

**ATTACHMENT F**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

**LEASEHOLD DEED OF TRUST**

**DATE:** \_\_\_\_\_

**GRANTOR:** \_\_\_\_\_

**GRANTOR'S MAILING ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**TRUSTEE:** Gayle Cannon

**TRUSTEE'S MAILING ADDRESS:** c/o Haynes and Boone, LLP  
600 Congress, Ste 1300  
Austin, TX 78701

**BENEFICIARY:** Cookies by Design, Inc.

**BENEFICIARY'S MAILING ADDRESS:** 1865 Summit Avenue, Suite 605  
Plano, Collin County, Texas 75074

**FRANCHISE:** Franchise granted by Beneficiary to Grantor to be located on the property, as evidenced by a Franchise Licensing Agreement dated \_\_\_\_\_ (the "**Franchise Licensing Agreement**").

**OBLIGATION:** The payment and performance (i) by Grantor of all obligations under the Franchise Licensing Agreement and the Lease, (ii) by Guarantor of all obligations under the Guaranty, (iii) by Grantor and/or Guarantor of any notes or other agreements between or among Beneficiary, Grantor and/or Guarantor arising from or in connection with the Franchise and the business operated pursuant to the Franchise Licensing Agreement, and (iv) this Leasehold Deed of Trust (the "**Deed of Trust**").

**LANDLORD:** \_\_\_\_\_ (the "**Landlord**")

**GUARANTY:** Guaranty signed by \_\_\_\_\_ for the benefit of Beneficiary of even date herewith jointly and severally guarantying the payment and performance by Grantor of its obligations under the Franchise Licensing Agreement and any other agreement between Grantor and Beneficiary arising in connection with the Franchise and the business operated pursuant to the Franchise.

**PROPERTY** (including any improvements): The Grantor's tenant leasehold estate, together with and including all right, title and interest of Grantor therein, under that certain lease (hereinafter called the "Lease") dated of even date herewith, by and between Landlord and \_\_\_\_\_, as Tenant covering the real estate situated in \_\_\_\_\_ County, \_\_\_\_\_, described in Appendix A attached hereto and made a part hereof, together with any fixtures attached to the property, as amended by the amendments, if any, listed in Appendix B.

**PRIOR LIEN(S) (INCLUDING RECORDING INFORMATION CHECK ONE):**

- None
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OTHER EXCEPTIONS TO CONVEYANCE AND WARRANTY:** This conveyance is subject to general real estate taxes on the Property for the current year, zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, affecting the Property and any and all valid restrictions, easements and other encumbrances, if any, affecting the Property as the same effect.

**GRANT:** For Value received, in satisfaction of covenants contained in the Franchise Licensing Agreement and to secure the payment and performance and discharge by Grantor of each and every Obligation by which it is bound, Grantor conveys the property to Trustee in Trust. Grantor warrants and agrees to defend the title to the property.

This Deed of Trust shall have no further effect upon the last date to occur of (i) the expiration or termination of the Franchise Licensing Agreement and the Lease, or (ii) the repayment and performance in full of each Obligation, and Beneficiary shall release it at Grantor's expense.

**GRANTOR'S OBLIGATIONS:** Grantor agrees to:

1. Keep the property in good repair and condition;
2. Pay all rents, additional rents, other charges payable pursuant to the Lease provisions, including taxes and assessments on the property, when due, and provide Beneficiary with proper receipts evidencing such payment upon Beneficiary's request;
3. Preserve the lien's priority as it is established in this Deed of Trust;
4. Maintain, in a form acceptable to Beneficiary, an insurance policy that:
  - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
  - b. contains an 80% coinsurance clause;
  - c. provides fire and extended coverage, including windstorm coverage;
  - d. protects Beneficiary with a standard mortgage clause;
  - e. provides flood insurance at any time the property is in a flood hazard area; and
  - f. contains such other coverage as Beneficiary may reasonably require.
5. Comply at all times with the requirements of the 80% co-insurance clause;
6. Deliver the insurance policy, or a certificate of insurance in a form acceptable to Beneficiary, to Beneficiary and deliver renewals or evidence of renewals in a form acceptable to Beneficiary, to Beneficiary at least 10 days before expiration;
7. Keep any buildings occupied as required by the insurance policy;
8. If this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments;
9. Without the prior written consent of Beneficiary, not modify, extend or in any way alter the terms of the Lease or cancel, release, terminate or surrender the Lease, or waive, excuse, condone or in any way release or discharge Landlord of or from Landlord's obligations, covenants, conditions and agreements;
10. Keep and perform all the covenants and conditions contained in the Lease by the tenant to be kept and performed and not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair or tend to impair the security of this Deed of Trust or will be grounds for declaring a forfeiture of the Lease;
11. Give Beneficiary:
  - a. immediate notice of any default or notice of default received from Landlord under the Lease; and
  - b. immediately upon Beneficiary's request, all information concerning the performance by Grantor of the covenants of the Lease, and permit Beneficiary or its representative at all reasonable times to investigate Grantor's performance by Grantor of the Lease covenants;

12. Promptly deposit with Beneficiary (i) an original executed copy of the Lease and any and all documentary evidence received by Grantor showing compliance by it with the provisions of the Lease and (ii) a photocopy of any notice, communication, plan, specification or other document received or given by Grantor in any way relating to or affecting the Lease which may concern or affect the estate of Landlord or the tenant in or under the Lease or the property;

13. Timely exercise any option to renew or extend the term of the Lease, exercise such option and give immediate written notice thereof to Beneficiary and hereby grants to Beneficiary the irrevocable right to exercise any such option to renew or extend, either in its own name and behalf or in the name and behalf of a designee or nominee of Beneficiary or in the name and on behalf of Grantor, as Beneficiary shall in its sole discretion determine; provided, that if the Franchise expires or terminates and Beneficiary has not acquired the property by exercise of the Option to Purchase, Grantor will not be obligated to exercise any such option to renew or extend, nor will Beneficiary have any right to exercise any such option;

14. Keep and perform all the covenants and conditions contained in the Franchise by Grantor, as franchisee, to be kept and performed and will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair or tend to impair the security of this Deed of Trust or will be grounds for declaring a forfeiture of the Franchise; and

15. Obtain the Landlord's consent to this Deed of Trust affecting the Lease in the form attached hereto as Appendix C.

**BENEFICIARY'S RIGHTS:**

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.

2. If the proceeds of any note that is an Obligation are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.

3. Beneficiary may apply any proceeds received under the insurance policy to repair or replace damaged or destroyed improvements covered by the policy, or to reduce the Obligation.

4. If Grantor fails to perform or pay any Obligation, Beneficiary may perform or pay such Obligation and be reimbursed by Grantor on demand at Beneficiary's mailing address for any sums so paid, including attorneys' fees, plus interest on those sums from the dates of payment at the maximum rate permitted by applicable law, or if applicable, at the rate stated in any note payable to Beneficiary. The sum to be reimbursed shall be secured by this Deed of Trust.

5. If a default or failure to perform should occur under any Obligation, or if default occurs on a prior lien note or other instrument, and the default continues after Grantor receives notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:

- a. declare the unpaid principal balance and earned interest on any note that is an Obligation immediately due;
- b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by applicable law; and
- c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

**TRUSTEE'S DUTIES:** If requested by Beneficiary to foreclose this lien, Trustee shall:

1. Either personally or by agent give notice of the foreclosure sale as required by applicable law as then amended;
2. Sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. From the proceeds of the sale, pay, in this order:
  - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
  - b. to Beneficiary, the full amount of any Obligation, any note principal, interest, attorneys' fees, and other charges due and unpaid;
  - c. any amounts required by law to be paid before payment to Grantor; and

d. to Grantor, any balance.

**GENERAL PROVISIONS:**

1. If any of the property is sold under this Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so Grantor shall become a Tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the Obligation is extended, waived or part of the property is released.
5. If any portion of the Obligation can not be lawfully secured by this Deed of Trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorneys' fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the Obligation. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not as collateral, all present and future rent and other income and receipts from the property as a source of future payment of the Obligations. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may collect rent and other income and receipts as long as Grantor is not in default under the Obligation and performance of this Deed of Trust, but if the rent and other income and receipts exceed the amount due under any Obligation, Grantor may retain the excess. If Grantor defaults in payment or performance of any Obligation, Beneficiary may then, as Grantor's agent, rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under any Obligation in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If either Grantor or a Landlord becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under applicable law.
8. It is the intent of the Beneficiary and Grantor in the execution of any document evidencing an Obligation (a "**Document**"), this Deed of Trust and all other instruments now or hereafter securing the Obligations or executed agreement by Grantor in favor of Beneficiary to contract in strict compliance with the applicable usury law. In furtherance thereof, Beneficiary and Grantor stipulate and agree that none of the terms and provisions contained in any Document, this Deed of Trust or any other instrument securing an Obligation or executed in connection herewith, or in any other written or oral agreement by Grantor in favor of the Beneficiary, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; that neither Grantor nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of an Obligation secured hereby shall ever be obligated or required to pay interest on an Obligation or on indebtedness arising under any instrument securing an Obligation or executed in connection therewith, or in any other written or oral agreement by Grantor in favor of Beneficiary, at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this paragraph shall control over all other provisions of any Document, this Deed of Trust and any other instruments now or hereafter securing an Obligation or executed in connection herewith or any other oral or written agreements which may be in apparent conflict herewith. Beneficiary expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of an Obligation is accelerated. If the maturity of an Obligation shall be accelerated for any reason or if the principal of an Obligation shall be accelerated for any reason or if the principal of an Obligation is paid prior to the end of the term of an Obligation, and as a result thereof the interest received for the actual period of existence of an Obligation evidenced by a Document exceeds the applicable maximum lawful rate, the Beneficiary shall, at its option, either refund to Grantor the amount of such excess or credit the amount of such excess against the principal balance of an Obligation then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Beneficiary shall contract for, charge or receive any amount or amounts and/or any other thing of value which are determined to constitute interest which would increase the effective interest rate on an Obligation or the other indebtedness secured hereby to a rate in excess of that permitted to be charged by applicable law, an amount equal to interest in excess of the lawful rate shall, upon such determination, at the option of Beneficiary, be either immediately returned to Grantor or credited against the principal balance of an Obligation then outstanding, in which event any and all penalties of any kind under applicable

law as a result of such excess interest shall be in applicable. By execution of this Deed of Trust, Grantor acknowledges that it believes the Obligations evidenced by the Documents to be non-usurious and agrees that if, at any time, Grantor should have reason to believe that should any extension of funds pursuant to a Document is in fact usurious, it will give Beneficiary notice of such condition and Grantor agrees that Beneficiary shall have ninety (90) days after receipt of such notice in which to make appropriate refund or other adjustment to correct such condition if in fact such exists. The term "applicable law" as used in this paragraph shall mean the laws of the State of Texas or the laws of the United States, which ever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

9. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment and performance of an Obligation, or any part thereof, or otherwise benefiting the Beneficiary, and the Trustee and the Beneficiary shall, in addition to the remedies herein provided, be entitled to avail themselves of all such other remedies as may now or hereafter exist at law or in equity for the payment and performance of an Obligation and the enforcement of the covenants herein and the foreclosure of the liens evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

10. When the context requires, singular nouns and pronouns include the plural.

11. This Deed of Trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

12. Grantor represents that lien evidenced by this Deed of Trust is granted in compliance with the Franchise Licensing Agreement.

13. Grantor represents, warrants and covenants to Beneficiary that (i) the Lease is a valid and subsisting lease of the property set forth in the Lease, (ii) the Franchise is a valid and subsisting license of the right to operate a Shoppe under the COOKIE BOUQUET® and COOKIES BY DESIGN® trademarks and trade name, as applicable to Grantor, as set forth in the Franchise Licensing Agreement, (iii) the Lease and the Franchise are each in full force and effect in accordance with the terms thereof and have not been modified and no default exists thereunder and no event or act has occurred and no condition exists which with the passage of time or the giving of notice or both would constitute a default thereunder.

14. **APPLICABLE LAW.** This Deed of Trust and the rights and obligations of the parties hereunder and shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Texas (without giving effect to Texas' principles of conflicts of law), except to the extent (a) of procedural and substantive matters relating only to the creation, perfection, foreclosure and enforcement of rights and remedies against the Property, which matters shall be governed by the laws of the State in which the Property is located, and (b) that the laws of the United States of America and any rules, regulations, or orders issued or promulgated thereunder, applicable to the affairs and transactions entered into by Beneficiary, otherwise preempt Texas law or the law of the State in which the Property is located; in which event federal law shall control. Grantor hereby irrevocably submits to the non-exclusive jurisdiction of any Texas or federal court sitting in Dallas, Texas over any suit, action or proceeding arising out of or relating to any of this Deed of Trust, and Grantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any Texas or federal court sitting in Dallas, Texas may be made by certified or registered mail, return receipt requested, directed to Grantor at the address of Grantor on page 1 hereof, and service so made shall be complete five days after the same shall have been so mailed.

GRANTOR:

(Corporate, LLC or Partnership Franchisee)

\_\_\_\_\_
a(n) \_\_\_\_\_

By: \_\_\_\_\_
Name: \_\_\_\_\_
Title: \_\_\_\_\_

(Individual Franchisee)

\_\_\_\_\_
Name: \_\_\_\_\_

\_\_\_\_\_
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ §
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_,
20\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of said
corporation.

[Notary Seal]

\_\_\_\_\_
Notary Public, State of \_\_\_\_\_

STATE OF \_\_\_\_\_ §
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_,
20\_\_ by \_\_\_\_\_, individually.

[Notary Seal]

\_\_\_\_\_
Notary Public, State of \_\_\_\_\_

**APPENDIX A**

**PROPERTY DESCRIPTION**

**APPENDIX B**  
**LEASE AMENDMENTS**



APPENDIX C

**CONSENT AND AGREEMENT OF LANDLORD**

The undersigned Landlord under the Lease described in Appendix B agrees as follows:

- (a) Landlord will notify CBDI in writing of and upon the failure of (“**Tenant/Grantor**”) to cure any default by Tenant/Grantor under the Lease;
- (b) Landlord agrees that CBDI will have the right, but will not be obligated, to cure any default by Assignor under the Leases within 30 days after delivery by Landlord of notice of a default in accordance with paragraph (a) of this Consent;
- (c) Landlord consents to the Leasehold Deed of Trust and all of its terms and conditions and agrees that if CBDI or its designee takes possession of the Premises and confirms to Landlord the assumption of the Lease by CBDI or its designee as tenant under the Lease, Landlord will recognize CBDI or its designee as tenant under the Lease, if CBDI or its designee cures within the 30 day period provided for in paragraph (b) of this Consent any defaults of Assignor under the Lease; and
- (d) Landlord agrees that CBDI may assign or sublet the Lease to a person or business entity who is a franchisee who will agree to assume the tenant’s obligations under the Lease and who is reasonably acceptable to Landlord, and upon the occurrence of an assignment by CBDI, CBDI will have no continuing liability or obligation under the Lease as CBDI, tenant or otherwise.

LANDLORD:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT G**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

Recording Requested by and when recorded mail to:

COOKIES BY DESIGN, INC.  
c/o Gayle Cannon  
Haynes and Boone, LLC  
600 Congress, Ste 1300  
Austin, Texas 78701

**ASSIGNMENT OF LEASE**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

THIS ASSIGNMENT OF LEASE (this "**Assignment**"), is made as of the date last shown below, by \_\_\_\_\_, a \_\_\_\_\_ ("**You**"), to COOKIES BY DESIGN, INC. ("**CBDI**") whose mailing address is 1865 Summit Avenue, Suite 605, Plano, Texas 75074.

**WITNESSETH:**

You, in consideration of the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by You, do GRANT, CONVEY, ASSIGN, TRANSFER, and SET OVER TO CBDI, its successors and assigns, all rights, interests, and your estates as a tenant in, to, and under all lease agreements (written or oral) and other instruments (now existing or which may be entered into at a later time by You) which cover or affect any portion of the premises described in Appendix A (the "**Premises**"), and all renewals and extensions of the lease agreements, and other instruments, including the lease agreement(s) (written or oral) and other instruments described in Appendix B to this Agreement (all the lease agreements, other instruments, renewals, and extensions are collectively called the "**Leases**").

**FOR THE PURPOSE OF SECURING:**

1. Payment of all sums with any interest on these amounts becoming due and payable to CBDI under the provisions of this Assignment or under the provisions of the Franchise Licensing Agreement (the "**Franchise Licensing Agreement**"), dated \_\_\_\_\_, 20\_\_ by and between You and CBDI.
2. Performance and discharge of every obligation, covenant, and agreement of yours under this Assignment, the Franchise Licensing Agreement, and any other document evidencing or securing (or otherwise executed along with) the obligations evidenced by the Franchise Licensing Agreement, together with all amendments, extensions, modifications, and restatements of, and supplements to, those documents (this Assignment, the Franchise Licensing Agreement, and all other documents together with all amendments, extensions, modifications, and restatements of, and supplements to, those documents are collectively called the "**Documents**" in this Assignment).

A. TO PROTECT THE SECURITY OF THIS ASSIGNMENT, YOU AGREE AS FOLLOWS:

1. You represent and warrant that: (a) You have good right, title, and interest in and to the Leases assigned in this Assignment; (b) You have the right to assign the Leases to CBDI; (c) no other person, partnership, entity, corporation, or governmental agency or authority has any right, title, or interest in your interest in the Leases; (d) as of the date of this Assignment, You have duly and punctually performed all of the terms, covenants, conditions, and warranties of the Leases on your part to be kept, observed, and performed; (e) the Leases described in Appendix B are valid and unmodified except as indicated in Appendix C and are in full force and effect; (f) You have not previously sold, assigned, transferred, mortgaged, pledged, or granted a security interest in the Leases; (g) none of the rents, profits, or other sums of money due under the Leases have been collected in advance of the time they are due, and that payment of any of the rents, profits, or other sums of money has not otherwise been anticipated, waived, released, discounted, set off, or otherwise discharged or compromised; (h) each of the Leases is valid and subsisting and in full force and effect; and (i) You know of no defaults now existing under the Leases.

2. You agree: (a) to faithfully observe, abide by, perform, and discharge every obligation, covenant, and agreement of the Leases to be performed by the tenant under the Leases; and (b) not to amend, modify, extend, renew, supplement, or in any way alter the terms of any of the Leases without the prior written consent of CBDI, the failure to obtain CBDI's consent will constitute a default under this Assignment and the other Documents entitling CBDI to declare a default under the Documents.

3. You agree not to waive, execute, condone, or in any manner release or discharge the landlord from the obligations, covenants, conditions, and agreements to be performed by the landlord under the Lease.

4. You agree not to declare any of the Leases terminated nor exercise any other right available to You upon breach by the landlord without the prior written consent of CBDI.

5. At your sole cost and expense, You agree to appear in and defend any action or proceeding in any manner connected with the Leases or your obligations, duties, or your liabilities under the Leases and to pay all costs and expenses, including attorneys' fees, court costs, and investigation expenses in a reasonable sum, incurred by CBDI in any action or proceeding in which CBDI may appear.

6. Should You fail to make any lease payment or to do any act as provided in this Assignment, then You agree that CBDI, in its sole discretion, may make the lease payment or take the actions, but will not have an obligation to do so and without giving notice to, or serving a demand on, You and without releasing You from any obligation under this Assignment, may make any payment or take whatever actions in any manner and to the extent CBDI may consider necessary or advisable to protect the security for this Assignment, including, without limitation, the right to appear in and defend any action or proceeding which may affect the security of this Assignment or the rights or powers of CBDI and also the right to perform and discharge every one of your obligations, covenants and agreements contained in the Leases. In exercising any of the powers listed above, CBDI will have the right; but not the obligation, to pay all necessary or advisable costs and expenses, employ an attorney, and incur and pay reasonable attorneys' fees, investigation expenses, court costs, and other related costs and expenses.

7. You agree to pay immediately upon demand all reasonable sums expended by CBDI under the authority of this Assignment

8. At the request of CBDI, You agree to furnish to CBDI true and correct copies or, if CBDI elects, photostatic copies of any of the Leases entered into by You after the date of this Assignment and covering any part of the Premises.

B. IT IS MUTUALLY AGREED AS FOLLOWS:

1. This Assignment is for security purposes only and, except as specified in this Assignment, CBDI will have no liability or obligation of any kind arising from or in connection with this Assignment unless CBDI takes possession of the Premises demised by the Leases according to the terms in this Assignment and assumes your obligations under this Assignment.

2. At any time after, your default under this Assignment or under any of the other Documents, CBDI may, at its sole option, without notice or demand and regardless of whether a declaration of default under the Franchise Licensing Agreement has been delivered to You, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court: (a) enter upon, take possession of, manage and operate the Premises (or any part of the Premises); (b) make, cancel, enforce, assign, or modify the Leases (or any one of them); (c) fix or modify rents; (d) do any acts which CBDI considers to be proper to protect the security covered by this Assignment; and (e) either with or without taking possession of the Premises (or any part of the Premises) in its own name sue for or otherwise collect and receive reasonable attorneys' fees, investigation expenses, and court costs, upon any obligations secured by this Assignment, as CBDI may, in its sole judgment determine necessary. The entering upon and taking possession of the Premises (or any part of the Premises), the collection of rents, issues, and profits and the application to the Lease as mentioned above, will not cure or waive any default or waive, modify or affect any notice of default under any of the Documents or invalidate any act done according to the notice.

3. Any default by You in the performance of any obligation or agreement contained in this Assignment or the obligations secured by this Assignment will be a default under the terms of the other Documents giving CBDI the right to enforce or seek enforcement of all rights, remedies, and recourses contained in the other Documents, including the right to declare a default under the other Documents.

4. CBDI or its designee will not be liable for any loss sustained by You as a result of the failure of CBDI or its designee to possess the Premises (or any portion of the Premises) or from any other act or omission of CBDI or its designee in managing or possessing the Premises after default unless the loss is directly and solely caused by the willful misconduct or gross negligence of CBDI or its designee. Nor will CBDI or its designee be obligated to perform or discharge, nor does CBDI agree to perform or discharge, any obligation, duty, or liability under the Leases, or under, or by reason of, this Assignment, and You do agree to and will, indemnify and hold CBDI and/or its designee harmless from any liability, loss, or damage of any kind which CBDI might incur under the Leases or under, or by reason of, this Assignment and from any claims and demands which may be asserted against CBDI by reason of any alleged obligations or undertaking on CBDI's part to perform or discharge any of the terms, covenants, or agreements contained in the Leases.

5. You agree to: (a) at CBDI's request, assign to CBDI all additional Leases entered into after the date of this Assignment covering all or any part of the Premises under the same or substantially the same terms and conditions as are contained in this Assignment; and (b) execute and deliver to CBDI upon demand all instruments that CBDI, in its sole judgment, considers necessary or desirable for the transfer and assignment of the additional Leases.

6. By execution of this Assignment, You appoint CBDI (and any of its officers) as your true and lawful agent and attorney-in-fact (with full powers of substitution) and in your name, place and stead. You authorize CBDI to: (a) upon the occurrence of a default under any of the Documents, take all actions CBDI considers necessary or advisable to carry out the provisions of this Assignment; and (b) execute all documents which CBDI considers necessary or advisable to accomplish the purposes of this Assignment. This appointment will be irrevocable and continuing and deemed to be coupled with an interest, and these rights, powers and privileges will be exclusive in CBDI and its successors and assigns and binding upon You and your heirs, executors, administrators, legal and personal representatives, successors, and assigns.

7. If any provision of this Assignment or the application of this Assignment to any entity, person, or circumstance is determined to be invalid or unenforceable to any extent, the remainder of this Assignment and the application of the provisions to other entities, persons, or circumstances will not be affected by the invalidity or unenforceability, and will be enforced to the greatest extent permitted by law.

8. Nothing contained in this Assignment and no act done or omitted by CBDI according to the powers and rights granted it in this Assignment will be considered to be a waiver by CBDI of its rights, remedies, and recourses under any of the Documents, and this Assignment is made and accepted without prejudice to any of the rights, remedies, and recourses possessed by CBDI under the terms of the Documents.

9. Except where federal law is applicable, this Assignment will be governed by, and construed in accordance with, the laws of the State of Texas, and all obligations of the parties created by this Assignment, will be

performable in Dallas County, Texas[; however, as to procedural and substantive matters concerning only the creation, perfection, and enforcement of the assignments and other rights intended by this Assignment, the laws of the State of \_\_\_\_\_ will be applicable].

10. All exhibits attached to this Assignment are, by this reference, incorporated fully into the Assignment. The term "this Assignment" will be considered to include all appendices.

EXECUTED as of this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ASSIGNOR:

(Corporate, LLC or Partnership Franchisee)

\_\_\_\_\_  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

(Individual Franchisee)

\_\_\_\_\_  
Name: \_\_\_\_\_

ASSIGNEE:

COOKIES BY DESIGN, INC., a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

          This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a(n)  
\_\_\_\_\_, on behalf of said \_\_\_\_\_.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

          This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_ by \_\_\_\_\_, individually.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

STATE OF TEXAS               §  
  §  
COUNTY OF COLLIN       §

          This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of COOKIES BY DESIGN, INC., a Texas  
corporation, on behalf of said corporation.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas

**APPENDIX A**  
**LEGAL DESCRIPTION**

**APPENDIX B**

**LEASE DESCRIPTION**

A. Lease Description

That certain lease entitled \_\_\_\_\_ dated  
\_\_\_\_\_, \_\_\_\_\_ executed by and between \_\_\_\_\_ as  
Landlord and \_\_\_\_\_ as Tenant covering the premises described in  
Appendix A to this Assignment of Lease.

B. Lease Amendments

1. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**APPENDIX C**

**CONSENT AND AGREEMENT OF LANDLORD**

The undersigned Landlord under the Lease described in Appendix B agrees as follows:

- (a) Landlord will notify CBDI in writing of and upon the failure of Assignor to cure any default by Assignor under the Leases;
- (b) Landlord agrees that CBDI will have the right, but will not be obligated, to cure any default by Assignor under the Leases within 30 days after delivery by Landlord of notice of a default in accordance with paragraph (a) of this Consent;
- (c) Landlord consents to the Assignment of Lease and all of its terms and conditions and agrees that if CBDI or its designee takes possession of the Premises and confirms to Landlord the assumption of the Leases by CBDI or its designee as tenant under the Leases, Landlord will recognize CBDI or its designee as tenant under the Leases, if CBDI or its designee cures within the 30 day period provided for in paragraph (b) of this Consent any defaults of Assignor under the Leases; and
- (d) Landlord agrees that CBDI may assign or sublet the Leases to a person or business entity who is a franchisee who will agree to assume the tenant's obligations under the Leases and who is reasonably acceptable to Landlord, and upon the occurrence of an assignment by CBDI, CBDI will have no continuing liability or obligation under the Leases as CBDI, tenant or otherwise.

LANDLORD:

\_\_\_\_\_  
(Name of Landlord)

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT H**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

**FINANCING STATEMENT**

This instrument is prepared as, and is intended to be, a Financing Statement complying with the formal requisites therefor as set forth in the Uniform Commercial Code Secured Transactions, and in particular, Section 47-9402 thereof.

1. The name and address of the "**Debtor**" (hereinafter so called) is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The name and address of the "**Secured Party**" is:

Cookies by Design, Inc.  
1865 Summit Avenue, Suite 605  
Plano, Collin County, Texas 75074  
Attention: \_\_\_\_\_

3. This Financing Statement covers each of the following collateral now or hereafter owned by Debtor (the "**Collateral**") and all proceeds of the Collateral:

the telephone numbers, directory listings and advertisements using the telephone number(s) used in connection with the business conducted at the following address:

\_\_\_\_\_

and the Uniform Resource Locator (i.e., a "**domain name**") for any websites associated with the business of Debtor conducted at the same address:

IN WITNESS WHEREOF, this instrument is executed on \_\_\_\_\_, 20\_\_.

DEBTOR:

(Corporate, LLC or Partnership Franchisee)

\_\_\_\_\_  
a(n) \_\_\_\_\_

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Individual Franchisee)

\_\_\_\_\_  
Name: \_\_\_\_\_

**ATTACHMENT I**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

**END USER LICENSE AGREEMENT FOR CBDI/CB INTRANET SITE**

This agreement (this "**Agreement**") is effective as of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), by and between \_\_\_\_\_ located at \_\_\_\_\_ (herein "**Licensee**"), and COOKIES BY DESIGN, INC., a Texas corporation, with its principle place of business at 1865 Summit Avenue, Suite 605, Plano, Texas 75074 ("**CBDI**") for the use by Licensee of the CBDI/CB Intranet site located at www.CBDIcb.com (the "**Site**"). The Site is a private Online communication system for CBDI personnel, authorized franchisees and affiliates. It is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties and the terms of this Agreement. The Site may only be used by Licensees who have agreed to the terms of this Agreement.

1. **FRANCHISE AGREEMENT.** Licensee (i) has entered into a Franchise Agreement with CBDI that is current and valid as of the Effective Date of this Agreement (the "**Franchise Agreement**") or (ii) is an approved and Authorized User of the Site as defined in the Site Policies. Licensee may have full or limited access to the Site based upon Licensee's status as a franchisee, an employee of a franchisee or another Authorized User. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Franchise Agreement. This Agreement supplements and is subject to the Franchise Agreement and all policies and procedures adopted by CBDI and set forth in the Confidential Manuals. The Site Policies are attached hereto as Appendix A and incorporated as a material part of the Agreement by reference.

2. **GRANT OF LICENSE.**

(a) CBDI hereby grants to Licensee, a non-exclusive, non-transferable, non-sublicensable license to use the Site on the terms and conditions set forth in this Agreement and in the Site Policies, as may be revised from time to time by CBDI (the "**License**").

(b) Licensee acknowledges and agrees that use of the Site will require Licensee to have available certain computer hardware and software and Internet access, which may need to be upgraded or replaced periodically for the proper operation of the Site (the "**Required Equipment**"). Licensee may at the onset and/or from time to time incur certain expenses in order to obtain, upgrade, or replace such Required Equipment. Licensee hereby agrees to obtain the Required Equipment at its sole expense and to upgrade or replace the Required Equipment as needed to continue its access to the Site.

(c) Licensee acknowledges and agrees:

(i) Not to disclose or transfer Licensee's password(s) to any other person, or to otherwise allow access to the Site by any person not granted a License thereto or approved as an Authorized User by CBDI.

(ii) To be responsible for all activities that occur under Licensee's user name(s) and password(s) while using the Site. Licensee also agrees to accept responsibility for all activities that occur under the user name(s) and password(s) of Licensee's employees and Licensee's designated Authorized Users.

(iii) To notify CBDI of any unauthorized use of Licensee's user name(s) or password(s) or any other breach of security that comes to Licensee's attention.

(iv) To use the Site only for purposes authorized by CBDI, as it may revise such purposes from time to time. CBDI authorizes the use of the Site for communication between (a) CBDI, its employees, chain-related committees and associations, and Licensees, and (b) between Licensees, their employees, chain-related committees and associations.

(v) To comply with the published operating procedures for the Site as provided on the Site.

(vi) Not to use the Software to act as a service bureau or on behalf of unauthorized third parties.

(vii) By becoming a Licensee, Licensee expressly consents to receive e-mail from CBDI, its employees, other licensees of CBDI, members of committees and associations relating to CBDI and representatives of companies that co-brand with CBDI.

3. **TERM.** The License provided for herein shall be effective as of the Effective Date, and shall terminate (a) automatically upon the date Licensee's Franchise Agreement expires or is terminated by either party for any reason; or (b) upon any breach of this Agreement by Licensee. In the event that Licensee breaches any term of this Agreement, CBDI may immediately terminate this Agreement, without prior notice and without waiving any other rights. CBDI may reinstate this License in its sole discretion.

4. **CONSIDERATION AND FEES.** In consideration of the License granted herein, Licensee agrees to comply with all terms and conditions of this Agreement. CBDI reserves the right to charge a fee for certain optional goods or services which it may make available to Licensees through the Site. CBDI will provide Licensee with access for up to two Authorized Users at no administrative cost to the Licensee. Licensee agrees to pay CBDI an annual administrative fee of \$100 for each additional Authorized User accessing the Site. Licensee must pay the annual administrative fee by credit card only at the time Licensee requests an additional Authorized User, and each fee thereafter on the anniversary date of the Effective Date of this Agreement. If the administrative fee for the first year is payable on a date other than the Effective Date or the anniversary date thereof, CBDI will prorate the annual fee based on the number of months remaining until the anniversary date of the Effective Date. CBDI reserves its right to adjust the administrative fee on an annual basis. Licensee may have no more than four Authorized Users.

5. **THIRD PARTY LICENSE REQUIREMENT.** Licensee acknowledges that any third party software required as part of the Required Equipment (the "**Third Party Software**") will be likely to require a separate license for use of that Third Party Software. As a condition to the License granted herein, Licensee agrees to obtain and maintain all required licenses for the Third Party Software during the Term of this Agreement.

6. **INDEMNIFICATION.** LICENSEE AGREES TO INDEMNIFY AND HOLD CBDI, ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, CO-BRANDERS, AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF ANY AND ALL CHARACTER THAT MAY RESULT FROM OR ARISE AS A RESULT OF A BREACH

OF THIS AGREEMENT BY LICENSEE, INCLUDING BUT NOT LIMITED TO ANY AND ALL DIRECT AND INDIRECT LOSS, DAMAGE, LIABILITY, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COSTS OF DEFENSE, INCIDENTAL DAMAGES AND CONSEQUENTIAL DAMAGES.)

7. **LIMIT OF LIABILITY.** IN NO EVENT WILL CBDI BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS OR CONFIDENTIAL INFORMATION, LOSS OF PRIVACY, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SITE, EVEN IF CBDI OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE ENTIRE LIABILITY OF CBDI AND ITS SUPPLIERS UNDER THIS AGREEMENT WITH RESPECT TO THE SITE SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE SPECIFIC GOODS OR SERVICES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

8. **OWNERSHIP OF INTELLECTUAL PROPERTY.** As between Licensee and CBDI, CBDI shall have the exclusive ownership of the Site, and everything posted or communicated thereon, and all copies thereof. Licensee agrees to assign, and hereby assigns all right, title and interest in and to anything posted or communicated on the Site by Licensee, including but not limited to communications, graphics, and ideas, and the copyrights thereto, if applicable. CBDI reserves all rights not expressly granted under this Agreement.

9. **TERMINATION.** Either party may terminate this Agreement at any time for any reason by notifying the other party in writing of such termination at the address set forth above. CBDI also has the right to terminate this Agreement if Licensee violates any material term or condition of the Franchise Agreement, this Agreement or any policies for Intranet use. The address for notice may be revised from time to time by either party by providing written notice to the other party. CBDI reserves the right, in its sole discretion, to terminate the Site in its entirety or any part thereof for any reason.

10. **GOVERNING LAW AND ATTORNEYS' FEES.** This Agreement shall be governed by the provisions hereof and by the laws of the State of Texas. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

11. **VENUE.** Dallas County, State of Texas shall be the exclusive venue for any judicial relief, claim or cause of action which arises under or by virtue of this agreement, whether the action is on the agreement, or for breach of the agreement, or whether the action is for declaratory, injunctive, or other equitable relief.

12. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Licensee and CBDI with respect to the Site, and replaces all other representations. This Agreement may be modified by CBDI by posting such modification(s) on the Site in the Site Policies. If Licensee does not agree to any modification set forth in the Site Policies, Licensee shall immediately cease use of the Site and notify CBDI of its termination of this Agreement. Continuation of use of the Site following posting of any modification of this Agreement or the Site Policies shall confirm Licensee's consent to the modifications. The section titles in this Agreement are for convenience only and have no legal or contractual effect. If any part of this Agreement is held to be unenforceable as written, it will be enforced to the maximum extent allowed by applicable law, and will not affect the enforceability of any other part.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

COOKIES BY DESIGN, INC., a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE

Shoppe No(s): \_\_\_\_\_

(Corporate, LLC or Partnership Franchisee)

\_\_\_\_\_  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Individual Franchisee)

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

## APPENDIX A

### **CBDI/CB INTRANET SITE POLICIES**

These policies and the Cookies by Design, Inc. End User License Agreement for the CBDI/CB Intranet Site together are a legal agreement (collectively the "**Agreement**") between Licensee as defined in the End User Agreement for CBDI/CB Intranet Site ("**You**") and COOKIES BY DESIGN, INC., a Texas corporation ("**CBDI**"), regarding the CBDI/CB Intranet site located at www.CBDIcb.com (the "**Site**") and the information and materials contained thereon (the "**Intranet Materials**"). Your, or Your Manager as defined in the Operations Manual and included in the Shoppe Directory listing ("**Authorized Users**"), and the act of logging onto the Site by entering a user name and password constitutes Your representation that You have read, understand and consent to be bound by this Agreement and all changes that are made hereto from time to time.

1. **LIMITED NON-EXCLUSIVE LICENSE.** If You have read, understand and accept this Agreement and any changes made thereto, You may access the Site and use the Intranet Materials as provided herein. The Intranet Materials include, without limitation, email services, message boards, news and newsletters, manuals, catalogs, a franchise shoppe directory, workbooks, and supply order forms for Your use in connection with Your franchise shoppe. You may print out a hard copy of the Intranet Materials for use in connection with Your franchise shoppe. In addition, certain Intranet Materials may be identified as materials that are appropriate for distribution by You to Your customers or potential customers (the "**Distribution Materials**"). The Distribution Materials may include product catalogs, promotional postcards and other marketing or promotional materials. You may send or otherwise provide copies of the Distribution Materials to third parties by e-mailing such materials to third parties or by printing out copies of the Distribution Materials and distributing the copies as directed and authorized by CBDI. You may not use the Distribution Materials in any way not authorized by this Agreement or otherwise on the Site. This license does NOT authorize You to sell, email, distribute or disclose Intranet Materials not specifically identified as Distribution Materials or copies thereof to any other person or entity (see "**Restrictions**" below).

2. **INTELLECTUAL PROPERTY OWNERSHIP.** CBDI retains all right, title and interest to the Site and the Intranet Materials, including, but not limited to, all copyrights, trademarks, trade secrets, trade names, trade dress, proprietary rights, patents, titles, computer codes, audiovisual effects, themes, characters, character names, artwork, sound effects, musical works, and moral rights. The Site and the Intranet Materials are protected by United States copyright law and applicable copyright laws and treaties throughout the World. All rights are reserved. Any persons copying or reproducing all or any portion of the Site or the Intranet Materials except as specifically provided under "**Limited Non-Exclusive License**" above, in any manner or medium, will be willfully violating the copyright laws and may be subject to civil or criminal penalties. **The Intranet Materials may not be sold, disclosed, or otherwise transferred to any other individual or entity except as specifically provided for under "Limited Non-Exclusive License" above.**

3. **RESTRICTIONS.** Other than as provided specifically in this Agreement in "**Limited Non-Exclusive License,**" You may not copy, distribute, republish, upload, post, email, transmit, send, duplicate or otherwise reproduce the Site or the Intranet Materials in any way; modify or prepare derivative works based on the Site or the Intranet Materials; distribute copies of the Site or the Intranet Materials by sale or other transfer of ownership; or display the Site or the Intranet Materials publicly. **YOU MAY NOT EDIT THE SITE OR THE INTRANET MATERIALS.** Any copying or distribution of the Site or the Intranet Materials not specifically allowed in this Agreement is a violation of this Agreement. Additionally, You may not use the Site to:

(a) upload, post, email or otherwise transmit any Submission that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise offensive;

(b) upload, post, email or otherwise transmit any Submission that You do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary information and confidential information);

(c) upload, post, email or otherwise transmit any Submission that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any person or entity;

(d) upload, post, email or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," or any other form of solicitation;

(e) upload, post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; or

(f) collect or store personal data about other users.

4. **SUBMISSIONS.** All remarks, suggestions, questions, ideas, answers or other submissions communicated to CBDI at the Site become the property of CBDI (the "Submissions"). CBDI will be entitled to use such Submissions for any commercial or other purpose without compensation to You or any other person sending the Submissions. You may choose to participate in chat rooms and online discussions featured on the Site and to send and receive messages through an CBDI sponsored email account accessed through the Site. Any information or messages that You post, send or receive by any of these means may be monitored by CBDI, and CBDI employees may participate in chat rooms and online discussions. Thus, information and messages that You post in chat rooms and during online discussions and information that You send or receive in e-mails are not private. You agree that You are responsible for the reliability, appropriateness, originality, and copyright of your Submissions. If CBDI, in its sole and absolute discretion, determines that your Submissions are inappropriate for any reason, CBDI reserves the right to immediately remove the inappropriate materials and suspend Your access to the Site and the Intranet Materials without further notice to You.

5. **INDEMNIFICATION.** You agree to indemnify CBDI against any and all damages, costs, expenses, including reasonable attorneys fees and court costs, which may arise out of claims relating to your Submissions to, or other use of the Site or the Intranet Materials, including claims by third parties that your Submissions violate the third party's trademark rights, privacy rights, copyrights, rights of publicity or other proprietary rights and claims that your Submissions contain obscenities, defamations or offensive material.

6. **AUTHORIZED USERS.** Only Authorized Users may access the Site. Licensees, shoppe managers as listed in the shoppe directory, who have signed confidentiality agreements may be designated as Authorized Users if approved by CBDI. One authorized user will be assigned to the licensed entity as identified in the Franchise Agreement. Other individuals who sign confidentiality agreements and are approved in advance by CBDI may also be designated as Authorized Users. The Authorized User Approval Form, attached hereto and made a part hereof, is located on the Site in a subfolder at Library/Forms and Easy Reference Pages/Intranet Agreement. Licensee should download the Authorized User Approval Form, fill it out, and submit it to CBDI for each user. CBDI will assign Level 1 and Level 2 passwords to the Authorized User(s) listed on the form who are approved by CBDI. A Level 1 password allows an Authorized User to access most information on the Site. A Level 2 password allows an Authorized User to access confidential information on the Site and verifies and acknowledges that the



Authorized User has received certain email messages. Authorized Users should not disclose their passwords to anyone. Once an account has been established for the Authorized User, Authorized User agrees to complete the profile, located under the "Profile" icon on the Site, with the Authorized User's email address and set the notice to daily.

Licensee agrees to assume full responsibility for the use or misuse of the Site and the Intranet Materials by its designated Authorized Users. Furthermore, Authorized Users agree to notify CBDI immediately upon (a) termination of the Franchise Agreement, (b) separation or divorce from an Authorized User, or (c) if there is any reason to believe an Authorized User has misused or may misuse the Site or the Intranet Materials. CBDI reserves the right to immediately terminate any Authorized User's access to the site without notice if CBDI reasonably believes that such Authorized User is misusing or may misuse the Site or the Intranet Materials, upon separation or divorce from the Licensee, or upon termination of the Franchise Agreement.

7. **ORDERS.** The Licensee will determine which Authorized User(s) may submit an order using the Site. Orders placed using the Site by the Licensee will be deemed "received" by CBDI when the order is retrieved by CBDI. An order is "retrieved" by CBDI when CBDI opens the email containing the order.

8. **LINKS AND ADVERTISERS.** CBDI may link the Site to the websites of third parties, including, other electronic service providers, affiliates and other providers of goods and services. CBDI is not responsible for the availability of such external sites or resources, and CBDI neither endorses nor assumes any responsibility for any content, advertising, products, or other materials on or available from such sites or resources. CBDI will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

Your business dealings with, or participation in promotions of, advertisers found on or through the Site, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between You and the advertiser. CBDI shall not be responsible or liable for any loss or damage of any kind that You may incur as the result of any such dealings or as the result of the presence of such advertisers on the Site.

CBDI may place legal notices, disclaimers, corporate logos and slogans, advertisements, endorsements, trademarks, and other identifying information on the Site, all of which CBDI may modify, expand or eliminate at CBDI's option. All consideration (monetary and non-monetary) received by CBDI on account of the placement or sale of advertisements, endorsements and sponsorships on the Site will belong only to CBDI.

9. **NO WARRANTY.** CBDI PROVIDES THE SITE AND THE INTRANET MATERIALS "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW. THE SITE AND THE INTRANET MATERIALS MAY INCLUDE TECHNICAL INACCURACIES AND/OR TYPOGRAPHICAL ERRORS. CBDI MAY MAKE CHANGES OR IMPROVEMENTS TO THE SITE AND/OR THE INTRANET MATERIALS AT ANY TIME. CBDI DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CBDI DOES NOT WARRANT THAT THE FUNCTIONS OF THE SITE, THE INTRANET MATERIALS OR DOWNLOADABLE SOFTWARE AVAILABLE ON THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ERRORS WILL BE CORRECTED, OR THAT THE SITE, THE SERVER AVAILABLE OR ANY DOWNLOADABLE SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL PROGRAMS. CBDI DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF THE SITE AND THE INTRANET MATERIALS IN TERMS OF THEIR CORRECTNESS, ACCURACY OR OTHERWISE. THE ABOVE EXCLUSIONS MAY NOT APPLY

TO YOU TO THE EXTENT THAT APPLICABLE LAW PROHIBITS THE EXCLUSION OF IMPLIED WARRANTIES.

10. **LIABILITY LIMITATION.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL CBDI, ITS DIRECTORS, EQUITY HOLDERS, OFFICERS, EMPLOYEES, AGENTS, LICENSEES (EXCLUDING YOU), SUBLICENSEES (EXCLUDING YOU), AFFILIATES NOR ANYONE ELSE INVOLVED IN THE DEVELOPMENT OR DISTRIBUTION OF THE SITE OR THE INTRANET MATERIALS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DIRECT OR INDIRECT; INCIDENTAL; OR CONSEQUENTIAL DAMAGES FOR PERSONAL INJURY, PERSONAL PROPERTY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF TEXT OR THE COST OF RECOVERING OR REPRODUCING THE TEXT OR DATA, OR ANY OTHER PECUNIARY LOSS, ARISING FROM OR OUT OF THE USE OR INABILITY TO USE THE SITE OR THE INTRANET MATERIALS. THIS LIABILITY LIMITATION APPLIES EVEN IF YOU OR ANYONE ELSE HAS ADVISED CBDI OR ANY OF ITS AUTHORIZED REPRESENTATIVES OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH IS CAUSED BY, ARISES OUT OF OR RESULTS FROM THE ORDINARY, STRICT, SOLE OR CONTRIBUTORY NEGLIGENCE OF CBDI OR ITS DIRECTORS, EQUITY HOLDERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR AFFILIATES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

YOU HEREBY AGREE THAT CBDI IS NOT RESPONSIBLE FOR ANY PROBLEMS OR TECHNICAL MALFUNCTION OF ANY TELEPHONE NETWORK OR LINES, COMPUTER ONLINE SYSTEMS, SERVERS OR PROVIDERS, COMPUTER EQUIPMENT, SOFTWARE, FAILURE OF EMAIL OR PLAYERS ON ACCOUNT OF TECHNICAL PROBLEMS OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY WEBSITE OR COMBINATION THEREOF, INCLUDING INJURY OR DAMAGE TO YOUR COMPUTER OR TO ANY OTHER PERSON'S COMPUTER RELATED TO OR RESULTING FROM DOWNLOADING OR USE OF THE SITE, THE INTRANET MATERIALS OR ANY DOWNLOADABLE SOFTWARE. ALSO, YOU HEREBY AGREE THAT CBDI SHALL NOT BE LIABLE FOR ANY VIRUS, "BUG" OR OTHER SOFTWARE OR HARDWARE MALFUNCTION RESULTING FROM USE OF THE SITE, THE INTRANET MATERIALS OR ANY DOWNLOADABLE SOFTWARE.

11. **CONTACT CBDI.** If You have any questions regarding this Agreement, the enclosed materials, or otherwise, please contact in writing:

COOKIES BY DESIGN, INC.  
1865 Summit Avenue, Suite 605  
Plano, Texas 75074

Copyright © 2001 Cookies by Design, Inc. All Rights Reserved.

**ATTACHMENT J**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

**ORDERS ADMINISTRATION WEBSITE PARTICIPATION  
AND LICENSE AGREEMENT FOR CBDI/CB WEBSITE**

This agreement (this "**Agreement**"), effective as of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), is by and between \_\_\_\_\_ located at \_\_\_\_\_ (herein "**Licensee**") and COOKIES BY DESIGN, INC., a Texas corporation with its principle place of business at 1865 Summit Avenue, Suite 605, Plano, Texas 75074 ("**CBDI**") for the use by Licensee of the CBDI/CB Website located at www.cookiesbydesign.com/orders or www.cookieorders.com (the "**Admin Site**"). The Admin Site is primarily for participation in the Online Order Program, as defined in the Operations Manual, for eCommerce orders. It is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties and the terms of this Agreement. The Admin Site may only be used by Licensees who have agreed to the terms of this Agreement.

1. **FRANCHISE AGREEMENT.** Licensee (i) has entered into a Franchise Agreement with CBDI that is current and valid as of the Effective Date of this Agreement (the "**Franchise Agreement**") or (ii) is an approved and Authorized User of the Admin Site as defined in the Website Policies. Licensee may have full or limited access to the Admin Site based upon Licensee's status as a franchisee, an employee of a franchisee or another Authorized User. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Franchise Agreement. This Agreement supplements and is subject to the Franchise Agreement and all policies and procedures adopted by CBDI and set forth in the Confidential Manuals. The Website Policies are attached hereto as Appendix A and incorporated as a material part of the Agreement by reference.

2. **GRANT OF LICENSE.**

(a) CBDI hereby grants to Licensee, a non-exclusive, non-transferable, non-sublicensable license to use the Admin Site in order to participate in the Online Order Program on the terms and conditions set forth in this Agreement and in the Website Policies, as may be revised from time to time by CBDI (the "**License**").

(b) Licensee acknowledges and agrees that use of the Admin Site will require Licensee to have available certain computer hardware and software and Internet access, which may need to be upgraded or replaced periodically for the proper operation of the Admin Site (the "**Required Equipment**"). Licensee may at the onset and/or from time to time incur certain expenses in order to obtain, upgrade, or replace such Required Equipment. Licensee hereby agrees to obtain the Required Equipment at its sole expense and to upgrade or replace the Required Equipment as needed to continue its access to and participation in the Admin Site.

(c) Licensee acknowledges and agrees:

(i) To comply with the published operating procedures for the Online Order Program.

(ii) Not to disclose or transfer Licensee's password(s) to any other person, or to otherwise allow access to the Admin Site by any person not granted a License thereto or approved as an Authorized User by CBDI.

(iii) To be responsible for all activities that occur under Licensee's user name(s) and password(s) while using the Admin Site. Licensee also agrees to accept responsibility for all activities that occur under the user name(s) and password(s) of Licensee's employees and Licensee's designated Authorized Users.

(iv) To notify CBDI of any unauthorized use of Licensee's user name(s) or password(s) or any other breach of security that comes to Licensee's attention.

(v) To use the Admin Site only for purposes authorized by CBDI, as it may revise such purposes from time to time. CBDI authorizes the use of the Admin Site for communication between (a) CBDI, its employees, customers, and Licensees, and (b) between Licensees, their employees, customers and CBDI.

(vi) To comply with the published operating procedures for the Admin Site as provided on the Admin Site.

(vii) Not to use the Software to act as a service bureau or on behalf of unauthorized third parties.

(viii) By becoming a Licensee, Licensee expressly consents to receive communications, including but not limited to email from CBDI, its employees, customers and third party designees as authorized by CBDI.

3. **TERM AND TERMINATION.** The License provided for herein shall be effective as of the Effective Date, and shall terminate (a) automatically upon the date Licensee's Franchise Agreement expires, is terminated or transferred by either party for any reason; or (b) upon any breach of this Agreement by Licensee. CBDI has the right to immediately terminate this Agreement without prior notice and without waiving any other rights if Licensee violates any term or condition of the Franchise Agreement, this Agreement or any policies for Internet use. CBDI may reinstate this License in its sole discretion. Either party may terminate this Agreement at any time for any reason by notifying the other party in writing of such termination at the address set forth above. The address for notice may be revised from time to time by either party by providing written notice to the other party. If Licensee is a Franchisee, Licensee must also comply with the terms of the Franchise Agreement that address termination. CBDI reserves the right, in its sole discretion, to terminate the Admin Site in its entirety or any part thereof for any reason.

4. **CONSIDERATION AND FEES.** In consideration of the License granted herein, Licensee agrees to comply with all terms and conditions of this Agreement. CBDI reserves the right to charge a fee for certain optional goods and services, which it may make available to Licensees through the Admin Site, or an administrative fee.

5. **THIRD PARTY LICENSE REQUIREMENT.** Licensee acknowledges that any third party software required as part of the Required Equipment (the "**Third Party Software**") will be likely to require a separate license for use of that Third Party Software. As a condition to the License granted herein, Licensee agrees to obtain and maintain all required licenses for the Third Party Software during the Term of this Agreement.

6. **INDEMNIFICATION.** LICENSEE AGREES TO INDEMNIFY AND HOLD CBDI, ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF ANY AND ALL CHARACTER THAT MAY RESULT FROM OR ARISE AS A RESULT OF A BREACH OF THIS AGREEMENT BY LICENSEE, INCLUDING BUT NOT LIMITED TO ANY AND ALL DIRECT AND INDIRECT LOSS, DAMAGE, LIABILITY, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COSTS OF DEFENSE, INCIDENTAL DAMAGES AND CONSEQUENTIAL DAMAGES.)

7. **OWNERSHIP OF INTELLECTUAL PROPERTY.** As between Licensee and CBDI, CBDI shall have the exclusive ownership of the Admin Site, and everything posted or communicated thereon, and all copies thereof. Licensee agrees to assign, and hereby assigns all right, title and interest in and to anything posted or communicated on the Admin Site by Licensee, including but not limited to communications, graphics, and ideas, and the copyrights thereto, if applicable. CBDI reserves all rights not expressly granted under this Agreement.

8. **GOVERNING LAW AND ATTORNEYS' FEES.** This Agreement shall be governed by the provisions hereof and by the laws of the State of Texas. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

9. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Licensee and CBDI with respect to the Admin Site, and replaces all other representations. This Agreement may be modified by CBDI by posting such modification(s) on the Admin Site in the Website Policies. If Licensee does not agree to any modification set forth in the Website Policies, Licensee shall immediately cease use of the Admin Site and participation in the Online Order Program and notify CBDI of its termination of this Agreement. Continuation of use of the Admin Site and participation in the Online Order Program following posting of any modification of this Agreement or the Website Policies shall confirm Licensee's consent to the modifications. The section titles in this Agreement are for convenience only and have no legal or contractual effect. If any part of this Agreement is held to be unenforceable as written, it will be enforced to the maximum extent allowed by applicable law, and will not affect the enforceability of any other part.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

COOKIES BY DESIGN, INC., a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE

Shoppe No(s): \_\_\_\_\_

(Corporate, LLC or Partnership Franchisee)

\_\_\_\_\_  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Individual Franchisee)

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

(Select the appropriate signature lines and mark out the unused signature block)

## APPENDIX A

### CBDI/CB ORDERS ADMINISTRATION WEBSITE POLICIES

These policies and the Cookies by Design, Inc. Orders Administration Website Participation and License Agreement for CBDI/CB Website together are a legal agreement (collectively the "**Agreement**") between Licensee as defined in the Orders Administration Website Participation and License Agreement for CBDI/CB Website ("**You**") and COOKIES BY DESIGN, INC., a Texas corporation ("**CBDI**"), regarding the internet administration site located at [www.cookieorder.com](http://www.cookieorder.com) (the "**Admin Site**") and the information and materials contained thereon (the "**Internet Materials**"). Your, Your Manager or Your employees', as defined in the Operations Manual, that You designate to be authorized to access the Admin Site ("**Authorized Users**"), and the act of logging onto the Admin Site by entering a user name and password constitutes Your representation that You have read, understand and consent to be bound by this Agreement and all changes that are made hereto from time to time.

1. **LIMITED NON-EXCLUSIVE LICENSE.** If You have read, understand and accept this Agreement and any changes made thereto, You may access the Admin Site and use the Internet Materials as provided herein. The Internet Materials include, without limitation, email services, customer order information, employment opportunities in Your franchise shoppe, and online ordering reports for Your use in connection with Your franchise shoppe, specifically the fulfillment of an order placed by a customer using the CBDI/CB Website located at [www.cookieorder.com](http://www.cookieorder.com). You may print out a hard copy of the Internet Materials for use in connection with Your franchise shoppe. This license does NOT authorize You to sell, email, distribute or disclose Internet Materials to any other person or entity (see "Restrictions" below).

2. **INTELLECTUAL PROPERTY OWNERSHIP.** CBDI retains all right, title and interest to the Admin Site and the Internet Materials, including, but not limited to, all copyrights, trademarks, trade secrets, trade names, trade dress, proprietary rights, patents, titles, computer codes, audiovisual effects, themes, characters, character names, artwork, sound effects, musical works, and moral rights. The Admin Site and the Internet Materials are protected by United States copyright law and applicable copyright laws and treaties throughout the World. All rights are reserved. Any persons copying or reproducing all or any portion of the Admin Site or the Internet Materials except as specifically provided under, "**Limited Non-Exclusive License**" above, in any manner or medium, will be willfully violating the copyright laws and may be subject to civil or criminal penalties. **The Internet Materials may not be sold, disclosed, or otherwise transferred to any other individual or entity except as specifically provided for under "Limited Non-Exclusive License" above.**

3. **RESTRICTIONS.** Other than as provided specifically in this Agreement in "**Limited Non-Exclusive License**," You may not copy, distribute, republish, upload, post, email, transmit, send, duplicate or otherwise reproduce the Admin Site or the Internet Materials in any way; modify or prepare derivative works based on the Admin Site or the Internet Materials; distribute copies of the Admin Site or the Internet Materials by sale or other transfer of ownership; or display the Admin Site or the Internet Materials publicly. **You may not edit the Admin Site or the Internet Materials, except for the employment opportunities in your Franchise Shoppe or to provide specific information to customers regarding sales tax and shipping costs.** Any copying or distribution of the Admin Site or the Internet Materials not specifically allowed in this Agreement is a violation of this Agreement. Additionally, You may not use the Admin Site to:

(a) upload, post, email or otherwise transmit any Submission that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise offensive;

(b) upload, post, email or otherwise transmit any Submission that You do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary information and confidential information);

(c) upload, post, email or otherwise transmit any Submission that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any person or entity;

(d) upload, post, email or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," or any other form of solicitation; or

(e) upload, post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.

4. **SUBMISSIONS.** All remarks, suggestions, questions, ideas, answers or other submissions communicated to CBDI at the Admin Site become the property of CBDI (the "Submissions"). CBDI will be entitled to use such Submissions for any commercial or other purpose without compensation to You or any other person sending the Submissions. You agree that You are responsible for the reliability, appropriateness, originality, and copyright of your Submissions. If CBDI, in its sole and absolute discretion, determines that your Submissions are inappropriate for any reason, CBDI reserves the right to immediately remove the inappropriate materials and suspend Your access to the Admin Site and the Internet Materials without further notice to You.

5. **INDEMNIFICATION.** You agree to indemnify CBDI against any and all damages, costs, expenses, including reasonable attorneys fees and court costs, which may arise out of claims relating to your Submissions to, or other use of the Admin Site or the Internet Materials, including claims by third parties that your Submissions violate the third party's trademark rights, privacy rights, copyrights, rights of publicity or other proprietary rights and claims that your Submissions contain obscenities, defamations or offensive material.

6. **AUTHORIZED USERS.** Only Authorized Users may access the Admin Site. **All Authorized Users must have signed the appropriate confidentiality agreement as required by CBDI's standards of operations, as outlined in the Operations Manual prior to using the Admin Site.** CBDI will assign password(s) to the Licensee. Licensee should not disclose their password(s) to anyone except those designated as Authorized Users for their franchise shoppe. Licensee will be responsible for designating who in their franchise shoppe will be an Authorized User.

Licensee agrees to assume full responsibility for the use or misuse of the Admin Site and the Internet Materials by Authorized Users. Furthermore, Licensee agrees to notify CBDI immediately upon (a) termination or transfer of the Franchise Agreement, or (b) if there is any reason to believe an Authorized User has misused or may misuse the Admin Site or the Internet Materials. CBDI reserves the right to immediately terminate any Authorized User's access to the Admin Site without notice if CBDI reasonably believes that such Authorized User is misusing or may misuse the Admin Site or the Internet Materials, upon separation or divorce from the Licensee or its principal, or upon termination of the Franchise Agreement.

7. **ORDERS.** You will determine which designated Authorized User(s) may process an order using the Admin Site. Orders received by you using the Admin Site will be deemed "received" and "retrieved" by you when you logon to the Admin Site and are granted access by using your security password. An order is deemed "acknowledged" when you enter the appropriate sales tax and shipping costs and



click on the submit button. Acknowledged orders submitted by you using the Admin Site will be deemed "received" by CBDI, or its designated representative, when the order is retrieved by CBDI, or its designated representative. An order is "retrieved" by CBDI, or its designated representative, when an acknowledged order is forwarded to the customer.

8. **NO WARRANTY.** CBDI PROVIDES THE ADMIN SITE AND THE INTERNET MATERIALS "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW. THE ADMIN SITE AND THE INTERNET MATERIALS MAY INCLUDE TECHNICAL INACCURACIES AND/OR TYPOGRAPHICAL ERRORS. CBDI MAY MAKE CHANGES OR IMPROVEMENTS TO THE ADMIN SITE AND/OR THE INTERNET MATERIALS AT ANY TIME. CBDI DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CBDI DOES NOT WARRANT THAT THE FUNCTIONS OF THE ADMIN SITE, THE INTERNET MATERIALS OR DOWNLOADABLE SOFTWARE AVAILABLE ON THE ADMIN SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ERRORS WILL BE CORRECTED, OR THAT THE ADMIN SITE, THE SERVER AVAILABLE OR ANY DOWNLOADABLE SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL PROGRAMS. CBDI DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF THE ADMIN SITE AND THE INTERNET MATERIALS IN TERMS OF THEIR CORRECTNESS, ACCURACY OR OTHERWISE. THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU TO THE EXTENT THAT APPLICABLE LAW PROHIBITS THE EXCLUSION OF IMPLIED WARRANTIES.

9. **LIABILITY LIMITATION.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL CBDI, ITS DIRECTORS, EQUITY HOLDERS, OFFICERS, EMPLOYEES, AGENTS, LICENSEES (EXCLUDING YOU), SUBLICENSEES (EXCLUDING YOU), AFFILIATES NOR ANYONE ELSE INVOLVED IN THE DEVELOPMENT OR DISTRIBUTION OF THE ADMIN SITE OR THE INTERNET MATERIALS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DIRECT OR INDIRECT; INCIDENTAL; OR CONSEQUENTIAL DAMAGES FOR PERSONAL INJURY, PERSONAL PROPERTY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF TEXT OR THE COST OF RECOVERING OR REPRODUCING THE TEXT OR DATA, OR ANY OTHER PECUNIARY LOSS, ARISING FROM OR OUT OF THE USE OR INABILITY TO USE THE ADMIN SITE OR THE INTERNET MATERIALS. THIS LIABILITY LIMITATION APPLIES EVEN IF YOU OR ANYONE ELSE HAS ADVISED CBDI OR ANY OF ITS AUTHORIZED REPRESENTATIVES OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH IS CAUSED BY, ARISES OUT OF OR RESULTS FROM THE ORDINARY, STRICT, SOLE OR CONTRIBUTORY NEGLIGENCE OF CBDI OR ITS DIRECTORS, EQUITY HOLDERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR AFFILIATES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

YOU HEREBY AGREE THAT CBDI IS NOT RESPONSIBLE FOR ANY PROBLEMS OR TECHNICAL MALFUNCTION OF ANY TELEPHONE NETWORK OR LINES, COMPUTER ONLINE SYSTEMS, SERVERS OR PROVIDERS, COMPUTER EQUIPMENT, SOFTWARE, FAILURE OF EMAIL OR PLAYERS ON ACCOUNT OF TECHNICAL PROBLEMS OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY WEBSITE OR COMBINATION THEREOF, INCLUDING INJURY OR DAMAGE TO YOUR COMPUTER OR TO ANY OTHER PERSON'S COMPUTER RELATED TO OR RESULTING FROM DOWNLOADING OR USE OF THE ADMIN SITE, THE INTERNET MATERIALS OR ANY DOWNLOADABLE SOFTWARE. ALSO, YOU HEREBY AGREE THAT CBDI SHALL NOT BE LIABLE FOR ANY VIRUS, "BUG" OR OTHER

SOFTWARE OR HARDWARE MALFUNCTION RESULTING FROM USE OF THE ADMIN SITE,  
THE INTERNET MATERIALS OR ANY DOWNLOADABLE SOFTWARE.

10. **CONTACT CBDI**. If You have any questions regarding this Agreement, the enclosed materials,  
or otherwise, please contact in writing:

COOKIES BY DESIGN, INC.  
1865 Summit Avenue, Suite 605  
Plano, Texas 75074

Copyright © 2001 Cookies by Design, Inc. All Rights Reserved.

**ATTACHMENT K**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

**LIMITED POWER OF ATTORNEY TO TRANSFER TELEPHONE  
LISTING AND NUMBER, E-MAIL ADDRESS AND DOMAIN NAME**

THE UNDERSIGNED, having, as applicable, a telephone listing and telephone number with the local telephone and directory companies, trade and name registrations and business licenses, E-Mail address(es) using the Licensed Marks, and a domain name registration(s) that uses the Licensed Marks, as defined in the Franchise Licensing Agreement between CBDI and the undersigned (the "**Franchise Agreement**"), appoints the President of Cookies by Design, Inc., a Texas corporation ("**CBDI**"), its attorney-in-fact for the limited purpose of transferring the telephone numbers, directory listings and advertisements using the telephone numbers, trade and name registrations and business licenses, E-mail address(es) that use a Licensed Mark, and any domain name registration(s) that include a Licensed Mark, to CBDI, including the execution of all documents necessary to accomplish the transfers. CBDI may enforce its exercise of the rights granted by this Limited Power of Attorney by specific performance.

FRANCHISEE:

(Corporate, LLC or Partnership Franchisee)

\_\_\_\_\_

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Individual Franchisee)

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_  
corporation, on behalf of said corporation.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_, individually.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**ATTACHMENT L**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

**LICENSE AGREEMENT  
VANITY NUMBER AND TELEPHONE LOCATOR SERVICE**

This agreement (this "**Agreement**"), effective as of \_\_\_\_\_, 200\_\_ (the "**Effective Date**"), is by and between \_\_\_\_\_, located at \_\_\_\_\_, (herein "**Licensee**") and COOKIES BY DESIGN, INC., a Texas corporation with its principle place of business at 1865 Summit Avenue, Suite 605, Plano, Texas 75074 ("**CBDI**").

Recitals

Licensee has entered into a Franchise Agreement with CBDI that is current and valid as of the Effective Date of this Agreement (the "**Franchise Agreement**").

This Agreement sets forth the terms and conditions for the use by Licensee of a toll free number(s) (the "**Vanity Number**") and participation in a Shoppe location service (the "**Locator Service**").

The Locator Service is a "National Program," as defined in the Operations Manual, primarily used in connection with the Vanity Number. The Vanity Number and the Locator Service are collectively referred to herein as the "**Telephone Locator Program**".

Agreement

The parties agree as follows:

1. **DEFINITIONS.** All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Franchise Agreement.
2. **GRANT OF LICENSE.** CBDI hereby grants to Licensee, a non-exclusive, non-transferable, non-sublicensable license to use the Vanity Number in order to participate in the Locator Service on the terms and conditions set forth in this Agreement, as may be revised from time to time by CBDI (the "**License**"). Licensee may have full access to the Telephone Locator Program solely based upon Licensee's status as a franchisee of the COOKIES BY DESIGN®/COOKIE BOUQUET® franchise system, and its agreement to the terms and conditions of this Agreement.

Licensee acknowledges and agrees that use of the Locator Service will require Licensee to have available telephone hardware and toll free number access, which may need to be upgraded or replaced periodically for the proper operation of the Locator Service (the "**Required Equipment**"). Licensee may at the onset and/or from time to time incur certain expenses in order to obtain, upgrade, or replace such Required Equipment. Licensee hereby agrees to obtain the Required Equipment at its sole expense and to upgrade or replace the Required Equipment as needed to continue its access to and participation in the Locator Service.

Licensee acknowledges and agrees:

To comply with the published operating procedures for the Telephone Locator Program as provided in the Operations Manual, and the terms and conditions of this Agreement and any Provider Agreement, as hereinafter defined.

To use the Telephone Locator Program exclusively for the benefit of the COOKIES BY DESIGN®/COOKIE BOUQUET® franchise system, Licensee's licensed franchise shoppe, and any other purposes specifically authorized by CBDI, as it may revise such purposes from time to time.

3. PROVIDER. Licensee acknowledges that the Locator Service may be provided by either a third party or CBDI (the "Provider"). Licensee agrees to execute any agreement required by the Provider in connection with the Locator Service (the "Provider Agreement"). Licensee also agrees to comply with all payment and other terms set forth in the Provider Agreement. Licensee acknowledges that failure to pay fees due Provider on a timely basis, or to comply with other terms or conditions set forth in the Provider Agreement may result in termination of this Agreement and Licensee's participation in the Telephone Locator Program or suspension until all amounts owed are brought current, and/or Licensee is otherwise in full compliance with the terms and conditions of the Provider Agreement.

4. SHOPPE REFERRALS. Licensee agrees that CBDI shall in its sole discretion set all rules and policies that will apply to shoppe referrals through the Locator Service for customer contacts received through the Vanity Number.

5. TERM AND TERMINATION. The License provided for herein shall be effective as of the Effective Date, and shall terminate (a) automatically upon the date Licensee's Franchise Agreement expires, is terminated for any reason, or transferred to a third party; or (b) upon any breach of this Agreement or the Provider Agreement by Licensee, including any failure to pay fees due; or (c) for any reason by either party, upon providing written notice to the other party at the address set forth above. CBDI has the right to immediately terminate this Agreement without prior notice and without waiving any other rights if Licensee violates any term or condition of the Franchise Agreement. In the event that Licensee cures all defaults on which any termination was based, and is in full compliance with the Franchise Agreement, CBDI may, but is not required to, reinstate this License in its sole discretion. The address for notice may be revised from time to time by either party by providing written notice to the other party. CBDI reserves the right, in its sole discretion, to terminate the Telephone Locator Program in its entirety or any part thereof for any reason.

6. CONSIDERATION AND FEES. In consideration of the License granted herein, Licensee agrees to comply with all terms and conditions of this Agreement and the Provider Agreement, and to pay all fees required thereunder. Licensee acknowledges that CBDI will pay the initial set up fee for the Telephone Locator Program system, but not the initial costs of Required Equipment or other costs incurred by Licensee for its individual participation. Licensee agrees to pay all continuing fees charged by the Provider.

7. INDEMNIFICATION. LICENSEE AGREES TO INDEMNIFY AND HOLD CBDI, ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF ANY AND ALL CHARACTER THAT MAY RESULT FROM OR ARISE AS A RESULT OF A BREACH OF THIS AGREEMENT OR THE PROVIDER AGREEMENT BY LICENSEE, INCLUDING BUT NOT LIMITED TO ANY AND ALL DIRECT AND INDIRECT LOSS, DAMAGE, LIABILITY, COSTS

AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COSTS OF DEFENSE, INCIDENTAL DAMAGES AND CONSEQUENTIAL DAMAGES.)

8. OWNERSHIP OF INTELLECTUAL PROPERTY. As between Licensee and CBDI, CBDI shall have the exclusive ownership of the Vanity Number and all other rights related to the Telephone Locator Program. CBDI reserves all rights not expressly granted under this Agreement.

9. GOVERNING LAW AND ATTORNEYS' FEES. Unless otherwise specified, in the Franchise Agreement, this Agreement shall be governed by the laws of the State of Texas. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between Licensee and CBDI with respect to the Telephone Locator Program., unless CBDI becomes the Provider, at which time, the Provider Agreement shall supplement and be subject to this Agreement.

11. MODIFICATION. This Agreement may be modified in writing by CBDI in its sole discretion. Any proposed modification shall be communicated to Licensee at least ten (10) days prior to the effective date of the modification. Upon receipt of written notification of any modification from CBDI, if Licensee does not agree to the modification, Licensee shall notify CBDI of its intention to terminate its participation in the Telephone Locator Program, this Agreement, and the Provider Agreement, and cease use of the Locator Service and Vanity Number. Continuation of use of the Locator Service or Vanity Number following the effective date identified in the notice of any modification of this Agreement shall confirm Licensee's consent to the modification.

12. HEADINGS. The section headings in this Agreement are for convenience only and have no legal or contractual effect.

13. ENFORCEABILITY. If any part of this Agreement is held to be unenforceable as written, it will be enforced to the maximum extent allowed by applicable law, and will not affect the enforceability of any other part.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

CBDI:

COOKIES BY DESIGN, INC., a Texas corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LICENSEE:

Shoppe(s) No.: \_\_\_\_\_

(Corporate, LLC or Partnership Licensee)

\_\_\_\_\_  
a(n) \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Individual Licensee)

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

(Select the appropriate signature lines and mark out the unused signature block)



**ATTACHMENT M**

**FRANCHISE LICENSING AGREEMENT  
BETWEEN COOKIES BY DESIGN, INC.  
AND**

\_\_\_\_\_  
*(Name of Franchisee)*

**FORM OF AUTOMATIC FUNDS TRANSFER AGREEMENT**

The undersigned depositor ("**Depositor**") hereby authorizes Cookies by Design, Inc., a Texas corporation ("**CBDI**") and/or its agents, representatives, and assignees, to initiate debit/credit entries to the account indicated below for the payment of amounts required to be paid to CBDI by the Depositor. The depository institution named below is authorized to debit/credit the same such account and to further debit such account for any depository institution charges related to the electronic transfers permitted under this authorization. This authority can be terminated by the Depositor only by written permission from CBDI. CBDI must be given 10 days prior written notice of any changes, closures and modifications in the below authorized account in order to act on such matters. The Depositor agrees to pay all costs, charges and expenses incurred by CBDI and/or any depository institution involved in the automatic transfer of funds pursuant to this authorization, including any administrative or transaction fees and any costs, charges or expenses related to any modification of the referenced account, failure to provide required notices under the authorization or failure to maintain a sufficient account balance.

Bank Name \_\_\_\_\_

Address: \_\_\_\_\_

Transit ABA No. \_\_\_\_\_ Acct. No. \_\_\_\_\_

Taxpayer Federal ID No. \_\_\_\_\_

**PLEASE ATTACH A VOIDED CHECK**

Authorized Signature of Depositor

\_\_\_\_\_  
Date

Please print name of Depositor as it appears on bank records

\_\_\_\_\_  
Address of Depositor