

LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 19____, by and between _____, a _____ corporation with its principal place of business at _____, hereinafter referred to as "Licensor", and _____ of _____, hereinafter referred to as "Licensee".

WHEREAS, the Licensor has expended time, effort, and money to develop and obtain knowledge in the field of producing, merchandising, distributing and promoting the sale of _____ and related products and has established successfully a reputation, demand, and goodwill for such

products under the trade name, _____, which signifies the highest standards of management, supervision, merchandising, and quality of products; and

WHEREAS, the Licensee desires to obtain the benefits of the form of operation established by the Licensor and the right to do business under the trade name _____, as hereinafter provided.

IT IS THEREFORE AGREED between the parties as follows:

1. License. The Licensee shall have the exclusive right to engage under the terms hereof in the business of preparing and selling _____ under the trade name, _____, at _____

, and not elsewhere.

2. Term of license. The term of this license shall commence when the Licensee shall begin operation; providing, however, that the Licensee shall commence operations no later than sixty (60) days from the execution of this agreement and shall continue for _____ years thereafter; unless the Licensee's location is for a period of less than _____ years, in which case, this License Agreement shall terminate simultaneously with the termination of the lease on the Licensee's premises.
3. Initial funds to be paid. The Licensee shall pay to the Licensors, as the initial fee, the sum of _____ Dollars (\$ _____) in cash payable in full upon the execution of this agreement.
4. Recurring funds to be paid. The Licensee shall pay monthly to the Licensors _____ percent of the gross sales of the operation during the term of this agreement as its contribution to the Licensors' advertising program.
5. Territory. The Licensors shall not, while this Agreement is in effect, operate or grant a license for the operation of any other unit within _____ .
6. Equipment and leasehold improvements.
 - a. The Licensee is required to comply with the plans and specifications provided by the Licensors concerning all leasehold improvements and equipment.
 - b. The Licensee has signed an "Equipment Lease", dated _____ the _____ day of _____, 19 _____, a copy of

which is attached to this agreement for identification

purposes only as Exhibit "A". Such Equipment Lease is a separate and independent contract and does not represent a part hereof.

7. Site Selection. The Licensor shall either select or approve the site for the location selected by the Licensee.

8. Products and Supplies. The Licensee will buy from the

Licensor or from such sources as shall be approved by the Licensor, food materials and supplies for the conduct of such business in accordance with the Licensor's distinctive products, including:

; and the Licensor shall either sell such products to the

Licensee when available to Licensor, or the Licensor shall provide the Licensee with sources from which such products may be purchased.

9. Prices and terms of payment. The prices to be charged

under paragraph 8 shall be the prices in force and effect in respect to the same merchandise purchased from the Licensor by other licensees of the Licensor in the state in which the Licensee's place of business is located, at the time or times when any order or orders therefor with similar delivery dates shall be received by the Licensor from such licensees, with additional allowances for costs of shipping. Such prices shall be consistent with good business practices and shall contain a margin of profit for the Licensor. With the exception of the original order which shall be paid as agreed upon between the parties, payment for any order or orders shall be received by the Licensor on or before the Friday of the week immediately following that week in which such merchandise is received by the Licensee. The Licensor reserves the right to change these credit terms at any time if in its opinion the Licensee's financial condition and other circumstances do not warrant shipment under the terms herein above specified. A copy of the initial price list in effect at the time of the signing of this Agreement by the Licensor and the Licensee is attached hereto and made a part hereof and marked Exhibit "B". When updates shall be made, such updates shall be published in the Licensee's Operations Manual.

10. Delay in delivery of products. The Licensor shall deliver to the Licensee all products, equipment and supplies to be supplied by Licensor which are necessary to begin substantial operations on or before the commencement

date. If Licensor fails to make delivery within forty-five (45) days of that date, the Licensee may notify the Licensor in writing and cancel this agreement. The Licensor shall not be liable for any delay in manufacturing or delivering any of the products or merchandise herein above mentioned, if such delay shall be due to fire, strike, dispute with workmen, delays in transportation, governmental demands or requirements, or any causes whatsoever, whether similar or dissimilar to those herein enumerated, beyond the reasonable control of the Licensor. The existence of any such cause or causes or delay shall extend the time of performance by the time or times measured by any such

cause of causes of delay. The Licensee shall have authority to obtain necessary products for the ordinary

operation of his business during a delay if caused by the reasons set forth in this paragraph from supply sources approved by the Licensor. Prompt approval and designation of supply sources shall not be unreasonably withheld by the Licensor.

11. Training Program.

- a. The Licensor shall, upon the execution of this agreement, make available to one individual designated by the Licensee a five (5) day training period at the home office of Licensor, or at such other place designated by Licensor. If, for any reason, the Licensee shall not complete the training or shall, for any reason, abandon the program, then this License Agreement shall be terminated, and further, Licensee shall reimburse the Licensor for any expenses incurred and those expenses to be incurred by the Licensor in obtaining another licensee for the designated and intended area of the Licensee.
- b. If additional participants are to be trained or if refresher training is required at a later date, it will be provided at the rate of \$500.00 per additional trainee.
- c. The Licensor shall continue to provide consulting

assistance to the Licensee. In order to facilitate this assistance and increase its effectiveness, the Licensee shall allow representatives of the Licensor on the Licensee's premises at any time and shall make available to such representative any information requested and permit said representative to inspect the premises, its operations, marketing methods, as well as to make such inspections as representatives of the Licensor consider necessary.

12. Uniform standards of operation and quality control. In order to maintain uniform standards of operation and quality control for all licensees and to protect the goodwill of the Licensor's name.

a. The Licensor may at all times determine the standards

of quality, service, product merchandising, and advertising for all products sold by the Licensee. No product other than Licensor's products shall be sold at the premises by the Licensee without the written consent of the Licensor.

b. The Licensee shall abide by the terms and conditions

of the Licensor's Operations Manual. The Operations Manual shall be deemed to be an integral part of this License Agreement, and it may be modified from time to time at the sole and exclusive option of the Licensor.

c. Should a new building or structure be constructed upon

the premises or any existing building or structure be altered or fixtures or equipment be installed or substituted at such premises, or signs be erected or altered at such premises, such construction, alteration, installation, or substitution shall be approved in writing by the Licensor and shall conform with plans and specifications approved by the Licensor. Such construction, alteration, installation, or substitution shall be performed under the supervision of the Licensor's authorized

representative. The services of the Licensor's authorized representative shall not be interpreted to mean "on the job" construction supervision, but shall only apply to determine on behalf of the Licensor

that the construction is being completed in conformity with the plans and specifications approved by the Licensor.

- d. The Licensee shall at all times maintain the interior and exterior of the buildings and the surrounding premises used in connection with such business in the highest degree of cleanliness, orderliness, sanitation, and hygiene.
- e. The Licensee shall repair, alter, and paint the exterior and interior of the premises at the Licensee's own expense at reasonable times as reasonably directed by the Licensor.
- f. The Licensee shall operate continuously such business on such days and during such hours as the Licensor shall reasonably determine. The Licensee may remain open on a 24-hour daily basis if desired.
- g. All local advertising and promotions to be employed independently by the Licensee shall be submitted to and approved in writing by the Licensor prior to the use thereof.
- h. Licensee agrees to execute any and all documents necessary to assume the obligations of Licensor under that certain Lease Agreement with

, dated

for a term of _____ years

beginning _____, 19____ and ending

_____, 19____. The terms of such assignment and assumption of lease shall contain the right to reassign such lease to the Licensor and the entire assignment and assumption of lease shall be submitted to and approved by the Licensor. Upon the execution of such assignment and assumption of lease, the Licensee shall deliver to the Licensor or its attorney, either a conformed copy or photo copy of

such assignment and assumption of lease together with a written assignment of such lease which shall be held by the Licensor

as collateral for the faithful performance by the Licensee of its covenants under this agreement.

i. The Licensee shall exert best effort and facilities to

establish, maintain, and increase sales of approved products of Licensor and shall, at all times, maintain a sufficient supply of such products to meet public demand.

j. Licensee shall assume full operation of the business

as of the _____ day of _____, 19 ____.

k. Membership in the Licensor's Regional Advertising

Cooperative is mandatory and will provide advertising, public relations and sales promotion programs to members of each Regional Advertising Cooperative on a co-op wide basis.

13. Confidentiality. The Licensee acknowledges the confidential nature of information and procedures which

shall be made available to it by Licensor and will not disclose to anyone other than an authorized employee any information or procedures of the Licensor. Any confidential literature or documents given to Licensee will be returned to the Licensor at the expiration or termination of this license.

14. Reporting Requirements. The Licensee shall submit to the Licensor, on forms approved or provided by the Licensor,

such financial and operating information as required by the Licensor. The Licensee, by these presents, consents to the use of such information by the Licensor as the Licensor shall, in its sole discretion, determine. The Licensor shall not identify such information, when and if released, with the name of the Licensee without the prior written consent of the Licensee. In addition, the Licensee shall submit a copy of its monthly financial statement by the fifteenth (15th) of the month immediately subsequent to the end of the monthly reporting period and a copy of its annual financial statement by the fifteenth (15th) of February of the year immediately subsequent to the end of the calendar year constituting a reporting year.

15. Personnel. All personnel employed by the Licensee in connection with the production and sale of such products shall maintain such standards of sanitation, cleanliness, and demeanor as shall be established by the Licensor.

Should any employee or prospective employee perform work which in the opinion of the Licensor requires special skill or knowledge, such employee shall be specially trained and shall take part in such instruction as shall be determined by the Licensor. All personnel performing managerial or supervisory functions, and all personnel receiving special training and instruction shall execute noncompetitive agreements in the form executed by similar employees of other licensees and approved by the Licensor.

16. Signs. The Licensee shall prominently display at the Licensee's own expense in and upon the premises used in

the conduct of his business advertising signs, of such

nature, form, color, number, location, and size and containing such legends as the Licensor shall approve in writing, which approval shall not be unreasonably withheld. Such signs shall be obtained from a sign company approved by the Licensor. The Licensee shall not

display in or upon such premises any sign or advertising of any kind to which the Licensor objects. The Licensor's agents, servants, or employees may at any reasonable time enter upon such premises, inspect such premises, and may remove any objectionable signs or advertising without paying therefor and without being deemed guilty of trespass or other tort. The Licensor may not withdraw approval of any sign once permission has been granted the Licensee in writing for the erection of such sign.

17. Insurance. The Licensee shall maintain at the Licensee's expense insurance against all types of liability. Such insurance shall be with accredited companies and in an amount not less than \$100,000.00 - \$500,000.00 coverage and shall name and insure both the Licensor and the Licensee as their interest may appear. The Licensor shall be supplied with certificates of such insurance, together with evidence showing that the premiums thereof have been paid.

18. Sale, assignment, mortgage.

- a. The rights of the Licensee under this License

Agreement shall not be sold or otherwise transferred without the prior written consent of the Licensor.

- b. The Licensee shall not sell, transfer, assign, lease,

or sublet such premises, the business thereon, or any part thereof without in each instance first offering the same to the Licensor upon the same terms as the Licensee shall previously have received as a bona fide written offer from a responsible, fully disclosed prospective purchaser. Thereafter, the Licensor shall have thirty (30) days within which to determine if it desires to accept such offer. If the Licensor should decline or fail to accept such offer, the Licensee may sell, transfer, assign, lease, or sublet such interest, as the case may be, within sixty (60) days thereafter, on the same terms and conditions as contained in such offer, providing the new Licensee pays to the Licensor a transfer fee in the amount of \$2,500.00 and executes the then existing license agreement being used by the Licensor, together with any and all documents necessary to effect said transaction. In no event shall the Licensee make any public offer to sell, transfer, assign, lease, or sublet through any medium of public advertising without first having complied with the conditions and terms of this paragraph. Should the Licensee be a corporation, the terms and conditions of sale contained in this paragraph shall apply to the sale of its shares or any part thereof. Notwithstanding anything herein contained, the rights of the Licensee under this agreement are not assignable and the shares of the Licensee in the event the Licensee is a corporation shall not be sold or otherwise transferred without the prior written consent of the Licensor. Should the Licensee's rights be sold, transferred, assigned, leased, or sublet in accordance with the terms of this paragraph, the new Licensee shall be required to complete the Licensor's training program to the reasonable satisfaction of the Licensor at a charge to the new Licensee as contained in the Licensor's Operations Manual.

c. The Licensee shall not mortgage, pledge, grant a

security interest in, or otherwise assign as security, such premises, the business thereon, or any part thereof, or the shares of the Licensee if the Licensee is a corporation, without in each instance first offering the same to the Licensor upon the terms as the Licensee shall previously have received as a bona fide written offer from a responsible, fully disclosed prospective mortgagee, pledgee, or assignee. Thereafter, the Licensor shall have thirty (30) days within which to determine if it desires to accept such offer. If the Licensor accepts such offer, it shall make payment in accordance with the terms of the acceptance within sixty (60) days from the date on which it has accepted such offer. If the Licensor should decline or fail to accept such offer, the Licensee may mortgage, pledge, or otherwise assign such interest, within thirty (30) days thereafter, on the same terms and conditions as contained in such offer.

19. Restrictions on Licensee.

a. The Licensee shall not, during the term of this

agreement and for a period of two (2) years thereafter, communicate or divulge to, or use for the benefit of, any other person, partnership, association, or corporation, any information or knowledge concerning the methods of manufacture, promotion, sale, or distribution used or employed by the Licensor in and about its business which may be communicated to the Licensee or which the Licensee may acquire by virtue of its operation under the terms of this agreement; nor will the Licensee do any act prejudicial or injurious to the business or goodwill of the Licensor. In addition, during such period of time, the Licensee shall not employ or seek to employ any person who is employed by any other business operated under the Licensor's name and will not, directly or indirectly, induce any such person to leave his or her employment unless the Licensee has obtained the prior written approval of the Licensor.

b. During the term of this agreement, upon its

termination for any cause, and for a period of two (2) years thereafter, the Licensee will not, directly or indirectly, enter the employment of, or render services to, any other person, partnership, association, or corporation engaged in the same or substantially similar business covered by this agreement in any area which can be reasonably termed competitive to the Licensor or any of its licensees; and during such term of two (2) years, the Licensee will not, within such territory engage, in such business on his own account, or become interested therein, directly or indirectly, as an individual, partner, shareholder, director, consultant, independent contractor, officer, clerk, principal, agent, employee, trustee, or in any relation or capacity whatsoever. Without limiting the generality of the foregoing, the minimum area of a competitive nature herein above referred to shall be that area within a twenty-five (25) mile radius of the Licensee's place of business, or any place of business conducted by the Licensor or any other license of the Licensor at the time of the termination of this agreement.

c. Upon the termination of this agreement for any cause,

the Licensee will immediately discontinue the use of all trade names, trademarks, signs, structures, and forms of advertising indicative of the Licensor or the business or products thereof, and will make or cause to be made such changes in signs, buildings, and structures as the Licensor shall reasonably direct so as to distinguish effectively the same from its former appearance and from any other of Licensor's places of business. If the Licensee shall upon request fail or omit to make such changes or cause them to be made, then the Licensor shall have the right to enter upon the premises upon which such business is being

conducted without being deemed guilty of trespass or any other tort, and shall have the right to make such changes or cause them to be made at the expense of the Licensee, which expense the Licensee shall pay on demand. The Licensee shall also on request of the Licensor, and upon the payment of the reasonable market value thereof, turn over and deliver to the Licensor, its representatives, agents or assigns, all

matters and things bearing the trademark or trade name of the Licensor.

20. Independence of restrictive covenants. The covenants contained in paragraph 19 shall be construed as

independent of any other provision of this agreement and

independent of each other unless otherwise stated, and the existence of any claim or cause of action of the Licensee against the Licensor, whether predicated on this agreement or otherwise, shall not constitute a defense to the enforcement by the Licensor of such covenants.

21. Termination.

a. If the Licensee shall neglect or fail to perform or

observe any of the Licensee's covenants, or if any assignment shall be made of the business for the benefit of creditors, or if a receiver, guardian, conservator, trustee in bankruptcy, or similar officer shall be appointed to take charge of all or part of the Licensee's property, or if the Licensee is adjudicated a bankrupt, then unless such condition or conditions are remedied to the satisfaction of the Licensor within thirty (30) days after written notice thereof has been given to the Licensee, the license hereunder shall cease.

b. In the event of any failure by the Licensee to pay any

amounts owed to the Licensor, the Licensor's expenses in collecting same, together with a delinquency charge of six cents for each dollar or fraction thereof in arrears more than five consecutive days from the date first due, and reasonable attorney's fees, shall be paid by the Licensee.

c. Notwithstanding any other terms herein above set

forth, in the event the Licensee neglects or fails to perform or observe any of the covenants, terms or conditions of the Licensor's Operations Manual, or defaults in the performance or observance of the Licensee's location lease, or the Licensee's Master Equipment Lease, such default or breach of any such material term shall be deemed to be a breach of the Licensee's covenants herein and shall be grounds for termination herein.

22. Death or permanent incapacity of Licensee. Upon the death or permanent incapacity of the Licensee, the interest of the Licensee in the license may be assigned either pursuant to the terms of subparagraphs a. b. and c. above of Paragraph 18 above, or to the Licensee's spouse, heirs and nearest relatives by blood or marriage, subject to the following conditions: (i) if, in the sole discretion of the Licensor, such person shall be capable of conducting the franchise business in accordance with the terms and conditions of the license agreement, and (ii) if such person shall also execute an agreement by which he/she personally assumes full and unconditional liability for and agrees to perform all the terms and conditions of the license agreement to the same extent as the original Licensee. If in the Licensor's sole discretion, such person cannot devote his full time and efforts to the operation of the franchise business or lacks the capacity to operate the franchise business in accordance with the license agreement, the Licensor shall have the option to operate and/or manage the business for the account of the

Licensee or the Licensee's estate until the deceased or incapacitated Licensee's interest is transferred to another party acceptable to the Licensor in accordance with the terms and conditions of the license agreement. However, in no event shall the Licensor's operation and management of the business continue for a period in excess of twelve (12) full calendar months without the consent of the Licensee or the Licensee's estate. In the event that the Licensor so operates and/or manages the business, the Licensor shall make a complete account to and return the net income from such operation to the Licensee or to the Licensee's estate, less a reasonable management fee and expenses. If the disposition of the business to a party acceptable to the Licensor has not taken place within twelve (12) months from the date that the Licensor has commenced the operation or management of the business on behalf of the deceased or incapacitated Licensee, then the Licensor shall have the option to purchase the business at fair market value.

23. Complete agreement; waivers. This agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of the Licensor to exercise any right given to it hereunder, or to insist upon strict compliance by the Licensee with any

obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of the

Licensor's rights to demand exact compliance with the terms hereof. Waiver by the Licensor of any particular default by the Licensee shall not affect or impair the Licensor's rights in respect to any subsequent default of the same or of a different nature, nor shall any delay or omission of the Licensor to exercise any rights arising from such default affect or impair the Licensor's rights as to such default or any subsequent default.

24. Separability of provisions. If any covenant or other provision of this agreement is invalid, illegal, or incapable of being enforced, by reason of any rule of law, administrative order, judicial decision or public policy, all other conditions and provisions of this agreement shall, nevertheless, remain in full force and effect, and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein.

25. Assignability. This agreement shall inure to the benefit of the successors and assigns of the Licensor. The Licensor shall have the right to assign its rights under this agreement to any person, firm, association, or corporation provided that such transferee shall agree in writing to assume all obligations undertaken by the Licensor herein. Upon such assignment and assumption, the Licensor shall be under no further obligation hereunder, except for accrued liabilities, if any. Such assignment shall not be binding upon the Licensee unless the transferee has agreed in writing to assume all of the Licensor's obligations to the Licensee under the terms of this agreement. If the Licensee is an individual, this agreement may be assigned by the Licensee to a corporation in which the Licensee is the principal shareholder, but such assignment shall not relieve the Licensee of his obligations hereunder and shall not become effective until an appropriate assumption agreement is executed by such assignee and delivered to the Licensor.

26. Renewal. The Licensee shall, at the expiration of the Licensee's term, have the option to renew said license for a _____ term provided:

a. The Licensee be authorized to occupy the Licensee's

premises or other premises acceptable to the Licensor for the term of the renewal period. In the event such occupancy is for a term less than the renewal period herein above granted, the renewal shall be for a period equal to the period outlined by this reference.

b. The Licensee shall have complied faithfully with the

terms of this Agreement, shall have fulfilled all obligations arising hereunder, and shall not, at such time, be in default hereunder.

c. The Licensee shall, upon exercise of said option, have executed the license agreement then and there being used by the Licensor as its license agreement, said new license agreement to supercede this license agreement and to be the license agreement governing said option period.

d. The Licensee shall have paid the Licensor a fee, hereinafter referred to as a "Renewal Fee", in an amount equal to the difference between the license fee specified herein and the license fee charged to the Licensee under the license agreement then and there being used. In no event, however, shall said amount be less than Two Thousand Five Hundred (\$2,500.00) Dollars.

27. The agent of the Licensor, for service of process within the State of _____, is

28. Governing Law. This agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of _____

. The parties herein waive trial by jury and

agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in

_____ County, State of _____. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

29. Limitations period. No action by the Licensee to enforce the terms and conditions of this agreement, or to enforce any right stemming from this agreement shall be entertained or prosecuted in court more than one year from the date the cause of action therefor accrued. Nothing herein shall be construed to limit

the limitations period within which the Licensor shall be entitled to enforce any rights or remedies emanating hereunder against the Licensee.

30. Contractual Procedures. Unless specifically disallowed by law, should litigation arise hereunder, service of process therefor may be obtained through certified mail, return receipt requested; the parties hereto waiving any and all rights they may have to object to the method by which service was perfected.

Signed, sealed and delivered in the presence of:

Witness

"LICENSOR"

Witness

"LICENSEE"

STATE OF

COUNTY OF

The foregoing instrument was executed and acknowledged before me
this day of , 19 , by

, as

on behalf of the corporation as Licensor in the foregoing instrument.

Notary Public

(SEAL)

My Commission Expires:

STATE OF

COUNTY OF

The foregoing instrument was executed and acknowledged before me
this day of , 19 , by , as Licensee in
the

foregoing instrument.

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT "A"

Equipment List

EXHIBIT "B"

Initial Price List