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  
Cla 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 the   
 Premises 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 (.5%)  
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: /S/ Xxx Xxxxx By: /S/ Xxxxxx Xxxxxxxx   
  
  
Its: Chairman and President Its: Chairman and President