litigation expenses and travel, lodging   
and meal expenses incurred in litigation or preparation for litigation,   
whether or not litigation is filed. If the indemnities reasonably conclude   
that their interests are not being adequately represented by your counsel,   
the indemnities will have the right to employ their own attorneys to defend   
any claim against them in the manner they deem appropriate or desirable in   
their sole discretion, and the indemnification hereunder shall apply to and   
include the costs incurred in any such defense. The obligation to indemnify   
the indemnities will continue in full force and effect subsequent to and   
notwithstanding the expiration or termination of this Agreement.  
  
6. CONFIDENTIAL INFORMATION  
  
 We possess certain confidential and proprietary information and trade   
secrets consisting of, but not limited to, the following categories of   
information, methods,   
  
  
  
  
techniques, procedures and knowledge we have developed (collectively, the   
"Confidential Information"):  
  
 (1)methods and procedures related to the development and operation of  
Friendly's Restaurants, whether contained in the Operations Manual or otherwise;  
  
 (2)secret recipes of ice cream and other frozen desserts and related  
toppings, menu analysis and methods of preparation of Products and services  
offered in Friendly's Restaurants;  
  
 (3)methods, procedures and techniques for preparing, packaging, marketing,  
selling and delivering Products and services offered in Friendly's Restaurants;  
  
 (4)knowledge of test programs, concepts and results relating to the  
planning, development and testing of the System and Products and services  
offered in Friendly's Restaurants;  
  
 (5)sources of purchase of food, beverages and other ingredients used by  
Friendly's Restaurants;  
  
 (6) marketing programs and image; and  
  
 (7)methods, techniques, specifications, procedures, information, systems  
and knowledge of and experience in the development, licensing and operation of  
Friendly's Restaurants.  
  
  
 We will disclose the Confidential Information to you during training, in   
the Operations Manual and training manuals, and in guidance and assistance   
furnished to you during the term of this Agreement. You may also learn   
additional Confidential Information and trade secrets of ours during the term   
of this Agreement. You acknowledge and agree that you will not acquire any   
interest in the Confidential Information, other than the right to utilize it   
in the operation of the Restaurant, and that the use of the Confidential   
Information in any other business, or the disclosure of the Confidential   
Information to any  
  
  
  
  
  
other person or entity, would constitute an unfair method of competition with   
us and other Friendly's Restaurant licensees.  
  
 We claim that the Confidential Information, which we have invested a   
substantial amount of money and time in developing, is a valuable asset of   
ours, includes trade secrets of ours, and will be disclosed to you solely on   
the condition that you agree, and you do hereby agree, that you:  
  
 (1)will not use the Confidential Information in any other business or   
capacity;  
  
 (2)will maintain the absolute secrecy and confidentiality of the   
Confidential Information during and after the term of this Agreement (except   
as authorized by this Agreement);  
  
 (3)will not make unauthorized copies of any portion of the Confidential   
Information which is in written, audio, video or other reproducible form; and  
  
 (4)will adopt and implement all reasonable procedures we prescribe from   
time to time to prevent unauthorized use or disclosure of the Confidential   
Information, including requiring your Restaurant Manages and other employees   
who have access to the Confidential Information to execute confidential   
agreements in the form we approve or prescribe prior to or during their   
employment. Furthermore, other than for consumption in the Restaurant or   
approved carry-out or retail sales programs, you agree not to sell or provide   
to any person or entity other than us or our designee, for use, testing or   
any other purpose, any mixes or formulations for preparation of Products you   
purchase from us or our designees.  
  
 Notwithstanding anything to the contrary contained in this Agreement, the   
restrictions on your disclosure and use of Confidential Information will not   
apply to the following: (i)  
  
  
  
  
  
information, processes or techniques which are or become generally known in   
the restaurant industry, other than through disclosure (whether deliberate or   
inadvertent) by you; and (ii) disclosure of Confidential Information in   
judicial or administrative proceedings to the extent that you are legally   
compelled to disclose such information, provided that you have used your best   
reasonable efforts, and have afforded us the opportunity, to obtain an   
appropriate protective order or other assurance satisfactory to us of   
confidential treatment of the information required to be so disclosed.  
  
 You will fully and promptly disclose to us, all ideas, concepts,   
formulas, recipes methods and techniques relating to the development and/or   
operation of the Restaurant, conceived or developed by you and/or your   
employees during the term of this Agreement. You acknowledge that such   
ideas, concepts, formulas, recipes, methods and techniques shall be our sole   
property, and you shall not be entitled to any compensation whatsoever for   
the same.  
  
7. FEES  
  
 A. Initial Franchise Fee  
  
 The initial franchise fee for your first franchise and second franchise   
is thirty thousand dollars ($30,000.00) each and the franchise fee for any   
additional franchises is twenty-five thousand dollars ($25,000.00)   
(collectively referred to as the "Fee"). The Fee is paid as follows:  
  
  
  
  
Five thousand dollars ($5,000.00) upon submissions of an application for a   
franchise. If the application is approved, that portion of the Fee becomes   
non-refundable. If the application is withdrawn prior to a decision by   
Friendly's, or if the application is denied, the Fee (less Friendly's costs   
and expenses in processing the application) is refunded without interest.  
  
Twenty-five thousand dollars ($25,000.00) (or twenty thousand dollars   
($20,000.00) in the case of the third or additional franchises) upon your   
execution of a Commitment Agreement ("Commitment Agreement").  
  
 B. Royalty Fee  
  
 You agree to pay to us a royalty fee equal to four percent (4%) of the   
Gross Sales (as defined in Subsection C of this Section) of the Restaurant.   
The royalty fee shall be payable by electronic funds transfer not later than   
the 21st day after the end of each calendar month, based on Gross Sales for   
the prior month. Upon the installation of an upgraded processing system by   
Franchisee, we may require that the royalty fee be payable by electronic   
funds transfer not later than the 14th day after the end of each calendar   
month. In any event, no default may be declared for late payment of the   
royalty or marketing fees unless and until seven (7) days have elapsed from   
the date the payment was due.  
  
 C. Definition of Gross Sales   
  
 As used in this Agreement, the term "Gross Sales" shall mean gross sales   
of all food, beverage, other menu items, merchandise, and goods and other   
services sold or performed by or for you or the Restaurant, in, upon, or from   
the Premises, or through or by means of the business conducted at the   
Restaurant or the Premises, whether for cash or credit. Sales and service   
taxes collected from customers and paid to the appropriate taxing authority,   
all  
  
  
  
  
  
management or employee meals, and sale of cigars, cigarettes and newspapers   
as well as income from pay telephones shall not be included in Gross Sales.   
The discounted portion of menu prices whether by way of coupons, promotions   
or otherwise shall not be included in Gross Sales.  
  
 D. Interest on Late Payments  
  
 All royalty fees, Marketing Fund contributions (as described in Section 9   
of this Agreement), amounts due for your purchases from us or our   
subsidiaries or affiliates, and other amounts which you owe to us or our   
subsidiaries or affiliates will bear interest beginning on the date due at   
the highest applicable legal rate for open account business credit, not to   
exceed one and one-half percent (1.5%) per month. This Section 7D does not   
constitute an agreement on our part to accept payments from you after the   
payments are due or our commitment to extend credit to, or otherwise finance   
your operation of, the Restaurant. Further, you acknowledge that your   
failure to pay all amounts when due may constitute grounds for termination of   
this Agreement, as provided in Section 14 of this Agreement, notwithstanding   
the provisions of this Section 7D.  
  
 E. Application of Payments  
  
 Notwithstanding your designation, we will have sole discretion to apply   
any of your payments to any of your past due indebtedness for initial or   
royalty fees, Marketing Fund contributions, purchases from us or our   
subsidiaries or affiliates, interest or any other outstanding indebtedness in   
such order and amounts as we may elect. The acceptance of  
  
  
  
  
a partial or late payment will not constitute a waiver of any of our rights   
or remedies contained in this Agreement.  
  
8. RESTAURANT OPERATING STANDARDS  
  
 A. Condition, Appearance and Operation  
 Of the Restaurant   
  
 You agree that :  
  
 (1)neither the Restaurant nor the Premises will be used for any purpose   
other than the operation of a Friendly's Restaurant in compliance with this   
Agreement, unless and until restaurant operations are appropriately   
discontinued on the site (pursuant to this Agreement or the terms of a   
Development Agreement);  
  
 (2)you will maintain the condition and appearance of the Restaurant, its   
equipment, furniture, furnishings, signs and the Premises in accordance with   
our specifications and standards as in effect from time to time and   
consistent with the image of a Friendly's Restaurant as an efficiently   
operated business offering high quality food service and observing the   
highest standards of cleanliness and sanitation; and will, upon our   
reasonable request, add or alter such equipment in the Restaurant so as to   
efficiently and hygienically prepare and serve any new menu items approved   
for sale throughout the Friendly's Restaurant system;  
  
 (3)you will perform all periodic maintenance with respect to the decor,   
equipment, furniture, furnishings and signs of the Restaurant and thePremises   
that is required from time to time to maintain such condition, appearance and   
efficient operation, including, without limitation:  
  
 (a)thorough cleaning, repainting and redecorating of the interior   
and exterior of the Premises at reasonable intervals;  
  
 (b) interior and exterior repair of the Premises; and  
  
 (c)repair or replacement of damaged, worn out or obsolete equipment,   
furniture, furnishings and signs.  
  
  
  
  
  
  
 (4)you will not make any material alterations to the Premises, or to the  
appearance of the Restaurant as originally developed, except as required by  
applicable real estate codes, local authorities or landlords, without our   
prior written approval, which approval shall not be unreasonably withheld;  
  
 (5)we have the right to require that you remodel, redecorate, re-equip,  
modernize and refurnish in a non-structural manner the Premises and the  
Restaurant not more than once in any five (5) year period and only after fifty   
percent (50%) of the Company-operated restaurants in the Friendly's Restaurant  
system have been so remodeled, redecorated, re-equipped or modernized, to  
reflect any changes in Friendly's Restaurants that we prescribe as our  
then-current standards and specifications. You understand that such remodeling,  
redecorating, re-equipping, modernization or refurnishing may require a  
substantial investment on your part and that we cannot make any guarantee of any  
particular return on that investment. We have the right to approve the layouts,  
designs, and new equipment, furniture and furnishings you use in any remodeling,  
redecorating and re-equipping, such approval not to be unreasonably withheld;  
and  
  
 (6)you will place or display at the Premises (interior and exterior) only  
such signs, emblems, lettering, logos and display and advertising materials that  
we from time to time approve, such approval not to be unreasonably withheld.  
  
  
 B. Restaurant Menu  
  
 You agree that the Restaurant will offer for sale all food and beverage  
products and services that we from time to time require. You agree that the  
Restaurant will sell only products that we have approved. You agree that the  
Restaurant will not sell any Products to any person for resale to any third  
person. The Restaurant must not offer for sale or sell at the Premises or any  
other location any unapproved products, or use the Premises for any purpose  
other than the operation of the Restaurant.  
  
 We have the right to approve the Restaurant's offering of Products or  
services on a test basis, which approval we may condition in any reasonable  
manner. We will have the right to stop the test at any time after its   
commencement, upon reasonable notice.  
  
 C. Approved Products, Distributors and Suppliers  
 The reputation and goodwill of Friendly's Restaurants is based upon, and  
can be maintained only by, the sale of distinctive, high quality food products  
and beverages and the presentation, packaging, service and delivery of such  
products in an efficient and appealing manner. We have developed various  
proprietary products which are prepared by or for us according to our  
proprietary and secret recipes and formulas. We have developed standards and  
specifications for food products, ingredients, seasonings, mixes, beverages,  
materials and supplies incorporated in or used in the preparation, cooking,  
serving, packaging and delivery of prepared food products authorized for sale at  
Friendly's Restaurants. We have and will periodically approve suppliers and   
distributors of the foregoing products that meet our standards and requirements,  
including, without limitation, standards and requirements relating to product  
quality, prices, consistency, reliability, financial capability, labor relations  
and customer relations. You agree that for use in the Restaurant you will:  
  
 (1)purchase our proprietary ice cream, frozen yogurt and other frozen  
desserts and related toppings, muffin and other mixes and batters, and other  
products developed by us from time to time pursuant to secret recipes or   
formulas, only from us or a third party licensed by us to prepare and sell such  
products; and   
  
 (2)purchase all other food products, ingredients, seasonings, mixes,  
beverages, materials and supplies used in the preparation of Products; menus,  
paper, glassware, china and plastic products; packaging or other materials,  
utensils and uniforms that meet our standards and specifications from suppliers  
we have approved.  
  
  
 You must at all times maintain an inventory of approved food products,  
beverages, ingredients and other products sufficient in quantity and variety to  
realize the full potential of the Restaurant.  
  
 We may approve a single distributor or other supplier for any Product and  
may approve a distributor or other supplier only as to certain of the Products.  
We may concentrate purchases with one (1) or more distributors or suppliers to  
obtain lower prices and/or the best advertising support and/or services for any  
group of Friendly's Restaurants we license and/or operate. Approval of a  
distributor or other supplier may be conditioned on requirements relating to the  
frequency and delivery, standards of service, including prompt attention to   
complaints or other criteria, and concentration of purchases, as set forth  
above, and may be temporary, pending our further evaluation of such distributor  
or other supplier.  
  
 Notwithstanding the above, you have the right to request our approval of  
alternative suppliers or distributors and we will consider alternative suppliers  
and distributors. Our evaluation of prospective suppliers and/or distributors  
will be conditioned upon payment of our reasonable evaluation costs of their  
products and/or services. You agree to notify us and submit to us all  
information, specifications and samples that we request if you propose  
  
to purchase any food products, mixes, seasonings, beverages, menus, paper,  
glassware, china or plastic products, packaging, uniforms or other materials or  
utensils from a distributor or other supplier who has not been previously  
approved by us. We will notify you within a reasonable time whether you are  
authorized to purchase such products from such distributor or other supplier.  
  
 We may, from time to time, conduct market research and testing to determine  
consumer trends and the marketability of new food products and services. You  
agree to cooperate and assist us by participating in our consumer surveys and  
market research programs, test marketing new food products and services in the  
Restaurant and providing us with timely reports and other relevant information  
regarding such customer surveys and market research.  
  
 You may from time to time conduct your own market research and testing to  
determine consumer trends and the marketability in your Trade Area of new food  
products or services. Prior to undertaking such market research or testing, you  
agree to provide us with written notice no less than thirty (30) days prior to  
the commencement of such research or testing for our approval of such research  
or testing, which approval shall not be unreasonably withheld.  
  
 D. Specifications, Standards and Procedures  
  
 You acknowledge that the operation of the Restaurant in compliance with our  
high standards is important to us and all other Friendly's Restaurant licensees.  
You agree to cooperate with us by maintaining our high standards in the  
operation of the Restaurant. You further agree to comply with all mandatory  
specifications, standards and operating procedures relating to appearance,  
function, cleanliness, sanitation, safety, business hours, delivery services,  
new Products, purchasing or leasing new or different equipment for preparation  
and sale of new Products, compliance with the decor, format and image, including  
equipment, furniture, fixtures and signage, of a Friendly's Restaurant.   
Mandatory specifications, standards and operating procedures we prescribe   
from time to time in the Operations Manual, or otherwise communicate to you in  
writing, will constitute provisions of this Agreement as if fully set forth in  
this Agreement unless such provisions conflict with applicable laws or local  
ordinances. All references to this Agreement include all such mandatory  
specifications, standards and operating procedures. You agree that the  
Restaurant will conduct business in the ordinary course seven days a week  
(excluding holidays we specify if any) and 17 hours a day, except as we may  
otherwise authorize in writing. You acknowledge that approved restaurant hours  
may vary from one location to another depending on conditions in the market  
where the restaurant is located.  
  
 E. Compliance with Laws and Good Business Practices  
  
 You agree to secure and maintain in force in your name all required  
licenses, permits and certificates relating to the operation of the Restaurant.  
You further agree to operate the Restaurant in full compliance with all   
applicable laws, ordinances and regulations, including, without limitation, all  
government regulations relating to health and sanitation, workers' compensation  
insurance, unemployment insurance and withholding and payment of federal, state  
and local income taxes, social security taxes and sales taxes. All of your  
advertising must conform to applicable legal standards, be in good taste in our  
reasonable judgment and conform to the highest standards of ethical advertising.  
You agree that in all dealings with us, your customers, suppliers and public  
officials, you will adhere to the highest standards of honesty, integrity, fair  
dealing and ethical conduct. You agree to refrain from any business or  
advertising practice which may be injurious to our business or to the goodwill  
associated with the Marks and other Friendly's Restaurants.  
  
 You agree to notify us, by telephone within seventy-two (72) hours followed  
within five (5) days by written notification, including copies of any pleadings  
or process received of: (i) the commencement of any action, suit or proceeding  
relative to the Restaurant; (ii) the issuance of any order, writ, injunction,  
award or decree of any court, agency or other governmental instrumentality which  
may adversely affect the operation or financial condition of the Restaurant; and  
(iii) any notice of violation of any law, ordinance or regulation relating to   
health or safety. You agree that you will not accept service of process for us  
and on our behalf.  
  
 F. Management and Personnel of the Restaurant  
  
 You agree that at all times you will (i) employ on terms reasonably  
satisfactory to us a General Manager who shall have principal operational  
responsibility for the Restaurant and who shall have such qualifications   
and experience as we shall reasonably require and who shall have completed our  
training program and (ii) employ on a full-time basis a Manager and an Assistant  
Manager, each of whom has completed our training program (collectively, the  
General Manager and Manager and Assistant Manager are referred to as "Restaurant  
Managers"). The Restaurant shall during all business hours be under the direct  
on-premises supervision of a Restaurant Manager. You agree to hire all  
employees to maintain a neat and clean appearance and to conform to the   
standards of dress and/or uniforms that we specify from time to time for  
Friendly's Restaurants. You shall not recruit or hire any of our employees or  
any employees of any Friendly's Restaurant operated by us or by a Friendly   
Restaurant licensee without obtaining our prior written permission or the prior  
written permission of the other licensee unless six months have expired since  
such employee's termination of employment with us or the licensee.  
  
 G. Insurance  
  
 During the term of the Franchise, you agree to comply with all insurance  
requirements related to the Restaurant's lease or mortgage and to maintain in  
force at all times, under policies of insurance issued by carriers we have  
approved:  
  
 (1)employer's liability and workers' compensation insurance as prescribed  
by applicable law;  
  
 (2)comprehensive general liability insurance (with products, completed  
operations and contractual liability and independent contractors and escalators  
coverage) and comprehensive motor vehicle liability insurance (for owned and  
non-owned vehicles) against claims for bodily and personal injury, death and  
property damage caused by or occurring in conjunction with the operation of the  
Restaurant (or otherwise in conjunction with your conduct of business pursuant  
to this Franchise) under one (1) or more policies of insurance, each on an   
occurrence basis, with single-limit coverage for personal and bodily injury,  
death and property damage of at least one million dollars ($1,000,000.00) (or  
such other amount as we may reasonably require), with no less than a five  
million dollar ($5,000,000.00) umbrella liability policy in force;  
  
 (3)All-risk building and contents insurance including flood and earthquake,  
vandalism and theft insurance for the replacement value of the Restaurant and  
its contents;  
  
 (4)business interruption insurance for a period adequate to reestablish  
normal business operations; and  
  
 (5)builders' risk insurance on a completed value non-reporting basis during  
the period of any remodeling of the Restaurant.  
  
  
 We may periodically increase the amounts of insurance you will be required  
to maintain, and we may require different or additional kinds of insurance at  
any time, including excess liability insurance, to reflect inflation,  
identification of new risks, changes in law or standards of liability, higher  
damage awards, or other relevant changes in circumstances. Each insurance  
policy must name us as an additional insured and must provide for thirty (30)  
days' prior written notice to us of any material modification, cancellation,  
termination or expiration of such policy.  
  
 Prior to the expiration of the term of each insurance policy, you agree to  
furnish us with a certificate of insurance or with a certified copy of each  
renewal or replacement insurance policy you will maintain for the immediately  
following term and evidence of the payment of the premium for the insurance  
policy. If you fail or refuse to maintain required insurance coverage, or to  
furnish satisfactory evidence of required insurance coverage and payment of the  
premiums we, at our option and in addition to our other rights and remedies  
under this Agreement, may obtain the required insurance coverage on your behalf.  
You must cooperate fully with us in our effort to obtain such insurance  
policies, promptly execute all forms or instruments required to obtain or  
maintain such insurance and pay to us, on demand any costs and premiums we  
incur.  
  
 Your obligations to maintain insurance coverage as described above will not  
be affected in any manner by reason of any separate insurance we maintain, nor  
will the maintenance of insurance relieve you of any obligation under Section 5  
of this Agreement.  
  
9. MARKETING  
  
 A. By Company  
  
 You agree that because of the value of advertising to the goodwill and  
public image of Friendly's Restaurants, we may maintain and administer a  
marketing fund (the "Marketing Fund") for the marketing program that we   
deem necessary or appropriate, in our sole discretion. You agree to contribute  
to the Marketing Fund three percent (3%) of Gross Sales  
  
of the Restaurant calculated in the same manner as, and payable monthly together  
with, the royalty fees due under this Agreement.  
  
 You agree that we will direct all marketing programs financed by the  
Marketing Fund, and we will have sole discretion over the creative concepts,  
materials and endorsements used in the programs, and the geographic, market and  
media placement and allocation of the programs. You agree that the Marketing  
Fund may be used to pay the costs of preparing and producing video, audio and  
written advertising materials; administering multi-regional advertising  
programs, including, without limitation, purchasing direct mail and other media   
advertising, and employing advertising agencies to assist therewith; supporting  
public relations, market research, and menu development; and other advertising  
and marketing activities that we, in our sole discretion, deem appropriate.  
  
 The Marketing Fund will be accounted for separately from our other funds  
and will not be used to defray any of our general operating expenses, except for  
such reasonable salaries, administrative costs and overhead as we may incur in  
activities reasonably related to the administration of the Marketing Fund and  
its marketing programs including, without limitations, conducting market  
research and menu development, preparing advertising and marketing materials,  
and collecting and accounting for contributions to the Marketing Fund  
(including, but not limited to, attorneys' and accountants' fees and other  
expenses of litigation). You agree that we may spend in any fiscal year an  
amount greater or less than the aggregate contribution of all Friendly's   
Restaurants to the Marketing Fund in that year   
  
and the Marketing Fund may borrow from us or from other lenders to cover  
deficits of the Marketing Fund or cause the Marketing Fund to invest any surplus  
for future use by the Marketing Fund. You authorize us to collect for the  
Marketing Fund any advertising or promotional monies or credits offered by any  
supplier based upon your purchases. All interest earned on monies contributed  
to the Marketing Fund will be used to pay the expenses of the Marketing Fund  
incurred in advertising and promotion, including the reasonable administrative  
expenses related thereto before other assets of the Marketing Fund are expended.  
We will prepare an annual statement of monies collected and costs incurred by  
the Marketing Fund within one hundred twenty (120) days after the end of our  
fiscal year and will furnish this statement to you upon your written request.   
We have the right to cause the Marketing Fund to be incorporated or operated  
through a separate entity at such time as we deem appropriate, and if we do so,  
that entity will have all of our rights and duties pursuant to this Section 9A.  
  
 You understand and acknowledge that the Marketing Fund is intended to  
enhance recognition of the Marks and patronage of Friendly's Restaurants and  
Friendly's proprietary branded products. Although we will endeavor to utilize  
the Marketing Fund to develop advertising and marketing materials and programs,  
and to place advertising that will benefit all Friendly's Restaurants, we  
undertake no obligation to ensure that expenditures by the Marketing Fund in or  
affecting any geographic area are proportionate or equivalent to the  
contributions to the Marketing Fund by Friendly's Restaurants operating in that  
geographic area or that any Friendly's Restaurant will benefit directly or in  
proportion to the  
  
contributions to the Marketing Fund from the development of advertising and  
marketing materials or the placement of advertising. Except as expressly  
provided in this Section 9A, we assume no direct or indirect liability or  
obligation to you with respect to our maintenance, direction or administration  
of the Marketing Fund. You acknowledge that we have the right, and you hereby  
authorize us, to settle or otherwise compromise all disputes with regard to the  
Marketing Fund.  
  
 B. By Franchisee  
  
 Until such time as a Cooperative Marketing Fund is established and funded,  
you agree we may expend the marketing contribution less administrative expenses  
not to exceed one-half percent (1/2%) required in Section 9A in your DMA in  
accordance with marketing plans reviewed and approved by Friendly's. Samples of  
any advertising and promotional material we have not prepared or previously  
approved must be submitted to us for approval prior to your use. You may not  
use any advertising or promotional materials that we have not approved or which  
we have disapproved. You agree to cooperate in the development of a Cooperative  
Marketing Fund and to coordinate any local or DMA advertising with Friendly's.   
Local advertising programs approved by Friendly's will be paid for or credited  
against the three percent (3%) marketing expenditure required hereunder at the  
option of Friendly's.  
  
 C. By Cooperative  
  
 Unless your franchise is granted pursuant to a Development Agreement for an  
exclusive territory covering an entire DMA, Friendly's reserves the right to  
form and you agree to join a cooperative marketing fund organized on a regional  
basis. Each franchisee within the affected region may contribute up to two  
percent (2%) of its Gross Sales to the cooperative marketing fund in addition to  
the marketing and advertising expense obligations under Section 9A and 9B of  
this Agreement. Each company operated restaurant within the region of the   
cooperative marketing fund shall likewise be required to contribute to the  
cooperative fund on a per restaurant basis equal to the franchisee's percentage  
of the Gross Sales contribution. Each franchised and company operated  
restaurant contributing to the cooperative shall have one (1) vote per  
restaurant in determining how the cooperative will apply the funds of such  
cooperative.  
  
10. REPORTS, FINANCIAL STATEMENTS AND FINANCIAL CONDITION  
  
 Unless otherwise agreed to by us in writing, you agree to adopt the  
Company's financial and operational reporting chart of accounts format, as set  
forth in the Operations Manual or otherwise furnished to you, which may be  
amended from time to time. You also agree to maintain accurate books of  
account, governmental reports, register tapes, guest checks, daily reports and  
complete copies of all federal and state income tax returns, property and sales  
and use tax returns. Such records, reports and returns must be preserved  
  
for such periods of time as are reasonably specified by us from time to time in  
the Operations Manual or otherwise but not less than the minimum time prescribed  
by applicable law.  
  
 With respect to the operation and financial condition of the Restaurant,  
you agree to furnish us, in the form we from time to time prescribe:  
  
 (1)by the tenth (10th) day of each month for the preceding calendar month,  
a report of the Gross Sales of the Restaurant, other revenues generated at the  
Restaurant and other information which we may reasonably request that may be  
useful in connection with our marketing and other legitimate functions. This  
report must also include a statement computing amounts then due for royalty fees  
and Marketing Fund contributions and be certified by you or by your chief   
executive or financial officer;  
  
 (2)by the twentieth (20th) day of each month for the preceding calendar  
month, a profit and loss statement for the Restaurant and be certified by you or  
by your chief executive or financial officer;  
  
 (3)upon our request, such other data, information and supporting records  
for such periods as we from time to time reasonably require; and  
  
 (4)within one hundred twenty (120) days after the end of your fiscal year,  
a fiscal year-end balance sheet, income statement and statement of changes in  
financial position (cash flow) of the Restaurant for such fiscal year,  
reflecting all year-end adjustments (audited if available) and a statement of  
annual Gross Sales certifying that your Gross Sales for the immediately  
preceding fiscal year have been calculated and reported in compliance with the  
terms of this Agreement, each of which shall be certified by you or by your  
chief executive or financial officer.  
  
 If at any time you are delinquent in the payment of any amount owed to us  
or our affiliates, you agree: (1) upon our request, to furnish us income  
statements and balance sheets for such periods and as of such dates and all in  
such detail as we may request, for  
  
you and each entity affiliated with you, whether or not such entity conducts any  
business with the Restaurant, (2) that we may directly contact any lender,  
lessor, supplier or vendor for the purpose of obtaining information relating to  
the Restaurant and any lease or financial arrangements and you hereby authorize  
such persons to disclose all such information to us and, if you are an entity,  
you agree that we may contact any of your officers, directors, shareholders or  
partners for any purpose reasonably related to your undertakings contained in  
this Agreement and (3) to furnish, at our request, books of account,  
governmental reports, register tapes, guest checks, daily reports and complete  
copies of federal and state income tax returns, property and sales and use tax  
returns.  
  
11. INSPECTIONS AND AUDITS  
  
 A. Company's Rights to Inspect the Restaurant  
  
 To determine whether you and the Restaurant are complying with this  
Agreement, and with specifications, standards and operating procedures we  
prescribe for the operation of Friendly's Restaurants, we or our agents will  
have the right, at any reasonable time, to:  
  
 (1)inspect the Restaurant and the Premises;  
  
 (2)observe and video tape the operations of the Restaurant for such  
consecutive or intermittent periods as we deem necessary;  
  
 (3)remove, in reasonable quantities, samples of any food and beverage  
product, material or other products for testing and analysis;  
  
 (4)interview personnel of the Restaurant;  
  
 (5) interview customers of the Restaurant; and  
  
 (6)inspect and copy any books, records and documents relating to the  
operation of the Restaurant.  
  
 You agree to fully cooperate with us in connection with any such  
inspections, observations, video taping, product removal and interviews. You  
agree to present to your customers any evaluation forms we periodically  
prescribe and to participate and/or request your customers to participate in any  
surveys performed by us or on our behalf.  
  
 B. Company's Right to Audit  
  
 We have the right at any time during the business hours, and without prior  
notice to you, to inspect and audit, or cause to be inspected and audited, the  
business records of the Restaurant and the books and records and tax returns of  
any entity which holds the Franchise granted under this Agreement. You must  
fully cooperate with our representatives and any independent accountants that we  
hire to conduct any such inspection or audit. If any such inspection or audit  
discloses an understatement of the Gross Sales of the Restaurant, you agree to  
pay to us, within fifteen (15) days after receipt of the inspection or audit  
report, the royalty fees and Marketing Fund contributions due on the amount of  
such understatement, plus interest (at the rate and on the terms provided in  
Section 7D of this Agreement) from the date originally due until the date of  
payment. Further, in the event such inspection or audit is made necessary   
due to your failure to furnish us with reports, supporting records, other  
information or financial statements, as required by this Agreement, or to  
furnish such reports, records, information or financial statements on a timely  
basis, or if an understatement of Gross Sales for the period of any audit is  
determined by any such audit or inspection to be greater that two percent   
(2%), you agree to reimburse us promptly upon notice for the cost of the  
inspection or audit, including, without limitation, the charges  
  
of attorneys and independent accountants, and the reasonable travel, lodging and  
meal expenses and applicable per diem charges for our employees. The forgoing  
rights will be in addition to all other remedies and rights that we may have  
under this Agreement or under applicable law.  
  
12. TRANSFER OF FRANCHISE  
  
 A. By Company  
  
 This Agreement is fully transferable by us and will inure to the benefit of  
any transferee or other legal successor to our interests in this Agreement.  
  
 B. Franchisee May Not Transfer Without Approval of Company   
   
 The rights and duties created by this Agreement are personal to you. We  
have granted the Franchise to you in reliance upon the individual and collective  
character, skill, aptitude, attitude, and business ability of the persons who  
will be engaged in the ownership and management of the Restaurant, your  
financial capacity and the representations and warranties made to us in the  
application and the Commitment Agreement, if applicable, and the  
representations, warranties and covenants contained in this Agreement.   
Accordingly, neither this Agreement nor the Franchise (or any interest therein),  
nor any part or all of the ownership of Franchisee (if an entity) or the  
Restaurant (or any interest therein), may be transferred, directly or  
indirectly, except by operation of legal merger with your corporate parent or  
other affiliate (subject to the successor merged entity having a net worth equal  
to the net worth of the Franchisee and corporate parent on the effective date  
hereof) without  
  
our prior written approval, and any attempted transfer without our prior written  
approval will constitute a breach of this Agreement and convey no rights to or  
interests in this Agreement or the Franchise. As used in this Agreement the  
term "transfer" means and includes the voluntary, involuntary, direct or  
indirect assignment, sale, gift, pledge, grant of security interest or other  
transfer by you of any interest in: (i) this Agreement or any related agreement  
between you and us; (ii) the Franchise; (iii) the Franchisee; (iv) the  
Restaurant or (v) the Premises. This Section 12B shall not apply to any  
interest in the Restaurant or the Premises conditionally transferred to any bona  
fide lender as collateral security for any loans to you or to any financing or  
refinancing structured as a sale-leaseback, provided that upon the sale of the   
Restaurant, it is simultaneously leased back pursuant to a Lease Agreement which  
is subject to our rights under this Agreement.  
  
 C. Right of First Refusal  
  
 If at any time during the term of this Agreement and for a period of one  
(1) year thereafter, any interest in this Agreement or the Franchise is proposed  
to be sold, the seller shall obtain a bona fide, executed, written offer from a  
responsible and fully disclosed purchaser and shall submit an exact copy of such  
offer to us along with any other information that we may reasonably request to  
evaluate the offer and the identity of the proposed purchaser shall be disclosed  
to us. We shall have the right, exercisable by written notice delivered to you  
within thirty (30) days after the date of delivery of an exact copy of such  
offer and all requested information to us, to purchase such interest for the  
price and on the terms and conditions contained in such offer. Regardless of  
the terms of the offer,  
  
we may, in our discretion, structure the transaction as an asset purchase,  
rather than a stock purchase and to substitute cash for securities or other  
property as consideration. If less than the entire interest in this Agreement  
or the Franchise is proposed to be sold, we shall have the right to purchase the  
entire interest for a price equal to the proposed price plus a pro-rata   
increase based on the value of the interest to be purchased. Our credit shall  
be deemed equal to the credit of any proposed purchaser and we shall have not  
less than ninety (90) days to prepare for closing. We shall be entitled to all  
representations and warranties given by the seller to the proposed buyer. We  
shall not be obligated to pay any finder's or broker's fee or commission.  
  
 If we do not exercise our right of first refusal, the sale or other  
transfer may be completed pursuant to and on the terms of such offer, subject to  
our approval of the transfer as otherwise provided in this Agreement; provided,  
however, that if the proposed sale or other transfer is not completed within one  
hundred eighty (180) days after delivery of such offer to us, or if there is   
any change in the terms of the proposed transaction, we shall have an additional  
right of first refusal for an additional thirty (30) days.  
  
 Our right of first refusal shall not apply to the sale or transfer of an  
interest in this Agreement or the Franchise, to a member of Franchisee's  
immediate family or, if Franchisee is an entity, between or among the owners of  
Franchisee or their affiliates provided that such transfer is otherwise  
permissible under this Agreement.  
  
 D. Conditions for Approval of Transfer  
  
 The proposed transferee and its owners (if the proposed transferee is an  
entity) must meet our then applicable standards for Friendly's Restaurant  
licensees. In addition, if the transfer is one of a series of transfers which  
in the aggregate constitute the transfer of the Franchise, all of the following  
conditions must also be met prior to, or concurrently with, the effective date   
of the transfer:  
  
 (1)the transferee must have sufficient business experience, aptitude and  
financial resources to operate the Restaurant;  
  
 (2)prior to the effective date of the transfer, you or the transferee must  
pay all royalty fees, Marketing Fund contributions and all other amounts owed to  
us or our subsidiaries and affiliates, which are then due and unpaid, and cure  
all defaults under this Agreement or any other agreement between you and us to  
our satisfaction (or make provision for their cure satisfactory to us);  
  
 (3)the transferee and its management personnel must have completed our  
training program to our satisfaction;  
  
 (4)the transferee must apply for a new license agreement in accordance with  
our then current standards for a term equal to the remaining term of this  
Agreement or for a full term. If the application is approved, we and the  
transferee will enter into a commitment agreement to govern the operation of the  
Restaurant until commencement of the new license agreement, provided that the  
transferee upgrades and modernizes the Restaurant to our then-current standards  
and meets the other requirements of the commitment agreement;  
  
 (5)you or the transferee must pay us the then current transfer fee to  
defray expenses incurred by us in connection with the transfer;  
  
 (6)you, and if you are an entity (and have signed the Entity Addendum (the  
"Entity Addendum")), your owners, officers and directors must execute a general  
release, in a form satisfactory to us, of any and all existing claims against  
us, our subsidiaries and affiliates, and our and their officers, directors,  
partners, employees and agents;  
  
 (7)we must approve the material terms and conditions of such transfer,  
including, without limitation, our determination that the price and terms of  
payment are not so burdensome as to adversely affect the subsequent operation or  
financial results of the Restaurant;  
  
 (8)you and any guarantors must execute a non-competition covenant in favor  
of us and the transferee, containing the terms contained in Section 16A;  
  
 (9)the lessor and lender, if any, of the Premises must give you its or  
their advance written consent to the transfer of the Premises, if required, and  
you must provide us with a copy of such consent; and  
  
 (10)you and any guarantors must guarantee the transferee's financial  
obligations to us in its commitment agreement and license agreement for two  
years from the date of transfer.  
  
  
 If the proposed transfer is to or among owners of you, subsection (5) of  
the above requirements shall not apply.  
  
 E. Transfer to a Wholly-owned Entity  
  
 If you are in full compliance with this Agreement, we will not unreasonably  
withhold our approval of a transfer to an entity which conducts no business  
other than the Restaurant (or other Friendly's Restaurants), which is actually  
managed by you and in which you maintain management control and own and control  
one hundred percent (100%) of the equity and voting power of all issued and  
outstanding securities, provided that you (i) guarantee, in accordance with our  
then current form, the performance of such transferee's obligations under this   
Agreement, and (ii) execute our current form of Entity Addendum. Transfers of  
interests in such entity will be subject to the other provisions of this Section  
12.  
  
 F. Effect of Consent to Transfer  
  
 Our consent to a transfer of this Agreement, the Franchise, the Restaurant  
or an interest in you will not constitute a waiver of any claims we may have  
against you (or your owners if you are an entity), nor shall it be deemed a  
waiver of our right to demand exact compliance with any of the terms or  
conditions of this Agreement by the transferee.  
  
13. CONDEMNATION AND CASUALTY  
  
 You must give us immediate notice in writing of any proposed taking of the  
Restaurant or the Premises by eminent domain. If we agree that the Restaurant  
or the Premises (or substantial parts thereof) will be taken, we will give due  
and prompt consideration to transferring the License to a nearby location which  
you select within two (2) months of the taking. If we approve the location and  
authorize the transfer, and if you open a new restaurant at such location in  
accordance with our specifications within eighteen (18) months if the new  
restaurant does not have a drive-thru, or if the new restaurant does have a  
drive-thru, within two (2) years of the closing of the Restaurant, the new  
restaurant will henceforth be deemed to be the Restaurant under this Agreement.   
If a condemnation takes place and the new restaurant does not, for whatever  
reason, become the Restaurant under this Agreement in strict accordance with   
this Section 13 (or if it is reasonably evident that such will be the case), the  
Franchise and this Agreement will terminate as provided for in Section 14.  
  
 If the Restaurant is damaged by fire or other casualty, you will  
expeditiously repair the damage. If the damage or repair requires closing the  
Restaurant, you will immediately notify us, will repair or rebuild the  
Restaurant in accordance with our standards, will commence reconstruction within  
four (4) months after closing, and will reopen the Restaurant for continuous   
business operations as soon as practicable but in no event later than twelve  
(12) months after closing of the Restaurant, giving us ample advance written  
notice of the date of reopening. If the Restaurant is not reopened in  
accordance with this Section 13, the Franchise and this Agreement will terminate  
as prescribed in Section 14.  
  
 Nothing in this Section 13 will extend the term of this Agreement but you  
will not be required to pay us any royalty fee or Marketing Fund contribution  
payments for periods during which the Restaurant is closed by reason of  
condemnation or casualty.  
  
14. TERMINATION OF THE FRANCHISE  
  
 A. Unless cured to our satisfaction, this Agreement shall terminate 30  
days from the date notice is given to you in accordance with Section 19, if you  
or any guarantor:  
  
 (1)fail to report accurately the Gross Sales of the Restaurant or fail to  
make payments of any amounts due to us for royalty fees, Marketing Fund  
contributions, or any other amounts due to us, our affiliates or our  
subsidiaries;  
  
 (2)fail to comply with any other provision of this Agreement or any  
mandatory specification, standard or operating procedure we prescribe, unless  
such failure cannot reasonably be corrected within such thirty (30) day period  
and you undertake within ten (10) days after such written notice is delivered to  
you, and continue, efforts to bring the  
  
Restaurant and the Premises into full compliance, and furnish proof acceptable  
to us of such efforts and the date by which full compliance will be achieved;  
  
 (3)you or any person controlling you, controlled by you, or under common  
control with you is in default of any other agreement with us (for purposes of  
this clause control means the ownership by a person or entity, directly or  
indirectly, of ten percent (10%) or more of another person or entity or the  
power to affect the policies of another person or entity);  
  
 (4)in our good faith reasonable judgment, fail to use your reasonable  
efforts employ on a full time basis qualified Restaurant Managers with  
qualifications and experience acceptable to us.   
  
 (5)if you violate the Continuous Operation covenant set forth in Section  
1B(3) of this Agreement, or there are three (3) or more breaches of any duration  
during any twelve-month period.  
  
  
 B. Unless we have notified you in writing to the contrary after  
discovering the relevant facts, this Agreement will terminate automatically and  
immediately without further action by us or notice to you, if you:  
  
 (1)become insolvent or are unable to pay your or their debts as they mature  
or make an assignment for the benefit of creditors or an admission of inability  
to pay obligations as they become due or file a voluntary petition in bankruptcy  
or any pleading seeking any reorganization, liquidation, dissolution or  
composition or other settlement with creditors under any law, or admit or fail  
to contest the material allegations of any such pleading filed against you, or   
are adjudicated a bankrupt or insolvent or a receiver or other custodian is  
appointed for a substantial part of your assets or the Restaurant or a final  
judgment remains unsatisfied or of record for ninety (90) days or longer (unless  
a supersedeas bond is filed), or if execution is levied against any substantial  
part of your assets or a tax levy is made, or suit to foreclose any lien or  
mortgage against you or the Restaurant is instituted and is not dismissed within  
ninety (90) days, or if a substantial part of your real or personal property is  
sold after levy of judgment thereupon by any sheriff, marshal or constable, or  
the claims of your creditors are abated or subject to a moratorium under any  
law;  
  
 (2)except as provided in Section 13, discontinue operating the Restaurant  
as a Friendly's Restaurant, or abandon, surrender or transfer control of the  
Restaurant without our prior approval;  
  
 (3)have made any material misrepresentation or omission in the application  
for the Franchise or in the Commitment Agreement or in this Agreement or in any  
other material submitted to us on which we have relied in determining whether to  
grant you the Franchise.  
  
 (4)are, or are discovered to have been, convicted of or plead no contest to  
a felony, or other crime or offense that is likely to have a material adverse  
effect on your reputation or the reputation of the Company, the System, or the  
Restaurant;  
  
 (5)make or attempt to make an unauthorized transfer in violation of Section  
12;  
  
 (6)make any unauthorized use or disclosure of any Confidential Information  
or any portion of the Operations Manual;  
  
 (7)lose the right to possession of the Premises or a substantial part  
thereof, whether or not due to your fault, except as otherwise provided in  
Section 13 of this Agreement regarding condemnation and casualty;  
  
 (8)take action toward dissolving or liquidating the entity owning the  
Franchise, or any such action is taken against you, without providing us advance  
written notice or complying with Section 12 of this Agreement;  
  
 (9)deny our representatives the right to enter and inspect the Restaurant  
or to examine or audit its books and records pursuant to Section 11B of this  
Agreement;  
  
 (10)make any unauthorized use of the Marks or contest in any court or  
proceeding our ownership of the Marks or the System or any part thereof;  
  
 (11)fail on three (3) or more separate occasions, for which notices of  
default were given, within any period of twelve (12) consecutive months to  
comply with this Agreement whether or not such failures to comply are corrected  
after notice of default is given, or fail on two (2) or more separate occasions,  
for which notices of default were given,   
  
within any period of twelve (12) consecutive months to comply with the same  
obligation under this Agreement whether or not such failures to comply are  
corrected after notice of default is given;   
  
 (12)you breach a material obligation, representation or warranty contained  
in this Agreement and such breach by its nature cannot be cured; or  
  
 (13)have made any material misrepresentation to us regarding your  
organizational or financial structure of financial condition.  
  
 In any judicial proceeding in which the validity of termination is at  
issue, we will not be limited to relying on the reasons for termination which  
are set forth in any notice sent to you in accordance with this Section 14.  
  
 C. You may terminate this Agreement at any time by giving us at least  
twelve (12) but not more than fifteen (15) months written notice.  
  
 D. Our rights to terminate this Agreement are in addition to all rights  
or remedies available at law or in equity in case of any breach, failure or  
default, or threatened breach, failure or default, all of which rights and  
remedies shall be cumulative and not alternative.  
  
15. DAMAGES  
  
 Except as otherwise provided in this Agreement, if this Agreement and the  
Franchise granted hereby terminate under any of the provisions of Section 14 of  
this Agreement, you agree to promptly pay us (as liquidated damages for the loss  
of the benefit bargained for in this Agreement due to premature termination  
only, and not as a penalty or as damages for breaching this Agreement or in lieu  
of any other payment) a lump sum equal to the royalty  
  
fees and Marketing Fund contributions payable to us during the thirty-six (36)  
calendar months immediately preceding the termination. In the event the  
Restaurant shall not have been open for thirty-six (36) months prior to  
termination, the monthly average of such payments during such shorter period  
shall be multiplied by thirty-six (36) for purposes of this section.   
In the event there are fewer than thirty-six (36) months remaining in the term  
hereof, the amount that you agree to pay shall be equal to the number of months  
remaining in the term of this Agreement multiplied by the average monthly  
royalty fees and Marketing Fund contributions payable to us during the  
thirty-six (36) months immediately preceding termination. In no event shall the  
damages for the termination of this Agreement, if any, exceed the greater of the  
liquidated damages set forth above or the actual damages proven by Friendly's.  
  
 If we are unable to determine the amount payable to us by you by reason of  
your failure to submit some or all of your Gross Sales reports as required  
pursuant to Section 10 of this Agreement, you agree that we may estimate the  
Gross Sales of your Restaurant for the applicable periods described above for  
the purpose of computing the amount payable to us by you under this Section 15.  
  
16.COVENANT NOT TO COMPETE; RIGHTS AND OBLIGATIONS OF COMPANY AND LICENSE UPON  
TERMINATION OR EXPIRATION OF THE LICENSE   
  
 A. Covenant Not to Compete  
  
 You acknowledge and agree that we have invested a substantial amount of  
time and money in developing the System, the Marks, and the Confidential  
Information and that we would be unable to protect our System, the Marks,  
Confidential Information and trade secrets against unauthorized use or  
disclosure and would be unable to encourage a free exchange of ideas and   
information among us or our licensees if prospective licensees or licensees were  
permitted to hold interests in or perform services for any competing business  
and that the following restrictions are reasonably required in order to protect  
our information, marketing strategies, operating policies and other elements of  
the System from unauthorized appropriation. Therefore, you agree that during  
the term of this Agreement, you will not have any direct or indirect or  
beneficial interest or perform services as an officer, director, manager,  
employee or consultant or otherwise for or in any business which owns, operates,  
licenses, franchises or develops any restaurant concept which both (i) has sit  
down, table service, and (ii) is a mid-scale priced, family style restaurant,  
coffee shop or ice cream/frozen yogurt shoppe (as defined by CREST operators  
list as of June 1, 1997) including but not limited to Denny's Shoney's Big Boy,   
Country Kitchen, Xxx Xxxxx, Cracker Barrel, IHOP, Village Inn, Waffle House,  
Dairy Queen, Xxxxxxx'x, Xxxxxx, Xxxxxx Xxxxxxx, TCBY or similar.   
Notwithstanding the above, a restaurant concept which is a mid-scale priced  
family style restaurant will be deemed competitive if frozen deserts comprise  
five percent (5%) or more of the sales mix as measured on any six (6) month   
basis. You further  
  
agree that for a period of two (2) years after the termination or expiration of  
this Agreement, you and all of such persons will be subject to the same  
restriction on competing activities within the trade area (the "Trade Area") of  
the Restaurant or within the trade area (as reasonably determined by us) of any  
Friendly's Restaurant operated currently by us or any other licensee of ours,  
but in no event within a radius of three (3) miles from any such restaurant.   
You and all of such persons also agree during such periods of time not to offer  
to employ or employ any person who is then employed by us, our affiliates or any  
other licensee. You acknowledge and agree that the Trade Area is an area equal  
to a three (3) mile radius with its epicenter at the Restaurant.  
  
 You acknowledge that the determination of the Trade Area is based on many  
factors, some of which are subjective, and that the Trade Area as described in  
this Agreement is reasonable under the circumstances. The restrictions of this  
Section shall not be applicable to the ownership of a Friendly's Restaurant  
operated pursuant to a License Agreement with us, 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 five percent (5%) or less of the number  
of shares of that class of securities issued and outstanding, or to the  
ownership or operation of any restaurant franchised by Wendy's International to  
your corporate parent or affiliate.  
  
 You further acknowledge that this Agreement does not confer any rights of  
exclusivity on you with respect to your operation of a Friendly's Restaurant  
within the Trade Area and will not prevent us from placing another Friendly's  
Restaurant or other food service establishment within the Trade Area.  
  
 B. Payment of Amounts Owed to Company  
  
 You must pay to us within fifteen (15) days after the effective date of  
termination or expiration of this Agreement, or such later date that the amounts  
due to us are determined, all royalty fees, Marketing Fund contributions,  
amounts owed for your purchases from us or our subsidiaries and affiliates,  
predecessors, successors and assigns, interest due on any of the foregoing,   
and all other amounts owed to us or our subsidiaries and affiliates under this  
Agreement or otherwise.  
  
 X. Xxxxx and System  
  
 You agree that immediately after the termination or expiration of this  
Agreement, you will:   
  
 (1)not directly or indirectly at any time or in any manner identify  
yourself or any business as a current or former Friendly's Restaurant, or as a  
franchisee or licensee of, or as otherwise associated with us, or use any Xxxx  
or any colorable imitation thereof in any manner or for any purpose, or utilize  
for any purpose any trade name, trade or service xxxx or other commercial symbol  
that suggests or indicates a connection or association with us;  
  
 (2)remove from the Premises, discontinue using for any purpose and return  
to us (or with our consent, destroy) any and all signs, menus, fixtures,  
furniture, furnishings, equipment, advertising, materials,  
  
stationary supplies, forms or other articles that display or contain any Xxxx or  
that otherwise identify or relate to a Friendly's Restaurant;  
  
 (3)remove all Marks that are affixed to uniforms and/or, at our direction,  
cease to use all uniforms that have been used in the Restaurant;  
  
 (4)take such action as may be required to cancel all fictitious or assumed  
name or equivalent registrations relating to your use of any Xxxx;  
  
 (5)change the telephone number of the Restaurant and instruct all telephone  
directory publishers to modify all telephone directory listings of the  
Restaurant associated with any Marks when the directories are next published;  
  
 (6)take such action to alter the physical interior and exterior decor of  
the Restaurant as will effectively de-identify and distinguish the Premises from  
the System; and  
  
 (7)furnish to us, within thirty (30) days after the effective date of  
termination or expiration, evidence satisfactory to us of your compliance with  
the foregoing obligations.  
  
  
 In the event that you fail to take such actions as required above to our  
satisfaction within the thirty (30) days to termination or expiration of this  
Agreement, you grant us the right to enter the Premises to remove all items  
bearing the Marks and take such actions as we deem necessary to de-identify the  
Restaurant from the System without committing any trespass or incurring any  
liability for such actions. You acknowledge and agree that you will be  
responsible for all costs and expenses that we incur in taking such actions.  
  
 D. Confidential Information  
  
 You agree that upon termination or expiration of this Agreement, you will  
immediately cease to use in any business or otherwise any of our Confidential  
Information disclosed to, or otherwise learned or acquired by you, and that you  
will return to us all  
  
copies of the Operations Manual and all other Confidential Information which we  
have loaned or made available to you or which is otherwise in your possession.   
You must also provide us with any and all supplies of our proprietary frozen  
desserts and toppings for which you will be compensated at the lower of their  
costs or market value.  
  
 E. Continuing Obligations  
  
 All obligations of the Company and Licensee which expressly or by their  
nature survive the expiration or termination of this Agreement shall continue in  
full force and effect subsequent to and notwithstanding its expiration or  
termination and until they are satisfied in full or by their nature expire.  
  
17. RENEWAL OF FRANCHISE  
  
 You understand that you have the conditional right to renew this Agreement  
one time to operate the Restaurant in the System for twenty (20) years beyond  
the expiration date provided for in this Agreement. However, if you desire to  
obtain a new license upon the expiration of this Agreement, you must apply to us  
for a new license agreement at least ninety (90) days, but not more than twelve  
(12) months, before expiration of the term of this Agreement. Upon payment of a  
renewal fee, which will not exceed our then standard initial license fee, we  
will process your application in good faith and in accordance with our  
procedures, criteria and requirements regarding upgrading of facilities, credit,  
market feasibility and related criteria then being applied by us in issuing new  
licenses to use the System. If you fulfill our upgrading and other  
then-current requirements, we will grant you  
  
a new license in the form of agreement then in use by us. If you are granted a  
new license, you (and if you are an entity, your owners) will be required to  
execute a general release, in a form satisfactory to us, of any and all claims  
against us and our subsidiaries, affiliates, partners, agents, employees,  
representatives and servants, including claims arising under this Agreement and  
federal, state and local laws, rules and regulations. If you are not granted a  
new license, we will return the renewal fee less expenses incurred in processing  
your application.  
  
 During the pendency of your application for the issuance of a new license,  
royalty fees and Marketing Fund contributions will be paid at the rate specified  
in this Agreement. Upon issuance of the new license agreement, fees must be  
paid at the rates specified in the new license agreement, which may be greater  
than the rates specified in this Agreement.  
  
18. ENFORCEMENT  
  
 A. Severability and Substitution of Valid Provisions  
  
 Except as expressly provided to the contrary, each section, paragraph, term  
and provision of this Agreement, and any portion thereof, shall be considered  
severable and if, for any reason, any such provision of this Agreement is held  
to be invalid, contrary to, or in conflict with any applicable present or future  
law or regulation in a final, unappealable ruling issued by any court, agency or  
tribunal with competent jurisdiction in a proceeding to which we are a party,  
that ruling shall not impair the operation of, or have any other effect upon,  
such other portions of this Agreement as may remain otherwise enforceable, all  
  
of which shall continue to be given full force and effect and bind the parties  
to this Agreement, although any portion held to be invalid shall be deemed not  
to be a part of this Agreement from the date the time for appeal expires, if you  
are a party thereto, or otherwise upon your receipt of a notice of  
non-enforcement thereof from us. To the extent that any provision of Section  
12D(8) or Section 16A is deemed unenforceable by virtue of its scope in terms of  
area, business activity prohibited and/or length of time, but could be made  
enforceable by reducing any or all thereof, you and we agree that such  
provisions shall be enforced to the fullest extent permissible under the laws  
and public policies applied in the jurisdiction in which enforcement is sought.   
If any applicable and binding law or rule of any jurisdiction requires a greater  
prior notice of the termination of or refusal to renew this Agreement, than is  
required in this Agreement, or if under any applicable and binding law or rule  
of any jurisdiction, any provision of this Agreement or any specification,  
standard or operating procedure we prescribe is invalid or unenforceable, the  
prior notice and/or other action required by such law or rule shall be  
substituted for the comparable provisions of this Agreement, and we will have  
the right, in our sole discretion, to modify such invalid or unenforceable  
provision, specification, standard or operating procedure to the extent required  
to be valid and enforceable. You agree to be bound by any promise or covenant  
imposing the maximum duty permitted by law which is contained within the terms  
of any provision of this Agreement, as though it were separately articulated in  
and made a part of this Agreement, that may result from striking from any of the  
provisions of this Agreement, or any specification, standard or operating  
procedure that we prescribe, any portion or portions which a court may hold to  
be unenforceable in a final decision to which we are  
  
a party, or from reducing the scope of any promise or covenant to the extent  
required to comply with such a court order. Such modifications to this  
Agreement shall be effective only in such jurisdiction, unless we elect to give  
them greater applicability, and shall be enforced as originally made and entered  
into in all other jurisdictions.  
  
 B. Waiver of Obligations  
  
 You and we may by written instrument unilaterally waive or reduce any  
obligation of or restriction upon the other under this Agreement, effective upon  
delivery of written notice thereof to the other or such other effective date  
stated in the notice of waiver. Any waiver granted by us shall be without  
prejudice to any other rights we may have, will be subject to continuing review  
by us, and may be revoked, in the good faith exercise of our sole discretion, at  
any time and for any reason, effective upon delivery to you of ten (10) days'  
prior written notice. You and we shall not be deemed to have waived or impaired  
any right, power or option reserved by this Agreement (including, without  
limitation, the right to demand strict compliance with every term, condition,  
and covenant herein, or to declare any breach thereof to be default and to  
terminate the License prior to the expiration of its term), by virtue of any  
custom or practice of the parties at variance with the terms hereof; any  
failure, refusal, or neglect by you or us to exercise any right under this  
Agreement or to insist upon exact compliance by the other with its obligations  
hereunder, including, without limitation, any mandatory specification, standard,  
or operating procedure; any waiver, forbearance, delay, failure, or omission by  
us to exercise any right, power, or   
  
option, whether of the same, similar or different nature, with respect to any  
other Friendly's Restaurant; or the acceptance by us of any payments from you  
after any breach by you of this Agreement.  
  
 C. Force Majeure  
  
 Neither you nor we shall be liable for loss or damage or deemed to be in  
breach of this Agreement if a failure to perform particular obligations results  
from: (i) transportation shortages, inadequate supply or unavailability from  
the manufacturers or suppliers of equipment, merchandise, supplies, labor,  
material, or energy, or the voluntary surrender of the right to acquire or   
use any of the foregoing in order to accommodate or comply with the orders,  
requests, regulations, recommendations, or instructions or any federal, state or  
municipal government or any department or agency thereof; (ii) compliance with  
any law, ruling, order, regulation, requirement or instruction of any federal,  
state or municipal government or any department or agency thereof; (iii) acts  
of God; (iv) fire, strikes, embargos, war or riot; or (v) any other similar   
event or cause.  
  
 Any delay resulting from any of such causes shall extend the time for  
performance or excuse performance, in whole or in party, as may be reasonable,  
except that such causes shall not excuse payments of amounts owed at the time of  
such occurrence or payment of any amounts due thereafter.  
  
 D. Injunctive Relief  
  
 You agree that we will have the right to preliminary injunctive relief  
to restrain any conduct by you in the development or operation of the Restaurant  
that could materially damage the goodwill associated with the System, the Marks  
and Friendly's Restaurants. You further agree that we will not be required to  
post a bond to obtain injunctive relief.  
  
 E. Rights of Parties Are Cumulative  
  
 Your and our rights under this Agreement are cumulative and no exercise or  
enforcement by you or us of any right or remedy hereunder shall preclude the  
exercise or enforcement by you or either of us of any right or remedy hereunder  
or which you or we are entitled by law to enforce.  
  
 F. Costs and Attorneys' Fees  
  
 In any proceeding by either party to enforce or interpret any provision of  
this Agreement, or appeal thereof, the party prevailing in such proceeding shall  
be entitled to reimbursement of its costs and expenses, including but not  
limited to, reasonable accounting and attorneys' fees. Attorneys' fees shall  
include, without limitation, reasonable legal and expert witness fees, cost of  
investigation and proof of facts, court costs, other litigation expenses and  
travel and living expenses, whether incurred prior to or in preparation for or  
in contemplation of the filing of any written demand or claim, action, hearing  
or proceeding. In any such proceeding involving more than one (1) allegation,  
issue or provision of this  
  
Agreement under circumstances where neither party prevails on all allegations  
or issues, the presiding court or other body may apportion costs and expenses  
between the parties.  
  
 G. Governing Law  
  
 EXCEPT TO THE EXTENT GOVERNED BY THE UNITED STATES TRADEMARK ACT OF 1946 OR  
OTHER FEDERAL LAW, THIS AGREEMENT AND THE LICENSE SHALL BE GOVERNED BY THE LAWS  
OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICT OF LAWS RULES.   
  
 H. Waiver of Punitive/Exemplary Damages:  
  
 Limitations of Actions  
  
 THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT  
OR CLAIM TO ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT  
IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF  
ANY ACTUAL DAMAGES SUSTAINED. ANY AND ALL CLAIMS, EXCEPT CLAIMS FOR MONIES DUE  
US OR OUR AFFILIATES, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE  
RELATIONSHIP AMONG THE PARTIES SHALL BE BARRED UNLESS AN ACTION OR LEGAL  
PROCEEDING IS COMMENCED WITHIN ONE (1) YEAR FROM THE DATE THE CLAIMANT KNEW OR  
SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO SUCH CLAIMS.  
  
 I. Venue and Jurisdiction  
  
 YOU AGREE THAT WE MAY INSTITUTE ANY ACTION AGAINST YOU TO ENFORCE THE  
PROVISIONS OF THIS AGREEMENT IN ANY STATE OR FEDERAL COURT OF COMPETENT  
JURISDICTION IN THE STATE OF DELAWARE AND YOU IRREVOCABLY SUBMIT TO THE  
JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION YOU MAY HAVE TO  
EITHER THE JURISDICTION OR VENUE OF SUCH COURTS. YOU AGREE THAT ANY ACTION  
BROUGHT BY YOU TO ENFORCE ANY PROVISION OF THIS AGREEMENT WILL BE BROUGHT AND  
MAINTAINED ONLY IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE  
STATE OF DELAWARE.  
  
 J. Waiver of Jury Trial  
  
 THE PARTIES HEREBY IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION,  
PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF  
THEM.  
  
 K. Binding Effect  
  
 This Agreement is binding upon the parties hereto and their respective  
executors, administrators, heirs, assigns and successors in interest, and shall  
not be modified except by written agreement signed by both you and us.  
  
 L. Interpretation  
  
 The preambles and exhibits are a part of this Agreement, which together  
with the Commitment Agreement and the Development Agreement, if any, constitutes  
the entire agreement of the parties, and there are no other oral or written  
understandings or agreements between the Company and the Franchisee relating to  
the subject matter of this Agreement except for the Commitment Agreement,  
certain portions of which survive the execution and delivery of this Agreement.   
In the event of a conflict between this Agreement and the Commitment Agreement  
(if applicable), the provisions of this Agreement shall control. In the event  
of a conflict between this Agreement and the Purchase and Sale Agreement or the  
Development Agreement, the provisions of the Purchase and Sale Agreement shall  
first control the interpretation, with the Development Agreement also  
superseding this Agreement. This Agreement may be modified only by a writing  
signed by both you and us. Nothing in this Agreement is intended, nor shall be  
deemed, to confer any rights or remedies upon any person or legal entity not a  
party hereto. Except where this Agreement expressly obligates the Company to  
reasonably approve or not unreasonably withhold its approval of any action or  
request of the Franchisee, the Company has the absolute right to refuse any  
request by the Franchisee or to withhold its approval of any action or omission  
by the Franchisee. The headings of the several sections and paragraphs hereof  
are for convenience only and do not define, limit or construe the contents of  
such sections or paragraphs. The term "attorneys' fees" shall include, without  
limitation, reasonable legal fees, whether incurred prior to, in preparation   
for or in contemplation of the filing of any written demand or claim, action,  
hearing or proceeding, including appellate   
  
proceedings, to enforce the obligations of this Agreement. The term "family  
member" as used herein refers to parents, spouses, offspring and siblings, and  
the spouses of parents and siblings. The term "affiliate" as used herein means  
any person or entity that directly or indirectly owns or controls, or is owned  
or controlled by, or is under common ownership or control with, another person  
or entity. References to a "controlling interest" in the Franchisee means  
fifty-one (51%) or such lesser percentage that may have the power to control the  
management and affairs of the Restaurant or the Licensee. The term "Franchisee"  
as used herein is applicable to one (1) or more persons, a corporation or a  
partnership or other entity, as the case may be, and the singular usage includes  
the plural and the masculine and neuter usages include the other and the  
feminine. If two or more persons are at any time the Franchisee hereunder,  
whether or not as partners or joint venturers, their obligations and liabilities  
to the Company shall be joint and several. This Agreement may be executed in  
counterparts, each of which shall be deemed an original.  
  
 M. Time  
  
 Time is of the essence of this Agreement  
  
19. NOTICES AND PAYMENTS  
  
 All written notices and reports permitted or required to be delivered  
hereunder shall be deemed so delivered at the time delivered by hand, the day of  
transmission by facsimile or other electronic system, one (1) business day after  
being placed in the hands of a commercial courier service for overnight  
delivery, or three (3) business days after placement   
  
in the United States Mail by Registered or Certified Mail, Return Receipt  
Requested, postage prepaid and addressed to the party to be notified at its most  
current principal business address of which the notifying party has been  
notified. All payments and reports required by this Agreement shall be directed  
to the Company at the address notified to the Franchisee from time to time, or  
to such other persons and places as the Company may direct from time to time.   
Any required payment or report not actually received by the Company during  
regular business hours on the date due (or postmarked by postal authorities at  
least two (2) days prior thereto) shall be deemed delinquent.  
  
20. ACKNOWLEDGEMENTS  
  
 Contemporaneously with the execution of this Agreement, you have carefully  
reviewed and executed the Disclosure Acknowledgement Statement attached and  
incorporated into this Agreement as Exhibit A.  
  
 You acknowledge that, due to the length of time we have been granting  
licenses to operate Friendly's Restaurants or other food service concepts using  
the Marks, there is more than one form of license agreement in effect between us  
and our various licensees and that such agreements contain provisions that may  
be materially different from the provisions contained in this Agreement and that  
you are not entitled to rely on any provision of any other such agreement,  
whether to establish course of dealing, waiver, estoppel or for any other  
purpose.  
  
 IN WITNESS WHEREOF the parties hereto have executed and delivered this  
Agreement as of the Agreement Date.  
  
  
  
FRIENDLY'S RESTAURANTS FRANCHISEE:  
FRANCHISE, INC.  
  
  
  
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:  
   
  
  
Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Its: