



FORM 10-K

KRISPY KREME DOUGHNUTS INC - KKD

Filed: April 17, 2008 (period: February 03, 2008)

Annual report which provides a comprehensive overview of the company for the past year

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

(Mark one)

- ☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended February 3, 2008

- ☐ OR
TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission file number 001-16485

KRISPY KREME DOUGHNUTS, INC.

(Exact name of registrant as specified in its charter)

North Carolina

(State or other jurisdiction of
incorporation or organization)

56-2169715

(I.R.S. Employer Identification No.)

370 Knollwood Street,
Winston-Salem, North Carolina

(Address of principal executive offices)

27103

(Zip Code)

Registrant's telephone number, including area code:
(336) 725-2981

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class
Common Stock, No Par Value
Preferred Share Purchase Rights

Name of
Each Exchange
on Which
Registered
New York Stock Exchange
New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller Reporting Company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of voting and non-voting common equity of the registrant held by nonaffiliates of the registrant as of July 27, 2007 was \$449.8 million.

Number of shares of Common Stock, no par value, outstanding as of March 28, 2008: 65,370,272.

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the definitive proxy statement for the registrant's 2008 Annual Meeting of Shareholders to be held on June 17, 2008 are incorporated by reference into Part III hereof.

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As used herein, unless the context otherwise requires, “Krispy Kreme,” the “Company,” “we,” “us” and “our” refer to Krispy Kreme Doughnuts, Inc. and its subsidiaries. References contained herein to fiscal 2004, fiscal 2005, fiscal 2006, fiscal 2007, fiscal 2008 and fiscal 2009 mean the fiscal years ended February 1, 2004, January 30, 2005, January 29, 2006, January 28, 2007, February 3, 2008 and February 1, 2009, respectively. Please note that fiscal 2008 contained 53 weeks.

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains statements about future events and expectations, including our business strategy and trends in or expectations regarding the Company’s operations, financing abilities and planned capital expenditures that constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are based on management’s beliefs, assumptions and expectations of our future economic performance, considering the information currently available to management. These statements are not statements of historical fact. Forward-looking statements involve risks and uncertainties that may cause our actual results, performance or financial condition to differ materially from the expectations of future results, performance or financial condition we express or imply in any forward-looking statements. The words “believe,” “may,” “will,” “should,” “anticipate,” “estimate,” “expect,” “intend,” “objective,” “seek,” “strive” or similar words, or the negative of these words, identify forward-looking statements. Factors that could contribute to these differences include, but are not limited to:

- the outcome of pending governmental investigations, including by the Securities and Exchange Commission (the “SEC”) and the United States Attorney’s Office for the Southern District of New York;
 - potential indemnification obligations and limitations of our director and officer liability insurance;
 - the quality of Company and franchise store operations;
 - our ability, and our dependence on the ability of our franchisees, to execute on our and their business plans;
 - our relationships with our franchisees;
 - our ability to implement our international growth strategy;
 - our ability to implement our new domestic operating model and refranchising strategy;
 - currency, economic, political and other risks associated with our international operations;
 - the price and availability of raw materials needed to produce doughnut mixes and other ingredients;
 - compliance with government regulations relating to food products and franchising;
 - our relationships with wholesale customers;
 - our ability to protect our trademarks;
 - risks associated with our high levels of indebtedness;
 - restrictions on our operations and compliance with covenants contained in our secured credit facilities;
 - changes in customer preferences and perceptions;
 - significant changes in our management;
 - risks associated with competition; and
 - other factors discussed below in Item 1A, “Risk Factors” and in Krispy Kreme’s periodic reports and other information filed with the SEC.
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All such factors are difficult to predict, contain uncertainties that may materially affect actual results and may be beyond our control. New factors emerge from time to time, and it is not possible for management to predict all such factors or to assess the impact of each such factor on the Company. Any forward-looking statement speaks only as of the date on which such statement is made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made.

We caution you that any forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to differ materially from the facts, results, performance or achievements we have anticipated in such forward-looking statements.

Item 1. BUSINESS.**Overview**

Krispy Kreme is a leading branded retailer and wholesaler of high-quality doughnuts. Our principal business, which began in 1937, is owning and franchising Krispy Kreme doughnut stores where over 20 varieties of doughnuts, including our hot Original Glazed[®] doughnut, are made, sold and distributed and where a broad array of coffees and other beverages are offered.

As of February 3, 2008, there were 449 Krispy Kreme stores operated systemwide in 37 U.S. states and in the District of Columbia, Australia, Canada, Hong Kong, Indonesia, Japan, Kuwait, Mexico, the Philippines, Qatar, Saudi Arabia, South Korea, the United Arab Emirates and the United Kingdom, of which 105 were owned by us and 344 were owned by franchisees. Of the 449 total stores, there were 295 factory stores and 154 satellites. Of the Krispy Kreme factory stores and satellites in operation at February 3, 2008, 210 and 35, respectively, were located in the United States.

Factory stores (stores which contain a doughnut-making production line) typically support multiple sales channels to more fully utilize production capacity and reach various consumer segments. These sales channels are comprised of on-premises sales (sales to customers visiting our factory and satellite stores) and off-premises sales (sales to convenience stores, grocery stores/mass merchants and other food service and institutional accounts) as described further under “Business Operations — Company Stores.” Satellite stores consist primarily of the fresh shop, kiosk and hot shop store formats. Hot shop stores contain doughnut heating technology that allows customers to have a hot doughnut experience throughout the day. Fresh shops and free-standing kiosk locations do not contain doughnut heating technology.

Business Operations

We generate revenues from three distinct sources: stores we operate, which we refer to as Company Stores; franchise fees and royalties from our franchise stores, which we refer to as Franchise; and a vertically integrated supply chain, which we refer to as KK Supply Chain. Company Stores, Franchise and KK Supply Chain comprise our three reportable segments under generally accepted accounting principles (“GAAP”).

Company Stores. The principal source of revenue for our stores is the production and distribution of doughnuts. Many of our factory stores are both retail outlets and wholesale producers of our doughnuts and, as a result, can sell their products through multiple channels.

- **On-premises sales.** On-premises sales consist of sales to customers visiting our factory and satellite stores, including sales made through drive-through windows, along with discounted sales to community organizations that in turn sell doughnuts for fundraising purposes. Each of our factory stores offers at least 15 of our more than 20 varieties of doughnuts, including our signature hot Original Glazed[®] doughnut. We also sell beverages, including drip coffees, espresso-based coffees, both coffee-based and noncoffee-based frozen drinks and packaged and fountain beverages. The majority of the sales by stores outside the United States are on-premises.
- **Off-premises sales.** In addition to on-premises sales, we have developed multiple channels of sales outside our stores, which we refer to as off-premises sales. Off-premises sales consist of sales of fresh doughnuts, primarily on a branded basis (i.e., bearing the Krispy Kreme brand name), to a variety of retail customers, such as convenience stores, grocery stores/mass merchants and other food service and institutional accounts. Doughnuts are sold to these customers on trays for display and sale in glass-enclosed cases and in packages for display and sale on both stand-alone display units and on our customers’ shelves.

These sales channels are designed to generate incremental sales, increase market penetration and brand awareness, increase consumer convenience and optimize utilization of our stores’ production capacity. We accomplish off-premises sales through our direct store delivery system, or DSD, through which we deliver

fresh doughnuts, both packaged and unpackaged, to our retail customers. Our off-premises customers include Amerada Hess, BiLo/Bruno's, Exxon/Mobil, Food Lion, Kroger, QuikTrip, Sheetz, Speedway SuperAmerica, Wal-Mart and Wilco/Hess. Our route drivers are capable of taking customer orders and delivering products directly to our customers' retail locations, where they are typically merchandised from Krispy Kreme branded displays. We have also developed national account relationships and implemented electronic invoicing and payment systems with many large DSD customers.

Franchise. Through our Franchise segment, we generate revenues through the collection of franchise fees and royalties. Franchisees sell doughnuts and other products through the same channels discussed above under "— Company Stores" and, as a result, our royalty revenues are dependent on the on-premises and off-premises sales of our franchisees.

KK Supply Chain. KK Supply Chain produces doughnut mixes and manufactures our doughnut-making equipment, which all factory stores are required to purchase. Additionally, KK Supply Chain operates two distribution centers that provide Krispy Kreme stores with supplies for the critical areas of their business. KK Supply Chain generates revenues on sales of doughnut mixes, supplies, ingredients and equipment to franchisees and supports both Company and franchisee stores through product knowledge and technical skills, control of critical production and distribution processes and collective buying power.

The primary raw materials used in our products are flour, sugar and shortening. We routinely obtain ingredients under forward purchase agreements and in the commodity spot markets; market risks associated with our purchases of ingredients are discussed in Item 7A, "Quantitative and Qualitative Disclosures About Market Risk." Although we own the recipe for our glaze flavoring — a key ingredient in many of our doughnuts — we currently utilize a sole source for our supply.

KK Supply Chain has four business units:

- **Mix manufacturing.** We produce all of our proprietary doughnut mixes, which our franchisees are required to purchase, at our manufacturing facility in Winston-Salem, North Carolina. For certain international franchisees, we produce a concentrate which is shipped internationally where it is then combined with other ingredients sourced locally pursuant to the terms of agreements with contract manufacturers. We control production of this critical component in order to ensure that our products meet quality expectations. Our mixes are produced according to our high quality standards, which include:

- Receiving truckloads of shipment of our main ingredients regularly;
- Testing each incoming shipment of key ingredients; and
- Testing each batch of mix.

We closed our mix manufacturing operation in Effingham, Illinois, and sold the facility in January 2008. In connection with the closure, we consolidated mix manufacturing operations into our Winston-Salem facility. We currently are in discussions and conducting product testing with third party mix manufacturers regarding contract mix production for regions outside the southeastern United States.

- **Equipment.** We manufacture doughnut-making equipment, which our franchisees are required to purchase. Our equipment, when combined with our proprietary mixes and operated in accordance with our standard procedures, produces doughnuts with uniform consistency and quality. Manufacturing our equipment results in several advantages, including:

- **Flexibility.** We manufacture several models, with varying capacities, which are capable of producing multiple products and fitting varying store configurations; and
- **Efficiency.** We continually refine our equipment design to improve automation in order to manage labor costs and/or improve consistency.

Our line of doughnut-making machines includes machines that produce doughnuts at rates of approximately 65, 150, 270, 600 and 1,000 dozen doughnuts per hour. The largest of these machines (the 600 and 1,000 dozen per hour machines) are used primarily in a subset of our factory stores called commissaries, which are production facilities used principally to serve off-premises customers domestically and to supplement factory stores focused on on-premises sales internationally.

We also sell smaller machines, which we refer to as tunnel ovens and which are used in hot shops, that are manufactured by others and that complete the final steps of the production process by preparing unglazed doughnuts for the glazing process. We also refurbish for resale used machines that we have as a result of store closings.

- **Beverage program.** We provide many of the beverages offered in our stores, all of which are purchased from third parties. We have implemented in the majority of our stores a complete beverage program, including drip coffees, a complete line of espresso-based coffees including flavors, both coffee-based and noncoffee-based frozen drinks and packaged and fountain beverages. See “— Products — Beverages.”
- **Distribution centers.** We operate distribution centers in Winston-Salem, North Carolina, and greater Los Angeles, California, which are capable of supplying our domestic stores and certain of our international stores with key supplies, including mixes, icings and fillings, other food ingredients, coffee, juices, signage, display cases, uniforms and various other items. We closed our distribution center in Effingham, Illinois, and sold the facility in January 2008. In connection with the closure, we consolidated distribution operations into our Winston-Salem and Los Angeles facilities. The lease on our Los Angeles facility expires in May 2008, and we currently are considering either relocating the facility or outsourcing distribution in the western United States to a third party. Most of our domestic store operators have agreed contractually through our Supply Chain Alliance Program to purchase all of their requirements for the critical areas of their business from KK Supply Chain. We believe that our ability to distribute supplies to our operators produces several advantages, including:
 - Economies of scale.** We are able to purchase key supplies at volume discount prices, which we believe are often lower than those that would be available to our operators individually. In addition, we are selective in choosing our suppliers and require that they meet certain standards with regard to quality and reliability. Also, inventory is managed on a systemwide basis rather than at the store level.
 - Convenience.** Our distribution centers carry the key items necessary for store operation. We believe this strategy of having one ordering and delivery system for store operations enables the store operators to focus their time and energies on running their stores, rather than managing multiple supplier and distribution relationships.

Krispy Kreme Brand Elements

Krispy Kreme has several important brand elements which we believe have created a bond with many of our customers. The key elements are:

- **One-of-a-kind taste.** The taste experience of our doughnuts is the foundation of our concept and the common thread that binds generations of our loyal customers. Our doughnuts are made based on a secret recipe that has been in our Company since 1937. We use premium ingredients, which are blended by our custom equipment in accordance with our standard operating procedures, to create this unique and very special product.
- **Doughnut-making theater.** Our factory stores typically showcase our doughnut-making theater, which is designed to produce a multi-sensory customer experience and establish a brand identity. Our goal is to provide our customers with an entertainment experience and to reinforce our commitment to quality and freshness.

- **Hot Krispy Kreme Original Glazed Now® sign.** The Hot Krispy Kreme Original Glazed Now® sign, when illuminated, is a signal that our hot Original Glazed® doughnuts are being made. The Hot Krispy Kreme Original Glazed Now® sign is an impulse purchase generator and an integral contributor to our brand. Our hot Original Glazed® doughnuts are made for several hours every morning and evening, and at other times during the day.
- **Community relationships.** We are committed to local community relationships. Our store operators support their local communities through fundraising programs and the sponsorship of charitable events. Many of our loyal customers have memories of selling Krispy Kreme doughnuts to raise money for their schools, clubs and community organizations.

Store Format and Development

Store Format. We classify a store as either a factory store or a satellite store. Our traditional factory store has the capacity to produce from 4,000 dozen to over 10,000 dozen doughnuts daily. Commissaries, which are production facilities used principally to serve off-premises customers domestically and to supplement factory stores focused on on-premises sales internationally, have the highest production capabilities of our factory stores. As of February 3, 2008, there were 22 commissaries systemwide, six of which were operated by the Company. Our other factory stores generally engage in both on-premises and off-premises sales.

Satellite stores consist primarily of the hot shop, fresh shop and kiosk store formats, each of which is substantially smaller than a traditional factory store. Hot shop stores contain tunnel oven doughnut heating technology that allows customers to have a hot doughnut experience throughout the day. Our fresh shops and our free-standing kiosk locations do not contain doughnut heating technology. In each of these formats, we typically sell fresh doughnuts and beverages, but the doughnuts are supplied by nearby factory stores. Each of these formats requires less space than our traditional factory store. We began our tests of the fresh shop concept during fiscal 2004 and our tests of the hot shop store and kiosk formats in fiscal 2005. As of February 3, 2008, 67 fresh shops, 48 hot shop stores and 39 kiosks were open systemwide. We continue to view the fresh shop, hot shop store and kiosk formats as additional ways to achieve market penetration in a variety of market sizes and settings.

Domestic Store Development. As of February 3, 2008, there were a total of 245 domestic stores, of which 210 were factory stores and 35 were satellite stores. These store numbers reflect the opening in fiscal 2008 of four domestic stores and the closing of 31 domestic stores. Of the four stores opened in fiscal 2008, one was a Company store. Of the 31 stores closed in fiscal 2008, eight were Company stores. As we work to improve our operations and to refine our store format for new domestic stores, we do not expect that we or our franchisees will open a significant number of domestic factory stores in the near future, although we plan to begin construction of a limited number of Company-operated satellite stores in fiscal 2009, and domestic franchisees also may open satellite stores.

We have converted several of the stores we operate from traditional factory stores to hot shops using tunnel oven technology to reduce operating costs and increase the number of hours each day we offer our hot Original Glazed® doughnuts. Certain of our franchisees also have converted factory stores to hot shops. We have converted additional factory stores to hot shops in fiscal 2009.

International Store Development. Markets outside the United States are a source of growth. As of February 3, 2008, there were a total of 204 Krispy Kreme stores (including 119 satellites) operated internationally, which were located in Australia, Canada, Hong Kong, Indonesia, Japan, Kuwait, Mexico, the Philippines, Qatar, Saudi Arabia, South Korea, the United Arab Emirates and the United Kingdom. In fiscal 2008, 85 new international stores were opened, and four international stores were closed. Based upon our continued research and experience with our international stores, we are focusing additional international development efforts primarily on opportunities in markets in Asia and the Middle East. We are focusing on these two geographic areas because of their favorable population demographics, relatively high levels of consumer sweet goods consumption and the popularity of Western brands in these markets. The development and franchise agreements for territories outside the United States (which include the countries listed above) provide for the development of over 170 additional stores in fiscal 2009 and thereafter. Our ability to expand in these or other international markets, however, will depend on a number of factors, including attracting experienced and well capitalized franchisees, demand for our product, our ability to supply or obtain the ingredients and equipment necessary to produce our products and local laws or policies of the particular countries.

Set forth below is a table containing certain store information as of the end of fiscal 2008, fiscal 2007 and fiscal 2006.

	At February 3, 2008	At January 28, 2007	At January 29, 2006
By Owner:			
Company Stores	105	113	133
Franchise Stores	344	282	269
Total Systemwide	<u>449</u>	<u>395</u>	<u>402</u>
By Type:			
Factory Stores			
Company	97	108	128
Franchise	198	188	195
Total Factory Stores	295	296	323
Satellites			
Company	8	5	5
Franchise	146	94	74
Total Satellites	<u>154</u>	<u>99</u>	<u>79</u>
Total Systemwide	<u>449</u>	<u>395</u>	<u>402</u>
By Location:			
Domestic Stores			
Company	100	107	127
Franchise	145	165	207
Total Domestic Stores	245	272	334
International Stores:			
Company	5	6	6
Franchise	199	117	62
Total International Stores	<u>204</u>	<u>123</u>	<u>68</u>
Total Systemwide	<u>449</u>	<u>395</u>	<u>402</u>

Store Operations

General store operations. We outline uniform specifications and designs for each Krispy Kreme store format and require compliance with our standards regarding the operation of each store, including, but not limited to, varieties of products, product specifications, sales channels, packaging, sanitation and cleaning, signage, furniture and fixtures, image and use of logos and trademarks, training and marketing and advertising. We also require the use of a computer and cash register system with specified capabilities to ensure the collection of sales information necessary for effective store management. Our franchisees are required to provide us with weekly sales reports.

We generally assist our franchisees with issues such as operating procedures, advertising and marketing programs, public relations, store design, training and technical matters. We also provide an opening team to provide on-site training and assistance both for the week prior to and during the first week of operation for each initial store opened by a new franchisee. The number of opening team members providing this assistance is reduced with each subsequent store opening for an existing franchisee.

Our stores generally operate seven days a week, excluding some major holidays. Traditionally, our sales have been slower during the winter holiday season and the summer months.

Quality standards and customer service. We encourage our employees to be courteous, helpful, knowledgeable and attentive. We emphasize the importance of performance by linking a portion of both a Company store manager's and an assistant Company store manager's incentive compensation to profitability and customer service. We also encourage high levels of customer service and the maintenance of our quality standards

by frequently monitoring our stores through a variety of methods, including periodic quality audits, “mystery shoppers” and a toll-free number. In addition, our customer experience department handles customer comments and conducts routine satisfaction surveys of our off-premises customers.

Management and staffing. Our Senior Vice President and General Manager of U.S. Operations, along with other corporate officers responsible for store operations, is responsible for corporate interaction with our store operations divisional directors and store management. Through our divisional directors, each of whom is responsible for a specific geographic region, we communicate frequently with all store managers and their staff using store audits, weekly communications by telephone or e-mail and both scheduled and surprise store visits.

We offer a comprehensive manager training program covering the critical skills required to operate a Krispy Kreme store and a training program for all positions in the store. The manager training program, conducted both at our headquarters and at certified training stores, includes classroom instruction, computer-based training modules and in-store training.

Our staffing varies depending on a store’s size, volume of business and number of sales channels. Stores, depending on the sales channels they serve, have employees handling on-premises sales, processing, production, bookkeeping, sanitation and delivery. Hourly employees, along with delivery personnel, are trained by local store management through hands-on experience and training manuals.

Store Ownership

We divide our stores into three categories: Company stores, associate stores and area developer stores. We refer to associates and area developers collectively as franchisees. The store counts below include both factory stores and satellites.

Company stores. As of February 3, 2008, Krispy Kreme owned 105 stores. Many of these stores were developed between 1937 and 1996 and are located predominantly in the Southeastern United States. These stores were designed as wholesale bakeries and generate a majority of their revenues through off-premises sales. Through acquisitions of associate and area developer franchisees’ market rights and related stores, as well as through new store construction, the number of Company stores located outside the Southeast has increased. In the past three fiscal years, we have examined the performance of each of our Company stores and closed 70 underperforming stores.

Franchisee stores. Our franchisees generally consist of associates who operate under our original franchising program developed in the 1940s and area developers who operate under our franchising program developed in the mid-1990s. We prefer that franchisees have ownership and successful operating experience in multi-unit food operations within the territory they propose for development. To ensure a consistent high-quality product, we require each franchisee to purchase our proprietary mixes and doughnut-making equipment. We devote resources to providing our franchisees with assistance in site selection, store design, employee training and marketing. We expect that in the near term the majority of franchisee growth will be primarily through international rather than domestic expansion.

As of February 3, 2008, a total of 44 franchisees operated 344 stores systemwide. Approximately 60% of those franchisees are area developers, and those area developers operated approximately 85% of the total number of franchise stores.

Associates. Associate stores have attributes which are similar to those of Company stores located in the Southeast, and associates typically have many years of experience operating Krispy Kreme stores. This group generally concentrates on growing sales within the current base of stores rather than developing new stores or new territories. Generally, our associates are not obligated to develop additional stores within their territories. We cannot grant licenses to other franchisees within an associate’s territory during the term of the license agreement.

Associates are typically parties to 15-year licensing agreements that are renewed automatically for successive five-year periods, unless previously terminated by either party. These licensing agreements generally permit associates to operate stores using the Krispy Kreme system within a specific territory. Associates generally pay royalties of 3.0% of on-premises sales and 1.0% of all other sales. Some associates also contribute 1.0% of all sales

to the Company-administered public relations and advertising fund, which we refer to as the Brand Fund. The Company has informed its associate franchisees that it will reduce the brand fund contribution rate to 0.75% for fiscal 2009. Our associates who were shareholders prior to our initial public offering in April 2000 have license agreements which were extended for a period of 20 years following that offering. We do not plan to license any new Krispy Kreme franchisees under the terms of the associate license agreement.

Area developers. Under our area developer franchise program, which we introduced in the mid-1990s to strategically expand into new territories in the United States and Canada, we licensed territories, usually defined by metropolitan statistical areas, to area developers which we believed were capable of developing a prescribed number of stores within a specified time period. We have also used area developers through a modified franchise program to expand outside of the United States and Canada.

As of February 3, 2008, we had an equity interest in seven of the area developers. We do not currently expect to own any equity interests in any area developers that may be formed in the future.

Many of our area developers are multi-unit food operators with knowledge about their local territory or territories. Our area developer program includes a royalty and fee structure that is more attractive to Krispy Kreme than that of our associate program.

Each of our domestic and Canadian area developers has been required to enter into two types of agreements: a development agreement, which establishes the number of stores to be developed in an area, and a franchise agreement for each store opened. With respect to our international area developers, most have entered into one agreement covering both store development and store operations for each store opened. Area developers typically pay development and franchise fees ranging from \$20,000 to \$50,000 for each store they develop. Domestic and international area developers generally pay royalties of 4.5% and 6.0%, respectively, of all sales. The Company has informed its area developers that it will reduce the royalty rate on off-premises sales to 3.5% in fiscal 2009. Off-premises sales represented approximately 37% of domestic area developer sales and less than 1% of international area developer sales in fiscal 2008.

Our current standard franchise agreement for domestic and Canadian area developers provides for a 15-year term. Upon expiration of the term, an area developer typically has the right to acquire a successor franchise on terms and conditions of the franchise agreement that we are then using and subject to certain conditions. The agreement can be terminated for a number of reasons, including the failure of the franchisee to comply with system standards or to make timely payments within applicable grace periods, subject to state law. Domestic area developers are required to contribute 1.0% of their sales to the Brand Fund. The Company has informed its domestic area developer franchisees that it will reduce the brand fund contribution rate to 0.75% for fiscal 2009. International area developers generally are required to contribute 0.25% of their sales to the Brand Fund.

In addition to a franchise agreement, all domestic area developers have signed development agreements which require them to develop a specified number of stores on or before specific dates. Generally, these agreements expire upon the conclusion of the store development schedule stated in the agreement, which schedule varies among area developers. Most international franchisees have executed a single agreement that includes both franchise rights and development obligations. If franchisees fail to develop their stores on schedule, we have the right to terminate the agreement and develop Company stores or develop stores through other franchisees in their territories. Currently, we have several area developers that are not in compliance with their development schedules and a number of domestic development agreements have expired.

Where we are an equity investor in an area developer, we contribute equity or guarantee debt or lease commitments of the franchisee generally proportionate to our ownership interest. See Note 18 to the consolidated financial statements appearing elsewhere herein for additional information on our franchisee investments.

Franchisee financial performance. Over the past several years, domestic franchisees have closed a large number of stores in an effort to improve overall financial performance. Several franchisees have been experiencing financial pressures which, in certain instances, became exacerbated during fiscal 2008. On August 22, 2007, Great Circle, the Company's franchisee in Southern California, filed for reorganization under Chapter 11 of the Bankruptcy Code. At the time of the filing, Great Circle operated 11 franchise stores, which it continues to

operate. On September 4, 2007, Sweet Traditions, the Company's franchisee in Northeastern Illinois and in Eastern Missouri, filed for reorganization under Chapter 11 of the Bankruptcy Code. At the time of the filing, Sweet Traditions operated 23 franchise stores. On February 7, 2008, the bankruptcy court authorized Sweet Traditions to sell substantially all of its assets, including 20 Krispy Kreme stores, to Hot Light Brands, L.L.C., an affiliate of Allied Capital Corporation. Krispy Kreme consented to the sale and the assignment of the franchise agreements to Hot Light Brands, L.L.C., which currently operates these 20 stores. The Company believes franchisees will close additional stores in the future, and the number of such closures may be significant. Royalty revenues and most KK Supply Chain revenues are directly correlated to sales by franchise stores and, accordingly, franchise store closures have an adverse effect on the Company's revenues, results of operations and cash flows.

Products

Doughnuts and Related Products. We currently make and sell over 20 varieties of high-quality doughnuts, including our hot Original Glazed[®] doughnut. Generally a product is first tested in our Company stores and then rolled out to our franchise stores. We have introduced doughnuts in non-traditional shapes and packaged doughnut snacks, as well as non-traditional packaging offerings including doughnut hole cups, for distribution through convenience stores.

In December 2007, we completed the process of reducing artificial trans fats in our doughnuts, which now contain zero grams of artificial trans fats per serving at all U.S. and most international locations.

Beverages. We have implemented in the majority of our stores a complete beverage program, including drip coffees, a complete line of espresso-based coffees including flavors, both coffee-based and noncoffee-based frozen drinks and packaged and fountain beverages, and we continue to seek to improve our beverage program. These drinks are designed to complement our existing juices, sodas, milks and water. In September 2007, we ceased production at our coffee roasting facility and sold our coffee roasting assets, and we simultaneously entered into an agreement with the purchaser to supply our coffee needs.

Marketing

Krispy Kreme's approach to marketing is a natural extension of our brand equity, brand attributes, relationship with our customers and our values. To build our brand and drive our sales in a manner aligned with our brand values, we have focused our marketing activities in the following areas:

Store Experience. Our factory stores and hot shops are where most customers first experience a hot Original Glazed[®] doughnut. Customers know that when our Hot Krispy Kreme Original Glazed Now[®] sign in the store window is illuminated, they can see our doughnuts being made and enjoy a hot Original Glazed[®] doughnut within seconds after it is made. We believe this begins our relationship with our customers and forms the foundation of the Krispy Kreme experience.

Relationship Marketing. Many of our brand-building activities are grassroots-based and focus on developing relationships with various constituencies, including consumers, local non-profit organizations, communities and businesses. Specific initiatives include:

- Good neighbor product deliveries to create trial uses;
- Sponsorship of local events and nonprofit organizations;
- Friends of Krispy Kreme eNewsletters sent to those customers that have registered to receive monthly updates about new products, promotions and store openings; and
- Fundraising programs that assist local charitable organizations to raise money for their non-profit causes.

Public Relations. We utilize media relations, product placement and event marketing as vehicles to generate brand awareness and trial usage for our products. In the years following our initial public offering, there were numerous product placements and references to our products on leading television programs and films and favorable media mentions in print publications. In recent years, there have been fewer such product placements, references and favorable media mentions.

Advertising and Sales Promotions. Grass roots marketing has been central to building our brand awareness. Although our marketing strategy has not historically employed traditional advertising, we have occasionally utilized free-standing newspaper inserts, direct mail, radio, television and sales promotions to generate awareness and usage of our products.

Brand Fund. We administer a public relations and advertising fund, which we refer to as the Brand Fund. We contribute 1.0% of sales from Company stores to the Brand Fund. Domestic area developers are required to contribute 1.0% of their sales to the Brand Fund. International area developers generally are required to contribute 0.25% of their sales to the Brand Fund. Some associates contribute 1.0% of their sales to the Brand Fund. The Company has informed its associate and domestic area developer franchisees that it will reduce the brand fund contribution rate to 0.75% for fiscal 2009, and the Company also will reduce the contribution rate for its stores to this amount. Proceeds from the Brand Fund are utilized to develop programs to increase sales and brand awareness and build brand affinity. Brand Fund proceeds are also utilized to measure consumer feedback and the performance of our products and stores. In fiscal 2008, we and our franchisees contributed approximately \$3.4 million to the Brand Fund.

Management Information Systems

Krispy Kreme has a management information system that allows for communication among our corporate office, support operations, Company stores, associates and area developers. Our franchisees and other affiliates connect to this system through our extranet and have access to e-mail and the ability to provide financial reporting.

An enterprise resource planning system supports major financial and operating functions within the Company, including financial reporting and inventory control. A data warehouse system supports the financial and operating needs of our Company Stores and KK Supply Chain segments.

All Company stores have been retrofitted with a point of sale, or POS, system. This POS system provides each store with the ability to manage on-premises sales. We retrieve the sales information from each store's POS system, which gives us the ability to analyze data. Two-way electronic communication with our stores permits sales transactions to be uploaded and price changes to be downloaded to in-store POS systems.

Direct store delivery sales operations have access to an internally-developed route accounting system connected into the corporate network. Information from these systems is retrieved at multiple times weekly and aggregated into the corporate data warehouse.

The Company maintains business continuity plans for its locations to protect against business interruption in the event of a system failure resulting from a catastrophe, natural disaster, security breach, power loss, telecommunications failure or other similar event. These plans include daily system backup procedures and use of offsite data recovery centers.

Competition

Our competitors include retailers of doughnuts and snacks sold through convenience stores, supermarkets, restaurants and retail stores. We compete against Dunkin' Donuts, which has the largest number of outlets in the doughnut retail industry, as well as against Tim Hortons and regionally and locally owned doughnut shops and distributors. Dunkin' Donuts and Tim Hortons have substantially greater financial resources than we do and are expanding to other geographic regions, including areas where we have a significant store presence. We also compete against other retailers who sell sweet treats such as cookie stores and ice cream stores. We compete on elements such as food quality, concept, convenience, location, customer service and value. Customer service, including frequency of deliveries and maintenance of fully stocked shelves, is an important factor in successfully competing for convenience store and grocery/mass merchant business. There is an industry trend moving towards expanded fresh product offerings at convenience stores during morning and evening drive times, and products are either sourced from a central commissary or brought in by local bakeries.

In the packaged doughnut market, an array of doughnuts is typically merchandised on a free-standing branded display. We compete primarily with other well-known producers of baked goods, such as Dolly Madison, Entenmann's and Hostess, and some regional brands.

Trademarks and Trade Names

Our doughnut shops are operated under the Krispy Kreme name, and we use over 40 federally registered trademarks and service marks, including Krispy Kreme® and Hot Krispy Kreme Original Glazed Now® and the logos associated with these marks. We have also registered some of our trademarks in approximately 40 other countries. We generally license the use of these trademarks to our franchisees for the operation of their doughnut shops. We also license the use of certain trademarks to convenience stores and groceries/mass merchants in connection with the sale of some of our products at those locations.

Although we are not aware of anyone else using “Krispy Kreme” or “Hot Krispy Kreme Original Glazed Now” as a trademark or service mark, we are aware that some businesses are using “Krispy” or a phonetic equivalent, such as “Crispie Creme,” as part of a trademark or service mark associated with retail doughnut stores. There may be similar uses we are unaware of which could arise from prior users. When necessary, we aggressively pursue persons who use our trademarks unlawfully and without our consent.

Government Regulation

Local regulation. Our stores, both those in the United States and those in international markets, are subject to licensing and regulation by a number of government authorities, which may include health, sanitation, safety, fire, building and other agencies in the states or municipalities in which the stores are located. Developing new doughnut stores in particular areas could be delayed by problems in obtaining the required licenses and approvals or by more stringent requirements of local government bodies with respect to zoning, land use and environmental factors. Our agreements with our franchisees require them to comply with all applicable federal, state and local laws and regulations, and indemnify us for costs we may incur attributable to their failure to comply.

Food product regulation. Our doughnut mixes are produced at our manufacturing facility in Winston-Salem, North Carolina. We closed our mix manufacturing operation in Effingham, Illinois and sold the facility in January 2008. Production at and shipments from our Winston-Salem facility are subject to the applicable federal and state governmental rules and regulations. Similar state regulations may apply to products shipped from our doughnut stores to convenience stores or groceries/mass merchants. Many of our convenience store and grocery/mass merchant customers require us to guarantee our products’ compliance with applicable food regulations.

As is the case for other food producers, numerous other government regulations apply to our products. For example, the ingredient list, product weight and other aspects of our product labels are subject to state and federal regulation for accuracy and content. Most states periodically check products for compliance. The use of various product ingredients and packaging materials is regulated by the United States Department of Agriculture and the Federal Food and Drug Administration. Conceivably, one or more ingredients in our products could be banned, and substitute ingredients would then need to be found.

In connection with our international operations, we typically export our products, principally our doughnut mixes (or concentrate which is combined with other ingredients sourced locally to manufacture mix) to our franchisees in markets outside the United States. Numerous government regulations apply to both the export of food products from the United States as well as the import of food products into other countries. If one or more of the ingredients in our products are banned, alternative ingredients would need to be found. Although we intend to be proactive in addressing any product ingredient issues, such requirements may delay our ability to open stores in other countries in accordance with our desired schedule.

Franchise regulation. We must comply with regulations adopted by the Federal Trade Commission (the “FTC”) and with several state and foreign laws that regulate the offer and sale of franchises. The FTC’s Trade Regulation Rule on Franchising (“FTC Rule”) and certain state and foreign laws require that we furnish prospective franchisees with a franchise disclosure document containing information prescribed by the FTC Rule and applicable state and foreign laws and regulations. We have amended our Franchise Disclosure Document (“FDD”) to conform it to new FTC disclosure requirements. We have submitted the amended FDD for registration in those states in which we have registered our franchise offering. We currently are able to offer franchises in all states except Maryland.

We also must comply with a number of state and foreign laws that regulate some substantive aspects of the franchisor-franchisee relationship. These laws may limit a franchisor's ability to: terminate or not renew a franchise without good cause; interfere with the right of free association among franchisees; disapprove the transfer of a franchise; discriminate among franchisees with regard to charges, royalties and other fees; and place new stores near existing franchises.

Bills intended to regulate certain aspects of franchise relationships have been introduced into the United States Congress on several occasions during the last decade, but none has been enacted.

Employment regulations. We are subject to state and federal labor laws that govern our relationship with employees, such as minimum wage requirements, overtime and working conditions and citizenship requirements. Many of our on-premises and delivery personnel are paid at rates related to the federal minimum wage. Accordingly, further increases in the minimum wage could increase our labor costs. Furthermore, the work conditions at our facilities are regulated by the Occupational Safety and Health Administration and are subject to periodic inspections by this agency.

Other regulations. We are subject to a variety of consumer protection and similar laws and regulations at the federal, state and local level. Failure to comply with these laws and regulations could subject us to financial and other penalties. We have several contracts to serve United States military bases, which require compliance with certain applicable regulations. The stores which serve these military bases are subject to health and cleanliness inspections by military authorities. We are also subject to federal and state environmental regulations, but we currently believe that these will not have a material effect on our operations.

Employees

As of February 3, 2008, we employed 4,033 people. Of these, 190 were employed in our headquarters and administrative offices and 143 were employed in our manufacturing and distribution centers. In our Krispy Kreme stores, we had 3,700 employees. Of our total workforce, 3,288 were full-time employees, including 549 managers and administrators.

We are not a party to any collective bargaining agreement although we have experienced occasional unionization initiatives. We believe our relationships with our employees are good.

Available Information

Krispy Kreme files annual reports, quarterly reports, proxy statements and other documents with the SEC under the Securities Exchange Act of 1934 (the "Exchange Act"). The public may read and copy any materials that the Company files with the SEC at the SEC's Public Reference Room at 100 F Street N.E., Washington, D.C. 20549 or obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Additionally, the SEC maintains a website that contains reports, proxy statements, information statements and other information regarding issuers, including the Company, that file electronically with the SEC at: <http://www.sec.gov>.

We make available free of charge through our website at: <http://www.krispykreme.com> our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and, if applicable, amendments to those reports filed or furnished pursuant to the Exchange Act as soon as reasonably practicable after we electronically file such material with, or provide it to, the SEC.

In addition, many of our corporate governance documents are available on our website. Specifically, our Nominating and Corporate Governance Committee Charter is available at: http://www.krispykreme.com/gov_charter.pdf, our Compensation Committee Charter is available at: http://www.krispykreme.com/comp_charter.pdf, our Audit Committee Charter is available at: http://www.krispykreme.com/audit_charter.pdf, our Corporate Governance Guidelines are available at: <http://www.krispykreme.com/corpgovernance.pdf>, our Code of Business Conduct and Ethics is available at: http://www.krispykreme.com/code_of_ethics.pdf, and our Code of Ethics for Chief Executive and Senior Financial Officers is available at: http://www.krispykreme.com/officers_ethics.pdf. Each of these documents is available in print to any shareholder who requests it by sending a written request to Krispy Kreme Doughnuts, Inc., 370 Knollwood Street, Suite 500, Winston-Salem, NC 27103, Attention: Secretary.

The content on our website is available for information purposes only and shall not be deemed to be a part of this Annual Report.

Item 1A. RISK FACTORS.

Our business, operations and financial condition are subject to various risks. Some of these risks are described below, and you should take such risks into account in evaluating us or any investment decision involving our Company. This section does not describe all risks that may be applicable to us, our industry or our business, and it is intended only as a summary of certain material risk factors. More detailed information concerning the risk factors described below is contained in other sections of this Annual Report on Form 10-K.

RISKS RELATING TO OUR BUSINESS

We are subject to ongoing governmental investigations which could require us to pay substantial fines or other penalties or otherwise have a material adverse effect on us.

We and certain of our former executive officers, directors and other employees are currently subject to investigations by the SEC and the United States Attorney's Office for the Southern District of New York. While we are cooperating with each of these investigations, adverse developments in connection with the investigations, including any expansion of the scope of the investigations, could negatively impact us and could divert the efforts and attention of our management team from our ordinary business operations. In connection with these investigations, it is possible that we will be required to pay criminal or civil fines, consent to injunctions on future conduct or suffer other penalties, any of which could have a material adverse effect on us. See Item 3, "Legal Proceedings" for a more detailed description of these investigations.

Our potential indemnification obligations and limitations of our director and officer liability insurance could have a material adverse effect on our results of operations and financial condition.

As discussed elsewhere herein, several of our former directors, officers and employees are the subject of criminal, administrative and civil investigations and lawsuits. Under North Carolina law, our bylaws and certain indemnification agreements, we may have an obligation to indemnify our former officers and directors in relation to these matters. Some of these indemnification obligations would be covered by certain insurers under applicable directors' and officers' liability policies. In connection with the settlement of the securities class action and the partial settlement of the derivative litigation described below under Item 3, "Legal Proceedings," however, we have agreed with these insurers to limit our claims for reimbursement for legal fees and costs incurred in connection with those proceedings, and the related criminal and administrative investigations, to a specified reserve fund in the amount of \$3.4 million (which currently has approximately \$1.4 million remaining). Two of our former officers have agreed to limit their claims for indemnity from us in connection with these investigations to a portion of the amount deposited into the reserve fund. This portion is not available to us for our claims for reimbursement of the legal fees and costs described above. If the sums provided for in this fund are not sufficient to provide for reimbursement to us or if we incur significant uninsured indemnity obligations, our indemnity obligations could have a material adverse effect on our results of operations and financial condition. In addition, counsel for the plaintiffs in several settled shareholder derivative actions have deferred their application for fees until conclusion of the derivative actions and there can be no assurance as to the amount that we will be required to pay to such counsel or whether the remaining reserve fund at such time will be sufficient to reimburse us for such amount.

We have experienced declines in revenues and have incurred net losses in each of the last three fiscal years and may experience further declines and losses in the future.

We incurred net losses of \$135.8 million, \$42.2 million and \$67.1 million in fiscal 2006, 2007 and 2008, respectively. We also experienced a decline in revenues in each of the last three fiscal years. The revenue decline reflects fewer Company stores in operation, a decline in domestic royalty revenues and in sales of mixes and other ingredients resulting from lower sales by the Company's domestic franchisees. Lower revenues have adversely affected operating margins because of the fixed or semi-fixed nature of many of our direct operating expenses. In addition, we have recorded significant asset impairment charges, principally related to underperforming Company stores and, in fiscal 2008, a manufacturing and distribution facility we divested. Total impairment charges and lease termination costs for fiscal 2008 were \$62.1 million. We may experience further revenue declines, asset impairments and net losses in the future.

Store profitability is sensitive to changes in sales volume.

Each factory store has significant fixed or semi-fixed costs, and margins and profitability are significantly affected by doughnut production volume and sales. While our average weekly sales per store have risen over the past three years, the improvement has been driven principally by the closure of underperforming locations. We are in the process of reevaluating our business and have taken steps to improve our sales. There can be no assurance, however, that these steps will produce the desired results. Because significant fixed and semi-fixed costs prevent us from reducing our operating expenses in proportion with declining sales, our earnings are negatively impacted if sales decline.

A number of factors have historically affected, and will continue to affect, our sales results, including, among other factors:

- Consumer trends;
- Our ability to execute our business strategy effectively;
- Competition;
- General regional and national economic conditions; and
- Weather conditions.

Changes in our sales results could cause the price of our common stock to fluctuate substantially.

We rely in part on our franchisees. Disputes with our franchisees, or failures by our franchisees to operate successfully, to develop or finance new stores or build them on suitable sites or open them on schedule, could adversely affect our growth and our operating results.

Area developers and associates, which are all independent contractors and not Krispy Kreme employees, contributed (including through purchases from KK Supply Chain) approximately 29% of our total revenues in fiscal 2008. We rely in part on these area developers and associates and the manner in which they operate their locations to develop and promote our business. We occasionally have disputes with franchisees. Future disputes could materially adversely affect our business, financial condition and results of operations. We provide training and support to area developers and associates, but the quality of franchised store operations may be diminished by any number of factors beyond our control. The failure of our area developers and associates to operate franchises successfully could have a material adverse effect on us, our reputation and our brands and could materially adversely affect our business, financial condition and results of operations. In addition, although we do not control our franchisees and they operate as independent contractors, actions taken by any of our franchisees may be seen by the public as actions taken by us, which, in turn could adversely affect our reputation or brands.

Reduced access to financing by our franchisees on reasonable terms could adversely affect our future operations by leading to additional store closures by our franchisees, which would in turn reduce our franchise revenues and KK Supply Chain revenues. Most area development agreements specify a schedule for opening stores in the territory covered by the agreement. These schedules form the basis for our expectations regarding the number and timing of new Krispy Kreme store openings. In the past, Krispy Kreme has agreed to extend or modify development schedules for certain area developers and may do so in the future.

Several franchisees have been experiencing financial pressures which, in certain instances, became more exacerbated during fiscal 2008. We have guaranteed certain obligations of franchisees in which we have an equity interest. Financial pressures on these franchisees increase the likelihood that we would be required to perform under these guarantees. In fiscal 2008, two of our other franchisees filed for reorganization under Chapter 11 of the United States Bankruptcy Code. Franchisees closed 26 stores in fiscal 2008. We believe franchisees will close additional stores in the future, and the number of such closures may be significant. Royalty revenues and most of KK Supply Chain revenues are directly correlated to sales by franchise stores and, accordingly, franchise store closures have an adverse effect on our revenues, results of operations and cash flows.

A portion of our growth strategy depends on opening new Krispy Kreme stores internationally. Our ability to expand our store base is influenced by factors beyond our and our franchisees' control, which may slow store development and impair our strategy.

As we work to stabilize our operations and to refine our store format for new domestic stores, we do not expect that we or our franchisees will open a significant number of domestic factory stores in the near future, although we plan to begin construction of a limited number of Company-operated satellite stores in fiscal 2009, and domestic franchisees also may open satellite stores. Our recent growth strategy has depended on the opening of new Krispy Kreme stores internationally. Our ability to expand our store base both domestically and internationally is influenced by factors beyond our and our franchisees' control, which may slow store development and impair our strategy. The success of these new stores will be dependent in part on a number of factors, which neither we nor our franchisees can control.

Our new domestic store operating model and refranchising strategy may not be successful.

We are working to refine our domestic store operating model to focus on a "hub and spoke" system, under which multiple satellite stores in a market are provided doughnuts from a single traditional factory store or commissary at which all doughnut production for the market takes place. Because the hub and spoke concept has not been completely refined, we do not expect that the Company or its franchisees will open a significant number of domestic factory stores in the near future. In addition, we cannot predict whether this new model will be successful in increasing our profitability.

In addition, we are developing a strategy to refranchise certain geographic markets. Because we have not completed the development of our detailed refranchising plans and have not entered into any new domestic franchise agreements in several years, we cannot predict the likelihood of refranchising any such markets or the amount of any proceeds which might be received therefrom, including the amounts which might be realized from the sale of store assets and the execution of any related franchise agreements. Refranchising could result in the recognition of impairment losses on the related assets.

Currency, economic, political and other risks associated with our international operations could adversely affect our operating results.

As of February 3, 2008, there were 204 Krispy Kreme stores operated outside of the United States. Such operations are transacted in the respective local currency. Amounts payable to us by our international franchisees are based on a conversion of the royalties and other fees to U.S. dollars using the prevailing exchange rate. In particular, the royalties are based on a percentage of net sales generated by our foreign franchisees' operations. Our revenues from international franchisees are exposed to the potentially adverse effects of our franchisees' operations, currency exchange rates, local economic conditions, political instability and other risks associated with doing business in foreign countries. To the extent that the portion of our revenues generated from international operations increases in the future, our exposure to changes in foreign economic conditions and currency fluctuations will increase.

In connection with our international operations, we typically export our products, principally our doughnut mixes and doughnut mix concentrates, to our franchisees in markets outside the United States. Numerous government regulations apply to both the export of food products from the United States as well as the import of food products into other countries. If one or more of the ingredients in our products are banned, alternative ingredients would need to be found. Although we intend to be proactive in addressing any product ingredient issues, such requirements may delay our ability to open stores in other countries in accordance with our desired schedule.

Our profitability is sensitive to changes in the cost of raw materials.

Although we utilize forward purchase contracts and futures contracts and options on such contracts to mitigate the risks related to commodity price fluctuations, such contracts do not fully mitigate commodity price risk, particularly over the longer term. In addition, the portion of our anticipated future commodity requirements that is subject to such contracts varies from time to time.

Flour and shortening are our two most significant raw materials. The prices of wheat and soybean oil, which are the principal components of flour and shortening respectively, reached record highs in fiscal 2008 and have continued to rise in fiscal 2009. Continued high prices or further adverse changes in commodity prices could adversely affect our profitability and liquidity and that of our franchisees.

We are the exclusive supplier of doughnut mixes, other key ingredients and flavors to all domestic Krispy Kreme Company stores. If we have any problems supplying these ingredients, our and our franchisees' ability to make doughnuts will be negatively affected. In addition, changes in vendor credit terms could adversely affect our profitability and liquidity.

We are the exclusive supplier of doughnut mixes and other key ingredients and flavors to all domestic Company stores and most domestic franchise stores. We supply the doughnut mixes and other key ingredients and flavors out of our mix manufacturing facility located in Winston-Salem, North Carolina. Although we have a backup source to manufacture our doughnut mixes in the event of the loss of our Winston-Salem plant, we do not have a contract with that source and its facilities do not regularly produce our doughnut mixes. Any interruption of existing or planned production capacity at our manufacturing plants could impede our ability or that of our franchisees to make doughnuts. In addition, in the event that any of our supplier relationships terminate unexpectedly, even where we have multiple suppliers for the same ingredient, we may not be able to obtain adequate quantities of the same high-quality ingredient at competitive prices.

We are the only manufacturer of our doughnut-making equipment. If we have any problems producing this equipment, our stores' ability to make doughnuts will be negatively affected.

We manufacture our custom doughnut-making equipment in one facility in Winston-Salem, North Carolina. Although we have limited backup sources for the production of our equipment, obtaining new equipment quickly in the event of the loss of our Winston-Salem plant would be difficult and would jeopardize our ability to supply equipment to new stores or new parts for the maintenance of existing equipment in established stores on a timely basis.

We have only one supplier of glaze flavoring, and any interruption in supply could impair our ability to make our signature hot Original Glazed[®] doughnut.

We utilize a sole supplier for our glaze flavoring. Any interruption in the distribution from our current supplier could affect our ability to produce our signature hot Original Glazed[®] doughnut.

We are subject to franchise laws and regulations that govern our status as a franchisor and regulate some aspects of our franchise relationships. Our ability to develop new franchised stores and to enforce contractual rights against franchisees may be adversely affected by these laws and regulations, which could cause our franchise revenues to decline.

We, as a franchisor, are subject to both regulation by the FTC and state laws regulating the offer and sale of franchises. Our failure to obtain or maintain approvals to offer franchises would cause us to lose franchise revenues and KK Supply Chain revenues. In addition, state laws that regulate substantive aspects of our relationships with franchisees may limit our ability to terminate or otherwise resolve conflicts with our franchisees. Because we plan to grow primarily through franchising, any impairment of our ability to develop new franchise stores will negatively affect us and our growth strategy.

Off-premises sales represent a significant portion of our sales. The infrastructure necessary to support off-premises sales results in significant fixed and semi-fixed costs. Also, the loss of one of our large wholesale customers could adversely affect our financial condition and results of operations.

The Company operates a fleet network to support off-premises sales. Declines in off-premises sales without a commensurate reduction in operating expenses, as well as rising fuel costs, may adversely affect our business.

We have several large wholesale customers. Our top two such customers accounted for approximately 10.2% of total Company store sales during fiscal 2008. The loss of one of our large national wholesale customers could adversely affect our results of operations across all business segments. These customers do not enter into long-term contracts; instead, they make purchase decisions based on a combination of price, product quality, consumer demand and service quality. They may in the future use more of their shelf space, including space currently used for our products, for other products, including private label products. If our sales to one or more of these customers are reduced, this reduction may adversely affect our business.

Our failure or inability to enforce our trademarks could adversely affect the value of our brands.

We own certain common law trademark rights in the United States, as well as numerous trademark and service mark registrations in the United States and in other jurisdictions. We believe that our trademarks and other intellectual property rights are important to our success and our competitive position. We therefore devote appropriate resources to the protection of our trademarks and proprietary rights and aggressively pursue persons who unlawfully and without our consent use or register our trademarks. The protective actions that we take, however, may not be sufficient, in some jurisdictions, to secure our trademark rights for some of the goods and services that we offer and/or to prevent imitation by others, which could adversely affect the value of our trademarks and service marks.

In jurisdictions outside the United States, specifically Costa Rica, Guatemala, Indonesia, Nigeria, Peru, the Philippines, Thailand and Venezuela, we are aware that some businesses have registered, used and/or may be using “Krispy Kreme” (or its phonetic equivalent) in connection with doughnut-related goods and services. There may be similar such uses or registrations of which we are unaware and which could perhaps arise from prior users. These uses and/or registrations could limit our operations and possibly cause us to incur litigation costs, or pay damages or licensing fees to a prior user or registrant of similar intellectual property.

We have substantial indebtedness under our secured credit facilities that could adversely impact cash availability for growth and operations and may increase our vulnerability to general adverse economic and industry conditions.

Our indebtedness for borrowed money as of February 3, 2008 was approximately \$76.7 million, including \$76.1 million under our secured credit facilities. Our debt service obligations with respect to this indebtedness could have an adverse impact on our earnings and cash flow for as long as the indebtedness is outstanding.

Our substantial level of indebtedness could have important consequences, including the following:

- our ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired;
- our use of a substantial portion of our cash flow from operations to make debt service payments under our secured credit facilities, which will reduce the funds available to us for other purposes such as potential acquisitions and capital expenditures;
- our level of indebtedness may put us at a competitive disadvantage and reduce our flexibility in planning for, or responding to, changing conditions in our business; and
- our level of indebtedness may increase our vulnerability to general economic downturns and adverse developments in our industry.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets, seek additional capital or restructure or refinance our indebtedness. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets to meet our debt service requirements.

Our secured credit facilities impose restrictions and obligations upon us that significantly limit our ability to operate our business, and in the past we have sought and received waivers relating to these restrictions and obligations.

Our secured credit facilities impose financial and other restrictive covenants that limit our ability to plan for and respond to changes in our business. Under our secured credit facilities, we are required to meet certain financial tests, including a maximum leverage ratio and a minimum interest coverage ratio. In addition, we must comply with covenants which, among other things, limit the incurrence of additional indebtedness, liens, investments, dividends, transactions with affiliates, asset sales, acquisitions, capital expenditures, mergers and consolidations, prepayments of other indebtedness and other matters customarily restricted in such agreements. Any failure to comply with these covenants could result in an event of default under our secured credit facilities.

We have sought and received waivers of defaults and amendments to covenants from the lenders under our current and former secured credit facilities. While we were able to obtain these waivers and amendments, in some cases at a significant additional cost, there is no assurance that we will not require additional waivers or amendments or that any future waivers or amendments will be granted. In the event of a default, the absence of waivers or amendments could result in acceleration of all or substantially all of our indebtedness and the loss of earning assets securing our indebtedness. As a result of amendments and waivers in fiscal 2008 and 2009, we have paid fees of approximately \$835,000 and the interest rate on the loans has increased from LIBOR + 2.75% to LIBOR + 5.50% (with a LIBOR floor of 3.25%). Any future amendments or waivers could result in additional fees or rate increases, which could have a material adverse effect on our financial position, results of operations and cash flows.

RISKS RELATING TO THE FOOD SERVICE INDUSTRY

The food service industry is affected by consumer preferences and perceptions. Changes in these preferences and perceptions may lessen the demand for our doughnuts, which would reduce sales and harm our business.

Food service businesses are often affected by changes in consumer tastes, national, regional and local economic conditions and demographic trends. Individual store performance may be adversely affected by traffic patterns, the cost and availability of labor, purchasing power, availability of products and the type, number and location of competing stores. Our sales have been and may continue to be affected by changing consumer tastes, such as health or dietary preferences, including the reduction of consumption of food products containing high levels of carbohydrates, that cause consumers to avoid doughnuts in favor of foods that are perceived as healthier. Moreover, because we are primarily dependent on a single product, if consumer demand for doughnuts should decrease, our business would suffer more than if we had a more diversified menu.

The food service industry is affected by litigation, regulation and publicity concerning food quality, health and other issues, which can cause customers to avoid our products and result in liabilities.

Food service businesses can be adversely affected by litigation, by regulation and by complaints from customers or government authorities resulting from food quality, illness, injury or other health concerns or operating issues stemming from one store or a limited number of stores, including stores operated by our franchisees. In addition, class action lawsuits have been filed and may continue to be filed against various food service businesses (including quick service restaurants) alleging, among other things, that food service businesses have failed to disclose the health risks associated with high-fat foods and that certain food service business marketing practices have encouraged obesity. Adverse publicity about these allegations may negatively affect us and our franchisees, regardless of whether the allegations are true, by discouraging customers from buying our products. Because one of our competitive strengths is the taste and quality of our doughnuts, adverse publicity or regulations relating to food quality or other similar concerns affects us more than it would food service businesses that compete primarily on other factors. We could also incur significant liabilities if such a lawsuit or claim results in a decision against us or as a result of litigation costs regardless of the result.

Our success depends on our ability to compete with many food service businesses.

We compete with many well-established food service companies. At the retail level, we compete with other doughnut retailers and bakeries, specialty coffee retailers, bagel shops, fast-food restaurants, delicatessens, take-out food service companies, convenience stores and supermarkets. At the wholesale level, we compete primarily with grocery store bakeries, packaged snack foods and vending machine dispensers of snack foods. Aggressive pricing by our competitors or the entrance of new competitors into our markets could reduce our sales and profit margins. Moreover, many of our competitors offer consumers a wider range of products. Many of our competitors or potential competitors have substantially greater financial and other resources than we do which may allow them to react to changes in pricing, marketing and the quick service restaurant industry better than we can. As competitors expand their operations, we expect competition to intensify. In addition, the start-up costs associated with retail doughnut and similar food service establishments are not a significant impediment to entry into the retail doughnut business. We also compete with other employers in our markets for hourly workers and may be subject to higher labor costs.

RISKS RELATING TO OWNERSHIP OF OUR COMMON STOCK

The market price of our common stock has been volatile and may continue to be volatile, and the value of any investment may decline.

The market price of our common stock has been volatile and may continue to be volatile. This volatility may cause wide fluctuations in the price of our common stock, which is listed on the New York Stock Exchange ("NYSE"). The market price may fluctuate in response to many factors including:

- The results of the ongoing governmental investigations and civil litigation described under Item 3, "Legal Proceedings";
- Changes in general conditions in the economy or the financial markets;
- Variations in our quarterly operating results or our operating results failing to meet the expectations of securities analysts or investors in a particular period;
- Changes in financial estimates by securities analysts;
- Other developments affecting Krispy Kreme, our industry, customers or competitors; and
- The operating and stock price performance of companies that investors deem comparable to Krispy Kreme.

Our charter, bylaws and shareholder rights agreement contain anti-takeover provisions that may make it more difficult or expensive to acquire us in the future or may negatively affect our stock price.

Our articles of incorporation, bylaws and shareholder rights agreement contain several provisions that may make it more difficult for a third party to acquire control of us without the approval of our board of directors. These provisions may make it more difficult or expensive for a third party to acquire a majority of our outstanding voting common stock. They may also delay, prevent or deter a merger, acquisition, tender offer, proxy contest or other transaction that might otherwise result in our shareholders' receiving a premium over the market price for their common stock.

Item 1B. UNRESOLVED STAFF COMMENTS.

None.

Item 2. PROPERTIES.

Stores. As of February 3, 2008, there were 449 Krispy Kreme stores systemwide, of which 105 were Company stores and 344 were operated by franchisees.

- As of February 3, 2008, all of our Company stores, except commissaries, had on-premises sales, and approximately 75 of our Company factory stores also engaged in off-premises sales.
- Of the 105 Company stores as of February 3, 2008, we owned the land and building for 47 stores, we owned the building and leased the land for 49 stores and leased both the land and building for 9 stores.

KK Supply Chain facilities. We own a 147,000 square foot mix manufacturing plant and distribution center in Winston-Salem, North Carolina. We lease a 102,000 square foot facility near Los Angeles, California, which is used as a distribution center, under a lease that expires on May 31, 2008. We currently are considering either relocating the Los Angeles facility or outsourcing distribution in the western United States to a third party. Additionally, we own a 103,000 square foot facility in Winston-Salem, which we use primarily as our equipment manufacturing facility and training facility.

Other properties. Our corporate headquarters is located in Winston-Salem, North Carolina. We occupy approximately 59,000 square feet of this multi-tenant facility under a lease that expires on September 30, 2012, with one five-year renewal option.

Item 3. LEGAL PROCEEDINGS.

From time to time we are subject to claims and suits arising in the course of our business. We maintain customary insurance policies against certain kinds of claims and suits which arise in the course of our business, including insurance policies for workers' compensation and personal injury, some of which provide for relatively large deductible amounts.

Except as disclosed below, we are currently not a party to any material legal proceedings.

Governmental Investigations

SEC Investigation. On October 7, 2004, the staff of the SEC advised us that the SEC had entered a formal order of investigation concerning the Company. The Company is cooperating with the investigation.

United States Attorney Investigation. On February 24, 2005, the United States Attorney's Office for the Southern District of New York advised us that it would seek to conduct interviews of certain current and former officers and employees of the Company. The Company is cooperating with the investigation.

Litigation

Federal Securities Class Actions and Settlement Thereof and Federal Court Shareholder Derivative Actions and Partial Settlement Thereof. On May 12, 2004, a purported securities class action was filed on behalf of persons who purchased the Company's publicly traded securities between August 21, 2003 and May 7, 2004 against the Company and certain of its former officers in the United States District Court for the Middle District of North Carolina, alleging violations of federal securities law in connection with various public statements made by the Company and seeking damages in an unspecified amount. Thereafter, 14 substantially identical purported class actions were filed in the same court. All the actions ultimately were consolidated. The court appointed lead plaintiffs in the consolidated action, who filed a second amended complaint on May 23, 2005, alleging claims under federal securities law on behalf of persons who purchased the Company's publicly-traded securities between March 8, 2001 and April 18, 2005.

In addition to the purported securities class action, three shareholder derivative actions were filed in the United States District Court for the Middle District of North Carolina against certain current and former directors of the Company, certain former officers of the Company, including Scott Livengood (the Company's former Chairman and Chief Executive Officer), as well as certain persons or entities that sold franchises to the Company. The complaints in these actions alleged that the defendants breached their fiduciary duties in connection with their management of the Company and the Company's acquisitions of certain franchises. The complaints sought damages, rescission of the franchise acquisitions, disgorgement of the proceeds from these acquisitions and other unspecified relief.

In October 2004, the Company's Board of Directors elected Michael Sutton and Lizanne Thomas to the Board and appointed them members and co-chairpersons of a Special Committee to investigate the matters raised in connection with a formal investigation of the Company by the SEC described below, the allegations in the purported derivative lawsuits, issues raised by the Company's independent auditors and other matters relevant to the foregoing.

On October 31, 2006, the Company and the Special Committee entered into a Stipulation and Settlement Agreement (the "Stipulation") with the lead plaintiffs in the securities class action, the derivative plaintiffs and all defendants named in the class action and derivative litigation, except for Mr. Livengood, providing for the settlement of the securities class action and a partial settlement of the derivative action. On February 14, 2007, the Court granted final approval of the proposed partial settlement in the derivative action and entered final judgment dismissing all claims with respect to all defendants, except for claims that the Company may assert against Mr. Livengood. On February 15, 2007, the court granted final approval of the proposed settlement in the securities class action and entered final judgment dismissing all claims with respect to all defendants. The final judgments were entered as contemplated by the terms of the Stipulation.

With respect to the securities class action, the Stipulation provided for the certification of a class consisting of all persons who purchased the Company's publicly-traded securities between March 8, 2001 and April 18, 2005, inclusive. The settlement class received total consideration of approximately \$76.0 million, consisting of a cash payment of approximately \$35.0 million made by the Company's directors' and officers' insurers, cash payments of \$100,000 each made by John Tate (the Company's former Chief Operating Officer) and Randy Casstevens (a former Chief Financial Officer), a cash payment of \$4 million made by the Company's independent registered public accounting firm and common stock and warrants to purchase common stock issued by the Company having an estimated aggregate value of approximately \$36.9 million as of their issuance on March 2, 2007. Claims against all defendants were dismissed with prejudice; however, claims that the Company may have against Mr. Livengood that may be asserted by the Company in the derivative action for contribution to the securities class action settlement or otherwise under applicable law are expressly preserved. The Stipulation contained no admission of fault or wrongdoing by the Company or the other defendants.

With respect to the derivative litigation, the Stipulation provided for the settlement and dismissal with prejudice of claims against all defendants except for claims against Mr. Livengood. The Company, acting through its Special Committee, settled claims against Mr. Tate and Mr. Casstevens for the following consideration: Messrs. Tate and Casstevens each agreed to contribute \$100,000 in cash to the settlement of the securities class action; Mr. Tate agreed to cancel his interest in 6,000 shares of the Company's common stock; and Messrs. Tate and Casstevens agreed to limit their claims for indemnity from the Company in connection with future proceedings before the SEC or by the United States Attorney for the Southern District of New York to specified amounts. The Company, acting through its Special Committee, has been in negotiations with Mr. Livengood but has not reached agreement to resolve the derivative claims against him. All other claims against defendants named in the derivative actions were dismissed with prejudice without paying any consideration. However, counsel for the derivative plaintiffs have deferred their application for fees until conclusion of the derivative actions against Mr. Livengood. See "Other Contingencies and Commitments" below.

On March 2, 2007, the Company issued 1,833,828 shares of its common stock and warrants to purchase 4,296,523 shares of its common stock at a price of \$12.21 per share in connection with the Stipulation. The warrants expire on March 2, 2012.

The Company recorded a non-cash charge to earnings in fiscal 2006 of approximately \$35.8 million, representing the estimated fair value, as of late October 2006, of the common stock and warrants to be issued by the Company. In addition, the Company recorded a related receivable from its insurers in the amount of approximately \$35.0 million, because the Company considered receipt of this amount to be probable based on the insurance companies' agreements to contribute this amount to the settlement and the Company's assessment of the insurance companies' financial condition. Simultaneously, the Company recorded a liability in the amount of \$70.8 million representing the then estimated aggregate fair value of the securities to be issued by the Company and the cash to be paid by the insurers. In the fourth quarter of fiscal 2007, the Company recorded an additional non-cash charge to earnings and an increase in the related liability of approximately \$16.0 million, representing the increase from October 2006 to January 28, 2007 in the estimated fair value of the securities issued by the Company in connection with the Stipulation. The provision for settlement costs was adjusted downward by approximately \$14.9 million in the first quarter of fiscal 2008 to reflect the decrease in the fair value of the securities from January 28, 2007 until their issuance on March 2, 2007. The fair value of the common shares was determined based upon the market price of the Company's common stock on March 2, 2007, and the fair value of the warrants to acquire common shares was estimated as of that date as described in Note 16 to the consolidated financial statements appearing elsewhere herein.

State Court Books and Records Action. On February 21, 2005, a lawsuit was filed against the Company in a North Carolina court seeking an order requiring the Company to permit the plaintiff to inspect and copy the books and records of the Company. On February 14, 2007, the federal district court approved the partial settlement of the consolidated derivative actions described above and entered an order dismissing those actions. On February 14, 2007, the North Carolina court filed a copy of that order and, on March 23, 2007, administratively dismissed the plaintiff's books and records action.

FACTA litigation. On October 3, 2007, a purported nationwide class action (Peter Jackson v. Krispy Kreme Doughnut Corporation (Case No. CV07-06449 ABC (VBC)), United States District Court, Central District of California) was filed against the Company and ten fictitiously named defendants. Plaintiff asserts a single cause of action for alleged willful violation of the federal Fair and Accurate Credit Transactions Act ("FACTA"). Specifically, plaintiff alleges a violation concerning electronic printing of certain credit card and debit card receipts that were not in compliance with the applicable information truncation provisions of FACTA. Plaintiff seeks statutory and punitive damages for these alleged violations, as well as injunctive relief on behalf of a putative nationwide class. The Company intends to defend vigorously against the claims asserted.

TAG Litigation. In February 2008, the Company filed suit in the U.S. District Court for the Middle District of North Carolina against The Advantage Group Enterprise, Inc. ("TAG"), alleging that TAG failed to properly account for and pay the Company on sales of equipment that the Company consigned to TAG. Based on these allegations, the Company asserted various claims including breach of fiduciary duty and conversion, and it seeks an accounting and constructive trust. In addition, the Company seeks a declaration that it does not owe TAG approximately \$1 million for storage fees and alleged lost profits. In March 2008, TAG answered the complaint, denying liability and asserting counterclaims against the Company. TAG alleges that the Company acted improperly by failing to execute a written contract between the companies and claims damages for breach of contract, services rendered, unjust enrichment, violation of the North Carolina Unfair Trade Practices Act and fraud in the inducement. TAG seeks approximately \$1 million of actual damages as well as punitive and treble damages. The Company intends to vigorously prosecute its claims against TAG and to vigorously defend against the counterclaims, which the Company believes are without merit.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

No matters were submitted to a vote of security holders during the fourth quarter of fiscal 2008.

PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.

Market Information

Our common stock is listed on the NYSE under the symbol "KKD." The following table sets forth the high and low sales prices for our common stock in composite trading as reported by the NYSE for the fiscal periods shown.

	<u>High</u>	<u>Low</u>
Year Ended January 28, 2007:		
First Quarter	\$ 9.57	\$5.30
Second Quarter	12.11	7.14
Third Quarter	10.25	7.50
Fourth Quarter	13.93	9.01
Year Ended February 3, 2008:		
First Quarter	\$ 13.20	\$9.71
Second Quarter	10.49	6.80
Third Quarter	7.33	2.91
Fourth Quarter	4.19	2.23

Holders

As of April 10, 2008, there were approximately 14,494 shareholders of record of our common stock.

Dividends

We did not pay any dividends in fiscal 2007 or 2008. We intend to retain any earnings to finance our business and do not anticipate paying cash dividends in the foreseeable future. Furthermore, the terms of our secured credit facilities prohibit the payment of dividends on our common stock.

Securities Authorized for Issuance Under Equity Compensation Plans

The information required by Item 201(d) of Regulation S-K is provided under Item 12, "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters," which is incorporated herein by reference.

Recent Sales of Unregistered Securities

None.

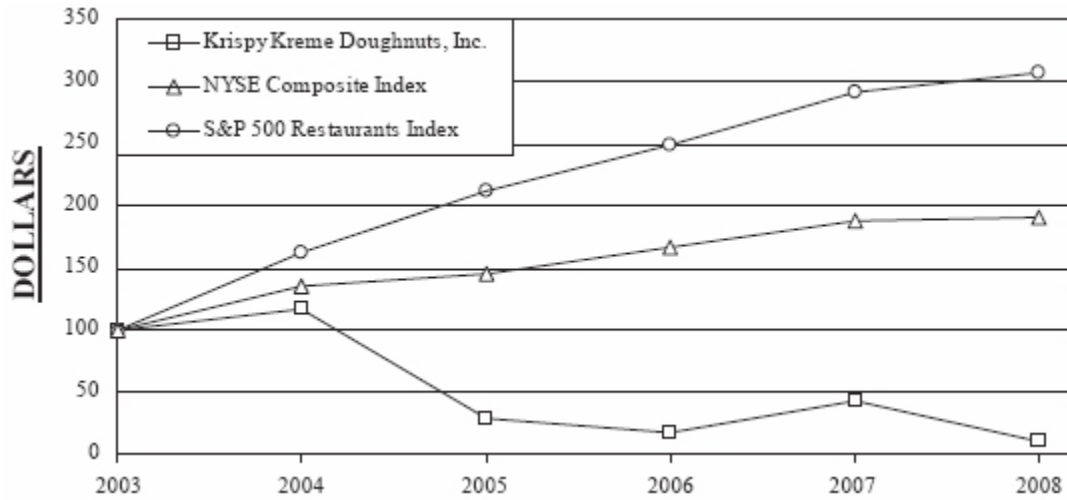
Purchases of Equity Securities

No purchases were made by or on behalf of the Company of its equity securities in fiscal 2008.

Stock Performance Graph

The performance graph shown below compares the percentage change in the cumulative total shareholder return on our common stock against the cumulative total return of the NYSE Composite Index and Standard & Poor's Restaurants Index for the period from January 31, 2003 through February 1, 2008. The graph assumes an initial investment of \$100 and the reinvestment of dividends.

Comparison of Cumulative Total Return



	January 31, 2003	January 30, 2004	January 28, 2005	January 27, 2006	January 26, 2007	February 1, 2008
Krispy Kreme Doughnuts, Inc.	\$100.00	\$117.20	\$ 28.48	\$ 17.53	\$ 42.35	\$ 9.50
NYSE Composite Index	100.00	134.57	144.43	166.29	188.02	190.56
S&P 500 Restaurants Index	100.00	161.60	211.89	248.69	291.57	307.75

Item 6. SELECTED FINANCIAL DATA.

The following selected financial data should be read in conjunction with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the Company's consolidated financial statements appearing elsewhere herein.

	Year Ended				
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006	Jan. 30, 2005	Feb. 1, 2004
(In Thousands, except per share and number of stores data)					
STATEMENT OF OPERATIONS DATA:					
Revenues	\$ 429,319	\$ 461,195	\$ 543,361	\$ 707,766	\$ 649,345
Operating expenses:					
Direct operating expenses	380,014	389,379	474,591	598,281	493,650
General and administrative expenses	26,303	48,860	67,727	55,301	45,230
Depreciation and amortization expense	18,433	21,046	28,920	31,934	22,309
Impairment charges and lease termination costs	62,073	12,519	55,062	161,847	—
Settlement of litigation	(14,930)	15,972	35,833	—	(525)
Other operating (income) and expenses, net	13	1,916	(1,741)	4,365	939
Operating income (loss)	(42,587)	(28,497)	(117,031)	(143,962)	87,742
Interest income	1,422	1,627	1,110	775	906
Interest expense	(9,796)	(20,334)	(20,211)	(6,875)	(4,509)
Loss on extinguishment of debt	(9,622)	—	—	—	—
Equity in (losses) of equity method franchisees	(933)	(842)	(4,337)	(1,622)	(2,242)
Minority interests in results of consolidated franchises	—	—	4,181	6,249	(1,898)
Other non-operating income and (expense), net	(3,211)	7,021	(248)	(1,945)	2,992
Income (loss) from continuing operations before income taxes	(64,727)	(41,025)	(136,536)	(147,380)	82,991
Provision for income taxes (benefit)	2,324	1,211	(776)	9,674	33,146
Income (loss) from continuing operations	\$ (67,051)	\$ (42,236)	\$ (135,760)	\$ (157,054)	\$ 49,845
Income (loss) from continuing operations per common share					
Basic	\$ (1.05)	\$ (.68)	\$ (2.20)	\$ (2.55)	\$.84
Diluted	\$ (1.05)	\$ (.68)	\$ (2.20)	\$ (2.55)	\$.80
BALANCE SHEET DATA (AT END OF YEAR):					
Working capital (deficit)(1)	\$ 32,862	\$ (3,052)	\$ (6,894)	\$ 1,728	\$ 78,821
Total assets	\$ 202,351	\$ 349,492	410,855	480,278	656,603
Long-term debt, less current maturities	75,156	105,966	118,241	90,950	137,114
Total shareholders' equity	56,624	78,962	108,671	240,943	436,409
Number of factory stores at end of year (unaudited):					
Company	97	108	128	175	141
Franchise	198	188	195	221	216
Systemwide	295	296	323	396	357

- (1) Reflects a liability, net of amounts recoverable from insurance companies, of approximately \$51.8 million and \$35.8 million as of January 28, 2007 and January 29, 2006, respectively, related to the settlement of certain litigation. This liability was satisfied in March 2007 through the issuance of shares of common stock and warrants to acquire shares of common stock as described in Note 12 to the consolidated financial statements appearing elsewhere herein.

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of the Company's financial condition and results of operations should be read in conjunction with the consolidated financial statements and notes thereto appearing elsewhere herein.

Company Overview

Krispy Kreme is a leading branded retailer and wholesaler of high-quality doughnuts. The Company's principal business, which began in 1937, is owning and franchising Krispy Kreme doughnut stores at which over 20 varieties of high-quality doughnuts, including the Company's signature hot Original Glazed[®] doughnut, are made, sold and distributed together with complementary products, and where a broad array of coffees and other beverages are offered.

The Company's stores include factory stores and satellite stores. Factory stores have a doughnut-making production line and are versatile in that many supply multiple sales channels to more fully utilize production capacity. These sales channels are comprised of:

- **On-premises sales.** Sales to customers visiting Company and franchise factory and satellite stores, including sales made through drive-through windows, along with discounted sales to community organizations that in turn sell doughnuts for fundraising purposes.
- **Off-premises sales.** Daily sales of fresh doughnuts primarily on a branded basis to a variety of retail customers, such as convenience stores, grocery stores/mass merchants and other food service and institutional accounts. Doughnuts are sold to these customers on trays for display and sale in glass-enclosed cases and in packages for display and sale on both stand-alone display units and on customers' shelves.

Traditional factory stores have the capacity to produce from 4,000 dozen to over 10,000 dozen doughnuts daily. Commissaries, which are production facilities used principally to serve off-premises customers domestically and to supplement factory stores focused on on-premises sales internationally, have the highest production capacities of factory stores. As of February 3, 2008, there were 22 commissaries systemwide, six of which were operated by the Company. Other factory stores often engage in both on-premises and off-premises sales, with the allocation between such channels dependent on the particular capacity of the store and the characteristics of the markets in which the stores operate. Each factory store has significant fixed or semi-fixed costs, and margins and profitability are significantly affected by doughnut production volume and sales. As of February 3, 2008, there were 295 Krispy Kreme factory stores systemwide, consisting of 97 Company stores and 198 franchise stores.

Satellite stores consist primarily of the hot shop, fresh shop and kiosk formats. The Company has begun introducing hot shops, which utilize tunnel oven doughnut heating and finishing technology scaled to accommodate principally on-premises sales in a store approximately one-half the size of a traditional factory store. Hot shop technology allows customers to have a hot doughnut experience throughout the day. Fresh shops and free-standing kiosks are satellite stores that do not contain doughnut heating technology, and are substantially smaller than a traditional factory store. In each of these three formats, the Company typically sells fresh doughnuts and beverages, with the doughnuts supplied by nearby factory stores. As of February 3, 2008, 48 hot shops, 67 fresh shops and 39 kiosks were open systemwide; the Company operated five of those hot shops and three of those fresh shops. The Company views the hot shop, fresh shop and kiosk formats as additional ways to achieve market penetration in a variety of market sizes and settings.

The Company is working to refine its domestic store operating model to focus on a "hub and spoke" system, under which multiple satellite stores in a market are provided doughnuts from a single traditional factory store or commissary at which all doughnut production for the market takes place. The objectives of the hub and spoke model are to, among other things:

- reduce the investment required to produce a given level of sales and reduce operating costs by operating smaller satellite stores instead of larger, more expensive factory stores;

- achieve greater production efficiencies by centralizing doughnut production to minimize the burden of fixed costs;
- achieve greater consistency of product quality through a reduction in the number of doughnut-making locations;
- enable store employees to focus on achieving excellence in customer satisfaction and in-shop consumer experience; and
- stimulate an increase in on-premises sales of doughnuts and complementary products by increasing the number of retail distribution points to provide customers more convenient access to the Company's products.

Because the hub and spoke concept has not been completely refined, the Company does not expect that the Company or its franchisees will open a significant number of domestic factory stores in the near future. The Company has converted several of its traditional factory stores to hot shops using tunnel oven technology to reduce operating costs and increase the number of hours each day the stores offer the Company's hot Original Glazed[®] doughnuts. Certain franchisees also have converted factory stores to hot shops. The Company plans to convert additional factory stores to hot shops in fiscal 2009, and to begin construction of a limited number of satellite locations in order to continue development and demonstrate the operation of the hub and spoke concept.

In addition, the Company is developing a strategy to rebrand certain geographic markets, expected to consist principally of, but not necessarily limited to, markets outside the Company's traditional base in the Southeast. The franchise rights and other assets in many of these markets were acquired by the Company in business combinations in prior years. Because the Company has not completed the development of its detailed rebranding plans and has not entered into any new domestic franchise agreements in several years, the Company cannot predict the likelihood of rebranding any such markets or the amount of any proceeds which might be received therefrom, including the amounts which might be realized from the sale of store assets and the execution of any related franchise agreements. Rebranding could result in the recognition of impairment losses on the related assets.

Like other retail and restaurant companies, the Company constantly evaluates the performance of its stores and from time to time decides to close locations whose performance no longer meets Company standards.

Markets outside the United States are a source of growth. As of February 3, 2008, there were a total of 204 Krispy Kreme stores (including 119 satellites) operated internationally, which were located in Australia, Canada, Hong Kong, Indonesia, Japan, Kuwait, Mexico, the Philippines, Qatar, Saudi Arabia, South Korea, the United Arab Emirates and the United Kingdom. The Company owned five of the Canadian stores and had an equity interest in the franchisees operating stores in Mexico and Western Canada. The Company currently does not expect to own equity interests in international area developers formed in the future. Based on continued research and experience with international stores, the Company is focusing international development efforts primarily on opportunities in markets in Asia and the Middle East. The development and franchise agreements for territories outside the United States (which include the countries listed above) provide for the development of over 170 additional stores in fiscal 2009 and thereafter.

The Company is vertically integrated to help maintain the consistency and quality of products throughout the Krispy Kreme system. In addition, through vertical integration, the Company utilizes volume-buying power, which the Company believes helps lower the cost of supplies to stores and enhances profitability. The supply chain business unit, KK Supply Chain, produces doughnut mixes and manufactures doughnut-making equipment, which all factory stores are required to purchase. Additionally, this business unit operates two distribution centers that are capable of supplying domestic stores and certain international stores with key supplies. This business unit is volume-driven, and its economics are enhanced by the opening of new stores and the growth of sales by existing stores.

The Company has three reportable segments as defined in Statement of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information," as described below.

- **Company Stores.** The Company Stores segment is comprised of the operating activities of the stores operated by the Company. These stores sell doughnuts and complementary products through the sales channels described above under "Company Overview." Expenses for this business segment include store level expenses along with direct general and administrative expenses and certain allocated corporate costs.
- **Franchise.** The Franchise segment consists of the Company's store franchise operations. The Company has two principal franchise programs: the Associate program, which is the Company's original franchising program developed in the 1940s, and the Area Developer program, which was developed in the mid-1990s. Associates generally pay royalties of 3.0% of on-premises sales and 1.0% of all other sales. Area Developers typically pay royalties of 4.5% to 6.0% of all sales and one-time development and franchise fees ranging from \$20,000 to \$50,000 per store. The Company has informed its area developers that it will reduce the royalty rate on off-premises sales to 3.5% in fiscal 2009. Domestic Area Developers are required to contribute 1.0% of their sales to the Brand Fund. International Area Developers generally are required to contribute 0.25% of their sales to the Brand Fund. Some Associates contribute 1.0% of their sales to the Brand Fund. The Company is reducing, for an indefinite period, the Brand Fund contribution rate for domestic Area Developers and for participating Associates to 0.75% effective at the beginning of fiscal 2009. Expenses for this business segment include costs incurred to recruit new franchisees, to assist with store openings, and to monitor and aid in the performance of these stores, as well as direct general and administrative expenses and certain allocated corporate costs.
- **KK Supply Chain.** The KK Supply Chain segment buys and processes ingredients it uses to produce doughnut mixes and manufactures doughnut-making equipment that all factory stores are required to purchase. The KK Supply Chain segment also purchases and sells key supplies, including icings and fillings, other food ingredients, juices, signage, display cases, uniforms and other items. In October 2007, the Company ceased production at its coffee roasting facility and sold its coffee roasting assets, and simultaneously entered into an agreement with the purchaser to supply the Company's coffee needs. All intersegment sales from the KK Supply Chain segment to the Company Stores segment have been eliminated in consolidation. Expenses for this business unit include all expenses incurred at the manufacturing and distribution level along with direct general and administrative expenses and certain allocated corporate costs.

The FTC's Trade Regulation Rule on Franchising ("FTC Rule") and certain state and foreign laws require the Company to furnish prospective franchisees with a franchise disclosure document containing information prescribed by the FTC Rule and applicable state and foreign laws and regulations. The Company has amended its Franchise Disclosure Document ("FDD") to conform it to new FTC disclosure requirements, and has submitted the amended FDD for registration in those states in which the Company has registered its franchise offering. The Company currently is able to offer franchises in all states except Maryland.

Several franchisees have been experiencing financial pressures which, in certain instances, became more exacerbated during fiscal 2008. The Company has guaranteed certain obligations of franchisees in which it has an equity interest, as described in "Other Commitments and Contingencies" in Note 12 to the consolidated financial statements appearing elsewhere herein. In the fourth quarter of fiscal 2008, the Company recorded a provision for estimated payments under guarantees related to a franchisee of \$3.0 million; during the quarter, the franchisee defaulted on certain of the obligations guaranteed by the Company. During the year ended February 3, 2008, two of the Company's other franchisees filed for reorganization under Chapter 11 of the United States Bankruptcy Code. One of these bankruptcy cases was substantially concluded in February 2008 upon the sale of the franchisee's assets to, and assumption of most of its franchise agreements by, a successor franchisee; the other franchise operation is continuing to operate under court supervision. Franchisees opened 88 stores and closed 26 stores in fiscal 2008. While franchisees have contractual commitments to open over 170 additional stores in

fiscal 2009 and thereafter, the Company believes franchisees also will close additional stores in the future, and the number of such closures may be significant. Royalty revenues and most of KK Supply Chain revenues are directly correlated to sales by franchise stores and, accordingly, franchise store closures have an adverse effect on the Company's revenues, results of operations and cash flows.

Results of Operations

The following table presents the Company's operating results for fiscal 2008, 2007 and 2006 expressed as a percentage of total revenues (amounts may not add to totals due to rounding).

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
Revenues	100.0%	100.0%	100.0%
Operating expenses:			
Direct operating expenses	88.5	84.4	87.3
General and administrative expenses	6.1	10.6	12.5
Depreciation and amortization expense	4.3	4.6	5.3
Impairment charges and lease termination costs	14.5	2.7	10.1
Settlement of litigation	(3.5)	3.5	6.6
Other operating (income) and expense, net	—	0.4	(0.3)
Operating (loss)	(9.9)	(6.2)	(21.5)

To facilitate an understanding of the Company's operating results, data on the number of factory stores (including commissaries) appear in the table below.

	NUMBER OF FACTORY STORES		
	COMPANY	FRANCHISE	TOTAL
JANUARY 30, 2005	175	221	396
Opened	3	13	16
Closed	(46)	(26)	(72)
Transferred	(3)	3	—
Converted to satellites	(1)	(16)	(17)
JANUARY 29, 2006	128	195	323
Opened	—	30	30
Closed	(8)	(44)	(52)
Transferred	(11)	11	—
Converted to satellites	(1)	(4)	(5)
JANUARY 28, 2007	108	188	296
Opened	1	32	33
Closed	(9)	(18)	(27)
Transferred	—	—	—
Converted to satellites	(3)	(4)	(7)
FEBRUARY 3, 2008	<u>97</u>	<u>198</u>	<u>295</u>

Data on the number of satellite stores appear in the table below.

	NUMBER OF SATELLITE STORES		
	COMPANY	FRANCHISE	TOTAL
JANUARY 30, 2005	10	27	37
Opened	1	33	34
Closed	(5)	(4)	(9)
Transferred	(2)	2	—
Converted from factory stores	1	16	17
JANUARY 29, 2006	5	74	79
Opened	—	34	34
Closed	(2)	(17)	(19)
Transferred	1	(1)	—
Converted from factory stores	1	4	5
JANUARY 28, 2007	5	94	99
Opened	—	56	56
Closed	—	(8)	(8)
Converted from factory stores	3	4	7
FEBRUARY 3, 2008	8	146	154

Data on the aggregate number of factory and satellite stores as of February 3, 2008 appear in the table below.

	NUMBER OF STORES		
	COMPANY	FRANCHISE	TOTAL
FACTORY STORES:			
Domestic	92	118	210
International	5	80	85
Total factory stores	97	198	295
SATELLITES:			
Domestic:			
Hot shops	5	15	20
Fresh shops	3	12	15
Kiosks	—	—	—
Total domestic	8	27	35
International:			
Hot shops	—	28	28
Fresh shops	—	52	52
Kiosks	—	39	39
Total international	—	119	119
Total satellites	8	146	154

Franchisees closed 26 stores in fiscal 2008. The Company believes franchisees will close additional stores in the future, and the number of such closures may be significant.

Systemwide sales, a non-GAAP financial measure, include sales by both Company and franchise stores. The Company believes systemwide sales data are useful in assessing the overall performance of the Krispy Kreme brand and, ultimately, the performance of the Company. The Company's consolidated financial statements appearing elsewhere herein include sales by Company stores, sales to franchisees by the KK Supply Chain business segment and royalties and fees received from franchisees, but exclude sales by franchise stores to their customers.

The table below presents average weekly sales per factory store (which represents, on a Company and systemwide basis, total sales of all stores divided by the number of operating weeks for factory stores) and average weekly sales per store (which represents, on a Company and systemwide basis, total sales of all stores divided by the number of operating weeks for both factory stores and satellites). Operating weeks represent, on a Company and systemwide basis, the aggregate number of weeks in the fiscal year that factory stores or both factory and satellite stores were in operation.

The Company's fiscal year ends on the Sunday closest to January 31, which periodically results in a 53-week year. Fiscal 2008 contained 53 weeks. To enhance comparability among the last three fiscal years, amounts in the table set forth below for fiscal 2008 have been computed based upon the 52-week period ended January 27, 2008.

	Fiscal Year		
	2008	2007	2006
	(Dollars in thousands)		
Average weekly sales per factory store (1):			
Company	\$ 54.7	\$ 54.6	\$ 48.5
Systemwide	\$ 51.8	\$ 49.6	\$ 46.3
Factory store operating weeks:			
Company	5,448	5,905	8,112
Systemwide	14,936	15,742	19,136
Average weekly sales per store (1):			
Company	\$ 53.0	\$ 52.9	\$ 47.7
Systemwide	\$ 37.2	\$ 39.5	\$ 41.4
Store operating weeks:			
Company	5,626	6,092	8,260
Systemwide	20,797	19,767	21,383

(1) Excludes intersystem sales between company and franchise stores.

FISCAL 2008 COMPARED TO FISCAL 2007

Overview

Excluding sales for the 53rd week, systemwide sales decreased 0.9% compared to fiscal 2007, reflecting a 5.8% decrease in average weekly sales per store, partially offset by a 5.2% increase in store operating weeks. The systemwide sales decrease reflects an 8.4% decrease in Company Stores sales and a 4.4% increase in franchise store sales. During fiscal 2008, one new Company factory store and 32 new franchise factory stores were opened, nine Company factory stores and 18 franchise factory stores were closed, and three Company factory stores and four franchise factory stores were converted from factory stores to satellite stores. The total number of factory stores at the end of fiscal 2008 was 295, consisting of 97 Company stores and 198 franchise stores. Satellite stores made up 34.3% of the total systemwide store count as of February 3, 2008 compared to 25.1% at January 28, 2007. Systemwide average weekly sales per store are lower than Company average weekly sales per store principally because satellite stores, which generally have lower average weekly sales than factory stores, are operated almost exclusively by franchisees. In addition, the increasing percentage of total stores which are satellite stores has the effect of reducing the overall systemwide average weekly sales per store.

Revenues

For fiscal 2008, revenues decreased to \$429.3 million from \$461.2 million in fiscal 2007. Excluding revenues for the 53rd week, revenues for fiscal 2008 decreased 8.6% to \$421.3 million. Revenues by business segment (expressed in dollars and as a percentage of total revenues) are set forth in the table below (percentage amounts may not add to totals due to rounding).

	Year Ended	
	Feb. 3, 2008	Jan. 28, 2007
(Dollars in thousands)		
REVENUES BY BUSINESS SEGMENT:		
Company Stores	\$ 304,444	\$ 326,199
Franchise	22,958	21,075
KK Supply Chain:		
Total revenues	203,283	219,991
Less – intersegment sales elimination	(101,366)	(106,070)
External revenues	101,917	113,921
Total revenues	<u>\$ 429,319</u>	<u>\$ 461,195</u>
PERCENTAGE OF TOTAL REVENUES:		
Company Stores	70.9%	70.7%
Franchise	5.3	4.6
KK Supply Chain	23.7	24.7
Total revenues	<u>100.0%</u>	<u>100.0%</u>

Company Stores Revenues. Company Stores revenues were \$304.4 million in fiscal 2008. Excluding revenues for the 53rd week, Company Stores revenues were \$298.9 million, a decrease of 8.4% from \$326.2 million in fiscal 2007. The decrease in revenues (measured on a 52-week basis) reflects a 7.6% decline in store operating weeks partially offset by a 0.2% increase in average weekly sales per store. The decrease in store operating weeks reflects the sale or closure of 17 factory stores since the end of fiscal 2006. The increase in the average weekly sales per store reflects, among other things, the closure of relatively poorer performing locations and the benefits of consolidating production for wholesale customers into a smaller number of factory stores, as well as the effects of price increases.

On-premises sales (which include fundraising sales) comprised approximately 43% and 41% of total Company Stores revenues in fiscal 2008 and 2007, respectively, with the balance comprised of off-premises sales.

The following table sets forth statistical data with respect to on- and off-premises sales by Company stores. The data have been computed by comparing the 52 weeks ended January 27, 2008 to the 52 weeks ended January 28, 2007. The change in “same store sales” is computed by dividing the aggregate on-premises sales (including fundraising sales) during the current year period for all stores which had been open for more than 56 consecutive weeks during the current year (but only to the extent such sales occurred in the 57th or later week of each store’s operation) by the aggregate on-premises sales of such stores for the comparable weeks in the preceding year. Once a store has been open for at least 57 consecutive weeks, its sales are included in the computation of same stores sales for all subsequent periods. In the event a store is closed temporarily (for example, for remodeling) and has no sales during one or more weeks, such store’s sales for the comparable weeks during the earlier or subsequent period are excluded from the same store sales computation. For off-premises sales, “average weekly number of doors” represents the average number of customer locations to which product deliveries are made during a week, and “average weekly sales per door” represents the average weekly sales to each such location.

	52 weeks ended Jan. 27, 2008
ON-PREMISES:	
Change in same store sales	0.0%
OFF-PREMISES:	
Change in average weekly number of doors	(1.1)%
Change in average weekly sales per door	(6.4)%

On-premises same stores sales were flat for the year, generally reflecting an increase in the average guest check offset by reduced customer traffic. The decrease in the average weekly number of doors represents a decrease in the grocery/mass merchant channel, partially offset by an increase in the average weekly number of doors in the convenience store channel. The average weekly sales per door fell in both channels. A decrease in average weekly sales per door generally adversely affects profitability because of the increased significance of delivery costs in relation to sales. In addition, delivery costs have been rising due to, among other things, rising fuel costs.

Franchise Revenues. Franchise revenues consist principally of royalties payable to the Company by franchisees based upon the franchisees’ sales and initial franchise fees earned by the Company in connection with new store openings by franchisees. The components of Franchise revenues are as follows:

	Year Ended	
	Feb. 3, 2008	Jan. 28, 2007
	(Dollars in thousands)	
Royalties	\$ 20,377	\$ 17,878
Development and franchise fees	2,341	2,891
Other	240	306
Total revenues	<u>\$ 22,958</u>	<u>\$ 21,075</u>

Excluding the 53rd week, franchise revenues were \$22.5 million in fiscal 2008, a 6.8% increase from \$21.1 million in fiscal 2007.

Royalty revenues measured on a 52-week basis rose to \$19.9 million in fiscal 2008 from \$17.9 in fiscal 2007. Sales by franchise stores, as reported by the franchisees, were approximately \$476 million (measured on a 52-week basis) in fiscal 2008 and \$456 million in fiscal 2007. The Company did not recognize as revenue approximately \$2.6 million of uncollected royalties which accrued during each of fiscal 2008 and 2007 because the Company did not believe collection of these royalties was reasonably assured. All of the growth in franchisee sales in fiscal 2008 was attributable to an increase in the number of franchise stores outside the United States. Domestic franchisee sales fell in fiscal 2008, principally due to store closings in fiscal 2008 and 2007.

Franchisee fees declined approximately \$550,000 in fiscal 2008 compared to fiscal 2007. Fiscal 2007 franchise fee revenue included approximately \$660,000 of fees related to amendments to agreements with certain international franchisees. The development and franchise agreements with these franchisees contemplated development only of factory stores, and were amended to provide for initial franchise fees for satellite stores and to provide for development of satellite stores to be partially creditable against the franchisees' store development obligations. The Company did not record initial franchise fees related to these franchisees' satellite stores until the Company agreed with the franchisees on the amount of initial franchise fee to be paid with respect to these stores. This decrease in franchise fees was offset by an increase in franchise fees arising from an increase in store openings by franchisees in 2008 compared to 2007.

Franchisees opened 88 stores in fiscal 2008. The Company currently expects that the number of franchise store openings in fiscal 2009 will be fewer than in fiscal 2008. Franchisees closed 26 stores in fiscal 2008. The Company believes franchisees will close additional stores in the future, and the number of such closures may be significant. Royalty revenues are directly correlated to sales by franchise stores and, accordingly, franchise store closures have an adverse effect on Franchise revenues.

KK Supply Chain Revenues. KK Supply Chain revenues were \$101.9 million in fiscal 2008. Excluding the 53rd week, KK Supply Chain revenues were \$99.9 million, a 12.3% decrease from \$113.9 million in fiscal 2007. The most significant reason for the decrease in revenues (measured on a 52-week basis) was lower sales by domestic franchisees, which resulted in an approximate 13.3% decrease in sales of mixes, icings and fillings, sugar, shortening and supplies by KK Supply Chain. In addition, an increasing percentage of franchisee sales is attributable to sales by franchisees outside North America. In certain instances, instead of selling finished doughnut mix to international franchisees, the Company sells doughnut mix concentrate, which is combined with other ingredients sourced locally to produce doughnut mix. While the KK Supply Chain's profit on sales of concentrate is intended to be similar to the profit which would be earned on the finished mix made from that concentrate, sales of concentrate generate less revenue than would sales of an equivalent amount of finished mix. In addition, many of the other ingredients and supplies used by international franchisees are acquired locally instead of from KK Supply Chain. The KK Supply Chain revenue decrease was also attributable to a 4.1% decrease in sales of equipment and equipment services in fiscal 2008 compared to fiscal 2007. Franchisee expansion in fiscal 2008 was comprised principally of satellite stores, which require less equipment than do factory stores. Sales of equipment and related services measured on a 52-week basis (including signage, beverage equipment; furniture, fixtures and similar items sold through the KK Supply Chain distribution centers) represented approximately 12% and 11% of KK Supply Chain revenues in fiscal 2008 and 2007, respectively.

Franchisees opened 88 stores in fiscal 2008. The Company currently expects that the number of franchise store openings in fiscal 2009 will be fewer than in fiscal 2008. Franchisees closed 26 stores in fiscal 2008. The Company believes franchisees will close additional stores in the future, and the number of such closures may be significant. A significant majority of KK Supply Chain's revenues are directly correlated to sales by franchise stores and, accordingly, franchise store closures have an adverse effect on KK Supply Chain revenues.

In fiscal 2008, the Company divested a KK Supply Chain manufacturing and distribution facility (see Note 13 to the consolidated financial statements appearing elsewhere herein). The business conducted by the divested facility was transferred to other KK Supply Chain locations and, accordingly, the divestiture has had no significant effect on KK Supply Chain revenues. The Company also is evaluating strategic options related to other aspects of the supply chain. In particular, we currently are in discussions and conducting product testing with third party mix manufacturers regarding contract mix production for regions outside the southeastern United States. In addition, the lease on our Los Angeles facility expires in May 2008, and we currently are considering either relocating the facility or outsourcing distribution in the western United States to a third party.

Direct Operating Expenses

Direct operating expenses, which exclude depreciation and amortization expense, were 88.5% of revenues in fiscal 2008 compared to 84.4% of revenues in fiscal 2007. Direct operating expenses by business segment (expressed in dollars and as a percentage of applicable segment revenues) are set forth in the table below. Such operating expenses are consistent with the segment operating income data set forth in Note 17 to the consolidated

financial statements appearing elsewhere herein. Amounts shown below for the Company Stores and KK Supply Chain segments for fiscal 2007 differ from those amounts as previously reported. As previously reported, the estimated profit earned by the KK Supply Chain segment on sales to the Company Stores segment was deducted from Company Stores direct operating expenses to illustrate the effects of the Company's vertical integration on the overall profit earned on Company Stores revenues. The Company has discontinued that profit attribution technique because management concluded that presenting direct operating expenses on a basis consistent with that used for reporting segment operating results was more relevant to users of the financial statements. Amounts previously reported for fiscal 2007 have been reclassified to be consistent with the presentation for fiscal 2008.

In fiscal 2008, the Company revised its allocation of corporate overhead costs to its operating segments to make such allocations more consistent with the current cost of providing support services to the operating segments; such revision resulted in an increase of \$6.0 million in costs allocated to segment direct operating expenses in fiscal 2008 compared to fiscal 2007, and a corresponding reduction in general and administrative expenses. The effect of the change in allocated costs is discussed within the discussion of each segment's direct operating expenses below.

	Year Ended	
	Feb. 3, 2008	Jan. 28, 2007
	(Dollars in thousands)	
DIRECT OPERATING EXPENSES BY BUSINESS SEGMENT:		
Company Stores	\$ 299,806	\$ 307,635
Franchise	8,746	4,602
KK Supply Chain:		
Total direct operating expenses	172,761	183,305
Less – intersegment elimination	(101,299)	(106,163)
KK Supply Chain direct operating expenses, less intersegment eliminations	71,462	77,142
Total direct operating expenses	<u>\$ 380,014</u>	<u>\$ 389,379</u>
DIRECT OPERATING EXPENSES AS A PERCENTAGE OF SEGMENT REVENUES:		
Company Stores	98.5%	94.3%
Franchise	38.1%	21.8%
KK Supply Chain (before intersegment eliminations)	85.0%	83.3%
Total direct operating expenses	88.5%	84.4%

Company Stores Direct Operating Expenses. Company Stores direct operating expenses as a percentage of Company Stores revenues increased to 98.5% in fiscal 2008 from 94.3% in fiscal 2007. The increase reflects, among other things, higher costs of doughnut mix and certain other ingredients resulting from price increases instituted by KK Supply Chain in order to partially offset higher raw materials costs, as well as increased direct labor and higher delivery vehicle and marketing costs as a percentage of revenues. KK Supply Chain instituted additional price increases in the first quarter of fiscal 2009 as a result of a continued rise in the cost of certain materials, of which flour and shortening are the most significant.

The Company has been experiencing a decline in the average weekly sales per door in the off-premises distribution channel. A decrease in average weekly sales per door generally adversely affects profitability because of the increased significance of delivery costs in relation to sales. In addition, delivery costs have been rising due to, among other things, rising fuel costs.

The increase in Company Stores direct operating expenses as a percentage of Company stores revenues is also a result of a \$3.1 million increase in the allocation of corporate overhead costs in fiscal 2008 compared to fiscal 2007.

In fiscal 2008, the Company refined the attribution of the cost of certain insurance and employee benefits among its business segments and general and administrative functions in order to attribute these costs to the Company's different operations more precisely. While the procedural refinement had no effect on total operating income, the Company estimates the refinement had the effect of increasing Company Stores direct operating expenses by approximately \$3.0 million in fiscal 2008 compared to fiscal 2007, with a corresponding decrease in general and administrative expenses.

Franchise Direct Operating Expenses. Franchise direct operating expenses include costs to recruit new franchisees, to assist in store openings, and to monitor and aid the performance of franchise stores, as well as direct general and administrative expenses and allocated corporate costs. Franchise direct operating expenses rose primarily due to increased costs associated with recruitment and development of international franchisees and related store opening assistance. The increase in Franchise direct operating expenses also reflects a \$1.4 million increase in the allocation of corporate overhead costs in fiscal 2008 compared to fiscal 2007.

KK Supply Chain Direct Operating Expenses. KK Supply Chain direct operating expenses as a percentage of KK Supply Chain revenues before intersegment eliminations increased to 85.0% in fiscal 2008 from 83.3% in fiscal 2007. The cost of raw materials used in the production of doughnut mix and of other goods sold to Company and franchise stores was higher in fiscal 2008 compared to fiscal 2007. In particular, the prices of flour and shortening and the products from which they are made rose significantly in fiscal 2008 compared to fiscal 2007. During 2008, KK Supply Chain increased the prices charged to Company and franchise stores for doughnut mixes, shortening and other goods in order to mitigate increased costs; however, those price increases did not fully offset the rise in KK Supply Chain's costs compared to fiscal 2007. The Company has implemented additional price increases in the first quarter of fiscal 2009 as a result of continuing increases in the cost of certain raw materials, particularly flour and shortening.

KK Supply Chain direct operating expenses include bad debt provisions related to certain franchisee receivables of approximately \$1.5 million (approximately 0.7% of KK Supply Chain revenues before intersegment eliminations) in fiscal 2008 compared to approximately \$2.9 million (approximately 1.3% of revenues before intersegment eliminations) in fiscal 2007. As of February 3, 2008, the Company's allowance for doubtful accounts from affiliated and unaffiliated franchisees totaled approximately \$5.6 million.

KK Supply Chain direct operating expenses in fiscal 2008 reflect a \$1.5 million increase in the allocation of corporate overhead costs compared to fiscal 2007.

In fiscal 2008, the Company refined the attribution of the cost of certain insurance and employee benefits among its business segments and general and administrative functions in order to attribute these costs to the Company's different operations more precisely. While the procedural refinement had no effect on total operating income, the Company estimates the refinement had the effect of increasing KK Supply Chain direct operating expenses by approximately \$625,000 for fiscal 2008 compared to fiscal 2007, with a corresponding decrease in general and administrative expenses.

General and Administrative Expenses

General and administrative expenses were \$26.3 million (6.1% of total revenues) in fiscal 2008 compared to \$48.9 million (10.6% of total revenues) in fiscal 2007. General and administrative expenses include professional fees paid to the interim management firm engaged by the Company in January 2005 through March 2006, and professional fees related to the internal and external investigations and litigation described in Note 12 to the consolidated financial statements included elsewhere herein, totaling approximately \$1.1 million in fiscal 2008 and approximately \$9.0 million (net of estimated insurance recoveries of approximately \$4.9 million) in fiscal 2007. The professional fees for fiscal 2007 include approximately \$3.9 million related to the warrant to acquire 1.2 million shares of the Company's common stock issued to the interim management firm as part of its compensation for services rendered to the Company, as more fully described under "Warrant Issued in Exchange for Services" in Note 16 to the consolidated financial statements appearing elsewhere herein. General and administrative expenses in fiscal 2008 include approximately \$2.7 million recorded in the fourth quarter for severance costs related to the resignation of the Company's former chief executive officer, of which approximately \$1.6 million relates to share-based compensation (including accelerated vesting of certain equity awards).

In fiscal 2008, the Company revised its allocation of corporate overhead costs to its operating segments to make such allocations more consistent with the current cost of providing support services to the operating segments. Such revision resulted in an increase of \$6.0 million in costs allocated to segment direct operating expenses in fiscal 2008 compared to fiscal 2007, and a corresponding reduction in general and administrative expenses. In addition, in fiscal 2008 the Company refined the attribution of the cost of certain insurance and employee benefits among its business segments and general and administrative functions in order to attribute these costs to the Company's different operations more precisely. While the procedural refinement had no effect on total operating income, the Company estimates the refinement had the effect of decreasing general and administrative expenses by approximately \$3.6 million in fiscal 2008, with a corresponding increase in segment direct operating expenses, the substantial majority of which is reflected in Company Stores direct operating expenses.

Exclusive of the effects of unusual professional fees, of officer severance pay and of changes in the allocation of corporate overhead, insurance and benefits costs, general and administrative expenses were \$32.1 million (7.5% of revenues) and \$39.9 million (8.7% of revenues) in fiscal 2008 and fiscal 2007, respectively. The decrease reflects, among other things, a decline in other professional fees of \$4.2 million. In fiscal 2007, the Company incurred increased accounting, legal and other costs associated with work on the Company's financial statements and filings with the Commission, the initial cost of strategic initiatives related to product, customer and market research and initiatives designed to achieve cost reductions related to the procurement of goods and services.

Depreciation and Amortization Expense

Depreciation and amortization expense decreased to \$18.4 million in fiscal 2008 from \$21.0 million in fiscal 2007. The decline in depreciation and amortization expense is attributable to the reduction in the number of Company factory stores operating in fiscal 2008 compared to fiscal 2007 and to a lower depreciable base of property and equipment resulting from impairment charges in the current and prior years related to stores which continue to operate. These decreases were partially offset by approximately \$2.3 million of increased depreciation charges related to the Company's mix manufacturing and distribution facility in Effingham, Illinois, which the Company divested in January 2008, the estimated useful life of which was adjusted downward at the end of the second quarter of fiscal 2008 as a consequence of the Company's decision to divest the facility. Total depreciation expense related to the Effingham facility was approximately \$4.3 million in fiscal 2008.

Impairment Charges and Lease Termination Costs

Impairment charges and lease termination costs were \$62.1 million in fiscal 2008 compared to \$12.5 million in fiscal 2007.

Impairment charges related to long-lived assets totaled \$56.0 million in fiscal 2008 and \$9.4 million in fiscal 2007, of which approximately \$44.1 million and \$9.4 million, respectively, related to the Company Stores segment. Approximately \$23.3 million of the fiscal 2008 charges in the Company Stores segment were recorded in the fourth quarter. The charges relate to stores closed or expected to be closed, as well as charges with respect to stores management believes will not generate sufficient future cash flows to enable the Company to recover the carrying value of the stores' assets, but which management has not yet decided to close. The Company closed nine factory stores in fiscal 2008 and eight factory stores in fiscal 2007. The Company tests other long-lived assets for impairment when events or changes in circumstances indicate that their carrying value may not be recoverable. These events and changes in circumstances include store closing decisions, the effects of changing costs (including the impact of rising commodity costs) on current results of operations, observed trends in operating results, and evidence of a change in circumstances observed as a part of periodic reforecasts of future operating results and as part of the Company's annual budgeting process. The Company records impairment charges associated with stores in the accounting period in which a store closing decision is made or in which the carrying value of the store is otherwise determined to be nonrecoverable. In addition, during fiscal 2008 the Company recorded an impairment charge of approximately \$10.4 million related to its manufacturing and distribution facility in Effingham, Illinois, which the Company divested as described in Note 13 to the consolidated financial statements appearing elsewhere herein. Such charge is net of a credit of approximately \$0.6 million recorded upon the sale of the facility in the fourth quarter to adjust earlier estimates of its net realizable value. Finally, the Company recorded an impairment charge of approximately \$1.5 million fiscal 2008 to reduce the carrying value of its KK Supply Chain coffee roasting assets to their estimated fair value upon disposition. The Company sold these assets for approximately \$1.9 million during the third quarter of fiscal 2008.

Impairment charges related to goodwill were approximately \$4.6 million and \$1.1 million in fiscal 2008 and 2007, respectively, substantially all of which relate to the Company Stores segment. Such charges were recorded in the fourth quarter of each fiscal year. The goodwill impairment charges were recorded to reduce the carrying value of goodwill to its estimated fair value, which the Company estimates using the present value of expected future cash flows. Such charges reflect reductions in the Company's forecasted sales and earnings in certain of the reporting units comprising the Company Stores and KK Supply Chain segments, which caused a reduction in the estimated fair value of those reporting units. Such reductions reflect current operating results, including the effects of higher materials and labor costs, as well as recent trends in operating results. The Company conducts its annual goodwill impairment testing as of December 31.

Lease termination costs represent the net present value of remaining contractual lease payments related to closed stores, after reduction by estimated sublease rental, and are recorded when the lease contract is terminated or, if earlier, the date on which the Company ceases use of the leased property. Lease termination costs were approximately \$1.0 million and \$1.8 million, respectively, in fiscal 2008 and fiscal 2007. The Company received \$966,000 in connection with its assignment of leases related to closed stores in fiscal 2008; lease termination charges related to other closed stores offset the credit to earnings resulting from these assignments.

The Company is developing a strategy to refranchise certain geographic markets, expected to consist principally of, but not necessarily limited to, markets outside the Company's traditional base in the Southeast. The franchise rights and other assets in many of these markets were acquired by the Company in business combinations in prior years. Because the Company has not completed the development of its detailed rebranding plans and has not entered into any new domestic franchise agreements in several years, the Company cannot predict the likelihood of rebranding any such markets or the amount of any proceeds which might be received therefrom, including the amounts which might be realized from the sale of store assets and the execution of any related franchise agreements. Rebranding could result in the recognition of impairment losses on the related assets.

Settlement of Litigation

On October 31, 2006, the Company agreed to settle a federal securities class action and to settle, in part, certain shareholder derivative actions, as more fully described in Item 3, "Legal Proceedings," and in Note 12 to the consolidated financial statements appearing elsewhere herein. As part of the settlement, the Company issued to the plaintiffs 1,833,828 shares of the Company's common stock and warrants to acquire 4,296,523 shares of common stock at a price of \$12.21 per share. At the time the settlement was agreed upon, the Company's fiscal 2006 financial statements had not been issued; accordingly, the Company charged a provision for the settlement of approximately \$35.8 million against fiscal 2006 earnings, representing the estimated fair value as of late October 2006 of the common stock and warrants to be issued by the Company. In the fourth quarter of fiscal 2007, the Company recorded an additional charge to earnings of approximately \$16.0 million relating to the settlement, representing the increase from October 2006 to January 28, 2007 in the estimated fair value of the securities to be issued by the Company. The provision for settlement costs was adjusted downward by \$14.9 million in the first quarter of fiscal 2008 to reflect the decrease in the fair value of the securities from January 28, 2007 until their issuance on March 2, 2007. The fair value of the common shares was determined based upon the market price of the Company's common stock on March 2, 2007, and the fair value of the warrants to acquire common shares was estimated as of that date as described in Note 16 to the consolidated financial statements appearing elsewhere herein.

Interest Income

Interest income was \$1.4 million in fiscal 2008 compared to \$1.6 million in fiscal 2007. The decrease principally reflects lower invested balances in fiscal 2008 compared to fiscal 2007.

Interest Expense

Interest expense decreased to \$9.8 million in fiscal 2008 from \$20.3 million in fiscal 2007. The decrease principally reflects decreased costs resulting from lower lender margin and amortization of deferred financing costs in fiscal 2008 compared to fiscal 2007 as a result of the Company's refinancing its long-term debt in the first quarter of fiscal 2008 as described under "Liquidity and Capital Resources" below and in Note 10 to the

consolidated financial statements appearing elsewhere herein. The reduction in interest expense also reflects a reduction in the amount of outstanding indebtedness. Amendments to the Company's credit facilities effective after February 3, 2008 will increase the Company's interest expense in fiscal 2009; such amendments also are described in Note 10 and in "Liquidity and Capital Resources" below.

Loss on Extinguishment of Debt

During the first quarter of fiscal 2008, the Company refinanced its long-term debt and revolving credit facilities as more fully described in Note 10 to the consolidated financial statements appearing elsewhere herein. The Company recorded a loss on extinguishment of the refinanced term debt of approximately \$9.6 million, consisting of a \$4.1 million prepayment fee and a \$5.5 million write-off of unamortized deferred financing costs related to refinanced facilities.

Equity in Losses of Equity Method Franchisees

The Company's share of the losses incurred by equity method franchisees totaled \$933,000 in fiscal 2008 compared to \$842,000 in fiscal 2007. This caption represents the Company's share of operating results of equity method franchisees which develop and operate Krispy Kreme stores.

Other Non-Operating Income and Expense, Net

Other non-operating income and expense in fiscal 2008 includes a provision of \$3.0 million recorded in the fourth quarter for estimated payments under the Company's guarantees of certain debt and leases related to a franchisee. During the quarter, the franchisee defaulted on certain of the obligations guaranteed by the Company and, while there is no current demand on the Company to perform under the guarantees, the Company believes it is probable that demand will be made on the Company to perform under some, and potentially all, of them. The charge is comprised of \$2.1 million representing 100% of the portion of principal balance of the franchisee's loans guaranteed by the Company, and \$900,000 representing the guaranteed portion of approximately one year's total payments on the guaranteed leases. The estimated aggregate maximum remaining potential obligation on guaranteed leases over their remaining lives (which range from 11 to 16 years) and for which no provision has been recorded is approximately \$8.8 million, assuming no sublease rentals or other loss mitigation benefits and no reduction for rights of setoff or other defenses the Company may have to the guarantees. In addition, other non-operating income and expense in fiscal 2008 includes an impairment charge of approximately \$550,000 to reduce the carrying value of the Company's investment in a franchisee to its estimated fair value, partially offset by a gain of approximately \$260,000 resulting from additional proceeds from the prior sale of an interest in another franchisee.

Other non-operating income and expense in fiscal 2007 includes gains of approximately \$7.3 million arising principally from the sale of the Company's investments in Krispy Kreme Australia and Krispy Kreme UK and a charge of approximately \$450,000 for estimated payments under a Company guarantee of certain obligations of a franchisee.

Provision for Income Taxes

The provision for income taxes was \$2.3 million and \$1.2 million in fiscal 2008 and fiscal 2007, respectively. Each of these amounts includes adjustments to the valuation allowance for deferred income tax assets to maintain such allowance at an amount sufficient to reduce the Company's aggregate net deferred income tax assets to zero, as well as a provision for income taxes estimated to be payable currently.

Net Loss

The Company incurred a net loss of \$67.1 million and \$42.2 million for fiscal 2008 and fiscal 2007, respectively.

FISCAL 2007 COMPARED TO FISCAL 2006

Overview

Systemwide sales for fiscal 2007 decreased 11.9% compared to fiscal 2006, reflecting a 4.6% decrease in average weekly sales per store and a 7.6% decrease in store operating weeks. The systemwide sales decrease reflects an 18.1% decrease in Company Stores sales and a 7.0% decrease in franchise store sales.

Revenues

Revenues by business segment (expressed in dollars and as a percentage of total revenues) are set forth in the table below (percentage amounts may not add to totals due to rounding). KK Supply Chain revenues exclude intersegment sales eliminated in consolidation.

	Year Ended	
	Jan. 28, 2007	Jan. 29, 2006
	(Dollars in thousands)	
REVENUES BY BUSINESS SEGMENT:		
Company Stores	\$ 326,199	\$ 398,450
Franchise	21,075	18,394
KK Supply Chain:		
Total revenues	219,991	253,367
Less – intersegment sales elimination	(106,070)	(126,850)
External revenues	113,921	126,517
Total revenues	<u>\$ 461,195</u>	<u>\$ 543,361</u>
PERCENTAGE OF TOTAL REVENUES:		
Company Stores	70.7%	73.3%
Franchise	4.6	3.4
KK Supply Chain	24.7	23.3
Total revenues	100.0%	100.0%

Company Stores Revenues. Company Stores revenues decreased 18.1% to \$326.2 million in fiscal 2007 from \$398.5 million in fiscal 2006. The decrease in revenues reflects a 26.2% decrease in store operating weeks, partially offset by a 10.9% increase in average weekly sales per store. The decrease in store operating weeks reflects the significant number of factory stores sold or closed since the end of fiscal 2005. The increase in the average weekly sales per store reflects, among other things, the closure of relatively poorer performing locations, the benefits of consolidating production for wholesale customers into a smaller number of factory stores, the effects of certain price increases implemented late in the second quarter of fiscal 2007 on products sold through certain off-premises distribution channels, and improved sales volume through convenience store outlets, partially offset by lower volumes through the grocery store and mass merchant channels.

Franchise Revenues. Franchise revenues, consisting principally of franchise fees and royalties, increased 14.6% to \$21.1 million in fiscal 2007 from \$18.4 million in fiscal 2006. Franchisee fees rose approximately \$2.3 million in fiscal 2007 compared to fiscal 2006, of which approximately \$660,000 represents revenue arising from amendments to agreements with certain international franchisees. The development and franchise agreements with these franchisees contemplated development only of factory stores, and were amended to provide for initial franchise fees for satellite stores and to provide for development of satellite stores to be partially creditable against the franchisees' store development obligations. The Company did not record initial franchisee fees related to these franchisees' satellite stores until the Company agreed with the franchisees on the amount of initial franchise fee to be paid with respect to these stores. The balance of the increase in franchise fees principally reflects an increase in new store openings in fiscal 2007 compared to fiscal 2006. In addition, royalty revenues rose to \$17.9 million in fiscal 2007 from \$17.5 million in fiscal 2006. While sales by franchise stores fell to approximately \$456 million in fiscal 2007 compared to approximately \$490 million in fiscal 2006, the resolution of disputes with two

major franchisees substantially eliminated collectability concerns with respect to royalties accruing on sales by these franchisees during fiscal 2007. The amount of royalty revenue not recognized during fiscal 2007 due to collectability concerns fell to approximately \$2.6 million from approximately \$3.7 million in fiscal 2006.

KK Supply Chain Revenues. KK Supply Chain sales to franchise stores decreased 10.0% to \$113.9 million in fiscal 2007 from \$126.5 million in fiscal 2006. The most significant reason for the decrease in revenues was lower sales by franchisees, which resulted in an approximate 13% decrease in sales of mixes, icings and fillings, sugar, shortening, coffee and supplies by KK Supply Chain. In addition, an increasing percentage of franchisee sales is attributable to sales by franchisees outside North America; while the Company sells the doughnut mixes used by such franchisees, many of the other ingredients and supplies used by these franchisees are acquired locally instead of from KK Supply Chain. The decline in sales of mixes and other supplies was partially offset by a 26% increase in sales of equipment and equipment services in fiscal 2007 compared to fiscal 2006, principally as a result of increased store expansion by franchisees in fiscal 2007. Franchisees opened 30 new factory stores in fiscal 2007 compared to 13 in fiscal 2006. Sales of equipment and related services (including signage, beverage equipment, furniture, fixtures and similar items sold through the KK Supply Chain distribution centers) represented approximately 11% and 8% of KK Supply Chain revenues in fiscal 2007 and 2006, respectively.

Direct Operating Expenses

Direct operating expenses, which exclude depreciation and amortization expense, were 84.4% of revenues in fiscal 2007 compared to 87.3% of revenues in fiscal 2006. Direct operating expenses by business segment (expressed in dollars and as a percentage of applicable segment revenues) are set forth in the table below. Such operating expenses are consistent with the segment operating income data set forth in Note 17 to the consolidated financial statements appearing elsewhere herein. Amounts shown below for the Company Stores and KK Supply Chain segments differ from those amounts as previously reported. As previously reported, the estimated profit earned by the KK Supply Chain segment on sales to the Company Stores segment was deducted from Company Stores direct operating expenses to illustrate the effects of the Company's vertical integration on the overall profit earned on Company Stores revenues. The Company has discontinued that profit attribution technique because management concluded that presenting direct operating expenses on a basis consistent with that used for reporting segment operating results was more relevant to users of the financial statements. Amounts previously reported for fiscal 2007 and 2006 have been reclassified to be consistent with the presentation for fiscal 2008.

	Year Ended	
	Jan. 28, 2007	Jan. 29, 2006
	(Dollars in thousands)	
DIRECT OPERATING EXPENSES BY BUSINESS SEGMENT:		
Company Stores	\$ 307,635	\$ 378,715
Franchise	4,602	5,017
KK Supply Chain:		
Total direct operating expenses	183,305	217,709
Less – intersegment elimination	(106,163)	(126,850)
KK Supply Chain direct operating expenses, less intersegment eliminations	77,142	90,859
Total direct operating expenses	<u>\$ 389,379</u>	<u>\$ 474,591</u>
DIRECT OPERATING EXPENSES AS A PERCENTAGE OF SEGMENT REVENUES:		
Company Stores	94.3%	95.0%
Franchise	21.8%	27.3%
KK Supply Chain (before intersegment eliminations)	83.3%	85.9%
Total direct operating expenses	84.4%	87.3%

Company Stores Direct Operating Expenses. Company Stores direct operating expenses as a percentage of Company Stores revenues decreased to 94.3% in fiscal 2007 from 95.0% in fiscal 2006. The improvement reflects the benefits of the sale or closure of relatively poorer performing locations, the benefits of higher average weekly sales per store resulting, in part, from consolidating production of products for sale through off-premises channels into a smaller number of factory stores, and the effects of certain price increases implemented late in the second quarter of fiscal 2007 on products sold through certain off-premises distribution channels. Many store operating costs are fixed or semi-fixed in nature and, accordingly, store profit margins are sensitive to changes in sales volumes. Company Stores direct operating expenses for fiscal 2007 include a charge of approximately \$1.3 million recorded in the fourth quarter related to the proposed settlement of claims alleging violation of wage and hour laws by the Company.

Franchise Direct Operating Expenses. Franchise direct operating expenses include costs to recruit new franchisees, to assist in store openings, and to monitor and aid in the performance of franchise stores, as well as direct general and administrative expenses and allocated corporate costs. Franchise direct operating expenses as a percentage of Franchise revenues decreased to 21.8% in fiscal 2007 from 27.3% in fiscal 2006, primarily due to reduced provisions for uncollectible receivables. Increased costs associated with recruitment and development of international franchisees were offset by a reduction in costs associated with domestic franchise expansion.

KK Supply Chain Direct Operating Expenses. KK Supply Chain direct operating expenses as a percentage of KK Supply Chain revenues before intersegment eliminations were 83.3% in fiscal 2007 compared with 85.9% in fiscal 2006. The improvement reflects the benefit of certain price increases instituted in the first quarter of fiscal 2007 to offset higher costs, as well as lower bad debt provisions and lower allocated corporate costs in fiscal 2007 compared to fiscal 2006. KK Supply Chain direct operating expenses include bad debt provisions relating to receivables from franchisees of approximately \$2.9 million in fiscal 2007 (of which approximately \$1.4 million was recorded in the fourth quarter) and \$4.8 million for fiscal 2006. These improvements were partially offset by the adverse effects of lower operating levels in fiscal 2007 compared to fiscal 2006 resulting from lower revenue levels and by increases in the cost of certain ingredients. In fiscal 2007, KK Supply Chain was adversely affected by increases in certain raw materials costs, including the cost of flour and shortening. The prices of these materials and the products from which they are made were volatile in fiscal 2007 and reached record highs during the year.

General and Administrative Expenses

General and administrative expenses were \$48.9 million (10.6% of total revenues) in fiscal 2007 compared to \$67.7 million (12.5% of total revenues) in fiscal 2006. General and administrative expenses include professional fees paid to the interim management firm engaged by the Company in January 2005 and professional fees related to the internal and external investigations and litigation described in Note 12 to the consolidated financial statements included elsewhere herein totaling approximately \$9.0 million (net of estimated insurance recoveries of approximately \$4.9 million) in fiscal 2007 and approximately \$31.8 million (net of estimated insurance recoveries of approximately \$14.4 million) in fiscal 2006. The professional fees for fiscal 2007 include a credit of approximately \$2.3 million recorded in the fourth quarter of fiscal 2007 resulting from reimbursements from insurance companies of costs and expenses in excess of amounts previously estimated. The professional fees for fiscal 2007 and fiscal 2006 include approximately \$3.9 million and \$2.8 million, respectively, related to the warrant to acquire 1.2 million shares of the Company's common stock issued to the interim management firm as part of its compensation for services rendered to the Company, as more fully described in Note 16 to the consolidated financial statements appearing elsewhere herein. In addition, general and administrative expenses in fiscal 2006 include approximately \$4.0 million of out-of-period costs related to stock-based compensation. The Company erroneously failed to record these costs in prior years, but concluded that such error was not material to the consolidated financial statements of the affected periods or to the fiscal 2006 consolidated financial statements. Accordingly, the Company recorded the costs in the first quarter of fiscal 2006 rather than restating prior periods' financial statements, as more fully described in Note 1 to the consolidated financial statements. Exclusive of these costs, general and administrative expenses were 8.7% of revenues in fiscal 2007 compared to 5.9% in fiscal 2006. The increase in these costs in absolute terms and as a percentage of revenue reflects, among other things, approximately \$3.4 million of stock compensation costs incurred in fiscal 2007 and included in general and administrative expenses (resulting, in part, from adoption of FAS 123(R) as described in Note 16 to

the consolidated financial statements), increased legal and other costs associated with work on the Company's financial statements and filings with the SEC, the initial cost of strategic initiatives related to product, customer and market research and initiatives designed to achieve cost reductions related to the procurement of goods and services, higher cash compensation costs, and the effects of the fixed nature of many of these costs on a smaller revenue base.

Depreciation and Amortization Expense

Depreciation and amortization expense decreased to \$21.0 million, or 4.6% of total revenues, in fiscal 2007 from \$28.9 million, or 5.3% of total revenues, in fiscal 2006. The decrease in depreciation and amortization expense relates almost entirely to the Company Stores segment, in which depreciation and amortization expense declined principally due to the sale and closure of stores.

Impairment Charges and Lease Termination Costs

Impairment charges and lease termination costs were \$12.5 million in fiscal 2007 compared to \$55.1 million in fiscal 2006, including approximately \$1.1 million and \$3.5 million, respectively, of goodwill impairment charges. The remaining charges in fiscal 2007 and 2006 consist principally of impairment charges related to long-lived assets at Company stores of approximately \$9.4 million and \$49.7 million, respectively, and lease termination costs of approximately \$1.8 million and \$1.3 million, respectively. While the majority of the impairment charges relate to closed stores, in the fourth quarter of fiscal 2007, the Company also recorded approximately \$3.0 million of impairment charges with respect to stores management believes are unlikely to generate sufficient future cash flows to enable the Company to recover the carrying value of the stores' assets, but which management has not yet decided to close. The Company closed eight factory stores in fiscal 2007 and 46 factory stores in fiscal 2006. The Company generally records impairment charges associated with a decision to close a store in the accounting period in which the closing decision is made; lease termination costs are recorded when the lease contract is terminated or, if earlier, the date on which the Company ceases use of the leased property.

Settlement of Litigation

On October 31, 2006, the Company agreed to settle a federal securities class action and to settle, in part, certain shareholder derivative actions, as more fully described in Item 3, "Legal Proceedings," and Note 12 to the consolidated financial statements appearing elsewhere herein. As part of the settlement, the Company issued to the plaintiffs 1,833,828 shares of the Company's common stock and warrants to acquire 4,296,523 shares of common stock at a price of \$12.21 per share. At the time the settlement was agreed upon, the Company's fiscal 2006 financial statements had not been issued; accordingly, the Company charged a provision for the settlement of approximately \$35.8 million against fiscal 2006 earnings, representing the estimated fair value as of late October 2006 of the common stock and warrants to be issued by the Company. In the fourth quarter of fiscal 2007, the Company recorded an additional charge to earnings of approximately \$16.0 million relating to the settlement, representing the increase from October 2006 to January 28, 2007 in the estimated fair value of the securities to be issued by the Company. The provision for settlement costs was adjusted downward by \$14.9 million in the first quarter of fiscal 2008 to reflect the decrease in the fair value of the securities from January 28, 2007 until their issuance on March 2, 2007. The fair value of the common shares was determined based upon the market price of the Company's common stock, and the fair value of the warrants to acquire common shares was estimated as described in Note 16 to the consolidated financial statements.

Interest Income

Interest income was \$1.6 million in fiscal 2007 compared to \$1.1 million in fiscal 2006. The increase principally reflects higher invested balances in fiscal 2007 compared to fiscal 2006.

Interest Expense

Interest expense increased to \$20.3 million in fiscal 2007 from \$20.2 million in fiscal 2006. The aggregate costs, including interest, fees and amortization of deferred financing costs, associated with the Company's credit facilities increased approximately \$4.9 million during fiscal 2007 compared to fiscal 2006, principally reflecting higher interest rates and lender margin in fiscal 2007 compared to fiscal 2006. In addition, interest expense in fiscal 2006 included one-time fees and expenses of approximately \$1.2 million associated with a bank credit facility prior to its retirement using proceeds of the 2005 Secured Credit Facilities, the write-off of approximately \$840,000 of unamortized financing costs associated with the retired bank financing and approximately \$640,000 charged to earnings upon termination of an interest rate hedge related to the retired bank financing. Interest expense in fiscal 2006 also included approximately \$2.0 million of interest expense associated indebtedness of certain subsidiaries which has since been retired.

Equity in Losses of Equity Method Franchisees

The Company's share of the losses incurred by equity method franchisees totaled \$842,000 in fiscal 2007 compared to \$4.3 million in fiscal 2006. This caption represents the Company's share of operating results of unconsolidated franchisees which develop and operate Krispy Kreme stores. The fiscal 2006 losses included approximately \$2.4 million of losses related to KremeKo, the Company's former franchisee in Eastern and Central Canada, which arose from impairment provisions associated principally with store closures. In addition, the Company's equity in the losses of equity method franchisees has declined as a result of the Company's sale or other disposal of these investments in fiscal 2006 and fiscal 2007.

Minority Interests in Results of Consolidated Franchisees

The minority interest in the results of operations of consolidated franchisees represents the portion of the income or loss of less than wholly-owned franchise subsidiaries allocable to other investors' interests in those franchisees. In fiscal 2006, minority investors absorbed losses in such subsidiaries totaling \$4.2 million. There were no minority interests in the results of operations of consolidated subsidiaries in fiscal 2007 because the minority interests in the franchisee had been reduced to zero or the franchisee had ceased operations.

Other Non-Operating Income and Expense, Net

Other non-operating income and expense in fiscal 2007 includes gains of approximately \$7.3 million arising principally from the sale of the Company's investments in Krispy Kreme Australia and Krispy Kreme UK, and a charge of approximately \$450,000 for estimated payments under a Company guarantee of certain obligations of an equity method franchisee.

Provision for Income Taxes

The provision for income taxes was \$1.2 million in fiscal 2007 and a benefit of \$776,000 in fiscal 2006. Each of these amounts includes adjustments to the valuation allowance for deferred income tax assets to maintain such allowance at an amount sufficient to reduce the Company's aggregate net deferred income tax assets to zero, as well as a provision for income taxes estimated to be payable currently. The provision for income taxes in fiscal 2006 also includes an out-of-period credit of approximately \$1.5 million. This credit corrects an overstatement of the valuation allowance for deferred income tax assets recorded by a charge to earnings in fiscal 2005. The Company concluded that this error was not material to the consolidated financial statements of the affected periods or to the fiscal 2006 consolidated financial statements. Accordingly, the Company recorded the credit in the first quarter of fiscal 2006 rather than restating prior periods' financial statements.

Net Loss

The Company incurred a net loss of \$42.2 million in fiscal 2007 compared to a net loss of \$135.8 million in fiscal 2006.

Liquidity and Capital Resources

The following table summarizes the Company's cash flows from operating, investing and financing activities for fiscal 2008, 2007 and 2006:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Net cash provided by operating activities	\$ 9,712	\$ 22,108	\$ 1,865
Net cash provided by (used for) investing activities	13,118	14,045	(11,688)
Net cash provided by (used for) financing activities	(34,425)	(15,477)	138
Effect of exchange rate changes on cash	88	(1)	(10)
Cash balances of subsidiaries at date of deconsolidation	—	(1,413)	(1,011)
Net increase (decrease) in cash and cash equivalents	<u>\$ (11,507)</u>	<u>\$ 19,262</u>	<u>\$ (10,706)</u>

Cash Flows from Operating Activities

Net cash provided by operating activities was \$9.7 million in fiscal 2008, \$22.1 million in fiscal 2007 and \$1.9 million in fiscal 2006.

Cash provided by operating activities in fiscal 2008 reflects a cash outflow of approximately \$4.1 million for the prepayment fee associated with the refinancing of the Company's 2005 Secured Credit Facilities as described below and in Note 10 to the consolidated financial statements appearing elsewhere herein. Operating cash flow was adversely affected in fiscal 2008 compared to fiscal 2007 by a \$4.2 million reduction in accrued interest from year end 2007 to year end 2008 arising from the change in the last day of the fiscal year relative to the last day of January. In addition, receipts of development and franchise fees were approximately \$5.0 million higher in fiscal 2007 than in fiscal 2008; such fees are deferred and not recognized in earnings until the related stores are opened.

Cash provided by operating activities in fiscal 2008, 2007 and 2006 was affected by professional and other fees related to the investigations and litigation described in Note 12 to the consolidated financial statements appearing elsewhere herein. Additionally, fiscal 2006 cash provided by operating activities was reduced by fees paid to the corporate recovery and advisory firm engaged by the Company to provide interim management services to the Company from late January 2005 through March 2006. These fees and expenses, net of related insurance recoveries, reduced operating cash flow by \$4.2 million, \$8.4 million and \$26.9 million in fiscal 2008, 2007 and 2006, respectively.

Cash Flows from Investing Activities

Net cash provided by investing activities was \$13.1 million in fiscal 2008 and \$14.0 in fiscal 2007. Net cash used for investing activities was \$11.7 million in fiscal 2006.

Cash used for capital expenditures increased to \$5.5 million in fiscal 2008 from \$4.0 million in fiscal 2007. Cash used for capital expenditures decreased in both fiscal 2008 and fiscal 2007 from \$10.4 million in fiscal 2006 because the Company substantially eliminated store expansion early in fiscal 2006. In fiscal 2008, 2007 and 2006, the Company realized proceeds from the sale of property and equipment of \$18.3 million, \$9.7 million and \$7.3 million, respectively, which, except for approximately \$10.9 million (net of expenses) received in fiscal 2008 from the sale of a mix manufacturing and distribution facility, related principally to closed stores.

During fiscal 2007, the Company recovered \$2.5 million related to its investment in Freedom Rings (a former franchisee which filed for bankruptcy protection in October 2005) and received approximately \$9.6 million from the sale of its interests in franchisees in Australia and the United Kingdom and from the sale of the Company's equity interest in another franchisee.

In addition, in fiscal 2007, the Company paid approximately \$818,000 (net of a recovery of \$282,000) to settle its obligations under its guarantees of a portion of the indebtedness of Glazed Investments, a subsidiary which filed for bankruptcy protection in February 2006. In fiscal 2006, the Company advanced approximately \$12.2 million to franchisees in which the Company had an ownership interest, including approximately \$9.3 million paid to settle the Company's obligations under certain guarantees of indebtedness of KremeKo. Each of these amounts is included in "Investments in and advances to equity method franchisees" in the consolidated statement of cash flows.

During fiscal 2007, the Company purchased three stores from one of its franchisees for \$2.9 million cash.

Cash Flows from Financing Activities

Net cash used for financing activities was \$34.4 in fiscal 2008 and \$15.5 million in fiscal 2007. Net cash provided by financing activities was \$0.1 million in fiscal 2006.

In February 2007 the Company closed new secured credit facilities totaling \$160 million. At closing, the Company borrowed the full \$110 million available under the 2007 Term Loan, and used the proceeds to retire approximately \$107 million of indebtedness outstanding under the 2005 Secured Credit Facilities (which were terminated) and to pay prepayment fees under the 2005 Secured Credit Facilities and fees and expenses associated with the 2007 Secured Credit Facilities. In fiscal 2008, the Company prepaid approximately \$32.8 million of the 2007 Term Loan, of which \$17.8 million was from the proceeds of sales of certain property and equipment and \$15.0 million represented discretionary prepayments made in order to reduce the likelihood of violating the leverage ratio covenant contained in the facilities.

During fiscal 2007, financing activities included scheduled principal payments of long-term debt. In addition, pursuant to the provisions of the 2005 Secured Credit Facilities described in Note 10 to the consolidated financial statements appearing elsewhere herein, in fiscal 2007 the Company prepaid approximately \$7.6 million of the debt thereunder using proceeds from the sale of certain property and equipment, and repaid an additional \$3.6 million using proceeds from the sale of the Company's interest in its franchisee in the United Kingdom.

In fiscal 2006, the Company closed the 2005 Secured Credit Facilities. The Company borrowed \$120 million under these facilities at closing, and used approximately \$88 million to repay borrowing outstanding under the credit facility existing at that time, which was then terminated. The Company paid approximately \$9.5 million of fees, costs and expenses associated with the 2005 Secured Credit Facilities. Other retirements of long-term debt in fiscal 2006 included approximately \$16.2 million related to a majority-owned franchise subsidiary and payments on capital lease obligations. Cash inflows from financing activities in fiscal 2006 included a \$7.7 million capital contribution to a majority-owned franchise subsidiary by the minority investors in that franchisee.

Other Balance Sheet Changes

Other current assets declined by approximately \$6.4 million in fiscal 2008 compared to fiscal 2007 principally due to the disposal of assets held for sale. Other accrued liabilities declined by approximately \$2.5 million in fiscal 2008, principally due to the timing of the January 2008 interest payment date relative to fiscal year end and the payment of certain accrued professional fees.

Business Conditions, Uncertainties and Liquidity

The Company incurred net losses of \$135.8 million, \$42.2 million and \$67.1 million in fiscal 2006, 2007 and 2008, respectively, which include non-cash impairment charges of \$53.7 million, \$10.8 million and \$61.0 million, respectively.

In addition, fiscal 2006 and 2007 results include non-cash charges of \$35.8 million and \$16.0 million, respectively, related to the settlement of certain litigation, and fiscal 2008 results reflect a non-cash credit of \$14.9 million related to the same settlement, as described in Note 12 to the consolidated financial statements appearing elsewhere herein.

The Company experienced a decline in revenues and incurred net losses in each of the last three fiscal years. The revenue decline reflects fewer Company stores in operation, a decline in domestic royalty revenues and lower sales of mixes and other ingredients resulting from lower sales by the Company's domestic franchisees. Lower revenues have adversely affected operating margins because of the fixed or semi-fixed nature of many of the Company's direct operating expenses. In addition, the Company has recorded significant asset impairment charges, principally related to underperforming Company stores and, in fiscal 2008, a manufacturing and distribution facility the Company divested. Total impairment charges and lease termination costs for fiscal 2008 were \$62.1 million.

The Company had net cash flow from operations of \$1.9 million, \$22.1 million and \$9.7 million in fiscal 2006, 2007, and 2008, respectively. Asset dispositions generated investing cash flows of \$9.7 million in fiscal 2007 and \$18.3 million in fiscal 2008, with the majority of such proceeds used to reduce the outstanding borrowings under the Company's credit facilities.

The Company's fiscal 2009 operating plan reflects a decline in revenues and an increase in certain costs, including the impact of commodity prices on its raw materials costs, compared to fiscal 2008. The Company is taking measures to reduce controllable costs and has implemented, and, to the extent feasible, plans to implement in the future, price increases to offset increases in raw material costs. Based on the Company's current working capital and the fiscal 2009 operating plan, management believes the Company can meet its projected operating, investing and financing cash requirements.

In February 2007, the Company completed a refinancing using the proceeds of the 2007 Secured Credit Facilities described in Note 10 to the consolidated financial statements appearing elsewhere herein, which are the Company's principal source of external financing. These facilities consist of a \$110 million term loan maturing in February 2014 and a \$30 million revolving credit facility maturing in February 2013.

The 2007 Secured Credit Facilities contain significant financial and other covenants. Based on its operating plan, the Company projected that it would not be able to comply with the financial covenants in fiscal 2009. Subsequent to the end of fiscal 2008, the Company executed amendments to the 2007 Secured Credit Facilities which, among other things, relaxed the financial covenants contained therein for fiscal 2009 and 2010. The financial covenants as of February 3, 2008, and the amended financial covenants for future years, are described in Note 10 to the consolidated financial statements appearing elsewhere herein. While the Company was in compliance with the financial covenants as of February 3, 2008, and the Company expects to be able to comply with the amended financial covenants based on its operating plan, there can be no assurance that the Company will be able to do so. As a result of amendments and waivers in fiscal 2008 and 2009, the Company paid fees of approximately \$835,000 and the interest rate on the loans has increased from LIBOR plus 2.75% to LIBOR plus 5.50% (with a LIBOR floor of 3.25%). The increase in rates will result in approximately \$1.9 million of additional annual interest expense based on the current level of borrowings. Any future amendments or waivers could result in additional fees or rate increases.

The Company has prepaid approximately \$32.8 million of the \$110 million term loan; such prepayments included prepayments of approximately \$17.8 million from sales of property and equipment and discretionary prepayments of \$5 million in each of the first, second and third quarters of fiscal 2008 made in order to reduce the likelihood of violating the leverage ratio covenant contained in the facilities. In addition to scheduled amortization of principal, the term loan is required to be prepaid with some or all of the net proceeds of certain equity issuances, debt incurrences, asset sales and casualty events and with a percentage of excess cash flow (as defined in the agreement) on an annual basis.

As of February 3, 2008, the maximum additional borrowing available to the Company was approximately \$9.7 million, computed on a pro forma basis after giving effect to the reduction in lender commitments under the Company's revolving credit facility described in Note 10 to the consolidated financial statements appearing elsewhere herein.

Failure to comply with the financial covenants contained in the 2007 Credit Facilities, or the occurrence or failure to occur of certain events, would cause the Company to default under the facilities. In the absence of a waiver of, or forbearance with respect to, any such default from the Company's lenders, the Company could be obligated to repay outstanding indebtedness under the facilities in advance of its scheduled maturity, and the Company's ability to access additional borrowings under the facilities would be restricted. In the event the Company were to fail to comply

with one or more such covenants, the Company would attempt to negotiate waivers of any such noncompliance. There can be no assurance that the Company would be able to negotiate any such waivers, and the costs or conditions associated with any such waivers could be significant. In the event that credit under the 2007 Secured Credit Facilities were not available to the Company, there can be no assurance that alternative sources of credit would be available to the Company or, if they are available, under what terms or at what cost.

Many factors could adversely affect the Company's business. In particular, the Company is vulnerable to further increases in the cost of raw materials, which could adversely affect the Company's operating results and cash flows. In addition, several franchisees have been experiencing financial pressures which, in certain instances, became more exacerbated during fiscal 2008. The Company has guaranteed certain obligations of franchisees in which it has an equity interest, as described in "Other Commitments and Contingencies" in Note 12 to the consolidated financial statements appearing elsewhere herein. In the fourth quarter of fiscal 2008, the Company recorded a provision of \$3.0 million for estimated payments under these guarantees. The Company may be required to make payments under any of these guarantees in the next 12 months. During the year ended February 3, 2008, two of the Company's other franchisees filed for reorganization under Chapter 11 of the United States Bankruptcy Code. One of these bankruptcy cases was substantially concluded in February 2008 upon the sale of the franchisee's assets to, and assumption of most of its franchise agreements by, a successor franchisee; the other franchise operation is continuing to operate under court supervision. Franchisees opened 88 stores and closed 26 stores in fiscal 2008. Franchisees have contractual commitments to open over 170 additional stores after fiscal 2008; however, the Company believes franchisees also will close additional stores in the future, and the number of such closures may be significant. Royalty revenues and most of KK Supply Chain revenues are directly correlated to sales by franchise stores and, accordingly, franchise store closures have an adverse effect on the Company's revenues, results of operations and cash flows.

Capital Resources, Contractual Obligations and Off-Balance Sheet Arrangements

In addition to cash flow generated from operations, the Company utilizes other capital resources and financing arrangements to fund its business. These other resources and arrangements have assumed increased importance in light of the reduced cash flows provided by operations. A discussion of these capital resources and financing techniques is included below.

Debt

The Company continuously monitors its funding requirements for general working capital purposes and other financing and investing activities. In the last three fiscal years, management focused on reducing or eliminating the Company's investments in franchisees and the related guarantees of franchisees' obligations, and on restructuring the Company's borrowing arrangements to maintain credit availability to facilitate accomplishing the Company's business restructuring initiatives.

On February 16, 2007, the Company closed new secured credit facilities totaling \$160 million (the "2007 Secured Credit Facilities"). The facilities then consisted of a \$50 million revolving credit facility maturing in February 2013 (the "2007 Revolver") and a \$110 million term loan maturing in February 2014 (the "2007 Term Loan"). The 2007 Secured Credit Facilities are secured by a first lien on substantially all of the assets of the Company and its domestic subsidiaries. At closing, the Company borrowed the full \$110 million available under the 2007 Term Loan, and used the proceeds to retire approximately \$107 million of indebtedness outstanding under the 2005 Secured Credit Facilities described below (which were then terminated), to pay prepayment premiums under the 2005 Secured Credit Facilities and to pay fees and expenses associated with the 2007 Secured Credit Facilities. The Company recorded a pretax charge related to the refinancing of approximately \$9.6 million in the first quarter of fiscal 2008, representing the approximately \$4.1 million prepayment fee related to the 2005 Secured Credit Facilities and the write-off of approximately \$5.5 million of unamortized deferred financing costs related to that facility.

The 2007 Revolver contains provisions which permit the Company to obtain letters of credit. Issuance of letters of credit under these provisions constitutes usage of the lending commitments, and reduces the amount available for cash borrowings under the 2007 Revolver. The commitments under the 2007 Revolver were reduced to \$30 million from \$50 million in connection with the amendments to the 2007 Secured Credit Facilities executed in April 2008 (the "April Amendments").

Interest on borrowings under the 2007 Revolver and Term Loan is payable either at LIBOR or at the Alternate Base Rate (which is the greater of Fed funds rate plus 0.50% or the prime rate), in each case plus the Applicable Margin. As of February 3, 2008, the Applicable Margin for LIBOR-based loans was 3.50% and for Alternate Base Rate-based loans was 2.50%. The April Amendments to the 2007 Secured Credit Facilities more fully described below increased the Applicable Margin for LIBOR-based loans to 5.50% and for Alternate Base Rate-based loans to 4.50%. In addition, those amendments provide that LIBOR-based loans shall be computed based upon the greater of the relevant LIBOR rate or 3.25%.

The Company is required to pay a fee equal to the Applicable Margin for LIBOR-based loans on the outstanding amount of letters of credit issued under the 2007 Revolver, as well as a fronting fee of 0.25% of the amount of such letter of credit payable to the letter of credit issuer. There also is a fee of 0.50% on the unused portion of the 2007 Revolver lending commitment, which increased to 0.75% simultaneously with the reduction in the revolver lending commitments pursuant to the April Amendments.

Borrowings under the 2007 Revolver (and issuances of letters of credit) are subject to the satisfaction of usual and customary conditions, including accuracy of representations and warranties and the absence of defaults.

The 2007 Term Loan is payable in quarterly installments of approximately \$240,000 (after adjustment for the effects of certain principal prepayments) and a final installment equal to the remaining principal balance in February 2014. The 2007 Term Loan is required to be prepaid with some or all of the net proceeds of certain equity issuances, debt incurrences, asset sales and casualty events and with a percentage of excess cash flow (as defined in the agreement) on an annual basis.

The 2007 Secured Credit Facilities require the Company to meet certain financial tests, including a maximum consolidated leverage ratio (expressed as a ratio of total debt to Consolidated EBITDA) and a minimum consolidated interest coverage ratio (expressed as a ratio of Consolidated EBITDA to net interest expense), computed based upon Consolidated EBITDA and net interest expense for the most recent four fiscal quarters and total debt as of the end of such four-quarter period. As of February 3, 2008, the consolidated leverage ratio was required to be not greater than 4.0 to 1.0 and the consolidated interest coverage ratio was required to be not less than 3.25 to 1.0. As of February 3, 2008, the Company's consolidated leverage ratio was approximately 3.03 to 1.0 and the Company's consolidated interest coverage ratio was approximately 4.23 to 1.0. The April Amendments provide that the consolidated leverage ratio shall not exceed 4.75 to 1.0 and the consolidated interest coverage ratio shall not be less than 2.5 to 1.0 in fiscal 2009. The maximum consolidated leverage ratio for periods after fiscal 2009 declines over time until it reaches 2.75 to 1.0 in fiscal 2013, and the minimum consolidated interest coverage ratio increases over time until it reaches 4.5 to 1.0 in fiscal 2011. "Consolidated EBITDA" is a non-GAAP measure and is defined in the 2007 Secured Credit Facilities to mean, generally, consolidated net income or loss, exclusive of unrealized gains and losses on hedging instruments, gains or losses on the early extinguishment of debt and provisions for payments on guarantees of franchisee obligations, plus the sum of net interest expense, income taxes, depreciation and amortization, non-cash charges, store closure costs, costs associated with certain litigation and investigations, and extraordinary professional fees; and minus payments, if any, on guarantees of franchisee obligations in excess of \$3 million in any rolling 12-month period and the sum of non-cash credits. In addition, the 2007 Secured Credit Facilities contain other covenants which, among other things, limit the incurrence of additional indebtedness (including guarantees), liens, investments (including investments in and advances to franchisees which own and operate Krispy Kreme stores), dividends, transactions with affiliates, asset sales, acquisitions, capital expenditures, mergers and consolidations, prepayments of other indebtedness and other activities customarily restricted in such agreements. The 2007 Secured Credit Facilities also prohibit the transfer of cash or other assets to KKDI from its subsidiaries, whether by dividend, loan or otherwise, but provide for exceptions to enable KKDI to pay taxes and operating expenses and certain judgment and settlement costs.

The operation of the restrictive financial covenants described above may limit the amount the Company may borrow under the 2007 Revolver. In addition, the maximum amount which may be borrowed under the 2007 Revolver is reduced by the amount of outstanding letters of credit, of which approximately \$20.3 million were outstanding as of February 3, 2008. The maximum additional borrowing available to the Company as of February 3, 2008 was approximately \$9.7 million (computed on a pro forma basis after giving effect to the April Amendments).

The 2007 Secured Credit Facilities also contain customary events of default, including without limitation, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to other indebtedness in excess of \$5 million, certain events of bankruptcy and insolvency, judgment defaults in excess of \$5 million and the occurrence of a change of control.

In May 2007, the Company entered into interest rate derivative contracts having an aggregate notional principal amount of \$60 million. The derivative contracts eliminate the Company's exposure, with respect to such notional amount, to increases in three month LIBOR beyond 5.40% through April 2010, and eliminate the Company's ability to benefit from a reduction in three month LIBOR below 4.48% for the same period.

Leases

The Company conducts some of its operations from leased facilities and leases certain equipment. Generally, these leases have initial terms of three to twenty years and contain provisions for renewal options of five to ten years. In determining whether to enter into a lease for an asset, the Company evaluates the nature of the asset and the associated lease terms to determine if leasing is an effective financing tool.

Off-Balance Sheet Arrangements

The Company's only off-balance sheet arrangements, as defined by Item 303(a)(4) of SEC Regulation S-K, consist of the Company's guarantees of indebtedness and lease obligations of certain franchisees, as discussed in Notes 12 and 18 to the consolidated financial statements appearing elsewhere herein, and certain potential indemnification obligations also discussed in Note 12.

Contractual Cash Obligations at February 3, 2008

The Company's contractual cash obligations as of February 3, 2008 are as follows:

	Total Amount	Payments Due In			
		Less Than 1 Year	1-3 Years	3-5 Years	More Than 5 Years
(In thousands)					
Long-term debt (excluding capital lease obligations), including current maturities	\$ 76,119	\$ 963	\$ 1,926	\$ 1,926	\$ 71,304
Interest payment obligations (1)(2)	47,565	7,806	15,594	16,481	7,684
Payment obligations on interest rate hedge (3)	3,052	1,160	1,630	262	—
Capital lease obligations	594	594	—	—	—
Operating lease obligations	159,658	10,651	20,083	18,406	110,518
Purchase obligations	48,885	34,974	13,911	—	—
Guarantee obligations	3,419	3,419	—	—	—
Other long-term obligations, including current portion, reflected on the Company's balance sheet:					
Self-insurance claims	18,127	6,373	4,526	2,170	5,058
401(k) mirror plan liability	368	—	—	—	368
Total	\$ 357,787	\$ 65,940	\$ 57,670	\$ 39,245	\$ 194,932

- (1) Interest rates utilized to estimate interest payments for variable rate debt are based upon the forward LIBOR interest rate curve as of February 1, 2008 and have been computed on a pro forma basis to give effect to the amendments to the Company's secured credit facilities executed in April 2008.
- (2) Represents estimated amounts payable without reduction for any amount due to the Company or payable by the Company pursuant to an interest rate hedge agreement. See Note 10 to the consolidated financial statements appearing elsewhere herein.

(3) Interest rates utilized to estimate payments on the interest rate hedge are based upon the forward LIBOR interest rate curve as of February 1, 2008

The preceding table of contractual cash obligations excludes income tax liabilities of approximately \$2.2 million as of February 3, 2008 for unrecognized tax benefits due to uncertainty in predicting the timing of any such related payments.

Capital Requirements

In the next five years, the Company plans to use cash primarily for the following activities:

- Working capital and other corporate purposes
- Opening new Company stores in selected markets, principally satellite shops
- Remodeling and relocation of selected older Company shops
- Investments in systems and personnel
- Restructuring initiatives

The Company's capital requirements for these activities may be significant. These capital requirements will depend on many factors including the Company's overall performance, the pace of store expansion and Company store remodels and infrastructure needs for both personnel and facilities. These capital outlays are subject to limitations contained in the 2007 Secured Credit Facilities.

Inflation

The Company does not believe that inflation has had a material effect on its results of operations in recent years.

Critical Accounting Policies

The Company's discussion and analysis of its financial condition and results of operations is based upon its financial statements that have been prepared in accordance with GAAP. The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosures, including disclosures of contingencies and uncertainties. GAAP provides the framework from which to make these estimates, assumptions and disclosures. The Company chooses accounting policies within GAAP that management believes are appropriate to accurately and fairly report the Company's operating results and financial position in a consistent manner. Management regularly assesses these policies in light of changes in facts and circumstances and discusses the selection of accounting policies and significant accounting judgments with the audit committee of the Board of Directors. The Company believes that application of the following accounting policies involves judgments and estimates that are among the more significant used in the preparation of the financial statements, and that an understanding of these policies is important to understanding the Company's financial condition and results of operations.

Allowance for Doubtful Accounts

Accounts receivable arise primarily from royalties earned on sales by the Company's franchisees, sales by KK Supply Chain to our franchisees of equipment, mix and other supplies necessary to operate a Krispy Kreme store, as well as from off-premises sales by company stores to convenience and grocery stores and other customers. During the three years in the period ended February 3, 2008, some of the Company's franchisees experienced financial difficulties or for other reasons did not comply with the normal payment terms for settlement of amounts due to the Company. The Company has recorded provisions for doubtful accounts related to its accounts receivable, including receivables from franchisees, in amounts which management believes are sufficient to provide for losses estimated to be sustained on realization of these receivables. Such estimates inherently involve uncertainties and assessments of the outcome of future events, and changes in facts and circumstances may result in adjustments to the provision for doubtful accounts.

FAS 142, "Goodwill and Other Intangible Assets" ("FAS 142"), addresses the accounting and reporting of goodwill and other intangible assets subsequent to their acquisition. FAS 142 requires intangible assets with definite lives to be amortized over their estimated useful lives, while those with indefinite lives and goodwill are not subject to amortization but must be tested annually for impairment, or more frequently if events and circumstances indicate potential impairment.

For intangible assets with indefinite lives, the Company performs the annual test for impairment as of December 31. The impairment test involves determining the fair values of the reporting units to which goodwill is assigned and comparing those fair values to the reporting units' carrying values, including goodwill. To determine fair value for each reporting unit, the Company uses the fair value of the cash flows that the reporting unit can be expected to generate in the future. This valuation method requires management to project revenues, operating expenses, working capital investment, capital spending and cash flows for the reporting units over a multiyear period, as well as determine the weighted average cost of capital to be used as a discount rate. Significant management judgment is involved in preparing these estimates. Changes in projections or estimates could significantly change the estimated fair value of reporting units and affect the recorded balances of goodwill. In addition, if management uses different assumptions or estimates in the future or if conditions exist in future periods that are different than those anticipated, future operating results and the balances of goodwill in the future could be affected by impairment charges. Impairment analyses of goodwill in fiscal 2008, 2007 and 2006 resulted in impairment charges of approximately \$4.6 million, \$1.1 million and \$3.5 million, respectively. As of February 3, 2008, the remaining goodwill had a carrying value of \$23.5 million, all of which was associated with the Franchise segment.

Asset Impairment

When an asset group (typically a store) is identified as underperforming or when a decision is made to abandon an asset group or to close a store, the Company makes an assessment of the potential impairment of the related assets. The assessment is based upon a comparison of the carrying amount of the assets, primarily property and equipment, to the estimated undiscounted cash flows expected to be generated from those assets. To estimate cash flows, management projects the net cash flows anticipated from continuing operation of the asset group or store until its closing or abandonment, as well as cash flows, if any, anticipated from disposal of the related assets. If the carrying amount of the assets exceeds the sum of the undiscounted cash flows, the Company records an impairment charge in an amount equal to the excess of the carrying value of the assets over their estimated fair value.

Determining undiscounted cash flows and the fair value of an asset group involves estimating future cash flows, revenues, operating expenses and disposal values. The projections of these amounts represent management's best estimates at the time of the review. If different cash flows had been estimated, property and equipment balances and related impairment charges could have been affected. Further, if management uses different assumptions or estimates in the future or if conditions exist in future periods that are different than those anticipated, future operating results could be affected. In fiscal 2008, 2007 and 2006, the Company recorded impairment charges related to long-lived assets totaling approximately \$56.0 million, \$9.4 million and \$49.7, respectively. Additional impairment charges may be necessary in future years.

Insurance

The Company is subject to workers' compensation, vehicle and general liability claims. The Company is self-insured for the cost of all workers' compensation, vehicle and general liability claims up to the amount of stop-loss insurance coverage purchased by the Company from commercial insurance carriers. The Company maintains accruals for the estimated cost of claims, without regard to the effects of stop-loss coverage, using actuarial methods which evaluate known open and incurred but not reported claims and consider historical loss development experience. In addition, the Company records receivables from the insurance carriers for claims amounts estimated to be recovered under the stop-loss insurance policies when these amounts are estimable and probable of collection. The Company estimates such stop-loss receivables using the same actuarial methods used to establish the related

claims accruals, and taking into account the amount of risk transferred to the carriers under the stop-loss policies. Many estimates and assumptions are involved in estimating future claims, and differences between future events and prior estimates and assumptions could affect future operating results and result in adjustments to these loss accruals and related insurance receivables.

Income Taxes

The Company recognizes deferred tax assets and liabilities based upon management's expectation of the future tax consequences of temporary differences between the income tax and financial reporting bases of assets and liabilities. Deferred tax liabilities generally represent tax expense recognized for which payment has been deferred, or expenses which already have been deducted in the Company's tax return but which have not yet been recognized as an expense in the consolidated financial statements. Deferred tax assets generally represent tax deductions or credits that will be reflected in future tax returns for which the Company has already recorded a tax benefit in its consolidated financial statements. The Company establishes valuation allowances for deferred income tax assets as required under FAS 109, "Accounting for Income Taxes." At February 3, 2008, the Company has recorded a valuation allowance against deferred income tax assets of \$177.0 million, representing the total amount of such assets in excess of the Company's deferred income tax liabilities. The valuation allowance was recorded because management was unable to conclude, in light of the cumulative losses realized by the Company, that realization of the net deferred income tax asset was more likely than not. The determination of income tax expense and the related balance sheet accounts, including valuation allowances for deferred income tax assets, requires management to make estimates and assumptions regarding future events, including future operating results and the outcome of tax-related contingencies. If future events are different from those assumed or anticipated, the amount of income tax assets and liabilities, including valuation allowances for deferred income tax assets, could be materially affected.

Guarantee Liabilities

The Company has guaranteed a portion of loan and lease obligations of certain franchisees in which the Company owns an interest. The Company assesses the likelihood of making any payments under the guarantees and records liabilities for the present value of anticipated payments when the Company believes that an obligation to perform under the guarantees is probable. No liabilities for the guarantees were recorded at the time they were issued because the Company believed the value of the guarantees was immaterial. As of February 3, 2008, the Company has recorded liabilities of approximately \$3.4 million related to such guarantees, which totaled approximately \$17.5 million at that date. Assessing the probability of future guarantee payments involves estimates and assumptions regarding future events, including the future operating results of the franchisees. If future events are different from those assumed or anticipated, the amounts estimated to be paid pursuant to such guarantees could change, and additional provisions to record such liabilities could be required.

Investments in Franchisees

The Company has investments in certain Equity Method Franchisees. While the Company believes that the recorded amounts of such investments are realizable, these franchisees typically do not have an extensive operating history, and the value of the Company's investments in the franchisees cannot be verified by reference to quoted market prices. The Company's assessment of the realizability of these investments involves assumptions concerning future events, including the future operating results of the franchisees. If future events are different from those assumed or anticipated by the Company, the assessment of realizability of the recorded investments in these entities could change, and impairment provisions related to these investments could be required. As of February 3, 2008, the Company's investment in Equity Method Franchisees was approximately \$2.0 million.

Stock-Based Compensation

In fiscal 2007 the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment," which requires that stock awards, including stock options, granted to employees and which ultimately vest be recognized as compensation expense based on their fair value at the grant date. Because

options granted to employees differ from options on the Company's common shares traded in the financial markets, the Company cannot determine the fair value of options granted to employees based on observed market prices. Accordingly, the Company estimates the fair value of stock options subject only to service conditions using the Black-Scholes option valuation model, which requires inputs including interest rates, expected dividends, volatility measures and employee exercise behavior patterns. Some of the inputs the Company uses are not market-observable and must be estimated. The fair value of stock options which contain market conditions as well as service conditions is estimated using Monte Carlo simulation techniques. In addition, the Company must estimate the number of awards which ultimately will vest, and periodically adjust such estimates to reflect actual vesting events. Use of different estimates and assumptions would produce different option values, which in turn would affect the amount of compensation expense recognized.

The Black-Scholes model is capable of considering the specific features included in the options granted to the Company's employees that are subject only to service conditions. However, there are other models which could be used to estimate their fair value, and techniques other than Monte Carlo simulation could be used to estimate the value of stock options which are subject to both service and market conditions. If the Company were to use different models, the option values would differ despite using the same inputs. Accordingly, using different assumptions coupled with using different valuation models could have a significant impact on the fair value of employee stock options.

Recent Accounting Pronouncements

The Company adopted Financial Accounting Standards Board ("FASB") Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109" during first quarter of fiscal 2008 as described in Note 1 to the consolidated financial statements appearing elsewhere herein.

In March 2008, the FASB issued FASB Statement No. 161, "Disclosures about Derivative Instruments and Hedging Activities" ("FAS 161"). The new standard is intended to improve financial reporting about derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance, and cash flows. FAS 161 is effective for the Company in fiscal 2010.

In February 2007, the FASB issued Statement No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115" ("FAS 159"). FAS 159 permits entities to choose to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings. FAS 159 does not affect any existing accounting literature that requires certain assets and liabilities to be carried at fair value. Management does not intend to adopt any fair value measurement options permitted by FAS 159 and, accordingly, does not expect FAS 159 to have any effect on the Company's financial position or results of operations.

In September 2006, the FASB issued Statement No. 157, "Fair Value Measurements" ("FAS 157"), which addresses how companies should measure fair value when they are required to use a fair value measure for recognition or disclosure purposes under GAAP. As a result of FAS 157, there is now a common definition of fair value to be used throughout GAAP, which is expected to make the measurement of fair value more consistent and comparable. The Company must adopt FAS 157 in fiscal 2009. Management does not expect adoption of FAS 157 to have a material effect on the Company's financial position or results of operations.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

The Company is exposed to market risk from increases in interest rates on its outstanding debt. All of the borrowings under the Company's secured credit facilities bear interest at variable rates based upon either the prime rate, Fed funds rate or LIBOR. The interest cost of the Company's debt is affected by changes in short-term interest rates and increases in those rates adversely affect the Company's results of operations. The Company has entered into interest rate derivative contracts having an aggregate notional principal amount of \$60 million. The derivative contracts eliminate the Company's exposure, with respect to such notional amount, to increases in three month LIBOR beyond 5.40% through April 2010, and eliminate the Company's ability to benefit from a reduction in three month LIBOR below 4.48% for the same period.

As of February 3, 2008, the Company had approximately \$76.7 million in borrowings outstanding. A hypothetical increase of 100 basis points in short-term interest rates would result in an increase in the Company's annual interest expense of approximately \$167,000, after giving effect to the change in payments due to or from the Company from the interest rate hedge described above.

Because the substantial majority of the Company's revenue, expense and capital purchasing activities are transacted in United States dollars, the exposure to foreign currency exchange risk is limited. The Company's investment in its franchisee operating in Mexico and the Company's operations in Canada expose the Company to exchange rate risk. In addition, although royalties from international franchisees are payable to the Company in United States dollars, changes in the rate of exchange between the United States dollar and the foreign currencies used in the countries in which the international franchisees operate will affect the Company's royalty revenues. The Company historically has not attempted to hedge these exchange rate risks.

The Company is exposed to the effects of commodity price fluctuations in the cost of ingredients of its products, of which flour, sugar and shortening are the most significant. In order to secure adequate supplies of materials and bring greater stability to the cost of ingredients, the Company routinely enters into forward purchase contracts and other purchase arrangements with suppliers. Under the forward purchase contracts, the Company commits to purchasing agreed-upon quantities of ingredients at agreed-upon prices at specified future dates. The outstanding purchase commitment for these commodities at any point in time typically ranges from one month's to two years' anticipated requirements, depending on the ingredient. Other purchase arrangements typically are contractual arrangements with vendors (for example, with respect to certain beverages and ingredients) under which the Company is not required to purchase any minimum quantity of goods, but must purchase minimum percentages of its requirements for such goods from these vendors with whom it has executed these contracts.

In addition to entering into forward purchase contracts, from time to time the Company purchases exchange-traded commodity futures contracts, and options on such contracts, for raw materials which are ingredients of its products or which are components of such ingredients, including wheat and soybean oil. The Company typically assigns the futures contract to a supplier in connection with entering into a forward purchase contract for the related ingredient. Quantitative information about the Company's unassigned commodity futures contracts as of February 3, 2008, all of which mature in fiscal 2009, is set forth in the table below.

	Contract Volume	Weighted Average Contract or Strike Price	Aggregate Contract Amount or Strike Price	Aggregate Fair Value
	(Dollars in thousands, except average prices)			
Wheat futures contracts	300,000 bu.	\$10.04/bu.	\$3,012	\$267

Although the Company utilizes forward purchase contracts and futures contracts and options on such contracts to mitigate the risks related to commodity price fluctuations, such contracts do not fully mitigate commodity price risk. In addition, the portion of the Company's anticipated future commodity requirements that is subject to such contracts varies from time to time. Recently, prices for wheat and soy bean oil have been at or near all-time highs and dairy prices have risen. Continued high prices or further adverse changes in commodity prices could adversely affect the Company's profitability and liquidity.

The following table illustrates the potential effect on the Company’s costs resulting from hypothetical changes in the cost of the Company’s three most significant ingredients.

Ingredient	Approximate Anticipated Fiscal 2009 Purchases	Approximate Range of Prices Paid In Fiscal 2008	Hypothetical Price Increase	Approximate Annual Effect Of Hypothetical Price Increase
	(In thousands)			(In thousands)
Flour	79,000lbs.	\$0.141 – \$0.239/lb.	\$0.01	\$790
Shortening	41,000lbs.	\$0.367 – \$0.586/lb.	\$0.01	410
Sugar	61,600lbs.	\$0.295 – \$0.306/lb.	\$0.01	616

The range of prices paid for fiscal 2008 set forth in the table above reflect the effects of any forward purchase contracts entered into at various times prior to delivery of the goods and, accordingly, do not necessarily reflect the range of prices of these ingredients prevailing in the market during the fiscal year.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of Krispy Kreme Doughnuts, Inc.

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Krispy Kreme Doughnuts, Inc. and its subsidiaries (the "Company") at February 3, 2008 and January 28, 2007, and the results of their operations and their cash flows for each of the three years in the period ended February 3, 2008 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedules listed in the accompanying index present fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of February 3, 2008, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedules, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedules, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 1 to the consolidated financial statements, the Company changed the manner in which it accounts for share-based compensation effective January 30, 2006 and uncertain tax positions effective January 29, 2007.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

PricewaterhouseCoopers LLP
Greensboro, North Carolina
April 17, 2008

KRISPY KREME DOUGHNUTS, INC.

CONSOLIDATED BALANCE SHEET

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 24,735	\$ 36,242
Receivables	22,991	26,769
Accounts and notes receivable — equity method franchisees	2,637	834
Inventories	19,987	21,006
Insurance recovery receivable	—	34,967
Deferred income taxes	83	—
Other current assets	5,647	12,000
Total current assets	76,080	131,818
Property and equipment	90,996	168,654
Investments in equity method franchisees	1,950	3,224
Goodwill and other intangible assets	23,856	28,934
Deferred income taxes	—	20
Other assets	9,469	16,842
Total assets	\$ 202,351	\$ 349,492
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Current maturities of long-term debt	\$ 1,557	\$ 1,730
Accounts payable	5,712	7,874
Accrued litigation settlement	—	86,772
Deferred income taxes	—	20
Other accrued liabilities	35,949	38,474
Total current liabilities	43,218	134,870
Long-term debt, less current maturities	75,156	105,966
Deferred income taxes	83	—
Other long-term obligations	27,270	29,694
Commitments and contingencies		
SHAREHOLDERS' EQUITY:		
Preferred stock, no par value; 10,000 shares authorized; none issued and outstanding	—	—
Common stock, no par value; 300,000 shares authorized; 65,370 and 62,670 shares issued and outstanding	355,615	310,942
Accumulated other comprehensive income	81	1,266
Accumulated deficit	(299,072)	(233,246)
Total shareholders' equity	56,624	78,962
Total liabilities and shareholders' equity	\$ 202,351	\$ 349,492

The accompanying notes are an integral part of the financial statements.

KRISPY KREME DOUGHNUTS, INC.

CONSOLIDATED STATEMENT OF OPERATIONS

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands, except per share amounts)		
Revenues	\$ 429,319	\$ 461,195	\$ 543,361
Operating expenses:			
Direct operating expenses (exclusive of depreciation and amortization shown below)	380,014	389,379	474,591
General and administrative expenses	26,303	48,860	67,727
Depreciation and amortization expense	18,433	21,046	28,920
Impairment charges and lease termination costs	62,073	12,519	55,062
Settlement of litigation	(14,930)	15,972	35,833
Other operating (income) and expense, net	13	1,916	(1,741)
Operating (loss)	(42,587)	(28,497)	(117,031)
Interest income	1,422	1,627	1,110
Interest expense	(9,796)	(20,334)	(20,211)
Loss on extinguishment of debt	(9,622)	—	—
Equity in (losses) of equity method franchisees	(933)	(842)	(4,337)
Minority interests in results of consolidated franchisees	—	—	4,181
Other non-operating income and (expense), net	(3,211)	7,021	(248)
(Loss) before income taxes	(64,727)	(41,025)	(136,536)
Provision for income taxes (benefit)	2,324	1,211	(776)
Net (loss)	\$ (67,051)	\$ (42,236)	\$ (135,760)
(Loss) per common share:			
Basic	\$ (1.05)	\$ (.68)	\$ (2.20)
Diluted	\$ (1.05)	\$ (.68)	\$ (2.20)

The accompanying notes are an integral part of the financial statements.

KRISPY KREME DOUGHNUTS, INC.
CONSOLIDATED STATEMENT OF CASH FLOWS

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
CASH FLOW FROM OPERATING ACTIVITIES:			
Net (loss)	\$ (67,051)	\$ (42,236)	\$ (135,760)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Depreciation and amortization	18,433	21,046	28,920
Deferred income taxes	889	(12)	(1,888)
Impairment charges	61,041	10,762	53,734
Settlement of litigation	(14,930)	15,972	35,833
Accrued rent expense	(663)	1,029	374
(Gain) loss on disposal of property and equipment	64	1,786	(1,807)
Gain on sale of interests in equity method franchisees	(260)	(7,308)	—
Share-based compensation	7,599	9,849	6,862
Provision for doubtful accounts	1,786	3,390	6,033
Amortization of deferred financing costs	6,041	2,925	2,544
Minority interests in results of consolidated franchisees	—	—	(4,181)
Equity in losses of equity method franchisees	933	842	4,337
Cash distributions from equity method franchisees	—	—	453
Other	991	407	295
Change in assets and liabilities:			
Receivables	284	501	2,252
Inventories	1,058	2,558	4,123
Other current and non-current assets	2,105	6,850	(2,971)
Accounts payable and accrued liabilities	(7,550)	(9,054)	435
Other long-term obligations	(1,058)	2,801	2,277
Net cash provided by operating activities	9,712	22,108	1,865
CASH FLOW FROM INVESTING ACTIVITIES:			
Purchase of property and equipment	(5,509)	(4,005)	(10,381)
Proceeds from disposals of property and equipment	18,314	9,663	7,330
Acquisition of franchisees and interests therein, net of cash acquired	—	—	428
Investments in and advances to franchise investees	—	(818)	(12,219)
Recovery of investments in and advances to franchise investee	—	2,500	2,542
Sale of interests in equity method franchisee	300	9,591	—
Acquisition of stores from franchisee	—	(2,900)	—
Decrease in other assets	13	14	612
Net cash provided by (used for) investing activities	13,118	14,045	(11,688)
CASH FLOW FROM FINANCING ACTIVITIES:			
Issuance of short-term debt	—	2,984	2,274
Repayment of short-term debt	—	(3,038)	(2,220)
Proceeds from issuance of long-term debt	110,000	—	120,000
Repayment of long-term debt	(141,733)	(14,936)	(108,475)
Net repayments under revolving credit lines	—	—	(1,606)
Deferred financing costs	(2,891)	(427)	(9,472)
Proceeds from exercise of stock options	292	—	154
Net change in book overdraft	—	(60)	(8,420)
Collection of notes receivable secured by common stock	—	—	197
Cash received from minority interests	—	—	7,706
Other	(93)	—	—
Net cash provided by (used for) financing activities	(34,425)	(15,477)	138
Effect of exchange rate changes on cash	88	(1)	(10)
Cash balances of subsidiaries at date of deconsolidation	—	(1,413)	(1,011)
Net increase (decrease) in cash and cash equivalents	(11,507)	19,262	(10,706)
Cash and cash equivalents at beginning of year	36,242	16,980	27,686
Cash and cash equivalents at end of year	\$ 24,735	\$ 36,242	\$ 16,980
Supplemental schedule of non-cash investing and financing activities:			
Assets acquired under capital leases	\$ 750	\$ —	\$ —

The accompanying notes are an integral part of the financial statements.

KRISPY KREME DOUGHNUTS, INC.

CONSOLIDATED STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY

	<u>Common Shares Outstanding</u>	<u>Common Stock</u>	<u>Unearned Compensation</u>	<u>Notes Receivable</u> (In thousands)	<u>Accumulated Other Comprehensive Income (Loss)</u>	<u>Retained Earnings (Accumulated Deficit)</u>	<u>Total</u>
BALANCE AT JANUARY 30, 2005	61,756	\$ 295,611	\$ (17)	\$ (197)	\$ 796	\$ (55,250)	\$ 240,943
Comprehensive income (loss):							
Net (loss) for the year ended January 29, 2006						(135,760)	(135,760)
Foreign currency translation adjustment, net of income tax benefit of \$168					(183)		(183)
Unrealized gain from cash flow hedge, net of income taxes of \$531					813		813
Total comprehensive (loss)							(135,130)
Correction of errors in accounting for stock-based compensation (Note 1)		2,508					2,508
Exercise of stock options	86	154					154
Amortization of restricted shares			5				5
Cancellation of restricted shares	(1)	(18)	12				(6)
Collection of notes receivable secured by common stock				197			197
BALANCE AT JANUARY 29, 2006	61,841	298,255	—	—	1,426	(191,010)	108,671
Comprehensive income (loss):							
Net (loss) for the year ended January 28, 2007						(42,236)	(42,236)
Foreign currency translation adjustment, net of income tax benefit of \$58					(267)		(267)
Unrealized gain from cash flow hedge, net of income taxes of \$70					107		107
Total comprehensive (loss)							(42,396)
Issuance of common stock warrant		6,700					6,700
Share-based compensation	831	5,987					5,987
Cancellation of restricted shares	(2)						
BALANCE AT JANUARY 28, 2007	62,670	310,942	—	—	1,266	(233,246)	78,962
Effect of adoption of FIN 48 (Note 1)						1,225	1,225
Comprehensive income (loss):							
Net (loss) for the year ended February 3, 2008						(67,051)	(67,051)
Foreign currency translation adjustment, net of income taxes of \$117					357		357
Unrealized loss from cash flow hedge, net of income tax benefit of \$1,006					(1,542)		(1,542)
Total comprehensive (loss)							(68,236)
Exercise of stock options	111	292					292
Issuance of common shares and warrants (Notes 12 and 16)	1,834	36,875					36,875
Share-based compensation	785	7,599					7,599
Cancellation of restricted shares	(30)	(93)					(93)
BALANCE AT FEBRUARY 3, 2008	<u>65,370</u>	<u>\$ 355,615</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 81</u>	<u>\$ (299,072)</u>	<u>\$ 56,624</u>

The accompanying notes are an integral part of the financial statements.

NOTES TO FINANCIAL STATEMENTS

Note 1 — Overview

Significant Accounting Policies

NATURE OF BUSINESS. Krispy Kreme Doughnuts, Inc. (“KKDI”) and its subsidiaries (collectively, the “Company”) are engaged in the sale of doughnuts and related items through Company-owned stores. The Company also derives revenue from franchise and development fees and the collection of royalties from franchisees. Additionally, the Company sells doughnut-making equipment, doughnut mix and other ingredients and supplies to franchisees.

The significant accounting policies followed by the Company in preparing the accompanying consolidated financial statements are as follows:

BASIS OF CONSOLIDATION. The financial statements include the accounts of KKDI and its wholly-owned subsidiaries, the most significant of which is KKDI’s principal operating subsidiary, Krispy Kreme Doughnut Corporation (“KKDC”).

The Company also consolidated the financial statements of certain less than wholly-owned franchisees in which the Company had a controlling financial interest and of certain variable interest entities of which the Company was the primary beneficiary under Financial Accounting Standards Board (“FASB”) Interpretation No. 46 (Revised), “Consolidation of Variable Interest Entities.” The Company referred to these investees as “Consolidated Franchisees,” each of which has either ceased operations or its minority interest has been acquired by the Company.

Investments in entities over which the Company has the ability to exercise significant influence, and whose financial statements are not required to be consolidated, are accounted for using the equity method. These entities typically are 20% to 35% owned and are hereinafter sometimes referred to as “Equity Method Franchisees.”

REVENUE RECOGNITION. A summary of the revenue recognition policies for each of the Company’s business segments is as follows:

- Company Stores revenue is derived from the sale of doughnuts and related items to on-premises and off-premises customers. Revenue is recognized at the time of sale for on-premises sales. For off-premises sales, revenue is recognized at the time of delivery, net of provisions for estimated product returns.
- Franchise revenue is derived from development and initial franchise fees relating to new store openings and ongoing royalties charged to franchisees based on their sales. Development and franchise fees for new stores are deferred until the store is opened, which is the time at which the Company has performed substantially all of the initial services it is required to provide. Royalties are recognized in income as underlying franchisee sales occur unless there is significant uncertainty concerning the collectability of such revenues, in which case royalty revenues are recognized when received.
- KK Supply Chain revenue is derived from the sale of doughnut mix, other ingredients, supplies and doughnut-making equipment needed to operate a Krispy Kreme doughnut store. Revenues for the sale of doughnut mix and supplies are recognized upon delivery to the customer or, in the case of franchisees located outside North America, when the goods are loaded on the transport vessel at the U.S. port. Revenue for equipment sales and installation associated with new store openings is recognized at the store opening date. Revenue for equipment sales not associated with new store openings is recognized when the equipment is installed if the Company is responsible for the installation, and otherwise upon shipment of the equipment.

FISCAL YEAR. The Company’s fiscal year ends on the Sunday closest to January 31, which periodically results in a 53-week year. Fiscal 2008 contained 53 weeks while fiscal 2007 and 2006 each contained 52 weeks.

NOTES TO FINANCIAL STATEMENTS — (Continued)

CASH AND CASH EQUIVALENTS. The Company considers cash on hand, demand deposits in banks and all highly liquid debt instruments with an original maturity of three months or less to be cash and cash equivalents.

INVENTORIES. Inventories are recorded at the lower of cost or market, with cost determined using the first-in, first-out method.

PROPERTY AND EQUIPMENT. Property and equipment are stated at cost less accumulated depreciation. Major renewals and betterments are capitalized, while replacements, maintenance and repairs which do not improve or extend the lives of the respective assets are expensed as incurred.

Depreciation of property and equipment is provided using the straight-line method over the assets' estimated useful lives, which are as follows: buildings — 15 to 35 years; machinery and equipment — 3 to 15 years; and leasehold improvements — lesser of the useful life of the improvements or the lease term.

GOODWILL AND OTHER INTANGIBLE ASSETS. Goodwill represents the excess of the purchase price over the value of identifiable net assets acquired in business combinations. Goodwill has an indefinite life and is not amortized, but is tested for impairment annually or more frequently if events or circumstances indicate the carrying amount of the asset may be impaired. Such impairment testing is performed for each reporting unit (as that term is defined in Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets") to which goodwill has been assigned.

Other intangible assets consist principally of franchise rights reacquired in acquisitions of franchisees, which the Company determined have indefinite lives and are not subject to amortization. Intangible assets with indefinite lives are reviewed for impairment annually or more frequently if events or circumstances indicate the carrying amount of the assets may be impaired.

ADVERTISING COSTS. All costs associated with advertising and promoting products are expensed as incurred.

STORE OPENING COSTS. Store opening costs are expensed as incurred. The Company incurred no store opening costs in fiscal 2007. Store opening costs were \$449,000 in fiscal 2006 and \$17,000 in fiscal 2008.

LEGAL COSTS. Legal costs associated with litigation and other loss contingencies are charged to expense as services are rendered.

ASSET IMPAIRMENT. When an asset group (typically a store) is identified as underperforming or a decision is made to abandon an asset group or to close a store, the Company makes an assessment of the potential impairment of the related assets. The assessment is based upon a comparison of the carrying amount of the asset group, consisting primarily of property and equipment, to the estimated undiscounted cash flows expected to be generated from the asset group. To estimate cash flows, management projects the net cash flows anticipated from continuing operation of the asset group or store until its closing or abandonment as well as cash flows, if any, anticipated from disposal of the related assets. If the carrying amount of the assets exceeds the sum of the undiscounted cash flows, the Company records an impairment charge in an amount equal to the excess of the carrying value of the assets over their estimated fair value.

EARNINGS PER SHARE. The computation of basic earnings per share is based on the weighted average number of common shares outstanding during the period. The computation of diluted earnings per share reflects the potential dilution that would occur if stock options and warrants were exercised and the dilution from the issuance of restricted shares, computed using the treasury stock method.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The following table sets forth amounts used in the computation of basic and diluted earnings per share:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Numerator: net (loss)	<u>\$ (67,051)</u>	<u>\$ (42,236)</u>	<u>\$ (135,760)</u>
Denominator:			
Basic earnings per share — weighted average shares outstanding	<u>63,805</u>	<u>61,871</u>	<u>61,807</u>
Diluted earnings per share — weighted average shares outstanding	<u>63,805</u>	<u>61,871</u>	<u>61,807</u>

All potentially dilutive securities have been excluded from the number of shares used in the computation of diluted earnings per share in fiscal 2008, 2007 and 2006 because the Company incurred a net loss in each year and their inclusion would be antidilutive.

SHARE-BASED COMPENSATION. Effective January 30, 2006 (the first day of fiscal 2007), the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004), “Share-Based Payment,” which requires the measurement and recognition of compensation expense for share-based payment (“SBP”) awards, including stock options, based on their fair values. Prior to fiscal 2007, the Company accounted for SBP awards using the intrinsic value method prescribed by Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB 25”).

CONCENTRATION OF CREDIT RISK. Financial instruments that subject the Company to credit risk consist principally of receivables from wholesale customers and franchisees and guarantees of leases and indebtedness of franchisees. Wholesale receivables are primarily from grocery and convenience stores. The Company performs ongoing credit evaluations of its customers’ financial condition and maintains allowances for doubtful accounts which management believes are sufficient to provide for losses which may be sustained on realization of these receivables. In fiscal 2008, 2007 and 2006, no customer accounted for more than 10% of Company-owned stores’ revenues. The Company’s two largest wholesale customers collectively accounted for approximately 10.2%, 10.2% and 10.3% of Company-owned stores’ revenues in fiscal 2008, 2007 and 2006, respectively. The Company’s two wholesale customers with the largest trade receivables balances collectively accounted for approximately 23.5% and 20.9% of wholesale doughnut customer trade receivables at February 3, 2008 and January 28, 2007, respectively. The foregoing percentages of revenues for fiscal 2007 and 2006 are computed based upon Company Stores segment revenues exclusive of sales of Consolidated Franchisees; revenues of Consolidated Franchisees accounted for 1.0% and 19.3% of total Company Stores revenues in fiscal 2007 and 2006, respectively. The Company had no Consolidated Franchisees in fiscal 2008.

The Company also evaluates the recoverability of receivables from its franchisees and maintains allowances for doubtful accounts which management believes are sufficient to provide for losses which may be sustained on realization of these receivables. In addition, the Company evaluates the likelihood of potential payments by the Company under loan and lease guarantees and records estimated liabilities for the present value of any payments the Company considers probable.

SELF-INSURANCE RISKS AND RECEIVABLES FROM INSURERS. The Company is subject to workers’ compensation, vehicle and general liability claims. The Company is self-insured for the cost of all workers’ compensation, vehicle and general liability claims up to the amount of stop-loss insurance coverage purchased by the Company from commercial insurance carriers. The Company maintains accruals for the estimated cost of claims, without regard to the effects of stop-loss coverage, using actuarial methods which evaluate known open and incurred but not reported claims and consider historical loss development experience. In addition, the

NOTES TO FINANCIAL STATEMENTS — (Continued)

Company records receivables from the insurance carriers for claims amounts estimated to be recovered under the stop-loss insurance policies when these amounts are estimable and probable of collection. The Company estimates such stop-loss receivables using the same actuarial methods used to establish the related claims accruals, and taking into account the amount of risk transferred to the carriers under the stop-loss policies. The stop-loss policies provide coverage for claims in excess of retained self-insurance risks, which are determined on a claim-by-claim basis.

The Company provides health and medical benefits to eligible employees, and purchases stop-loss insurance from commercial insurance carriers which pays covered medical costs in excess of a specified annual amount incurred by each claimant.

DERIVATIVE FINANCIAL INSTRUMENTS AND DERIVATIVE COMMODITY INSTRUMENTS. The Company reflects derivative financial instruments, which consist primarily of interest rate derivatives and commodity futures contracts and options on such contracts, in the consolidated balance sheet at their fair value. The difference between the cost, if any, and the fair value of the interest rate derivatives is reflected in income unless the derivative instrument qualifies as a cash flow hedge and is effective in offsetting future cash flows of the underlying hedged item, in which case such amount is reflected in other comprehensive income. The difference between the cost, if any, and the fair value of commodity derivatives is reflected in earnings because the Company has not designated these instruments as cash flow hedges.

FOREIGN CURRENCY TRANSLATION. The Company has ownership interests in franchisees in Mexico and Canada and has store operations in Canada. The functional currency of each of these operations is the local currency. Assets and liabilities of these operations are translated into U.S. dollars using exchange rates as of the balance sheet date, and revenues, expenses and the Company's equity in the earnings or losses of the franchisee are translated using the average exchange rate for the reporting period. The resulting cumulative translation adjustments are reported, net of income taxes, as a component of accumulated other comprehensive income. Transaction gains and losses resulting from remeasuring transactions denominated in currencies other than an entity's functional currency are reflected in earnings.

COMPREHENSIVE INCOME. Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income" ("FAS 130"), requires that certain items, including foreign currency translation adjustments and mark-to-market adjustments on derivative contracts accounted for as cash flow hedges (which are not reflected in net income) be presented as components of comprehensive income. The cumulative amounts recognized by the Company under FAS 130 are reflected in the consolidated balance sheet as accumulated other comprehensive income, a component of shareholders' equity, and are summarized in the following table:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Accumulated other comprehensive income:		
Unrealized gains (losses) on cash flow hedges, including amounts related to Equity Method Franchisees	\$ (2,236)	\$ 312
Cumulative foreign currency translation adjustments	2,371	1,897
	135	2,209
Less: deferred income taxes	(54)	(943)
	<u>\$ 81</u>	<u>\$ 1,266</u>

USE OF ESTIMATES. The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

NOTES TO FINANCIAL STATEMENTS — (Continued)

UNCERTAIN TAX POSITIONS. Effective January 29, 2007, the first day of fiscal 2008, the Company adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes," ("FIN 48"). FIN 48 prescribes recognition thresholds that must be met before a tax position is recognized in the financial statements and provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. Under FIN 48, an entity may only recognize or continue to recognize tax positions that meet a "more likely than not" threshold. The Company recorded the cumulative effect of applying FIN 48 as a \$1.2 million credit to the opening balance of accumulated deficit as of January 29, 2007, the date of adoption.

REVISIONS. At the beginning of fiscal 2008, the Company revised its presentation of gains and losses on disposals of property and equipment and foreign currency transaction gains and losses related to inventory purchases to report such amounts as components of income or loss from operations. Such amounts previously had been reported as components of non-operating income and expense. Gains and losses on disposals of property and equipment are now reported consistently with depreciation and amortization expense and impairment charges, and foreign currency gains and losses associated with purchases of materials are now reported with other components of materials purchases, as part of direct operating expenses. Amounts previously reported for fiscal 2007 and 2006 have been revised to reflect the presentation adopted in fiscal 2008; the effect of such revisions was not material.

CORRECTION OF ACCOUNTING ERRORS RELATED TO STOCK-BASED COMPENSATION. In connection with the preparation of its fiscal 2006 consolidated financial statements, the Company performed certain procedures with respect to grants of stock options in prior fiscal years.

In performing such procedures, the Company identified certain grants of stock options with respect to which the Company was unable to substantiate that the grant date specified in the options was the appropriate date on which compensation cost should have been measured under APB 25. Each of the stock options was dated August 2, 2000 and had an exercise price equal to the closing price of the Company's common stock on that date. The closing price on August 2, 2000 was the lowest closing price of the Company's common stock during the fiscal quarter. Because the Company was unable to substantiate August 2, 2000 as the measurement date, the Company considered all available relevant information and concluded that it should use September 12, 2000, the date on which the optionees were informed of the principal terms of the grants, as the measurement date.

The market price of the Company's common stock on this revised measurement date was greater than the exercise price specified in the options and, accordingly, the Company should have recognized compensation expense related to the options in an aggregate amount equal to such excess multiplied by the number of options awarded, in accordance with APB 25. Such aggregate charges total approximately \$4.0 million, and should have been recorded in the Company's fiscal 2001 through fiscal 2004 consolidated financial statements.

These grants were made principally to three new non-employee members of the board of directors. The Company is aware of no evidence which suggests the optionees influenced the selection of the grant date, were aware of how August 2, 2000 was selected by the Company as the grant date, or believed the Company's accounting for such options to be improper.

The Company concluded that the stock-based compensation amounts were not material either quantitatively or qualitatively to the Company's consolidated financial statements in the affected periods and were not material to the fiscal 2006 consolidated financial statements. Accordingly, the Company corrected the error by recording the approximately \$4.0 million aggregate charge to earnings in the first quarter of fiscal 2006 rather than restating prior periods' consolidated financial statements.

The Company's income tax returns for certain years currently are under examination by the Internal Revenue Service as described in Note 15. In connection with that examination, the Company determined that certain income tax deductions related to exercises of stock options reflected in its fiscal 2004 tax return were overstated. The Company accounted for the tax benefit of such deductions as a deferred income tax asset, with

NOTES TO FINANCIAL STATEMENTS — (Continued)

a corresponding credit to common stock, in fiscal 2004. These accounting entries constituted errors because the Company was not entitled to the related income tax deductions. In fiscal 2005, the Company established a valuation allowance against its deferred income tax assets via a charge to earnings, and such charge was overstated as a consequence of the fiscal 2004 error related to the tax benefit of stock option exercises. Because the Company concluded that these amounts were not material to the Company's consolidated financial statements in the affected periods, and were not material to the fiscal 2006 consolidated financial statements, the Company corrected the errors by recording an approximately \$1.5 million charge to common stock and a corresponding credit to the provision for income taxes in the first quarter of fiscal 2006 rather than restating prior periods' financial statements.

RECENT ACCOUNTING PRONOUNCEMENTS

In March 2008, the FASB issued FASB Statement No. 161, "Disclosures about Derivative Instruments and Hedging Activities" ("FAS 161"). The new standard is intended to improve financial reporting about derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance, and cash flows. FAS 161 is effective for the Company in fiscal 2010.

In February 2007, the FASB issued Statement No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115" ("FAS 159"). FAS 159 permits entities to choose to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings. FAS 159 does not affect any existing accounting literature that requires certain assets and liabilities to be carried at fair value. Management does not intend to adopt any fair value measurement options permitted by FAS 159 and, accordingly, does not expect FAS 159 to have any effect on the Company's financial position or results of operations.

In September 2006, the FASB issued Statement No. 157, "Fair Value Measurements" ("FAS 157"), which addresses how companies should measure fair value when they are required to use a fair value measure for recognition or disclosure purposes under generally accepted accounting principles ("GAAP"). As a result of FAS 157, there is now a common definition of fair value to be used throughout GAAP, which is expected to make the measurement of fair value more consistent and comparable. The Company must adopt FAS 157 in fiscal 2009. Management does not expect adoption of FAS 157 to have a material effect on the Company's financial position or results of operations.

Note 2 — Business Conditions, Uncertainties and Liquidity

The Company incurred net losses of \$135.8 million, \$42.2 million and \$67.1 million in fiscal 2006, 2007 and 2008, respectively, which include non-cash impairment charges of \$53.7 million, \$10.8 million and \$61.0 million, respectively.

In addition, fiscal 2006 and 2007 results include non-cash charges of \$35.8 million and \$16.0 million, respectively, related to the settlement of certain litigation, and fiscal 2008 results reflect a non-cash credit of \$14.9 million related to the same settlement, as described in Note 12.

The Company experienced a decline in revenues and incurred net losses in each of the last three fiscal years. The revenue decline reflects fewer Company stores in operation, a decline in domestic royalty revenues and lower sales of mixes and other ingredients resulting from lower sales by the Company's domestic franchisees. Lower revenues have adversely affected operating margins because of the fixed or semi-fixed nature of many of the Company's direct operating expenses. In addition, the Company has recorded significant asset impairment

NOTES TO FINANCIAL STATEMENTS — (Continued)

charges, principally related to underperforming Company stores and, in fiscal 2008, a manufacturing and distribution facility the Company divested. Total impairment charges and lease termination costs for fiscal 2008 were \$62.1 million.

The Company had net cash flow from operations of \$1.9 million, \$22.1 million and \$9.7 million in fiscal 2006, 2007, and 2008, respectively. Asset dispositions generated investing cash flows of \$9.7 million in fiscal 2007 and \$18.3 million in fiscal 2008, with the majority of such proceeds used to reduce the outstanding borrowings under the Company's credit facilities.

The Company's fiscal 2009 operating plan reflects a decline in revenues and an increase in certain costs, including the impact of commodity prices on its raw materials costs, compared to fiscal 2008. The Company is taking measures to reduce controllable costs and has implemented, and, to the extent feasible, plans to implement in the future, price increases to offset increases in raw material costs. Based on the Company's current working capital and the fiscal 2009 operating plan, management believes the Company can meet its projected operating, investing and financing cash requirements.

In February 2007, the Company completed a refinancing using the proceeds of the 2007 Secured Credit Facilities described in Note 10, which are the Company's principal source of external financing. These facilities consist of a \$110 million term loan maturing in February 2014 and a \$30 million revolving credit facility maturing in February 2013.

The 2007 Secured Credit Facilities contain significant financial and other covenants. Based on its operating plan, the Company projected that it would not be able to comply with the financial covenants in fiscal 2009. Subsequent to the end of fiscal 2008, the Company executed amendments to the 2007 Secured Credit Facilities which, among other things, relaxed the financial covenants contained therein for fiscal 2009 and 2010. The financial covenants as of February 3, 2008, and the amended financial covenants for future years, are described in Note 10. While the Company was in compliance with the financial covenants as of February 3, 2008, and the Company expects to be able to comply with the amended financial covenants based on its operating plan, there can be no assurance that the Company will be able to do so. As a result of amendments and waivers in fiscal 2008 and 2009, the Company paid fees of approximately \$835,000 and the interest rate on the loans has increased from LIBOR plus 2.75% to LIBOR plus 5.50% (with a LIBOR floor of 3.25%). The increase in rates will result in approximately \$1.9 million of additional annual interest expense based on the current level of borrowings. Any future amendments or waivers could result in additional fees or rate increases.

The Company has prepaid approximately \$32.8 million of the \$110 million term loan; such prepayments included prepayments of approximately \$17.8 million from sales of property and equipment and discretionary prepayments of \$5 million in each of the first, second and third quarters of fiscal 2008 made in order to reduce the likelihood of violating the leverage ratio covenant contained in the facilities. In addition to scheduled amortization of principal, the term loan is required to be prepaid with some or all of the net proceeds of certain equity issuances, debt incurrences, asset sales and casualty events and with a percentage of excess cash flow (as defined in the agreement) on an annual basis.

As of February 3, 2008, the maximum additional borrowing available to the Company was approximately \$9.7 million, computed on a pro forma basis after giving effect to the reduction in lender commitments under the Company's revolving credit facility described in Note 10.

Failure to comply with the financial covenants contained in the 2007 Credit Facilities, or the occurrence or failure to occur of certain events, would cause the Company to default under the facilities. In the absence of a waiver of, or forbearance with respect to, any such default from the Company's lenders, the Company could be obligated to repay outstanding indebtedness under the facilities in advance of its scheduled maturity, and the Company's ability to access additional borrowings under the facilities would be restricted. In the event the Company were to fail to comply with one or more such covenants, the Company would attempt to negotiate waivers of any such noncompliance. There can be no assurance that the Company would be able to negotiate any

NOTES TO FINANCIAL STATEMENTS — (Continued)

such waivers, and the costs or conditions associated with any such waivers could be significant. In the event that credit under the 2007 Secured Credit Facilities were not available to the Company, there can be no assurance that alternative sources of credit would be available to the Company or, if they are available, under what terms or at what cost.

Many factors could adversely affect the Company's business. In particular, the Company is vulnerable to further increases in the cost of raw materials, which could adversely affect the Company's operating results and cash flows. In addition, several franchisees have been experiencing financial pressures which, in certain instances, became more exacerbated during fiscal 2008. The Company has guaranteed certain obligations of franchisees in which it has an equity interest, as described in "Other Commitments and Contingencies" in Note 12. In the fourth quarter of fiscal 2008, the Company recorded a provision of \$3.0 million for estimated payments under these guarantees. The Company may be required to make payments under any of these guarantees in the next 12 months. During the year ended February 3, 2008, two of the Company's other franchisees filed for reorganization under Chapter 11 of the United States Bankruptcy Code. One of these bankruptcy cases was substantially concluded in February 2008 upon the sale of the franchisee's assets to, and assumption of most of its franchise agreements by, a successor franchisee; the other franchise operation is continuing to operate under court supervision. Franchisees opened 88 stores and closed 26 stores in fiscal 2008. Franchisees have contractual commitments to open over 170 additional stores after fiscal 2008; however, the Company believes franchisees also will close additional stores in the future, and the number of such closures may be significant. Royalty revenues and most of KK Supply Chain revenues are directly correlated to sales by franchise stores and, accordingly, franchise store closures have an adverse effect on the Company's revenues, results of operations and cash flows.

Note 3 — Receivables

The components of receivables are as follows:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Receivables:		
Wholesale doughnut customers	\$ 12,769	\$ 15,091
Unaffiliated franchisees	14,607	13,927
Current portion of notes receivable	365	496
	<u>27,741</u>	<u>29,514</u>
Less — allowance for doubtful accounts:		
Wholesale doughnut customers	(570)	(682)
Unaffiliated franchisees	(4,180)	(2,063)
	<u>(4,750)</u>	<u>(2,745)</u>
	<u>\$ 22,991</u>	<u>\$ 26,769</u>
Receivables from Equity Method Franchisees (Notes 1 and 18):		
Trade	\$ 4,016	\$ 3,719
Current portion of notes receivable	—	18
Less — allowance for doubtful accounts	(1,379)	(2,903)
	<u>\$ 2,637</u>	<u>\$ 834</u>

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The changes in the allowances for doubtful accounts are summarized as follows:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Allowance for doubtful accounts related to trade receivables:			
Balance at beginning of year	\$ 2,745	\$ 13,656	\$ 11,379
Provision for doubtful accounts	2,150	1,836	3,978
Reserves associated with acquired businesses	—	—	41
Effects of deconsolidation of subsidiaries	—	(115)	(132)
Chargeoffs	(145)	(12,632)	(1,610)
Balance at end of year	<u>\$ 4,750</u>	<u>\$ 2,745</u>	<u>\$ 13,656</u>
Allowance for doubtful accounts related to Equity Method			
Franchisees:			
Balance at beginning of year	\$ 2,903	\$ 3,160	\$ 1,105
Provision for doubtful accounts	(364)	1,554	2,055
Chargeoffs	(1,160)	(1,811)	—
Balance at end of year	<u>\$ 1,379</u>	<u>\$ 2,903</u>	<u>\$ 3,160</u>

Note 4 — Inventories

The components of inventories are as follows:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Raw materials	\$ 6,055	\$ 6,998
Work in progress	96	33
Finished goods	5,794	4,996
Purchased merchandise	7,969	8,872
Manufacturing supplies	73	107
	<u>\$ 19,987</u>	<u>\$ 21,006</u>

Note 5 — Other Current Assets

Other current assets are composed of the following:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Miscellaneous receivables	\$ 1,053	\$ 700
Current portion of claims against insurance carriers related to self-insurance programs (Notes 1, 8, 9 and 11)	609	665
Assets held for sale	—	5,156
Receivables from directors' and officers' insurance carriers	—	762
Prepaid expenses and other	3,985	4,717
	<u>\$ 5,647</u>	<u>\$ 12,000</u>

NOTES TO FINANCIAL STATEMENTS — (Continued)

Note 6 — Property and Equipment

Property and equipment consists of the following:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Land	\$ 19,058	\$ 19,161
Buildings	64,513	100,784
Leasehold improvements	9,918	18,848
Machinery and equipment	62,327	123,285
Construction in progress	25	360
	155,841	262,438
Less: accumulated depreciation	(64,845)	(93,784)
	<u>\$ 90,996</u>	<u>\$ 168,654</u>

Machinery and equipment includes assets leased under capital leases having a net book value of approximately \$594,000 and \$630,000 at February 3, 2008 and January 28, 2007, respectively. Depreciation expense was \$17.8 million, \$20.3 million and \$27.9 million in fiscal 2008, 2007 and 2006, respectively.

The Company recorded significant impairment charges related to property and equipment in fiscal 2008 as described in Note 13.

Note 7 — Goodwill and Other Intangible Assets

Goodwill and other intangible assets consist of the following:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Indefinite-lived intangible assets:		
Goodwill (by segment):		
Franchise	\$ 23,496	\$ 23,496
Company Stores	—	4,598
	23,496	28,094
Reacquired franchise rights associated with Company Stores	360	840
	<u>\$ 23,856</u>	<u>\$ 28,934</u>

During fiscal 2008, the Company recorded impairment charges of \$4.6 million and \$480,000 to reduce the carrying value of goodwill and reacquired franchise rights, respectively, to their estimated fair values. The goodwill impairment charge reflects reductions in the Company's forecasted sales and earnings in certain of the reporting units comprising the Company Stores segment. Such reductions reflect current operating results, including the effects of higher materials and labor costs, as well as recent trends in operating results. The fair values of those reporting units are estimated using the present value of expected future cash flows. The Company records impairment charges for reacquired franchise rights when such intangible assets are determined to be impaired as a result of store closing decisions or other developments.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

Note 8 — Other Assets

The components of other assets are as follows:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Non-current portion of claims against insurance carriers related to self-insurance programs (Notes 1, 5, 9 and 11)	\$ 3,838	\$ 4,276
Deferred financing costs, net of accumulated amortization	2,369	5,519
Deposits	1,275	1,408
Computer software, net of accumulated amortization	1,171	1,060
401(k) mirror plan assets (Notes 11 and 20)	368	255
Non-current portion of notes receivable from unaffiliated franchisees	74	308
Fair value of interest rate hedge	—	729
Other	374	3,287
	<u>\$ 9,469</u>	<u>\$ 16,842</u>

Note 9 — Other Accrued Liabilities

The components of other accrued liabilities are as follows:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Current portion of self-insurance claims, principally worker's compensation (Notes 1, 5, 8 and 11)	\$ 4,996	\$ 5,885
Accrued compensation	4,846	3,891
Accrued vacation pay	3,981	4,192
Accrued guarantee obligations (Notes 12, 14 and 18)	3,419	450
Accrued taxes, other than income	3,036	3,336
Customer deposits	2,881	2,742
Fair value of interest rate hedge	2,231	—
Accrued health care claims	1,377	1,290
Accrued professional fees	1,114	3,880
Accrued utilities	862	1,031
Current portion of deferred franchise fee revenue	601	944
Current portion of lease termination costs (Notes 11 and 13)	322	189
Accrued interest	67	4,222
Other	6,216	6,422
	<u>\$ 35,949</u>	<u>\$ 38,474</u>

NOTES TO FINANCIAL STATEMENTS — (Continued)

Note 10 — Long Term Debt and Lease Commitments

Long-term debt and capital lease obligations consist of the following:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
2007 Secured Credit Facilities	\$ 76,119	\$ —
2005 Secured Credit Facilities	—	107,066
Capital lease obligations	594	630
	76,713	107,696
Less: current maturities	(1,557)	(1,730)
	<u>\$ 75,156</u>	<u>\$ 105,966</u>

The following table presents maturities of long-term debt and capital lease obligations:

Fiscal Year	(In thousands)
2009	\$ 1,557
2010	963
2011	963
2012	963
2013	963
Thereafter	71,304
	<u>\$ 76,713</u>

2007 Secured Credit Facilities

On February 16, 2007, the Company closed new secured credit facilities totaling \$160 million (the “2007 Secured Credit Facilities”). The facilities then consisted of a \$50 million revolving credit facility maturing in February 2013 (the “2007 Revolver”) and a \$110 million term loan maturing in February 2014 (the “2007 Term Loan”). The 2007 Secured Credit Facilities are secured by a first lien on substantially all of the assets of the Company and its domestic subsidiaries. At closing, the Company borrowed the full \$110 million available under the 2007 Term Loan, and used the proceeds to retire approximately \$107 million of indebtedness outstanding under the 2005 Secured Credit Facilities described below (which were then terminated), to pay prepayment premiums under the 2005 Secured Credit Facilities and to pay fees and expenses associated with the 2007 Secured Credit Facilities. The Company recorded a pretax charge related to the refinancing of approximately \$9.6 million in the first quarter of fiscal 2008, representing the approximately \$4.1 million prepayment fee related to the 2005 Secured Credit Facilities and the write-off of approximately \$5.5 million of unamortized deferred financing costs related to that facility.

The 2007 Revolver contains provisions which permit the Company to obtain letters of credit. Issuance of letters of credit under these provisions constitutes usage of the lending commitments, and reduces the amount available for cash borrowings under the 2007 Revolver. The commitments under the 2007 Revolver were reduced to \$30 million from \$50 million in connection with the amendments to the 2007 Secured Credit Facilities executed in April 2008 (the “April Amendments”).

Interest on borrowings under the 2007 Revolver and Term Loan is payable either at LIBOR or at the Alternate Base Rate (which is the greater of Fed funds rate plus 0.50% or the prime rate), in each case plus the Applicable Margin. As of February 3, 2008, the Applicable Margin for LIBOR-based loans was 3.50% and for Alternate Base Rate-based loans was 2.50%. The April Amendments to the 2007 Secured Credit Facilities more fully described

NOTES TO FINANCIAL STATEMENTS — (Continued)

below increased the Applicable Margin for LIBOR-based loans to 5.50% and for Alternate Base Rate-based loans to 4.50%. In addition, those amendments provide that LIBOR-based loans shall be computed based upon the greater of the relevant LIBOR rate or 3.25%.

The Company is required to pay a fee equal to the Applicable Margin for LIBOR-based loans on the outstanding amount of letters of credit issued under the 2007 Revolver, as well as a fronting fee of 0.25% of the amount of such letter of credit payable to the letter of credit issuer. There also is a fee of 0.50% on the unused portion of the 2007 Revolver lending commitment, which increased to 0.75% simultaneously with the reduction in the revolver lending commitments pursuant to the April Amendments.

Borrowings under the 2007 Revolver (and issuances of letters of credit) are subject to the satisfaction of usual and customary conditions, including accuracy of representations and warranties and the absence of defaults.

The 2007 Term Loan is payable in quarterly installments of approximately \$240,000 (after adjustment for the effects of certain principal prepayments) and a final installment equal to the remaining principal balance in February 2014. The 2007 Term Loan is required to be prepaid with some or all of the net proceeds of certain equity issuances, debt incurrences, asset sales and casualty events and with a percentage of excess cash flow (as defined in the agreement) on an annual basis.

The 2007 Secured Credit Facilities require the Company to meet certain financial tests, including a maximum consolidated leverage ratio (expressed as a ratio of total debt to Consolidated EBITDA) and a minimum consolidated interest coverage ratio (expressed as a ratio of Consolidated EBITDA to net interest expense), computed based upon Consolidated EBITDA and net interest expense for the most recent four fiscal quarters and total debt as of the end of such four-quarter period. As of February 3, 2008, the consolidated leverage ratio was required to be not greater than 4.0 to 1.0 and the consolidated interest coverage ratio was required to be not less than 3.25 to 1.0. As of February 3, 2008, the Company's consolidated leverage ratio was approximately 3.03 to 1.0 and the Company's consolidated interest coverage ratio was approximately 4.23 to 1.0. The April Amendments provide that the consolidated leverage ratio shall not exceed 4.75 to 1.0 and the consolidated interest coverage ratio shall not be less than 2.5 to 1.0 in fiscal 2009. The maximum consolidated leverage ratio for periods after fiscal 2009 declines over time until it reaches 2.75 to 1.0 in fiscal 2013, and the minimum consolidated interest coverage ratio increases over time until it reaches 4.5 to 1.0 in fiscal 2011. "Consolidated EBITDA" is a non-GAAP measure and is defined in the 2007 Secured Credit Facilities to mean, generally, consolidated net income or loss, exclusive of unrealized gains and losses on hedging instruments, gains or losses on the early extinguishment of debt and provisions for payments on guarantees of franchisee obligations plus the sum of net interest expense, income taxes, depreciation and amortization, non-cash charges, store closure costs, costs associated with certain litigation and investigations, and extraordinary professional fees; and minus payments, if any, on guarantees of franchisee obligations in excess of \$3 million in any rolling 12-month period and the sum of non-cash credits. In addition, the 2007 Secured Credit Facilities contain other covenants which, among other things, limit the incurrence of additional indebtedness (including guarantees), liens, investments (including investments in and advances to franchisees which own and operate Krispy Kreme stores), dividends, transactions with affiliates, asset sales, acquisitions, capital expenditures, mergers and consolidations, prepayments of other indebtedness and other activities customarily restricted in such agreements. The 2007 Secured Credit Facilities also prohibit the transfer of cash or other assets to KKDI from its subsidiaries, whether by dividend, loan or otherwise, but provide for exceptions to enable KKDI to pay taxes and operating expenses and certain judgment and settlement costs.

The operation of the restrictive financial covenants described above may limit the amount the Company may borrow under the 2007 Revolver. In addition, the maximum amount which may be borrowed under the 2007 Revolver is reduced by the amount of outstanding letters of credit, of which approximately \$20.3 million were outstanding as of February 3, 2008. The maximum additional borrowing available to the Company as of February 3, 2008 was approximately \$9.7 million (computed on a pro forma basis after giving effect to the April Amendments).

NOTES TO FINANCIAL STATEMENTS — (Continued)

The 2007 Secured Credit Facilities also contain customary events of default, including without limitation, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to other indebtedness in excess of \$5 million, certain events of bankruptcy and insolvency, judgment defaults in excess of \$5 million and the occurrence of a change of control.

In May 2007, the Company entered into interest rate derivative contracts having an aggregate notional principal amount of \$60 million. The derivative contracts eliminate the Company's exposure, with respect to such notional amount, to increases in three month LIBOR beyond 5.40% through April 2010, and eliminate the Company's ability to benefit from a reduction in three month LIBOR below 4.48% for the same period. The Company is accounting for these derivatives as cash flow hedges.

2005 Secured Credit Facilities

On April 1, 2005, the Company closed secured credit facilities totaling \$225 million (collectively, the "2005 Secured Credit Facilities"). The facilities consisted of a \$75 million revolving credit facility (reduced by the Company to \$25 million in November 2006) secured by a first lien on substantially all of the assets of the Company and its domestic subsidiaries (the "First Lien Revolver"), and a \$150 million credit facility secured by a second lien on those assets (the "Second Lien Facility"). The Second Lien Facility consisted of a \$120 million term loan (the "Term Loan") and a \$30 million revolving credit facility (the "Second Lien Revolver"). At closing, the Company borrowed the full \$120 million available under the Term Loan, and used the proceeds to retire approximately \$88 million of indebtedness outstanding under a bank credit facility (which was then terminated) and to pay fees and expenses associated with the 2005 Secured Credit Facilities. The 2005 Secured Credit Facilities were refinanced with the proceeds of the 2007 Secured Credit Facilities described above.

Interest on borrowings under the First Lien Revolver was payable either at LIBOR or at the Alternate Base Rate (which is the greater of Fed funds rate plus 0.50% or the prime rate), in each case plus the Applicable Margin. The Applicable Margin for LIBOR-based loans was 2.75% and for Alternate Base Rate-based loans was 1.75% (3.25% and 2.25%, respectively, from December 12, 2005 through January 28, 2007). In addition, the Company was required to pay a fee equal to the Applicable Margin for LIBOR-based loans on the outstanding amount of letters of credit issued under the First Lien Revolver, as well as a 0.25% fronting fee. There also was a fee of 0.50% (0.75% from December 12, 2005 through January 28, 2007) on the unused portion of the First Lien Revolver lending commitment.

The Company paid fees aggregating 5.975% (7.35% from December 12, 2005 through January 28, 2007) on the entire \$30 million Second Lien Revolver commitment. In addition, interest accrued on outstanding borrowings at either the Fed funds rate or LIBOR, and the outstanding amount of letters of credit issued under the Second Lien Revolver incurred a fronting fee of 0.25%.

Interest on the outstanding balance of the Term Loan accrued either at LIBOR or at the Fed funds rate plus, in each case, the Applicable Margin. The Applicable Margin for LIBOR-based loans was 5.875% and for Fed funds-based loans was 4.875% (7.25% and 6.25%, respectively, from December 12, 2005 through January 28, 2007).

As required by the 2005 Secured Credit Facilities, the Company entered into an interest rate derivative contract having a notional principal amount of \$75 million. The derivative contract eliminated the Company's exposure, with respect to such notional amount, to increases in three month LIBOR beyond 4.0% through April 2006, 4.50% from May 2006 through April 2007 and 5.0% from May 2007 through March 2008. This derivative was accounted for as a cash flow hedge from its inception in June 2005 through February 16, 2007. After that date, the derivative contract could no longer be shown to be effective (as defined in Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities") in hedging interest rate risk due to a change in the computation of interest payment periods on the derivative contract relative to interest expense on the related indebtedness, and hedge accounting was discontinued. As a consequence,

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

subsequent changes in the fair value of the derivative contract after February 16, 2007 were reflected in earnings. Simultaneously with entering into the new derivative contracts described above related to the 2007 Secured Credit Facilities, the Company terminated the \$75 million notional amount derivative contract.

Lease Obligations

The Company leases equipment and facilities under both capital and operating leases. The approximate future minimum lease payments under non-cancelable leases as of February 3, 2008 are set forth in the following table:

<u>Fiscal Year</u>	<u>Operating Leases</u>	<u>Capital Leases</u>
	<u>(In thousands)</u>	
2009	\$ 10,651	\$ 654
2010	10,154	—
2011	9,929	—
2012	9,720	—
2013	8,686	—
Thereafter	110,518	—
	<u>\$ 159,658</u>	654
Less: portion representing interest and executory costs		(60)
		<u>\$ 594</u>

Rent expense, net of rental income, totaled \$14.8 million in fiscal 2008, \$17.7 million in fiscal 2007 and \$23.5 million in fiscal 2006.

Cash Payments of Interest

Interest paid, exclusive of deferred financing costs, totaled \$13.6 million in fiscal 2008, \$17.6 million in fiscal 2007 and \$13.4 million in fiscal 2006.

Note 11 — Other Long-Term Obligations

The components of other long-term obligations are as follows:

	<u>Feb. 3, 2008</u>	<u>Jan. 28, 2007</u>
	<u>(In thousands)</u>	
Non-current portion of self-insurance claims, principally worker's compensation (Notes 1, 5, 8 and 9)	\$ 11,754	\$ 11,389
Accrued rent expense	6,935	7,534
Non-current portion of deferred franchise fee revenue	3,405	4,038
Non-current portion of lease termination costs (Notes 9 and 13)	2,515	1,461
401(k) mirror plan liabilities (Notes 8 and 20)	368	255
Other	2,293	5,017
	<u>\$ 27,270</u>	<u>\$ 29,694</u>

NOTES TO FINANCIAL STATEMENTS — (Continued)

Note 12 — Commitments and Contingencies

Legal Proceedings

Except as disclosed below, the Company is not a party to any material legal proceedings.

*Litigation Settled**Federal Securities Class Actions and Settlement Thereof and Federal Court Shareholder Derivative Actions and Partial Settlement Thereof*

On May 12, 2004, a purported securities class action was filed on behalf of persons who purchased the Company's publicly traded securities between August 21, 2003 and May 7, 2004 against the Company and certain of its former officers in the United States District Court for the Middle District of North Carolina, alleging violations of federal securities law in connection with various public statements made by the Company and seeking damages in an unspecified amount. Thereafter, 14 substantially identical purported class actions were filed in the same court. All the actions ultimately were consolidated. The court appointed lead plaintiffs in the consolidated action, who filed a second amended complaint on May 23, 2005, alleging claims under federal securities law on behalf of persons who purchased the Company's publicly-traded securities between March 8, 2001 and April 18, 2005.

In addition to the purported securities class action, three shareholder derivative actions were filed in the United States District Court for the Middle District of North Carolina against certain current and former directors of the Company, certain former officers of the Company, including Scott Livengood (the Company's former Chairman and Chief Executive Officer), as well as certain persons or entities that sold franchises to the Company. The complaints in these actions alleged that the defendants breached their fiduciary duties in connection with their management of the Company and the Company's acquisitions of certain franchises. The complaints sought damages, rescission of the franchise acquisitions, disgorgement of the proceeds from these acquisitions and other unspecified relief.

In October 2004, the Company's Board of Directors elected Michael Sutton and Lizanne Thomas to the Board and appointed them members and co-chairpersons of a Special Committee to investigate the matters raised in connection with a formal investigation of the Company by the Securities and Exchange Commission (the "SEC") described below, the allegations in the purported derivative lawsuits, issues raised by the Company's independent auditors and other matters relevant to the foregoing.

On October 31, 2006, the Company and the Special Committee entered into a Stipulation and Settlement Agreement (the "Stipulation") with the lead plaintiffs in the securities class action, the derivative plaintiffs and all defendants named in the class action and derivative litigation, except for Mr. Livengood, providing for the settlement of the securities class action and a partial settlement of the derivative action. On February 14, 2007, the Court granted final approval of the proposed partial settlement in the derivative action and entered final judgment dismissing all claims with respect to all defendants, except for claims that the Company may assert against Mr. Livengood. On February 15, 2007, the court granted final approval of the proposed settlement in the securities class action and entered final judgment dismissing all claims with respect to all defendants. The final judgments were entered as contemplated by the terms of the Stipulation.

With respect to the securities class action, the Stipulation provided for the certification of a class consisting of all persons who purchased the Company's publicly-traded securities between March 8, 2001 and April 18, 2005, inclusive. The settlement class received total consideration of approximately \$76.0 million, consisting of a cash payment of approximately \$35.0 million made by the Company's directors' and officers' insurers, cash payments of \$100,000 each made by John Tate (the Company's former Chief Operating Officer) and Randy Casstevens (a former Chief Financial Officer), a cash payment of \$4 million made by the Company's independent registered

NOTES TO FINANCIAL STATEMENTS — (Continued)

public accounting firm and common stock and warrants to purchase common stock issued by the Company having an estimated aggregate value of approximately \$36.9 million as of their issuance on March 2, 2007. Claims against all defendants were dismissed with prejudice; however, claims that the Company may have against Mr. Livengood that may be asserted by the Company in the derivative action for contribution to the securities class action settlement or otherwise under applicable law are expressly preserved. The Stipulation contained no admission of fault or wrongdoing by the Company or the other defendants.

With respect to the derivative litigation, the Stipulation provided for the settlement and dismissal with prejudice of claims against all defendants except for claims against Mr. Livengood. The Company, acting through its Special Committee, settled claims against Mr. Tate and Mr. Casstevens for the following consideration: Messrs. Tate and Casstevens each agreed to contribute \$100,000 in cash to the settlement of the securities class action; Mr. Tate agreed to cancel his interest in 6,000 shares of the Company's common stock; and Messrs. Tate and Casstevens agreed to limit their claims for indemnity from the Company in connection with future proceedings before the SEC or by the United States Attorney for the Southern District of New York to specified amounts. The Company, acting through its Special Committee, has been in negotiations with Mr. Livengood but has not reached agreement to resolve the derivative claims against him. All other claims against defendants named in the derivative actions were dismissed with prejudice without paying any consideration. However, counsel for the derivative plaintiffs have deferred their application for fees until conclusion of the derivative actions against Mr. Livengood. See "Other Contingencies and Commitments" below.

On March 2, 2007, the Company issued 1,833,828 shares of its common stock and warrants to purchase 4,296,523 shares of its common stock at a price of \$12.21 per share in connection with the Stipulation. The warrants expire on March 2, 2012.

The Company recorded a non-cash charge to earnings in fiscal 2006 of approximately \$35.8 million, representing the estimated fair value, as of late October 2006, of the common stock and warrants to be issued by the Company. In addition, the Company recorded a related receivable from its insurers in the amount of approximately \$35.0 million, because the Company considered receipt of this amount to be probable based on the insurance companies' agreements to contribute this amount to the settlement and the Company's assessment of the insurance companies' financial condition. Simultaneously, the Company recorded a liability in the amount of \$70.8 million representing the then estimated aggregate fair value of the securities to be issued by the Company and the cash to be paid by the insurers. In the fourth quarter of fiscal 2007, the Company recorded an additional non-cash charge to earnings and an increase in the related liability of approximately \$16.0 million, representing the increase from October 2006 to January 28, 2007 in the estimated fair value of the securities issued by the Company in connection with the Stipulation. The provision for settlement costs was adjusted downward by approximately \$14.9 million in the first quarter of fiscal 2008 to reflect the decrease in the fair value of the securities from January 28, 2007 until their issuance on March 2, 2007. The fair value of the common shares was determined based upon the market price of the Company's common stock on March 2, 2007, and the fair value of the warrants to acquire common shares was estimated as of that date as described in Note 16.

NOTES TO FINANCIAL STATEMENTS — (Continued)

State Court Books and Records Action

On February 21, 2005, a lawsuit was filed against the Company in a North Carolina court seeking an order requiring the Company to permit the plaintiff to inspect and copy the books and records of the Company. On February 14, 2007, the federal district court approved the partial settlement of the consolidated derivative actions described above and entered an order dismissing those actions. On February 14, 2007, the North Carolina court filed a copy of that order and, on March 23, 2007, administratively dismissed the plaintiff's books and records action.

Pending Litigation and Investigations

The Company is subject to other litigation and investigations, the outcome of which cannot presently be determined. The Company cannot predict the likelihood of an unfavorable outcome with respect to these other matters, or the amount or range of potential loss with respect to, or the amount that might be paid in connection with any settlement of, any of these other matters, and, accordingly, no provision for loss with respect to any of the following matters has been reflected in the consolidated financial statements.

SEC Investigation

On October 7, 2004, the staff of the SEC advised the Company that the SEC had entered a formal order of investigation concerning the Company. The Company is cooperating with the investigation.

United States Attorney Investigation

On February 24, 2005, the United States Attorney's Office for the Southern District of New York advised the Company that it would seek to conduct interviews of certain current and former officers and employees of the Company. The Company is cooperating with the investigation.

FACTA litigation

On October 3, 2007, a purported nationwide class action (Peter Jackson v. Krispy Kreme Doughnut Corporation (Case No. CV07-06449 ABC (VBC)), United States District Court, Central District of California) was filed against the Company and ten fictitiously named defendants. Plaintiff asserts a single cause of action for alleged willful violation of the federal Fair and Accurate Credit Transactions Act ("FACTA"). Specifically, plaintiff alleges a violation concerning electronic printing of certain credit card and debit card receipts that were not in compliance with the applicable information truncation provisions of FACTA. Plaintiff seeks statutory and punitive damages for these alleged violations, as well as injunctive relief on behalf of a putative nationwide class. The Company intends to defend vigorously against the claims asserted.

TAG Litigation

In February 2008, the Company filed suit in the U.S. District Court for the Middle District of North Carolina against The Advantage Group Enterprise, Inc. ("TAG"), alleging that TAG failed to properly account for and pay the Company on sales of equipment that the Company consigned to TAG. Based on these allegations, the Company asserted various claims including breach of fiduciary duty and conversion, and it seeks an accounting and constructive trust. In addition, the Company seeks a declaration that it does not owe TAG approximately \$1 million for storage fees and alleged lost profits. In March 2008, TAG answered the complaint, denying liability and asserting counterclaims against the Company. TAG alleges that the Company acted improperly by failing to execute a written contract between the companies and claims damages for breach of contract, services rendered, unjust enrichment, violation of the North Carolina Unfair Trade Practices Act and fraud in the inducement. TAG seeks approximately \$1 million in actual damages as well as punitive and treble damages. The Company intends to vigorously prosecute its claims against TAG and to vigorously defend against the counterclaims, which the Company believes are without merit.

NOTES TO FINANCIAL STATEMENTS — (Continued)

Other matters

The Company also is engaged in various legal proceedings arising in the normal course of business. The Company maintains customary insurance policies (which are subject to deductibles) against certain kinds of such claims and suits, including insurance policies for workers' compensation and personal injury.

Other Commitments and Contingencies

The Company has guaranteed certain leases and loans from third-party financial institutions on behalf of Equity Method Franchisees primarily to assist the franchisees in obtaining third party financing. The loans are collateralized by certain assets of the franchisee, generally the Krispy Kreme store and related equipment. The Company's contingent liabilities related to these guarantees totaled approximately \$17.5 million and \$22.6 million at February 3, 2008 and January 28, 2007, respectively, and are summarized in Note 18. The guaranteed amount for debt was determined based upon the principal amount outstanding under the related agreement and the guaranteed amount for leases was determined based upon the gross amount of remaining lease payments. The percentage of the aggregate franchisee obligation guaranteed by the Company generally approximates the Company's percentage ownership in the franchisee. These guarantees require payment from the Company in the event of default on payment by the respective debtor and, if the debtor defaults, the Company may be required to pay amounts outstanding under the related agreements in addition to the principal amount guaranteed, including accrued interest and related fees. At the time the guarantees were issued, the Company determined the fair value of the guarantees was immaterial and, accordingly, no amount was reflected for the liabilities in the consolidated balance sheet. In the fourth quarter of fiscal 2008, the Company recorded a provision of \$3.0 million for estimated payments under the Company's guarantees of certain debt and leases related to a franchisee. During the quarter, the franchisee defaulted on certain of the obligations guaranteed by the Company and, while there is no current demand on the Company to perform under the guarantees, the Company believes it is probable that demand will be made on the Company to perform under them. The charge is comprised of \$2.1 million representing 100% of the portion of principal balance of the franchisee's loans guaranteed by the Company, and \$900,000 representing the guaranteed portion of approximately one year's total payments on the guaranteed leases. The estimated aggregate maximum remaining potential obligation on guaranteed leases over their remaining lives (which range from 11 to 16 years) and for which no provision has been recorded is approximately \$8.8 million, assuming no sublease rentals or other loss mitigation benefits and no reduction for rights of setoff or other defenses the Company may have to the guarantees. During fiscal 2007, the Company recorded a provision of approximately \$450,000 for estimated payments under a Company guarantee of indebtedness of another franchisee. These provisions are included in other non-operating income and expense in the accompanying consolidated statement of operations. There is no liability reflected for other guarantees as of February 3, 2008 because the Company did not believe it was probable that the Company would be required to perform under any other guarantees. However, there can be no assurance that the Company will not be required to perform under those guarantees and, if circumstances change from those prevailing at February 3, 2008, additional provisions for guarantee payments could be required with respect to any of the guarantees, and such provisions could be significant.

The Company is subject to indemnification obligations to its directors and officers pursuant to indemnification provisions of North Carolina law, the Company's bylaws and certain indemnification agreements. Several of the Company's former directors, officers and employees are the subject of criminal, administrative and civil investigations and the unresolved components of the shareholder derivative litigation. The Company may have an obligation to indemnify these persons in relation to these matters. Some of these indemnification obligations would be covered by certain insurers under applicable directors' and officers' liability policies. In connection with the settlement of the securities class action and the partial settlement of the derivative litigation described above, however, the Company agreed with these insurers to limit its claims for reimbursement for legal fees and costs incurred in connection with those proceedings, and the related criminal and administrative investigations, to a specified reserve fund in the amount of \$3.4 million (of which approximately \$1.4 million remains as of

NOTES TO FINANCIAL STATEMENTS — (Continued)

February 3, 2008). Two of the Company's former officers have agreed to limit their claims for indemnity from the Company in connection with future proceedings before the SEC or the United States District Court for the Southern District of New York to a portion of the amount deposited into the reserve fund. This portion is not available to the Company for its claims for reimbursement of the legal fees and costs described above. If the sums in this fund are not sufficient to provide for reimbursement to the Company or if the Company incurs significant uninsured indemnity obligations, such indemnity obligations could have a material adverse effect on the Company's financial condition, results of operations and cash flows. In addition, counsel for the plaintiffs in several settled shareholder derivative actions have deferred their application for fees until conclusion of the derivative actions, and there can be no assurance as to the amount the Company will be required to pay to such counsel or that the remaining reserve fund at such time will be sufficient to reimburse the Company for such amount.

One of the Company's lenders had issued letters of credit on behalf of the Company totaling \$20.3 million at February 3, 2008, the substantial majority of which secure the Company's reimbursement obligations to insurers under the Company's self-insurance arrangements.

The Company is exposed to the effects of commodity price fluctuations on the cost of ingredients of its products, of which flour, sugar and shortening are the most significant. In order to secure adequate supplies of product and bring greater stability to the cost of ingredients, the Company routinely enters into forward purchase contracts with suppliers under which the Company commits to purchasing agreed-upon quantities of ingredients at agreed-upon prices at specified future dates. Typically, the aggregate outstanding purchase commitment at any point in time will range from one month's to two years' anticipated ingredients purchases, depending on the ingredient. In addition, from time to time the Company enters into contracts for the future delivery of equipment purchased for resale and components of doughnut-making equipment manufactured by the Company. As of February 3, 2008, the Company had approximately \$48.9 million of commitments under ingredient and other forward purchase contracts. While the Company has multiple suppliers for most of its ingredients, the termination of the Company's relationships with vendors with whom the Company has forward purchase agreements, or those vendors' inability to honor the purchase commitments, could adversely affect the Company's results of operations and cash flows.

In addition to entering into forward purchase contracts, the Company from time to time purchases exchange-traded commodity futures contracts or options on such contracts for raw materials which are ingredients of the Company's products or which are components of such ingredients, including wheat and soybean oil. The Company typically assigns the futures contract to a supplier in connection with entering into a forward purchase contract for the related ingredient. The aggregate fair value of unassigned futures contracts as of February 3, 2008 was an asset of approximately \$267,000.

NOTES TO FINANCIAL STATEMENTS — (Continued)

Note 13 — Impairment Charges and Lease Termination Costs

The components of impairment charges and lease termination costs are as follows:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Impairment charges:			
Impairment of goodwill – Company Stores segment	\$ 4,598	\$ 874	\$ 3,511
Impairment of goodwill – KK Supply Chain segment	—	213	—
Total goodwill impairment charges	4,598	1,087	3,511
Impairment of long-lived assets	55,963	9,418	49,663
Impairment of reacquired franchise rights	480	120	560
Other	—	137	—
Total impairment charges	61,041	10,762	53,734
Lease termination costs:			
Provision for termination costs	2,683	2,113	2,860
Less — reversal of previously recorded deferred rent expense	(1,651)	(356)	(1,532)
Net provision	1,032	1,757	1,328
	<u>\$ 62,073</u>	<u>\$ 12,519</u>	<u>\$ 55,062</u>

The goodwill impairment charges were recorded to reduce the carrying value of goodwill to its estimated fair value, which the Company estimates using the present value of expected future cash flows. Such charges reflect reductions in the Company's forecasted sales and earnings in certain of the reporting units comprising the Company Stores and KK Supply Chain segments, which caused a reduction in the estimated fair value of those reporting units. Such reductions reflect current operating results, including the effects of higher materials and labor costs, as well as recent trends in operating results. The Company conducts its annual goodwill impairment testing as of December 31.

The Company tests other long-lived assets for impairment when events or changes in circumstances indicate that their carrying value may not be recoverable. These events and changes in circumstances include store closing decisions, the effects of changing costs (including the impact of rising commodity costs) on current results of operations, observed trends in operating results, and evidence of a change in circumstances observed as a part of periodic reforecasts of future operating results and as part of the Company's annual budgeting process. When the Company concludes that the carrying value of other long-lived assets is not recoverable (based on future projected undiscounted cash flows), the Company records impairment charges to reduce the carrying value of those assets to their estimated fair values. Impairment charges related to Company Stores long-lived assets were approximately \$44.1 million, \$9.4 million and \$49.7 million in fiscal 2008, 2007 and 2006, respectively. Such charges relate to underperforming stores, including both stores closed or likely to be closed and stores management believes will not generate sufficient future cash flows to enable the Company to recover the carrying value of the stores' assets, but which management has not yet decided to close. The impaired store assets include leasehold improvements, which are typically abandoned when the leased properties revert to the lessor (although the Company may recover a portion of the cost of the improvements if the Company is successful in assigning its leasehold interests to another tenant), and doughnut-making and other equipment. The fair value of equipment is based upon its estimated selling price to franchisees opening new stores, after considering refurbishment and transportation costs.

For the fiscal year ended February 3, 2008, the Company also recorded an impairment charge of approximately \$10.4 million (substantially all of which was recorded in the second quarter) with respect to its KK Supply Chain manufacturing and distribution facility in Illinois, based on management's revised expectations.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

about the use and ultimate disposition of that facility. During the second quarter, the Company decided to divest the facility and determined that the projected cash flows from operation and ultimate sale of the facility were less than its carrying value; accordingly, the Company recorded an impairment charge to reduce the carrying value of the facility and related equipment to their estimated fair value. The Company sold these assets for approximately \$10.9 million cash (net of expenses) in the fourth quarter of fiscal 2008, and recorded a credit to impairment charges of approximately \$600,000, representing the excess of the ultimate selling price over the previously estimated disposition value of the facility.

The Company also recorded an impairment charge of approximately \$1.5 million during fiscal year ended February 3, 2008 to reduce the carrying value of its KK Supply Chain coffee roasting assets to their estimated fair value upon disposition. The Company sold these assets for approximately \$1.9 million cash during the third quarter of fiscal 2008.

The Company records impairment charges for reacquired franchise rights when such intangible assets are determined to be impaired as a result of store closing decisions or other developments.

Lease termination costs represent the net present value of remaining contractual lease payments related to closed stores, after reduction by estimated sublease rentals.

The transactions reflected in the accrual for lease termination costs are as follows:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Balance at beginning of year	\$ 1,650	\$ 1,981	\$ 2,281
Provision for lease termination costs:			
Provisions associated with store closings, net of estimated sublease rentals	1,961	122	2,682
Adjustments to previously recorded provisions resulting from settlements with lessors and adjustments of previous estimates	526	1,824	77
Accretion of discount	196	167	101
Total provision	2,683	2,113	2,860
Proceeds from assignment of leases	966	—	—
Accruals related to deconsolidated franchisees	—	—	(1,012)
Payments on unexpired leases, including settlements with lessors	(2,462)	(2,444)	(2,148)
Total reductions	(1,496)	(2,444)	(3,160)
Balance at end of year	\$ 2,837	\$ 1,650	\$ 1,981
Accrued lease termination costs are included in the consolidated balance sheet as follows:			
Other accrued liabilities	\$ 322	\$ 189	\$ 282
Other long-term obligations	2,515	1,461	1,699
	\$ 2,837	\$ 1,650	\$ 1,981

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

Note 14 — Other Non-Operating Income and Expense

The components of other non-operating income and expense are as follows:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Foreign currency transaction gain (loss)	\$ 70	\$ 163	\$ (248)
Gain on disposal of interests in Equity Method Franchisees (Note 18)	260	7,308	—
Impairment charge related to investment in Equity Method Franchisee (Note 18)	(572)	—	—
Provision for guarantee payments	(2,969)	(450)	—
	<u>\$ (3,211)</u>	<u>\$ 7,021</u>	<u>\$ (248)</u>

In the fourth quarter of fiscal 2008, the Company recorded a provision of \$3.0 million for estimated payments under the Company's guarantees of certain debt and leases related to a franchisee. During the quarter, the franchisee defaulted on certain of the obligations guaranteed by the Company and, while there is no current demand on the Company to perform under the guarantees, the Company believes it is probable that the Company will be required to perform under some, and potentially all, of them. The charge is comprised of \$2.1 million representing 100% of the portion of principal balance of the franchisee's loans guaranteed by the Company, and \$900,000 representing the guaranteed portion of approximately one year's total payments on the guaranteed leases. The estimated aggregate maximum remaining potential obligation on guaranteed leases over their remaining lives (which range from 11 to 16 years) and for which no provision has been recorded is approximately \$8.8 million, assuming no sublease rentals or other loss mitigation benefits and no reduction for rights of setoff or other defenses the Company may have to the guarantees. During fiscal 2007, the Company recorded a provision of approximately \$450,000 for estimated payments under a Company guarantee of indebtedness of another franchisee.

Note 15 — Income Taxes

The components of the provision for income taxes (benefit) are as follows:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Current	\$ 1,435	\$ 1,223	\$ 1,112
Deferred	889	(12)	(1,888)
	<u>\$ 2,324</u>	<u>\$ 1,211</u>	<u>\$ (776)</u>

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The components of the loss before income taxes are as follows:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Domestic	\$ (58,491)	\$ (45,705)	\$ (130,411)
Foreign	(6,236)	4,680	(6,125)
Total (loss) before income taxes	<u>\$ (64,727)</u>	<u>\$ (41,025)</u>	<u>\$ (136,536)</u>

A reconciliation of a tax provision computed at the statutory federal income tax rate and the Company's provision for income taxes follows:

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Income taxes at statutory federal rate	\$ (22,654)	\$ (14,359)	\$ (47,788)
State income taxes	(3,718)	(1,984)	(3,988)
Foreign (income) losses with no tax (cost) benefit	114	(2,216)	291
Valuation allowance provided on deferred income tax assets	27,642	19,420	50,284
Foreign withholding taxes	773	1,033	102
Other	167	(683)	323
	<u>\$ 2,324</u>	<u>\$ 1,211</u>	<u>\$ (776)</u>

Income tax payments, net of refunds, were \$682,000, \$505,000 and \$690,000 in fiscal 2008, 2007 and 2006, respectively.

The components of deferred income taxes are as follows:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Net current assets (liabilities)	\$ 83	\$ (20)
Net noncurrent assets (liabilities)	(83)	20
Net asset	<u>\$ —</u>	<u>\$ —</u>

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The tax effects of temporary differences are as follows:

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
Deferred income tax assets:		
Goodwill and other intangible assets	\$ 29,830	\$ 33,056
Accrued litigation settlement	7,315	20,463
Allowance for doubtful accounts	2,668	2,298
Other current assets	2,180	1,900
Property and equipment	11,907	1,731
Other non-current assets	1,084	959
Insurance accruals	5,404	5,406
Deferred revenue	3,306	5,310
Other current liabilities	5,478	6,219
Other non-current liabilities	3,733	3,553
Share-based compensation	4,262	2,129
Federal net operating loss carryforwards	79,339	52,371
Federal tax credit carryforwards	3,678	2,883
Charitable contributions carryforward	3,889	3,717
State net operating loss and credit carryforwards	12,176	7,526
Other	1,532	625
Gross deferred income tax assets	177,781	150,146
Valuation allowance on deferred income tax assets	(176,964)	(149,322)
Deferred income tax assets, net of valuation allowance	817	824
Deferred income tax liabilities:		
Other	(817)	(824)
Gross deferred income tax liabilities	(817)	(824)
Net deferred income tax asset	\$ —	\$ —

Certain amounts set forth in the preceding table as of January 28, 2007 differ from amounts previously reported; however, the aggregate net deferred income tax asset at that date is unchanged.

The Company has recorded a valuation allowance against deferred income tax assets of \$177.0 million and \$149.3 million at February 3, 2008 and January 28, 2007, respectively, representing the amount of its deferred income tax assets in excess of its deferred income tax liabilities. The valuation allowances were recorded because management was unable to conclude, in light of the cumulative loss realized by the Company for the three year period ended February 3, 2008, that realization of the net deferred income tax asset was more likely than not.

The Company has approximately \$237 million of federal income tax loss carryforwards expiring in fiscal 2024 through 2028. Of this amount, approximately \$11 million is the result of tax deductions related to the exercise of stock options by employees, the tax benefits of which, if subsequently realized, will be recorded as an addition to common stock. The Company also has state income tax loss carryforwards expiring in fiscal 2010 through 2028.

The Company is subject to U.S. federal income tax, as well as income tax in multiple U.S. state and local jurisdictions and a limited number of foreign jurisdictions. All significant state, local and foreign income tax matters have been concluded through fiscal 2004. The Company has concluded all U.S. federal income tax matters for all years prior to fiscal 2002.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The Company currently is subject to examinations of its fiscal 2002 through 2004 income tax returns by the Internal Revenue Service (“IRS”), and other tax examinations by other tax authorities in various jurisdictions. The IRS has informed the Company that it will seek to disallow permanently approximately \$7.2 million of deductions claimed in the income tax returns currently under examination. The Company currently expects to agree with a portion of the adjustment proposed by the IRS, but disagrees with the balance of the proposed adjustment. Because the Company has net operating loss carryovers for federal income tax purposes, the proposed adjustment is not expected to result in significant payment of additional taxes with respect to the tax years under audit, but would, to the extent sustained by the IRS, result in an increase in taxes payable by the Company at such time, if any, as those net operating loss carryovers are exhausted. The Company assesses the likelihood of adverse outcomes resulting from these examinations in determining the provision for income taxes.

The Company had \$5.1 million of unrecognized tax benefits as of February 3, 2008. If recognized, \$2.2 million of the unrecognized tax benefits would be recorded as a part of income tax expense and affect the Company’s effective income tax rate.

The following table presents a reconciliation of the beginning and ending amounts of unrecognized tax benefits:

	<u>(In thousands)</u>
Unrecognized tax benefits recorded at adoption of FIN 48 effective January 29, 2007	\$ 4,540
Increases for positions related to the current year	238
Increases for positions taken in prior years	794
Settlements with taxing authorities	(41)
Lapsing of statutes of limitations	(401)
Unrecognized tax benefits at February 3, 2008	<u>\$ 5,130</u>

It is reasonably possible that the total amount of unrecognized tax benefits will decrease in fiscal 2009 by up to approximately \$3.9 million, of which approximately \$1.4 million would be recorded as part of income tax expense if recognized. Decreases in the unrecognized tax benefits may result from the completion of the IRS income tax audit, the pending liquidation of foreign subsidiaries and the lapsing of statutes of limitations.

The Company’s policy is to recognize interest and penalties related to income tax issues as components of income tax expense. The Company had approximately \$670,000 of accrued interest and penalties as of February 3, 2008, and accrued approximately \$220,000 for such items for the year then ended.

Note 16 — Shareholders’ Equity***Common Shares and Warrants Issued in Connection With Settlement of Litigation***

On March 2, 2007, the Company issued 1,833,828 shares of common stock and warrants to acquire 4,296,523 shares of common stock at a price of \$12.21 per share in connection with the settlement of certain litigation as described in Note 12. As of that date, the aggregate fair value of the common shares was approximately \$18.4 million and the aggregate fair value of the warrants was approximately \$18.5 million. The estimated fair value of the warrants was computed using the Black-Scholes option pricing model with the following assumptions: an exercise price of \$12.21 per share; a market price of common stock of \$10.01 per share; an expected term of 5.0 years; a risk-free rate of 4.46%; a dividend yield of zero; and expected volatility of 50%.

The common stock and warrants had a fair value as of January 28, 2007 of approximately \$51.8 million which, together with the approximately \$35.0 million cash paid to the settlement class by the Company’s insurers, was reflected in the consolidated balance sheet under the caption “accrued litigation settlement.” The decrease in the estimated fair value of the common stock and warrants from January 28, 2007 to their issuance on March 2,

NOTES TO FINANCIAL STATEMENTS — (Continued)

2007 of approximately \$14.9 million was credited to earnings in the first quarter of fiscal 2008, at which time the aggregate fair value of the securities of approximately \$36.9 million was reclassified from liabilities to common stock.

Warrant Issued in Exchange for Services

General and administrative expenses for fiscal 2007 and 2006 include \$3.9 million and \$2.8 million, respectively, representing, in the aggregate, the estimated fair value of a warrant to purchase 1.2 million shares of the Company's common stock issued during fiscal 2006 to a corporate recovery and advisory firm engaged by the Company to provide interim management services to the Company from late January 2005 through March 2006. The warrant's exercise price is \$7.75 per share, and it expires on January 31, 2013. The warrant's fair value was charged to earnings during the period from January 18, 2005, the date on which the advisory firm was engaged, to April 6, 2006, the date on which the warrant became exercisable and non-forfeitable, in accordance with EITF Issue 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods or Services." The substantial charge to earnings related to the warrant in fiscal 2007 reflects an increase in its estimated fair value as of April 6, 2006, the date on which the value of the warrant was fixed for accounting purposes, compared to its estimated fair value at January 29, 2006. The estimated fair value of the warrant as of April 6, 2006 was computed using the Black-Scholes option pricing model with the following assumptions: an exercise price of \$7.75 per share; a market price of common stock of \$8.84 per share; a term to maturity of 6.82 years; a risk-free rate of 4.91%; a dividend yield of zero; and expected volatility of 55%. The aggregate \$6.7 million estimated fair value of the warrant as of April 6, 2006 was reclassified from accrued liabilities to common stock as of that date.

Share-Based Compensation for Employees

The Company's shareholders approved the 2000 Stock Incentive Plan (the "2000 Plan"), under which incentive stock options, nonqualified stock options, stock appreciation rights, performance units, restricted stock (or units) and common shares may be awarded. In fiscal 2008, the Company's shareholders amended the 2000 plan to extend the term of the 2000 Plan by two years to June 30, 2012 and to remove the 2000 Plan's sublimit on the number of shares that may be issued in connection with awards of stock appreciation rights, restricted stock, common stock and performance unit awards. The maximum number of shares of common stock with respect to which awards may be granted under the 2000 Plan is 9,996,000, of which 3,566,500 remain available for grant after fiscal 2008. The 2000 Plan provides that options may be granted with exercise prices not less than the closing sale price of the Company's common stock on the date of grant.

Effective January 30, 2006 (the first day of fiscal 2007), the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" ("FAS 123(R)", which requires the measurement and recognition of compensation expense for share-based payment ("SBP") awards, including stock options. Such adoption included consideration of the provisions of Staff Accounting Bulletin No. 107, which contains the views of the staff of the Commission relating to adoption of FAS 123(R). Prior to fiscal 2007, the Company accounted for SBP awards using the intrinsic value method prescribed by APB 25.

The Company adopted FAS 123(R) using the modified prospective method of adoption; accordingly, financial statements for years prior to fiscal 2007 have not been restated to reflect the fair value method of recognizing compensation cost relating to stock options. Under the modified prospective method of adoption, the aggregate fair value of stock options which were unvested at the end of fiscal 2006 that is attributable to employee service after fiscal 2006 will be charged to earnings over the remaining service period associated with the options. In addition, the Company is recognizing compensation expense for stock option awards made in fiscal 2007 and thereafter. The Company previously recognized compensation expense for grants of restricted stock based upon the fair value of the shares awarded, and this practice has continued after adoption of FAS 123(R). Under FAS 123(R), the fair value of SBP awards with respect to which employees render the requisite service necessary for the

NOTES TO FINANCIAL STATEMENTS — (Continued)

award to vest is recognized over the related vesting period. The fair value of SBP awards which vest in increments and for which vesting is subject solely to service conditions is charged to expense on a straight-line basis over the aggregate vesting period of each award, which generally ranges from three to four years. The fair value of SBP awards which vest in increments and for which vesting is subject to both market conditions and service conditions is charged to expense over the estimated vesting period of each increment of the award, each of which is treated as a separate award for accounting purposes.

Adoption of FAS 123(R) had the effect of increasing compensation expense for fiscal 2007 by approximately \$5.0 million. Because the Company recorded no income tax benefit with respect to its operating loss for fiscal 2007, the after tax effect of the accounting change also was approximately \$5.0 million, or \$.08 per share. This additional expense includes not only a portion of the fair value of stock options granted during fiscal 2007, but also a portion of the fair value of stock options granted in prior years.

The aggregate cost of SBP awards charged to earnings in fiscal 2008 and fiscal 2007 is set forth in the following table. The Company did not realize any excess tax benefits from the exercise of stock options during either year.

	Year Ended	
	Feb. 3, 2008	Jan. 29, 2007
	(In thousands)	
Costs charged to earnings related to:		
Stock options	\$ 2,561	\$ 4,978
Restricted stock and restricted stock units	5,038	1,009
Total costs	<u>\$ 7,599</u>	<u>\$ 5,987</u>
Costs included in:		
Direct operating expenses	\$ 2,384	\$ 2,628
General and administrative expenses	5,215	3,359
Total costs	<u>\$ 7,599</u>	<u>\$ 5,987</u>

Had compensation cost for the Company's stock option plans for fiscal 2006 been determined based on the estimated fair value of the awards at the grant dates in accordance with the provisions of Statement of Financial Accounting Standards No. 123, "Stock-Based Compensation" ("FAS 123"), rather than using the intrinsic value method of APB 25, the Company's earnings would have been affected as set forth in the table below:

	Year Ended Jan. 29, 2006
	(In thousands, except per share amounts)
Net (loss) as reported	\$ (135,760)
Deduct: SBP awards determined under fair value method	(9,102)
Pro forma net (loss)	<u>\$ (144,862)</u>
(Loss) per share:	
Reported (loss) per share — Basic	\$ (2.20)
Pro forma (loss) per share — Basic	\$ (2.34)
Reported (loss) per share — Diluted	\$ (2.20)
Pro forma (loss) per share — Diluted	\$ (2.34)

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The fair value of stock options subject only to service conditions was estimated using the Black-Scholes option pricing model. In addition to service conditions, certain stock options granted in fiscal 2008 and 2007 also provide that the price of the Company's common stock must increase by 20% and 40% after the grant date, and remain at or above the appreciated price for at least ten consecutive trading days, in order for the options to become vested and exercisable. The fair value of those stock options was estimated using Monte Carlo simulation techniques. Options granted generally have contractual terms of 10 years, the maximum term permitted under the 2000 Plan. The weighted average assumptions used in valuing stock options are set forth in the following table:

	Year ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
Expected life of option	6.9 years	6.6 years	(1)
Risk-free interest rate	4.42%	4.63%	(1)
Expected volatility of stock	50.0%	51.8%	(1)
Expected dividend yield	—	—	(1)

(1) Not applicable; no stock options were granted in fiscal 2006.

The expected life of stock options valued using the Black-Scholes option pricing model is estimated by reference to historical experience, published data and any relevant characteristics of the option. The expected life of stock options valued using Monte Carlo simulation techniques is based upon the vesting dates forecasted by the simulation and then assuming that options which vest are exercised at the midpoint between the forecasted vesting date and their expiration. The risk-free rate of interest is based on the yield of a zero-coupon U.S. Treasury bond on the date the award is granted having a maturity approximately equal to the expected term of the award. Expected volatility is based on a combination of the historical and implied volatility of the Company's common shares and the shares of peer companies. The Company uses historical data to estimate forfeitures of awards prior to vesting.

The number of options granted during fiscal 2008, 2007 and 2006 and the aggregate and weighed average fair value of such options were as follows:

	Year ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
Weighted average fair value per share of options granted	\$ 2.95	\$ 4.88	(1)
Total number of options granted	784,200	1,400,000	—
Total fair value of all options granted	\$ 2,309,700	\$ 6,831,500	(1)

(1) Not applicable; no stock options were granted in fiscal 2006.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The following table summarizes stock option transactions for fiscal 2008, 2007 and 2006. Option transactions include options granted under the 2000 Plan as well as options granted under the Company's 1998 Stock Option Plan (the "1998 Plan") pursuant to which grants may no longer be awarded.

	Shares Subject to Option	Weighted Average Exercise Price Per Share	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Term
	(Dollars in thousands, except per share amounts)			
Outstanding at January 30, 2005	7,448,500	\$ 18.89		
Granted	—	—		
Exercised	(85,700)	\$ 1.79	\$ 459	
Forfeited	(1,284,400)	\$ 30.97		
Outstanding at January 29, 2006	6,078,400	\$ 16.58		
Granted	1,400,000	\$ 8.52		
Exercised	—	—	—	
Forfeited	(403,200)	\$ 26.78		
Outstanding at January 28, 2007	7,075,200	\$ 14.40	\$ 35,366	4.8 years
Granted	784,200	\$ 5.21		
Exercised	(110,800)	\$ 2.63	\$ 526	
Forfeited	(1,352,800)	\$ 13.76		
Outstanding at February 3, 2008	<u>6,395,800</u>	\$ 13.61	\$ 3,796	3.6 years
Exercisable at February 3, 2008	<u>5,253,300</u>	\$ 14.80	\$ 3,796	2.4 years

Additional information regarding stock options outstanding as of February 3, 2008, is as follows:

Range of Exercise Prices	Options Outstanding					
	Shares	Weighted	Weighted	Options Exercisable		
		Average		Shares	Weighted	
		Remaining				Average
		Contractual				Exercise
Life	Exercise	Price	Price			
Exercise Prices	Shares	(Years)	Price	Shares	Price	
\$ 1.30 - \$ 3.41	2,991,400	1.9	\$ 1.73	2,588,600	\$ 1.46	
\$ 5.25 - \$ 9.71	544,000	8.0	\$ 9.19	64,000	\$ 5.25	
\$10.20 - \$16.94	1,042,100	5.1	\$ 13.95	788,600	\$ 14.55	
\$28.11 - \$28.58	624,000	4.3	\$ 28.34	624,000	\$ 28.34	
\$30.98 - \$44.22	1,194,300	4.0	\$ 37.41	1,188,100	\$ 37.43	

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

In addition to stock options, the Company periodically has awarded restricted stock and restricted stock units (which are settled in common stock) under the 2000 Plan. The following table summarizes changes in unvested restricted stock awards for fiscal 2008, 2007 and 2006:

	Unvested Shares	Weighted Average Grant Date Fair Value
Unvested at January 30, 2005	500	\$ 38.66
Granted	—	—
Vested	(100)	\$ 34.11
Forfeited	(400)	\$ 39.43
Unvested at January 29, 2006	—	—
Granted	834,000	\$ 8.52
Vested	(87,000)	\$ 6.86
Forfeited	(3,000)	\$ 9.71
Unvested at January 28, 2007	744,000	\$ 8.71
Granted	1,552,000	\$ 4.68
Vested	(795,500)	\$ 4.96
Forfeited	(315,000)	\$ 7.24
Unvested at February 3, 2008	<u>1,185,500</u>	\$ 6.33

The total fair value as of the grant date of shares vesting during fiscal 2008, 2007 and 2006 was \$3,946,000, \$597,000 and \$3,000, respectively.

As of February 3, 2008, the total unrecognized compensation cost related to SBP awards was approximately \$9.0 million. The remaining service periods over which compensation cost will be recognized for these awards range from approximately three months to four years, with a weighted average remaining service period of approximately 1.6 years.

At February 3, 2008, there were approximately 11,147,800 shares of common stock reserved for issuance pursuant to awards granted under the 2000 Plan and the 1998 Plan.

Shareholder Rights Plan

Each share of the Company's common stock has one preferred share purchase right. Each share purchase right entitles the registered shareholder to purchase one one-hundredth (1/100) of a share of Krispy Kreme Series A Participating Cumulative Preferred Stock at a price of \$96.00 per one one-hundredth of a Series A preferred share. The share purchase rights are not exercisable until the earlier to occur of (1) 10 days following a public announcement that a person or group of affiliated or associated persons — referred to as an acquiring person — has acquired beneficial ownership of 15% or more of the Company's outstanding common stock or (2) 10 business days following the commencement of, or announcement of an intention to make a tender offer or exchange offer which would result in an acquiring person beneficially owning 15% or more of the outstanding shares of common stock.

If the Company is acquired in a merger or other business combination, or if 50% or more of the Company's consolidated assets or earning power is sold after a person or group has become an acquiring person, proper provision will be made so that each holder of a share purchase right — other than share purchase rights beneficially owned by the acquiring person, which will thereafter be void — will have the right to receive, upon exercise of the share purchase right at the then current exercise price, the number of shares of common stock of the acquiring company which at the time of the transaction have a market value of two times the share purchase right exercise

NOTES TO FINANCIAL STATEMENTS — (Continued)

price. If any person or group becomes an acquiring person, proper provision shall be made so that each holder of a share purchase right — other than share purchase rights beneficially owned by the acquiring person, which will thereafter be void — will have the right to receive upon exercise, and without paying the exercise price, the number of shares of Krispy Kreme common stock with a market value equal to the share purchase right exercise price.

Series A preferred shares purchasable upon exercise of the share purchase rights will not be redeemable. Each Series A preferred share will be entitled to a minimum preferential dividend payment of \$1 per share and will be entitled to an aggregate dividend of 100 times the dividend declared per share of common stock. In the event the Company liquidates, the holders of the Series A preferred shares will be entitled to a minimum preferential liquidation payment of \$1 per share but will be entitled to an aggregate payment of 100 times the payment made per share of common stock. Each Series A preferred share will have 100 votes, voting together with the shares of common stock. Finally, in the event of any merger, consolidation or other transaction in which shares of common stock are exchanged, each Series A preferred share will be entitled to receive 100 times the amount received per share of common stock. These rights are protected by customary antidilution provisions.

Before the date the share purchase rights are exercisable, the share purchase rights may not be detached or transferred separately from the common stock. The share purchase rights will expire on January 18, 2010, unless that expiration date is extended or unless the share purchase rights are redeemed or exchanged by the Company. At any time an acquiring person acquires beneficial ownership of 15% or more of the Company's outstanding common stock, the Board of Directors may redeem the share purchase rights in whole, but not in part, at a price of \$0.001 per share purchase right. Immediately upon any share purchase rights redemption, the exercise rights terminate and the holders will only be entitled to receive the redemption price.

Note 17 — Segment Information

The Company's reportable segments are Company Stores, Franchise and KK Supply Chain. The Company Stores segment is comprised of the operating activities of the stores operated by the Company. These stores sell doughnuts and complementary products through both on-premises and off-premises sales channels, although some stores serve only one of these distribution channels. The majority of the ingredients and materials used by Company stores are purchased from the KK Supply Chain segment, which supplies mix, equipment and other items to both Company and franchisee-owned stores. The Franchise segment consists of the Company's store franchise operations. Under the terms of the franchise agreements, the franchisees pay royalties and fees to the Company in return for the use of the Krispy Kreme name and ongoing brand and operational support. Expenses for this segment include costs incurred to recruit new franchisees and to open, monitor and aid in the performance of these stores and direct general and administrative expenses.

All intercompany sales by the KK Supply Chain segment to the Company Stores segment are at prices intended to reflect an arms-length transfer price and are eliminated in consolidation. Operating income for the Company Stores segment does not include any profit earned by the KK Supply Chain segment on sales of doughnut mix, ingredients and supplies to the Company Stores segment; such profit is included in KK Supply Chain operating income. The gross profit earned by the KK Supply Chain segment on sales of equipment to the Company Stores segment and eliminated in consolidation is not included in the KK Supply Chain segment operating income shown below, and depreciation expense charged to Company Stores operating income reflects the elimination of that intercompany profit.

The following table presents the results of operations of the Company's operating segments for fiscal 2008, 2007 and 2006. As described under "Revisions" in Note 1, in fiscal 2008 the Company revised its presentation of gains and losses on disposals of property and equipment and foreign currency transaction gains and losses related to inventory purchases to report such amounts as components of income or loss from operations rather than as components of non-operating income and expense. Certain amounts set forth in the table below for fiscal 2007 and 2006 differ from amounts previously reported as a result of such revision.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

Segment operating income is consolidated operating income before unallocated general and administrative expenses, impairment charges and lease termination costs and settlement of litigation.

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Revenues:			
Company Stores	\$ 304,444	\$ 326,199	\$ 398,450
Franchise	22,958	21,075	18,394
KK Supply Chain:			
Total revenues	203,283	219,991	253,367
Less – intersegment sales elimination	(101,366)	(106,070)	(126,850)
External KK Supply Chain revenues	101,917	113,921	126,517
Total revenues	<u>\$ 429,319</u>	<u>\$ 461,195</u>	<u>\$ 543,361</u>
Operating income (loss):			
Company Stores	\$ (6,292)	\$ 1,721	\$ (2,425)
Franchise	14,317	16,354	13,805
KK Supply Chain	24,083	32,311	32,089
Unallocated general and administrative expenses	(27,552)	(50,392)	(69,605)
Impairment charges and lease termination costs	(62,073)	(12,519)	(55,062)
Settlement of litigation	14,930	(15,972)	(35,833)
Total operating (loss)	<u>\$ (42,587)</u>	<u>\$ (28,497)</u>	<u>\$ (117,031)</u>
Depreciation and amortization expense:			
Company Stores	\$ 11,558	\$ 15,979	\$ 23,416
Franchise	92	119	145
KK Supply Chain	5,586	3,469	3,504
Corporate administration	1,197	1,479	1,855
Total depreciation and amortization expense	<u>\$ 18,433</u>	<u>\$ 21,046</u>	<u>\$ 28,920</u>

Segment information for total assets and capital expenditures is not presented as such information is not used in measuring segment performance or allocating resources among segments.

Revenues for fiscal 2008, 2007 and 2006 include approximately \$48 million, \$43 million and \$24 million, respectively, from customers outside the United States. Approximately \$4 million of the carrying value of property and equipment at January 28, 2007 relates to the Company's operations in Canada.

Note 18 — Investments in Franchisees

As of February 3, 2008, the Company has investments in seven franchisees. These investments have been made in the form of capital contributions and, in certain instances, loans evidenced by promissory notes. Notes receivable bear interest, payable semi-annually, at rates ranging from 6.5% to 10.0% per annum, and have maturity dates ranging from September 30, 2008 to the dissolution of the franchisee. These investments and notes receivable are included in "Investments in Equity Method Franchisees" in the consolidated balance sheet.

Information about the Company's ownership in the Equity Method Franchisees and the markets served by those franchisees is set forth below:

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

	Geographic Market	Number of Stores as of Feb. 3 2008(1)	Ownership%	
			Company	Third Parties
A-OK, LLC	Arkansas, Oklahoma	5	30.3%	69.7%
KK-TX I, L.P.	Texas (Amarillo, Lubbock)	1	33.3%	66.7%
KremeWorks, LLC	Alaska, Hawaii, Oregon, Washington	11	25.0%	75.0%
Kremeworks Canada, LP	Western Canada	1	24.5%	75.5%
Krispy Kreme of South Florida, LLC	Southern Florida	3	35.3%	64.7%
Krispy Kreme Mexico, S. de R.L. de C.V.	Mexico	36	30.0%	70.0%
Priz Doughnuts, LP	Texas (El Paso), Mexico (Ciudad Juarez)	2	66.7%	33.3%

- (1) Includes satellite stores.

Information about the financial position and results of operations of the Company's Equity Method Franchisees is set forth below:

	Summary Financial Information(1)				
	Revenues	Net Income (Loss)	Total Assets	Total Liabilities	Total Equity (Deficit)
	(In thousands)				
A-OK, LLC	\$ 11,121	\$ (626)	\$ 6,568	\$ 8,808	\$ (2,240)
KK-TX I, L.P.	2,268	(539)	1,216	2,348	(1,132)
KremeWorks, LLC	20,339	(2,121)	23,507	17,978	5,529
Kremeworks Canada, LP	1,511	(419)	2,850	3,576	(726)
Krispy Kreme of South Florida, LLC	13,196	53	9,026	13,036	(4,010)
Krispy Kreme Mexico, S. de R.L. de C.V.	14,238	(322)	10,816	5,242	5,574
Priz Doughnuts, LP(2)	3,904	—	—	—	—

- (1) The revenues and net income (loss) shown for each of these franchisees represents the amounts reported by the franchisee for calendar 2007, and the amounts shown as total assets and total liabilities represent the corresponding amounts reported by each of the franchisees on or about December 31, 2007.
- (2) Information other than revenues was not available for Priz Doughnuts, LP.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

The Company's financial exposures related to franchisees in which the Company has an investment are summarized in the tables below. The consolidated balance sheet at February 3, 2008 includes accruals for estimated payments under loan and lease guarantees of approximately \$3.4 million related to Krispy Kreme of South Florida, LLC ("KKSF") and Priz Doughnuts, LP ("Priz"). There is no liability reflected for other guarantees of franchisee obligations because the Company did not believe it was probable that the Company would be required to perform under such other guarantees.

	February 3, 2008				
	Investment	Trade	Notes Receivable		Loan and
	and	Receivables	Current	Long-term	Lease
	Advances				Guarantees
			(In thousands)		
A-OK, LLC	\$ (523)	\$ 2,591	\$ —	\$ —	\$ 2,319
KK-TX I, L.P.	(484)	203	—	—	810
Kremeworks, LLC	1,280	278	—	—	2,122
Kremeworks Canada, LP	—	17	—	—	—
Krispy Kreme of South Florida, LLC	—	102	—	—	11,801
Krispy Kreme Mexico, S. de R.L. de C.V.	1,677	756	—	—	—
Priz Doughnuts, LP	—	69	—	—	450
	<u>\$ 1,950</u>	<u>\$ 4,016</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 17,502</u>

	January 28, 2007				
	Investment	Trade	Notes Receivable		Loan and
	and	Receivables	Current	Long-term	Lease
	Advances				Guarantees
			(In thousands)		
A-OK, LLC	\$ (333)	\$ 1,563	\$ —	\$ —	\$ 2,554
KK-TX I, L.P.	(305)	206	—	—	1,330
Kremeworks, LLC	1,492	514	—	—	2,667
Kremeworks Canada, LP	569	51	—	—	—
Krispy Kreme of South Florida, LLC(1)	—	18	—	—	15,600
Krispy Kreme Mexico, S. de R.L. de C.V.	1,801	225	—	—	—
Priz Doughnuts, LP	—	1,142	18	—	450
	<u>\$ 3,224</u>	<u>\$ 3,719</u>	<u>\$ 18</u>	<u>\$ —</u>	<u>\$ 22,601</u>

- (1) Reflects a correction of the previously reported guarantee amount of \$10,231 reflected in the 2007 Form 10-K.

Amounts shown in the preceding tables for accounts and notes receivable are before reduction for related allowances for doubtful accounts, which totaled approximately \$1.4 million and \$2.9 million at February 3, 2008 and January 28, 2007, respectively (see Note 3). The aggregate loan and lease guarantees at February 3, 2008 and January 28, 2007 shown in the preceding tables include \$11.5 million and \$15.0 million, respectively, representing guarantees of lease obligations; the balance of the guarantee amounts represents guarantees of outstanding loans. The guaranteed amount for debt was determined based upon the principal amount outstanding under the related agreement and the guaranteed amount for leases was determined based upon the gross amount of remaining lease payments.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

In April 2008, the Company completed an agreement with A-OK, LLC and KK-TX-I, L.P. (which have common ownership and are collectively referred to as the “A-OK Parties”) pursuant to which, among other things, the Company conveyed to the owner of the A-OK Parties the Company’s equity interests in the A-OK Parties and compromised and settled certain disputed and past due amounts owed by the A-OK Parties to the Company. In connection with this agreement, the Company was released from its obligations under all of its partial guarantees of certain of the A-OK Parties’ indebtedness and lease obligations.

During fiscal 2008, the Company reevaluated its investment in Kremeworks Canada, LP (“Kremeworks Canada”) and concluded that such investment was not recoverable; accordingly, the Company recorded an impairment charge of \$572,000 to reduce the carrying value of the Company’s investment in Kremeworks Canada to zero. This charge is included in other non-operating income and expense, net in the consolidated statement of operations.

In August 2007, the Company acquired an additional 33.4% interest in Priz as part of a plan to restructure its operations, which currently consist of two franchise stores.

In December 2006, the Company entered into an agreement with KKSF pursuant to which, among other things, the Company agreed to permit KKSF to close certain of its stores and granted KKSF forbearance with respect to certain of KKSF’s financial obligations to the Company, and KKSF agreed to use its best efforts to cause the Company to be released from its obligations under its partial guarantees of certain KKSF indebtedness and lease obligations. If KKSF obtained the Company’s release from the guarantees and otherwise complied with the terms of the agreement, the Company agreed to convey to the majority owner of KKSF the Company’s equity interest in KKSF without further consideration. While KKSF obtained the Company’s release from approximately \$2.9 million of potential guarantee obligations since December 2006, as of February 3, 2008, KKSF was not in compliance with all of the terms of the agreement and which, in any event, has expired and not been extended. KKSF is seeking additional forbearance and/or financial support from the Company, and is in default with respect to certain credit agreements with its lenders, including agreements related to KKSF indebtedness guaranteed, in part, by the Company. During the fourth quarter of fiscal 2008, the Company recorded a provision of \$3.0 million for estimated payments related to guarantees of KKSF loans and leases, as more fully described under “Other Commitment and Contingencies” in Note 12.

The following table summarizes the Company’s obligations under the loan and lease guarantees as of February 3, 2008 and the scheduled expiration of these obligations in each of the next five fiscal years and thereafter. The amounts shown as the scheduled expiration of the guarantees are based upon the scheduled maturity of the underlying guaranteed obligation.

	Guarantee Percentages	Total Loan/ Lease Guarantees	Amounts Expiring in Fiscal Year					
			2009	2010	2011	2012	2013	Thereafter
			(In thousands)					
A-OK, LLC	22.3%-33.3%	\$ 2,319	\$ 366	198	143	147	150	1,315
KK-TX I, L.P.	30.0%-33.3%	810	147	128	92	69	52	322
Kremeworks, LLC	20.0%	2,122	1,506	616	—	—	—	—
Krispy Kreme of South Florida, LLC	35.0%-100.0%	11,801	2,969	822	822	822	822	5,544
Priz Doughnuts, LP	66.7%	450	450	—	—	—	—	—
		<u>\$ 17,502</u>	<u>\$ 5,438</u>	<u>\$ 1,764</u>	<u>\$ 1,057</u>	<u>\$ 1,038</u>	<u>\$ 1,024</u>	<u>\$ 7,181</u>

NOTES TO FINANCIAL STATEMENTS — (Continued)

Note 19 — Related Party Transactions

All franchisees are required to purchase doughnut mix and production equipment from the Company. Revenues include \$14.7 million, \$22.9 million and \$47.6 million in fiscal 2008, 2007 and 2006, respectively, of sales to franchise stores owned, in whole or in part, by emeritus directors and franchisees in which the Company has an ownership interest. In August 2005, the Company eliminated the position of emeritus director. Revenues also include royalties from these franchisees of \$2.9 million, \$4.4 million and \$8.6 million in fiscal 2008, 2007 and 2006, respectively. Trade receivables from these franchisees are included in receivables from related parties in Note 3. These transactions were conducted pursuant to development and/or franchise agreements, the terms of which are substantially the same as those with similar franchisees.

The Company's franchisee for the Middle East is an affiliate of a shareholder which is the beneficial owner of approximately 14% of the company's common stock. The Company had transactions in the normal course of business with this franchisee (including sales of doughnut mix and equipment to the franchisee and royalties payable to the Company by the franchisee based on its sales at Krispy Kreme franchise stores) totaling approximately \$8.1 million in fiscal 2008 and \$1.5 million in fiscal 2007. Such transactions were conducted pursuant to development and franchise agreements, the terms of which are substantially the same as those currently offered to our other international franchisees.

Note 20 — Employee Benefit Plans

The Company has a 401(k) savings plan (the "401(k) Plan") to which employees may contribute up to 100% of their salary and bonus to the plan on a tax deferred basis, subject to statutory limitations.

The Company also has a Nonqualified Deferred Compensation Plan (the "401(k) Mirror Plan") designed to enable officers of the Company whose contributions to the 401(k) Plan are limited by certain statutory limitations to have the same opportunity to defer compensation as is available to other employees of the Company under the qualified 401(k) savings plan. Participants may defer from 1% to 15% of their base salary and from 1% to 100% of their bonus (reduced by their contributions to the 401(k) Plan), subject to statutory limitations, into the 401(k) Mirror Plan and may direct the investment of the amounts they have deferred. The investments, however, are not a legally separate fund of assets and are included in other assets in the consolidated balance sheet. The corresponding liability to participants is included in other long-term obligations. The balance in the asset and corresponding liability account was \$368,000 and \$255,000 at February 3, 2008 and January 28, 2007, respectively.

The Company currently matches 50% of the first 6% of compensation contributed by each employee to both the 401(k) Plan and the 401(k) Mirror Plan. Contributions expense for these plans totaled \$847,000 in fiscal 2008, \$838,000 in fiscal 2007 and \$851,000 in fiscal 2006.

In February 1999, the Company established the Krispy Kreme Profit Sharing Stock Ownership Plan ("KSOP") pursuant to which the Company could contribute a discretionary percentage of each employee's compensation, subject to Internal Revenue Code limits, to each eligible employee's account under the plan. The Company made no contribution to this plan in fiscal 2008, 2007 or 2006. In connection with the settlement in fiscal 2007 of certain litigation involving the 401(k) Plan and the KSOP, the Company agreed to merge the KSOP with and into the Company's 401(k) Plan, which occurred on June 1, 2007.

KKDC established a nonqualified "mirror" plan, comparable to the KSOP, in February 1999. Contributions to this nonqualified plan could be made by the Company with respect to compensation earned by participants in excess of the maximum amount of compensation that may be taken into account under the qualified plan. No amounts were credited to employees under the nonqualified plan in fiscal 2008, 2007 or 2006.

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

In February 2002, the Company established the Krispy Kreme Doughnuts, Inc. Employee Stock Purchase Plan (“ESPP”) to provide eligible employees of the Company an opportunity to purchase Company common stock by deferring a portion of their compensation. Deferred amounts are accumulated and, at the end of each quarter, are used to purchase shares of common stock of the Company. The ESPP provides that the shares can be acquired either from the Company or in the open market. The Company recorded compensation expense related to the plan of \$14,000 in fiscal 2006 prior to halting purchases under the ESPP. As of February 3, 2008, there were 2,000,000 common shares reserved for issuance under the ESPP.

Note 21 — Selected Quarterly Financial Data (Unaudited)

The tables below present selected quarterly financial data for fiscal 2008 and 2007.

	Three Months Ended			
	Apr. 29, 2007	Jul. 29, 2007	Oct. 28, 2007	Feb. 3, 2008
	(In thousands, except per share data)			
Revenues	\$ 110,918	\$ 104,098	\$ 103,355	\$ 110,948
Operating expenses:				
Direct operating expenses	96,995	95,333	90,911	96,775
General and administrative expenses	6,822	6,922	5,650	6,909
Depreciation and amortization expense	4,688	4,086	4,868	4,791
Impairment charges and lease termination costs	12,663	22,109	(268)	27,569
Settlement of litigation	(14,930)	—	—	—
Other operating (income) and expense, net	(285)	16	196	86
Operating income (loss)	4,965	(24,368)	1,998	(25,182)
Interest income	438	407	379	198
Interest expense	(2,520)	(2,635)	(2,274)	(2,367)
Loss on extinguishment of debt.	(9,622)	—	—	—
Equity in (losses) of equity method franchisees	(221)	(258)	(216)	(238)
Other non-operating income and (expense), net	23	23	(309)	(2,948)
(Loss) before income taxes	(6,937)	(26,831)	(422)	(30,537)
Provision for income taxes	461	209	376	1,278
Net (loss)	\$ (7,398)	\$ (27,040)	\$ (798)	\$ (31,815)
(Loss) per common share:				
Basic	\$ (.12)	\$ (.42)	\$ (.01)	\$ (.50)
Diluted	\$ (.12)	\$ (.42)	\$ (.01)	\$ (.50)

KRISPY KREME DOUGHNUTS, INC.

NOTES TO FINANCIAL STATEMENTS — (Continued)

	Three Months Ended			
	Apr. 30, 2006	Jul. 30, 2006	Oct. 29, 2006	Jan. 28, 2007
	(In thousands, except per share data)			
Revenues	\$ 119,365	\$ 112,535	\$ 117,107	\$ 112,188
Operating expenses:				
Direct operating expenses	97,085	97,048	96,192	99,054
General and administrative expenses	16,607	12,154	12,457	7,642
Depreciation and amortization expense	5,478	5,459	5,177	4,932
Impairment charges and lease termination costs	755	382	5,423	5,959
Settlement of litigation	—	—	—	15,972
Other operating (income) and expenses, net	(11)	111	(105)	1,921
Operating (loss)	(549)	(2,619)	(2,037)	(23,292)
Interest income	284	424	460	459
Interest expense	(5,133)	(5,036)	(5,196)	(4,969)
Equity in income (losses) of equity method franchisees	(494)	(365)	(65)	82
Other non-operating income and (expense), net	122	3,097	68	3,734
(Loss) before income taxes	(5,770)	(4,499)	(6,770)	(23,986)
Provision for income taxes	272	78	431	430
Net (loss)	<u>\$ (6,042)</u>	<u>\$ (4,577)</u>	<u>\$ (7,201)</u>	<u>\$ (24,416)</u>
(Loss) per common share:				
Basic	<u>\$ (.10)</u>	<u>\$ (.07)</u>	<u>\$ (.12)</u>	<u>\$ (.39)</u>
Diluted	<u>\$ (.10)</u>	<u>\$ (.07)</u>	<u>\$ (.12)</u>	<u>\$ (.39)</u>

Quarterly loss per share amounts may not add to the total loss per share for the year due to rounding.

Note 22 — Fair Value of Financial Instruments

The carrying values and approximate fair values of certain financial instruments were as follows:

	Feb. 3, 2008		Jan. 28, 2007	
	Carrying value	Fair value	Carrying value	Fair value
	(In thousands)			
Assets				
Cash and cash equivalents	\$ 24,735	\$ 24,735	\$ 36,242	\$ 36,242
Trade receivables	22,991	22,991	26,769	26,769
Commodity futures contracts	267	267	31	31
Interest rate derivative instruments	—	—	729	729
Liabilities:				
Accounts payable	5,712	5,712	7,874	7,874
Interest rate derivative instruments	2,231	2,231	—	—
Long-term debt (including current maturities)	76,713	72,500	107,696	107,696

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

Item 9A. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

As of February 3, 2008, the end of the period covered by this Annual Report on Form 10-K, management performed, under the supervision and with the participation of our chief executive officer and chief financial officer, an evaluation of the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including our chief executive officer and chief financial officer, to allow timely decisions regarding required disclosures. Based on this evaluation, our chief executive officer and chief financial officer have concluded that, as of February 3, 2008, our disclosure controls and procedures were effective.

Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act. Internal control over financial reporting is a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with GAAP. Internal control over financial reporting includes those policies and procedures which pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets; provide reasonable assurance that transactions are recorded as necessary to permit preparation of consolidated financial statements in accordance with GAAP; provide reasonable assurance that receipts and expenditures are being made only in accordance with management's and/or the Board of Directors' authorization; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect material errors in our financial statements. Also, projection of any evaluation of the effectiveness of our internal control over financial reporting to future periods is subject to the risk that controls may become inadequate because of changes in conditions, because the degree of compliance with our policies and procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of February 3, 2008, using the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on our assessment, management has concluded that we maintained effective internal control over financial reporting as of February 3, 2008, based on the COSO criteria.

The report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, on our internal control over financial reporting appears on page 60 in this Annual Report.

Remediation of Material Weaknesses in Internal Control over Financial Reporting

Our management report on internal control over financial reporting for the fiscal year ended January 28, 2007 described material weaknesses in our internal control over financial reporting. These material weaknesses continued to exist as of the end of the first three quarters of fiscal 2008, during which time we were engaged in the implementation and testing of remedial measures designed to address these material weaknesses. In the

fourth quarter of fiscal 2008, we completed testing of the design and operating effectiveness of enhanced controls to demonstrate their operating effectiveness over a period of time sufficient to support our conclusion that, as of February 3, 2008, we had remediated the previously reported material weakness in our internal control over financial reporting.

During fiscal 2008, we implemented the following changes in our internal control over financial reporting to address previously reported material weaknesses:

1. We designed and implemented several key initiatives to strengthen our control environment. These included:
 - Establishing a formal risk assessment process and performing a formal enterprise risk assessment to gain insight as to areas of high risk throughout the Company.
 - Establishing and implementing procedures to promote the sharing of financial information within and across our corporate and divisional offices and other operating facilities such that significant issues are brought to the attention of appropriate level of accounting and financial reporting personnel.
 - Establishing and updating written accounting policies and procedures for our critical accounting policies.
 - Establishing formal procedures for monitoring the appropriateness of, and maintaining user access and segregation of duties related to, our key financial applications.
2. We designed and/or implemented several key initiatives to strengthen our internal control over financial closing and reporting including the following:
 - Designing and implementing controls over the review and approval of journal entries to ensure the completeness, accuracy and validity of the entries recorded.
 - Designing and implementing controls to ensure the completeness and accuracy of our accounting for equity method franchisees in accordance with GAAP.
 - Designing and implementing controls to ensure that accrued expenses, including accruals for legal and professional fees, were complete and accurate in accordance with GAAP.
3. We designed and implemented effective controls to ensure that revenue was recognized in the proper period for sales of equipment to franchisees in connection with new store openings.
4. We designed and implemented effective controls over the application and monitoring of accounting policies related to lease renewal options, rent escalations, amortization periods for leasehold improvements and lease classification principally affecting property and equipment, accrued rent, capital lease obligations, rent expense and depreciation to ensure that such transactions were completely and accurately accounted for in accordance with GAAP.
5. We designed and implemented effective controls to ensure that retired assets were written off in the appropriate period, that appropriate depreciable lives were assigned to capital additions and assets were capitalized in accordance with GAAP.

Changes in Internal Control over Financial Reporting

Our remediation of the material weaknesses described above during the quarter ended February 3, 2008 has materially affected our internal control over financial reporting.

Item 9B. OTHER INFORMATION.

None.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

Except as set forth below, the information required by this item is contained in our proxy statement for our 2008 Annual Meeting of Shareholders to be held on June 17, 2008, to be filed pursuant to Section 14 of the Exchange Act, and is incorporated herein by reference.

NYSE and SEC Certifications

In accordance with Section 303A.12(a) of the NYSE Listed Company Manual, the Chief Executive Officer of the Company submits annual certifications to the NYSE stating that he is not aware of any violations by the Company of the NYSE corporate governance listing standards, qualifying the certification to the extent necessary. The last such annual certification was submitted on June 22, 2007 and contained no qualifications.

We have filed certifications executed by our Chief Executive Officer and Chief Financial Officer with the SEC pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to this Annual Report on Form 10-K.

Item 11. EXECUTIVE COMPENSATION.

The information required by this item is contained in our proxy statement for our 2008 Annual Meeting of Shareholders to be held on June 17, 2008, to be filed pursuant to Section 14 of the Exchange Act, and is incorporated herein by reference.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

The information required by this item is contained in our proxy statement for our 2008 Annual Meeting of Shareholders to be held on June 17, 2008, to be filed pursuant to Section 14 of the Exchange Act, and is incorporated herein by reference.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

The information required by this item is contained in our proxy statement for our 2008 Annual Meeting of Shareholders to be held on June 17, 2008, to be filed pursuant to Section 14 of the Exchange Act, and is incorporated herein by reference.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is contained in our proxy statement for our 2008 Annual Meeting of Shareholders to be held on June 17, 2008, to be filed pursuant to Section 14 of the Exchange Act, and is incorporated herein by reference.

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**(a) Financial Statements and Schedules**

1. *Financial Statements.* See Item 8, “Financial Statements and Supplementary Data.”

2. *Financial Statement Schedules.*

For each of the three years in the period ended February 3, 2008

Schedule I — Condensed Financial Information of Registrant 110

Schedule II — Valuation and Qualifying Accounts and Reserves 113

3. *Exhibits.*

Exhibit Number	Description of Exhibits
3.1	— Amended Articles of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant’s Registration Statement on Form S-8 (Commission File No. 333-97787), filed with the Commission on August 7, 2002)
3.2	— Amended and Restated Bylaws of the Registrant, as amended (incorporated by reference to Exhibit 3.1 to the Registrant’s Current Report on Form 8-K filed September 5, 2007)
4.1	— Form of Certificate for Common Stock (incorporated by reference to Exhibit 4.1 to the Registrant’s Amendment No. 4 to Registration Statement on Form S-1 (Commission File No. 333-92909), filed with the Commission on April 3, 2000)
4.2	— Rights Agreement between the Company and Branch Banking and Trust Company, as Rights Agent, dated as of January 18, 2000 (incorporated by reference to Exhibit 4.2 to the Registrant’s Amendment No. 4 to Registration Statement on Form S-1 (Commission File No. 333-92909), filed with the Commission on April 3, 2000)
4.3	— Warrant to Purchase Common Stock issued by Krispy Kreme Doughnuts, Inc. in favor of Kroll Zolfo Cooper LLC, dated July 31, 2005 (incorporated by reference to Exhibit 4.1 to the Registrant’s Current Report on Form 8-K filed October 26, 2005)
4.4	— Warrant Agreement, dated as of March 2, 2007, between Krispy Kreme Doughnuts, Inc. and American Stock Transfer & Trust Company (incorporated by reference to Exhibit 4.1 to the Registrant’s Current Report on Form 8-K filed March 8, 2007)
10.1	— Form of Associates License Agreement (incorporated by reference to Exhibit 10.2 to the Registrant’s Registration Statement on Form S-1 (Commission File No. 333-92909), filed with the Commission on December 16, 1999)
10.2*	— Form of Development Agreement
10.3*	— Form of Franchise Agreement
10.4	— Form of International Franchise Agreement (incorporated by reference to Exhibit 10.4 to the Registrant’s Annual Report on Form 10-K for fiscal 2005)
10.5	— Form of International Development Agreement (incorporated by reference to Exhibit 10.5 to the Registrant’s Annual Report on Form 10-K for fiscal 2005)
10.6	— Trademark License Agreement, dated May 27, 1996, between HDN Development Corporation and Krispy Kreme Doughnut Corporation (incorporated by reference to Exhibit 10.22 to the Registrant’s Amendment No. 1 to Registration Statement on Form S-1 (Commission File No. 333-92909), filed with the Commission on February 22, 2000)
10.7	— 1998 Stock Option Plan dated August 6, 1998 (incorporated by reference to Exhibit 10.23 to the Registrant’s Amendment No. 1 to Registration Statement on Form S-1 (Commission File No. 333-92909), filed with the Commission on February 22, 2000)**

Exhibit Number	Description of Exhibits
10.8	— Employment Agreement, dated January 6, 2004, between the Registrant and Michael C. Phalen (incorporated by reference to Exhibit 10.15 to the Registrant's Annual Report on Form 10-K for fiscal 2004)**
10.9	— Employment Agreement, dated as of April 23, 2007, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Douglas R. Muir (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed April 27, 2007)**
10.10	— Amendment, dated November 8, 2007, to Employment Agreement, dated as of April 23, 2007, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Douglas R. Muir (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed November 13, 2007)**
10.11	— Employment Agreement, dated as of March 6, 2006, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Daryl G. Brewster (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed March 8, 2006)**
10.12	— Amendment, dated March 30, 2007, to Employment Agreement, dated as of March 6, 2006, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Daryl G. Brewster (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed April 2, 2007)**
10.13	— Agreement and Release, dated as of January 6, 2008, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Daryl G. Brewster (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed January 7, 2008)**
10.14	— Employment Agreement, dated as of February 27, 2008, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and James H. Morgan (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed March 5, 2008)**
10.15	— Employment Agreement, dated as of April 23, 2007, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Sandra K. Michel (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed April 27, 2007)**
10.16	— Amendment, dated October 3, 2007, to Employment Agreement, dated as of April 23, 2007, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Sandra K. Michel (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed October 4, 2007)**
10.17	— Second Amendment, dated as of November 8, 2007, to Employment Agreement, dated as of April 23, 2007, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Sandra K. Michel (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed November 13, 2007)**
10.18*	— Employment Agreement, dated as of November 7, 2007, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Kenneth J. Hudson**
10.19*	— Employment Agreement, dated as of November 7, 2007, among Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnut Corporation and Jeffrey B. Welch **
10.20	— 2000 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed June 8, 2007)**
10.21	— Krispy Kreme Doughnut Corporation Nonqualified Deferred Compensation Plan, effective October 1, 2000 (incorporated by reference to Exhibit 10.20 to the Registrant's Annual Report on Form 10-K for fiscal 2005)**
10.22	— Credit Agreement, dated as of February 16, 2007, by and among KKDC, KKDI, the Subsidiary Guarantors party thereto, the Lenders party thereto and Credit Suisse, Cayman Islands Branch, as administrative agent, collateral agent, issuing lender and swingline lender (the "Credit Agreement") (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed February 23, 2007)

Exhibit Number	Description of Exhibits
10.23	— Security Agreement, dated as of February 16, 2007, by and among KKDC, KKDI, the Subsidiary Guarantors party thereto and Credit Suisse, Cayman Islands Branch, as collateral agent (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed February 23, 2007)
10.24	— Amendment No. 1, dated as of June 21, 2007, to the Credit Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed June 27, 2007)
10.25	— Amendment No. 2, dated as of January 23, 2008, to the Credit Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed January 25, 2008)
10.26	— Amendment No. 3, dated as of April 9, 2008, to the Credit Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed April 15, 2008)
10.27	— Form of Indemnification Agreement entered into between Krispy Kreme Doughnuts, Inc. and Lizanne Thomas and Michael Sutton (incorporated by reference to Exhibit 99.3 to the Registrant's Current Report on Form 8-K filed October 8, 2004)**
10.28	— Form of Indemnification Agreement entered into between Krispy Kreme Doughnuts, Inc. and members of the Registrant's Board of Directors (other than Lizanne Thomas and Michael Sutton) (incorporated by reference to Exhibit 10.42 to the Registrant's Annual Report on Form 10-K for fiscal 2005)**
10.29	— Form of Indemnification Agreement entered into between Krispy Kreme Doughnuts, Inc. and Officers of the Registrant (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed September 18, 2007)
10.30*	— Form of Nonqualified Stock Option Agreement**
10.31	— Stipulation and Agreement of Class and Derivative Settlement, dated as of October 30, 2006 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed November 6, 2006)
10.32*	— Annual Incentive Plan**
10.33*	— Form of Restricted Stock Agreement**
10.34*	— Purchase Agreement, dated December 21, 2007, entered into between Krispy Kreme Doughnut Corporation and Harlan Bakeries, Inc.
21*	— List of Subsidiaries
23*	— Consent of PricewaterhouseCoopers LLP
24*	— Powers of Attorney of certain officers and directors of the Company (included on the signature page of this Annual Report on Form 10-K)
31.1*	— Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
31.2*	— Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
32.1*	— Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*	— Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

* Filed herewith.

** Identifies management contracts and executive compensation plans or arrangements required to be filed as exhibits pursuant to Item 15(b), "Exhibits and Financial Statement Schedules — Exhibits," of this Annual Report on Form 10-K.

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

**KRISPY KREME DOUGHNUTS, INC.
(PARENT COMPANY ONLY)**

BALANCE SHEET

	Feb. 3, 2008	Jan. 28, 2007
	(In thousands)	
ASSETS		
Investment in and advances to subsidiaries	\$ 56,624	\$ 78,962
SHAREHOLDERS' EQUITY		
Preferred stock	\$ —	\$ —
Common stock	355,615	310,942
Accumulated other comprehensive income	81	1,266
Accumulated deficit	(299,072)	(233,246)
Total shareholders' equity	\$ 56,624	\$ 78,962

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

**KRISPY KREME DOUGHNUTS, INC.
(PARENT COMPANY ONLY)**

STATEMENT OF OPERATIONS

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
Equity in (losses) of subsidiaries	\$ (67,051)	\$ (42,236)	\$ (135,760)
Miscellaneous expenses	—	—	—
(Loss) before income taxes	(67,051)	(42,236)	(135,760)
Provision for income taxes (benefit)	—	—	—
Net (loss)	<u>\$ (67,051)</u>	<u>\$ (42,236)</u>	<u>\$ (135,760)</u>

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

**KRISPY KREME DOUGHNUTS, INC.
(PARENT COMPANY ONLY)**

STATEMENT OF CASH FLOWS

	Year Ended		
	Feb. 3, 2008	Jan. 28, 2007	Jan. 29, 2006
	(In thousands)		
CASH FLOW FROM OPERATING ACTIVITIES:			
Net (loss)	\$ (67,051)	\$ (42,236)	\$ (135,760)
Equity in earnings of subsidiaries	67,051	42,236	135,760
Net cash used by operating activities	—	—	—
CASH FLOW FROM INVESTING ACTIVITIES:			
Investments in subsidiaries	(292)	—	(351)
Net cash used for investing activities	(292)	—	(351)
CASH FLOW FROM FINANCING ACTIVITIES:			
Proceeds from exercise of stock options	292	—	154
Collection of notes receivable secured by common stock	—	—	197
Net cash provided by financing activities	292	—	351
Net increase in cash and cash equivalents	—	—	—
Cash and cash equivalents at beginning of year	—	—	—
Cash and cash equivalents at end of year	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

KRISPY KREME DOUGHNUTS, INC.

<u>Description</u>	<u>Balance at beginning of year</u>	<u>Additions</u>		<u>Payments</u>	<u>Balance at end of year</u>
		<u>Charged to costs and expenses</u>	<u>Charged to other accounts</u>		
(In thousands)					
Accrual for self-insurance claims, principally worker’s compensation (current and non-current portions)					
Year ended January 28, 2007	\$ 13,250	\$8,223(1)	—	\$ (4,199)	\$ 17,274
Accrual included in:					
Other accrued liabilities (Note 9)	\$ 4,378				\$ 5,885
Other long-term obligations (Note 11)	8,872				11,389
	<u>\$ 13,250</u>				<u>\$ 17,274</u>
Year ended February 3, 2008	\$ 17,274	\$3,381	—	\$ (3,905)	\$ 16,750
Accrual included in:					
Other accrued liabilities (Note 9)	\$ 5,885				\$ 4,996
Other long-term obligations (Note 11)	11,389				11,754
	<u>\$ 17,274</u>				<u>\$ 16,750</u>

- (1) Includes an increase in the estimated total cost of open claims of \$2,040. All of the increase represents claim amounts covered by the Company's stop-loss coverages; accordingly, there was a corresponding increase in amounts estimated to be recoverable from the Company's insurance carriers related to such claims, and the increase in total estimated claims was offset by a credit from stop-loss insurance coverage, resulting in no net impact to earnings.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Krispy Kreme Doughnuts, Inc.

By: /s/ Douglas R. Muir

Name: Douglas R. Muir
Title: Executive Vice President and
Chief Financial Officer

Date: April 17, 2008

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints James H. Morgan and Douglas R. Muir, or either of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments or supplements to this Annual Report on Form 10-K and to file the same with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing necessary or appropriate to be done with this Annual Report on Form 10-K and any amendments or supplements hereto, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on April 17, 2008.

<u>Signature</u>	<u>Title</u>
<u>/s/ James H. Morgan</u> James H. Morgan	Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer)
<u>/s/ Douglas R. Muir</u> Douglas R. Muir	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Charles A. Blixt</u> Charles A. Blixt	Director
<u>/s/ Lynn Crump-Caine</u> Lynn Crump-Caine	Director
<u>/s/ C. Stephen Lynn</u> C. Stephen Lynn	Director
<u>/s/ Robert S. McCoy, Jr.</u> Robert S. McCoy, Jr.	Director

<u>Signature</u>	<u>Title</u>
<u>/s/ Andrew J. Schindler</u> Andrew J. Schindler	Director
<u>/s/ Michael H. Sutton</u> Michael H. Sutton	Director
<u>/s/ Lizanne Thomas</u> Lizanne Thomas	Director
<u>/s/ Togo D. West, Jr.</u> Togo D. West, Jr.	Director
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**KRISPY KREME DOUGHNUT CORPORATION
DEVELOPMENT AGREEMENT**

BASIC TERMS

A.	Effective Date (Insert date Franchisee executes the agreement):			
B.	Franchisor:	Krispy Kreme Doughnut Corporation, a North Carolina Corporation		
C.	Franchisee:			
	Franchisee's Address:			
	Telephone:		Fax No.:	
	E-mail Address:			
D.	Principal Owners:			
E.	Managing Director:			
F.	Development Area (See Exhibit A for more detailed description):			
G.	Development Schedule Totals (See Exhibit A for specific requirements):	<u>Cumulative Number of Franchises</u>	<u>End of Development Period</u>	
H.	Development Fee*:			
I.	Initial Franchise Fee**:	Factory Store: \$50,000 Hot Shop: \$30,000	Fresh Shop/Kiosk: \$20,000 Commissary Facility: \$ 0	

Franchisor: _____
(initials)

Franchisee: _____
(initials)

* The Development Fee is equal to 50% of the Initial Franchise Fees for all Stores to be opened pursuant to the Development Schedule.

** Subject to a dollar-for-dollar credit equal to the amount of the Development Fee attributable to the particular Store; the Development Fee will be attributed only to the Stores for which it is paid and may not be used as a credit for any other Stores.

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KRISPY KREME DOUGHNUT CORPORATION
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of the Effective Date by and between Franchisor and Franchisee.

1. BACKGROUND

- 1.1 Franchisor has developed, as a result of considerable time, skill, effort, and money, a distinctive system for operating stores called “Krispy Kreme Stores” that offer and serve a variety of doughnuts, beverages, and other authorized products and services under the Marks.
- 1.2 Franchisor’s Affiliate, HDN Development Corporation, owns the Marks and has granted Franchisor the right to sublicense the Marks to its franchisees for their use in operating Krispy Kreme Stores and Commissary Facilities.
- 1.3 Franchisor grants franchises to own and operate Krispy Kreme Stores and Commissary Facilities to Persons who meet its qualifications and are willing to undertake the investment and effort to properly develop and operate them.
- 1.4 Franchisee has submitted a Franchise Application to develop multiple Krispy Kreme Stores and Commissary Facilities in the Development Area, and Franchisor has accepted the application in reliance on all information Franchisee has provided in connection therewith.
- 1.5 Pursuant to the terms of this Agreement, Franchisor grants Franchisee the right to develop Krispy Kreme Stores and Commissary Facilities within the Development Area. The operation of each Krispy Kreme Store and Commissary Facility will be governed by a separate Franchise Agreement and Commissary Facility Agreement, respectively.

2. DEFINITIONS

- 2.1 Capitalized terms used in this Agreement have the meanings given to them in this Section and in the Basic Terms.

Affiliate – Any person that directly or indirectly owns or controls, that is directly or indirectly owned or controlled by, or that is under common ownership or control with the referenced person, including parents and subsidiaries.

Basic Terms – The terms of this Agreement set forth on the Krispy Kreme Doughnut Corporation Development Agreement Basic Terms section on the first page hereof.

Commissary Facility – A manufacturing facility for doughnuts and other Products that are supplied to Hot Shops and Fresh Shops/Kiosks. Commissary Facilities are not used for retail sales, but may distribute and sell to wholesale customers subject to Franchisor’s authorization pursuant to the Commissary Facility Agreement.

Commissary Facility Agreement – An agreement used by Franchisor to grant Franchisee the right to operate a Commissary Facility at a specified location.

Competitive Business – A business, other than a Krispy Kreme Store or Commissary Facility, that: (a) makes, sells, or distributes yeast-raised doughnuts, cake doughnuts, or any other types of doughnuts, miniature doughnuts, doughnut holes or any other bakery products in any distribution channel to any customer for consumption or resale, and such sales constitute ten percent (10%) or more of its total sales (or such sales from any single location constitute 10% or more of the total sales of that location) during any calendar quarter or calendar year; (b) sells coffee or coffee drinks in any distribution channel to any customer for consumption or resale, and such sales constitute twenty percent (20%) or more of its total sales (or such sales from any single location constitute 20% or more of the total sales of that location) during any calendar quarter or calendar year; (c) is the same as, or similar to, the Krispy Kreme Store

concept as it evolves over time; or (d) grants franchises or licenses, or establishes joint ventures, for the development and/or operation of any business referred to in (a) through (c), above. Restrictions in this Agreement on having an Ownership Interest in a Competitive Business shall not apply to the ownership of shares of a class of securities listed on a stock exchange or traded on a public stock market that represents less than three percent (3%) of the number of shares of that class of securities issued and outstanding.

Confidential Information – Certain confidential information relating to the development and operation of Krispy Kreme Stores and Commissary Facilities, which includes:

- (a) methods, techniques, equipment, specifications, standards, policies, procedures, information, concepts, and systems relating to and knowledge of and experience in the development, equipping, operation, outfitting, and franchising of Krispy Kreme Stores and Commissary Facilities, as well as expansion, growth and development plans, and prospects;
- (b) marketing and advertising programs for Krispy Kreme Stores and Commissary Facilities;
- (c) knowledge concerning the logic, structure, and operation of computer software programs that Franchisor authorizes for use in connection with the operation of Krispy Kreme Stores and Commissary Facilities, and all additions, modifications and enhancements, and all data generated from use of such programs;
- (d) specifications and standards for, and sources of, buildings, equipment, furnishings, fixtures, signs, products, materials, supplies, and services utilized in the development and operation of Krispy Kreme Stores and Commissary Facilities;
- (e) ingredients, formulas, mixes, recipes for and methods of preparation, cooking, serving, packaging, and delivery of the Products;
- (f) information concerning sales, operating results, financial performance, consumer preferences, inventory requirements, materials and supplies, and other financial data of Krispy Kreme Stores and Commissary Facilities, and customer lists;
- (g) current and concluded research, development and test programs for products, services and operations for use in Krispy Kreme Stores and Commissary Facilities;
- (h) the contents of any System Standards Manuals, System Standards, and site selection criteria; and
- (i) employee training, and staffing levels.

Development Area – The geographic area described in the Basic Terms and Exhibit A. Political boundaries described in the Basic Terms shall be considered fixed as of the Effective Date and shall not change for the purpose hereof, notwithstanding a political reorganization or change to such boundaries or regions. All street boundaries shall be deemed to end at the street center line unless otherwise specified above.

Development Fee – The non-refundable development fee that Franchisee agrees to pay Franchisor, as set forth in the Basic Terms.

Development Rights – The rights granted to Franchisee pursuant to this Agreement to develop Krispy Kreme Stores and Commissary Facilities within the Development Area.

Development Schedule – The cumulative number of Krispy Kreme Stores and Commissary Facilities that Franchisee agrees to have open and in operation by the corresponding date set forth in Exhibit A.

Expansion Criteria – Franchisor's expansion criteria, which shall consist of Franchisee and its Affiliates being in compliance with all agreements with Franchisor or any of its Affiliates, including this Agreement and all Franchise Agreements and Commissary Facility Agreements. The Expansion Criteria include Franchisor's assessment of compliance by Franchisee and its Affiliates with respect to factors such as monetary obligations, upgrading facilities and achieving satisfactory quality control levels with respects to products, services and cleanliness.

Factory Store – A retail sales facility with the manufacturing capability to produce fresh doughnuts in accordance with System Standards. Additionally, Factory Stores may have some capacity to supply fresh doughnuts to Hot Shops and Fresh Shops/Kiosks.

Franchise – The right to operate a Krispy Kreme Store or Commissary Facility at a specific location within the Development Area pursuant to an effective Franchise Agreement or Commissary Facility Agreement, as applicable.

Franchise Agreement – An agreement used by Franchisor to grant the right to operate a Krispy Kreme Store at a specific location, the current form of which (including all exhibits, schedules, riders, addenda and other agreements used in connection therewith) is attached hereto as Exhibit C.

Franchise Application – The application submitted by Franchisee for the rights granted hereunder or for a Franchise, as applicable.

Franchise Disclosure Document – The franchise disclosure document required by applicable law.

Franchisee – As defined in the Basic Terms.

Franchisor – As defined in the Basic Terms.

Fresh Shop/Kiosk – A retail sales facility with limited manufacturing capabilities (e.g., icing and filling equipment), or no manufacturing capabilities, that receives doughnuts from a Factory Store or a Commissary Facility and finishes them as necessary to sell in accordance with System Standards.

Good Standing – The condition that Franchisee and its Affiliates: (a) are current with all payments due to Franchisor, its Affiliates and suppliers; (b) have met their obligations under the Development Schedule; and (c) are not in default of any of their obligations under this Agreement, any Franchise Agreement, any Commissary Facility Agreement or any other agreement between the parties hereto or any of their Affiliates.

Hot Shop – A retail sales facility with an impinger oven and limited manufacturing capabilities (e.g., icing and filling equipment) that receives doughnuts from a Factory Store or a Commissary Facility and finishes them as necessary to sell in accordance with System Standards.

Immediate Family – The spouse, parents, brothers, sisters and children, whether natural or adopted, of the referenced Person.

Krispy Kreme Store(s) – Stores which Franchisor or any of its Affiliates own, operate or franchise and which use the Marks and the Krispy Kreme System. Krispy Kreme Stores include Factory Stores, Hot Shops and Fresh Shops/Kiosks, but do not include Commissary Facilities.

Managing Director – The person designated as managing director of Franchisee's business pursuant to Section 5.3. The initial Managing Director is identified in the Basic Terms.

Marks – The current and future trademarks, service marks, logos, designs, trade names, and other commercial symbols, together with all distinctive trade dress elements, or combinations thereof, used by Franchisor to identify the sources of goods and services offered and sold at Krispy Kreme Stores, including the trademark and service mark KRISPY KREME®.

Owner – Each Person (and permitted transferee of each such Person) holding: (a) a direct or indirect, legal or beneficial Ownership Interest or voting rights in Franchisee or any Affiliate of Franchisee that owns an Ownership Interest or voting rights in Franchisee; (b) a direct or indirect, legal or beneficial interest in this Agreement; or (c) any other legal or equitable interest, or the power to vest in himself or herself or itself any legal or equitable interest, in the revenue, profits, rights or assets of arising from any of the foregoing.

Ownership Interest – Any direct or indirect, legal or beneficial ownership interest of any type, including (a) in relation to a corporation, the ownership of shares in the corporation; (b) in relation to a partnership, the ownership of a general or limited partnership interest; (c) in relation to a limited liability company, the ownership of a membership interest; or (d) in relation to a trust, the ownership of a legal or beneficial interest of such trust.

Person – Any individual, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity.

Principal Owner – An Owner with an Ownership Interest in Franchisee of ten percent (10%) or more.

Restricted Person – Franchisee, its Owners and Affiliates, and members of the Immediate Families of Franchisee (if a natural Person), and its Owners and Affiliates.

System – Those business formats, methods, procedures, signs, designs, layouts, equipment, and mixes designated by Franchisor from time to time for use in operating Krispy Kreme Stores and Commissary Facilities.

System Standards – The mandatory and suggested specifications, standards, operating procedures and rules that Franchisor prescribes from time to time for the operation of Krispy Kreme Stores and Commissary Facilities, including the standards, specifications and other requirements related to the purchase, preparation, marketing and sale of the Products; on-premises sales, Authorized Off-Premises Sales; customer service; the design, décor and appearance of Krispy Kreme Stores and Commissary Facilities; the maintenance and remodeling of Krispy Kreme Stores and Commissary Facilities and the equipment, fixtures and furnishings therein; the use and display of the Marks; the insurance coverage required to be carried for Krispy Kreme Stores and Commissary Facilities; the training of employees of Krispy Kreme Stores and Commissary Facilities; the days and hours of operation for Krispy Kreme Stores and Commissary Facilities; and the content, quality and use of advertising and promotional materials.

Term – The period of time starting on the Effective Date and ending on the expiration of the last date indicated on the Development Schedule (regardless whether all Krispy Kreme Stores and Commissary Facilities are open and operating at that time), unless terminated earlier in accordance with the provisions of this Agreement.

Transfer or Transfer the Development Rights (or similar words) – The direct or indirect sale, assignment, transfer, exchange, conversion, license, sublicense, lease, sublease, mortgage, pledge, collateral assignment, grant of a security, collateral or conditional interest or other encumbrance in or on, or other disposition, whether voluntary, involuntary, by operation of law or otherwise, of this Agreement, of any interest in or right under this Agreement, any form of legal or beneficial ownership interest in Franchisee, or any form of ownership interest or right to participate in or receive the benefits of the assets, revenues, income or profits of Franchisee's business, or any one or more other acts or events not covered by the foregoing that Franchisor reasonably determines to be a form of direct or indirect transfer, including: (a) any transfer, redemption or issuance of a legal or beneficial ownership interest in the capital stock of, a membership interest in, or a partnership interest in, Franchisee or any interest convertible into or exchangeable for capital stock of, a membership interest in or a partnership interest in, Franchisee; (b) any merger or consolidation of Franchisee, whether or not Franchisee is the surviving entity, or any conversion of Franchisee from one form of legal entity into another form of legal entity, or any sale, exchange, encumbrance or other disposition of Franchisee's assets; (c) any transfer in connection with or as a result of a divorce, dissolution of marriage or similar proceeding or a property settlement or legal separation agreement in the context of a divorce, dissolution or marriage or similar proceeding, an insolvency, bankruptcy or assignment for benefit of creditors, a judgment, a corporate, limited liability company or partnership dissolution or otherwise by operation of law; or (d) any transfer by gift, declaration of trust, transfer in trust, revocation of trust, trustee succession, trust termination, discretionary or mandatory trust distribution, occurrence of any event (*e.g.*, death of a person) that affects or ripens the rights of contingent beneficiaries, exercise of a power of appointment, exercise of a withdrawal right, adjudication of Franchisee or any Principal Owner as legally disabled, or upon or after Franchisee's death or the death of any of Franchisee's Principal Owners by will, disclaimer or the laws of intestate succession or otherwise.

2.2 Other terms used in this Agreement are defined in the context in which they arise.

3. ACKNOWLEDGMENTS, REPRESENTATIONS, AND WARRANTIES

- 3.1 Franchisee acknowledges that Franchisee has read this Agreement and Franchisor's Franchise Disclosure Document and understands and accepts the terms and conditions contained in this Agreement as being reasonably necessary to maintain Franchisor's high standards of quality and service. Franchisee further acknowledges that the uniformity of those standards at Krispy Kreme Stores and Commissary Facilities is reasonably necessary to protect and preserve the goodwill of the Marks. Franchisee acknowledges that Franchisee has conducted an independent investigation of the business venture contemplated by this Agreement and recognizes that, like any other business, the nature of the business conducted by Krispy Kreme Stores and Commissary Facilities may evolve and change over time, that an investment in Krispy Kreme Stores and Commissary Facilities involves business risks, and that Franchisee's business abilities and efforts are vital to the success of the venture. Any information Franchisee acquires from other franchisees relating to their sales, profits, or cash flows does not constitute information obtained from Franchisor, nor does Franchisor make any representation as to the accuracy of any such information or the likelihood of Franchisee achieving comparable results. Franchisee acknowledges that, in all of its dealings with Franchisor, Franchisor's officers, directors, employees and agents act only in a representative, and not in an individual, capacity. All business dealings between Franchisee and such Persons in connection with this Agreement are solely between Franchisee and Franchisor. Franchisee further acknowledges that Franchisor has advised Franchisee to have this Agreement reviewed and explained to Franchisee by an attorney.
- 3.2 Franchisee represents and warrants to Franchisor, as an inducement to Franchisor's entry into this Agreement, that all statements Franchisee has made and all materials Franchisee has submitted to Franchisor in connection with Franchisee's Franchise Application are accurate and complete and that Franchisee has made no misrepresentations or material omissions to obtain the rights granted hereunder. Franchisor has approved Franchisee's Franchise Application in reliance on each of Franchisee's representations to Franchisor.
- 3.3 Franchisee represents and warrants to Franchisor that Franchisee has the authority to execute and deliver this Agreement and to perform Franchisee's obligations hereunder.
- 3.4 Franchisee represents and warrants to Franchisor that this Agreement has been duly executed and delivered by Franchisee and, assuming the due authorization, execution and delivery by Franchisor, constitutes a legal, valid and binding obligation of Franchisee, enforceable in accordance with its terms.
- 3.5 Franchisee represents and warrants to Franchisor that Franchisee's execution and delivery of this Agreement does not, and Franchisee's performance of its obligations under this Agreement will not, with or without the giving of notice or the lapse of time or both, (a) conflict with or violate its organizational documents, if applicable, (b) conflict with or violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Franchisee, or (c) conflict with, result in any breach of, or constitute a default under, any contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Franchisee is a party or by which Franchisee is bound.
- 3.6 If Franchisee is, or at any time becomes, a business corporation, partnership, limited liability company, or other legal entity, Franchisee and each of its Principal Owners represents, warrants and agrees that: (a) Franchisee is duly organized and validly existing under the laws of the state of its organization, and, if a foreign business corporation, partnership, limited liability company or other legal entity, Franchisee is duly qualified to transact business in the state in which the Development Area is located; (b) Franchisee has the authority to execute and deliver this Agreement and to perform its obligations hereunder; (c) true and complete copies of the articles of incorporation, articles of organization, operating agreement or principles, partnership agreement, bylaws, subscription agreements, buy-sell agreements, voting trust agreements, trust agreements and all other documents relating to Franchisee's ownership, organization, capitalization, management and control ("Organizational Documents") shall be promptly delivered to Franchisor for its approval, which approval shall not be unreasonably withheld; (d) any and all amendments, deletions and additions to Franchisee's Organizational Documents shall be promptly delivered to Franchisor for its approval, which approval shall not be unreasonably withheld; (e) Franchisee's activities are restricted

to those necessary solely for the development, ownership and operation of Krispy Kreme Stores and Commissary Facilities in accordance with this Agreement and in accordance with any other agreements entered into with Franchisor or any of its Affiliates; (f) the Organizational Documents recite that the issuance, transfer or pledge of any direct or indirect legal or beneficial ownership interest is restricted by the terms of this Agreement; (g) all certificates representing direct or indirect legal or beneficial ownership interests now or hereafter issued must bear a legend in conformity with applicable law reciting or referring to such restrictions; and (h) Franchisee will deliver to Franchisor a Secretary/Clerk's/Trustee's Certificate or other evidence satisfactory to Franchisor that the execution, delivery and performance of this Agreement and all other agreements and ancillary documents contemplated hereby or thereby have been duly authorized by all necessary action by the corporation, partnership, limited liability company or other legal entity, as applicable, and are within the legal powers of Franchisee's trustee, if Franchisee is a trust.

- 3.7 Franchisee and each of its Principal Owners represent, warrant, and agree that Exhibit B is current, complete and accurate. Franchisee agrees that an updated Exhibit B will be furnished promptly to Franchisor, so that Exhibit B (as so revised and signed by Franchisee) is at all times current, complete and accurate. Each person who is or becomes a Principal Owner must execute an agreement in the form Franchisor prescribes, undertaking to guarantee and be bound jointly and severally by the terms of this Agreement, the current form of which is attached hereto as Exhibit E. Each person who is or becomes an Owner, whether or not a Principal Owner, must execute an agreement in the form Franchisor prescribes, undertaking to be bound by the confidentiality and non-competition covenants contained in this Agreement, the current form of which is attached hereto as Exhibit F. Each Owner must be an individual acting in his/her individual capacity, unless Franchisor waives this requirement.
- 3.8 The provisions of Section 3 constitute continuing representations and warranties, and Franchisee and Franchisee's Principal Owners shall notify Franchisor immediately in writing of the occurrence of any event or the development of any circumstance that might render any of the foregoing representations and warranties false, inaccurate, or misleading.

4. TERM/ FEES /DEVELOPMENT SCHEDULE

- 4.1 Franchisor grants Franchisee the right to develop (as long as Franchisee remains in Good Standing and meets the Expansion Criteria), and Franchisee accepts the obligation to develop, Krispy Kreme Stores and Commissary Facilities in the Development Area during the Term subject to and in compliance with the terms of this Agreement, including the Development Schedule.
- 4.2 Franchisor's obligation to grant Franchises to Franchisee to operate Krispy Kreme Stores and Commissary Facilities in the Development Area will expire upon the expiration of the Term. Franchisee has no right to renew or extend the rights granted under this Agreement. However, if Franchisee has been in Good Standing and has met the Expansion Criteria during the Term, Franchisor may, but is not obligated to, offer Franchisee further development rights on such terms and conditions as Franchisor deems appropriate. Upon expiration, Franchisor has the right to develop and operate, and to allow others to develop and operate, Krispy Kreme Stores and Commissary Facilities in the Development Area, unless further development rights are granted to Franchisee, as above provided.
- 4.3 Franchisee agrees that during the Term, it will strictly and diligently perform its obligations hereunder and will continuously exert its best efforts to promote and enhance the development and operation of Krispy Kreme Stores and Commissary Facilities within the Development Area. Without limiting the foregoing obligations, Franchisee agrees to meet the Development Schedule. Time is of the essence in this Agreement. Franchisee's failure to develop and operate Krispy Kreme Stores and Commissary Facilities in accordance with the Development Schedule is a material breach of this Agreement for which Franchisor has the right to exercise any and all rights and remedies conferred under this Agreement and applicable law, including the right to terminate this Agreement pursuant to Section 10 without prejudice to its recovery of damages.
- 4.4 Notwithstanding anything to the contrary in this Agreement, Franchisee shall not be deemed to be in breach of this Agreement if its failure to meet the Development Schedule results solely from windstorms, rains, floods, earthquakes, mudslides, fires or other natural disasters. Any delay resulting from any of such

causes shall extend performance accordingly, in whole or in part, as may be reasonable, except that no such cause, alone or in combination with other causes, shall extend performance more than ninety (90) days without Franchisor's prior written consent.

- 4.5 Franchisee will pay to Franchisor the Development Fee as set forth in the Basic Terms. The Development Fee will be fully earned, non-refundable (except as otherwise provided in Section 10.2), and payable to Franchisor upon execution of this Agreement; provided however, the Development Fee may be creditable on a dollar-for-dollar basis against Initial Franchise Fees, if provided in the Basic Terms.
- 4.6 For each Franchise granted to Franchisee pursuant to this Agreement, the Initial Franchise Fee (defined in the Franchise Agreement) will be as set forth in the Basic Terms and will be subject to a credit in the amount of the portion of the Development Fee attributable to the Store. The Development Fee will be attributed only to the Stores for which it is paid and may not be used as a credit for any other Stores. For each Franchise granted to Franchisee pursuant to this Agreement, the Royalties (defined in the Franchise Agreement and the Commissary Facility Agreement) and other fees will be as set forth in the Franchise Agreement and the Commissary Facility Agreement.

5. BUSINESS PLANS AND MANAGEMENT

- 5.1 Prior to execution of this Agreement, and on an annual basis thereafter, Franchisee will submit for review and approval by Franchisor, a written business plan for the development and financing of Krispy Kreme Stores and Commissary Facilities in the Development Area in accordance with the Development Schedule.
- 5.2 Franchisee must secure and maintain in force in its name all required licenses, permits, and certificates relating to the conduct of its business pursuant to this Agreement. Franchisee will at all times remain in Good Standing. Franchisee shall comply with all applicable laws, including all federal, state and local laws, rules, regulations, ordinances, court orders and decrees. Franchisee shall refrain from any business practice that Franchisor determines in its sole discretion may be injurious to the business or reputation of Franchisor or Franchisee or the goodwill associated with the Marks.
- 5.3 At all times during the Term, Franchisee will designate a Managing Director of its business pursuant to this Agreement who shall complete Franchisor's mandatory training program to Franchisor's satisfaction. The initial Managing Director is identified in the Basic Terms. The Managing Director will use his or her full-time efforts to fulfill Franchisee's obligations under this Agreement and under Franchise Agreements and any Commissary Facility Agreements, and will not directly or indirectly engage in any other business or activity that requires any significant management responsibility or time commitments, or that otherwise conflicts with Franchisee's obligations under this Agreement. If the Managing Director is terminated in that role, or if the Managing Director does not carry out his or her responsibilities or otherwise perform in accordance with this Agreement, Franchisee will promptly designate a replacement, and each such replacement shall complete Franchisor's mandatory training program to Franchisor's satisfaction.

6. GRANT OF FRANCHISES

- 6.1 Franchisor will furnish Franchisee with its standard site selection criteria, and provide site selection assistance for Krispy Kreme Stores and Commissary Facilities, in accordance with System Standards. Franchisor also will provide such on-site evaluation of sites proposed pursuant hereto as Franchisor deems necessary or appropriate.
- 6.2 Subject to the terms and conditions of Section 4.1, Franchisor will grant Franchises for the cumulative number and type of Krispy Kreme Stores and Commissary Facilities set forth in the Development Schedule located within the Development Area in accordance with the following provisions:
- (a) Franchisee must submit to Franchisor, in accordance with Franchisor's procedures, a complete site information package (the "Site Information Package"), as Franchisor may require from time to time, for each site for a Krispy Kreme Store or Commissary Facility that Franchisee proposes to develop and operate and that Franchisee, in good faith, believes to conform to Franchisor's then-current standard site selection criteria for Krispy Kreme Stores and Commissary Facilities;

- (b) Franchisor will accept or reject each site for which Franchisee submits a complete Site Information Package in accordance with Section 6.2(a) and, if Franchisor accepts the site, Franchisor will do so by delivering its standard site acceptance letter. The site acceptance letter, duly executed by Franchisor, is the exclusive means by which Franchisor accepts a proposed site, and no other direct or indirect representation, approval or acceptance, whether in writing or orally, by any of Franchisor's officers, employees or agents, shall be effective or bind Franchisor. Franchisor will use all reasonable efforts to make a site acceptance decision and, if the site is accepted, deliver a site acceptance letter to Franchisee within thirty (30) days after Franchisor receives the complete Site Information Package and any other materials Franchisor has requested.

In deciding whether to accept or reject a site Franchisee proposes, Franchisor may consider such factors as Franchisor, in its sole discretion, deems appropriate, including the general location and neighborhood, demographic information, traffic patterns, access, visibility, location of other retail food establishments (including other Krispy Kreme Stores and Commissary Facilities) and size, condition, configuration, appearance, and other physical characteristics of the site.

Neither Franchisor's acceptance of a proposed site, nor any information communicated to Franchisee regarding Franchisor's standard site selection criteria or the proposed site, constitutes a warranty or representation of any kind, express or implied, as to the suitability of the proposed site for a Krispy Kreme Store, a Commissary Facility or for any other purpose. Franchisor's acceptance of a proposed site merely signifies that Franchisor is willing to grant a Franchise for a Krispy Kreme Store or Commissary Facility at that location in accordance with the terms of this Agreement. Franchisee's decision to develop and operate a Krispy Kreme Store or Commissary Facility at any site is based solely on its own independent investigation of the suitability of the site for a Krispy Kreme Store or Commissary Facility, as applicable.

- 6.3 In conjunction with its decision whether to accept or reject a proposed site, Franchisor may require that Franchisee and its Principal Owners furnish Franchisor with financial statements (historical and pro forma), statements of the sources and uses of capital funds, budgets and other information regarding Franchisee, its Principal Owners and each legal entity, if any, involved in the development, ownership and operation of any Krispy Kreme Store or Commissary Facility that Franchisee proposes, as well as any then-existing Krispy Kreme Stores or Commissary Facilities that Franchisee or its Affiliates own. All such information shall be verified by Franchisee and its Principal Owners as being complete and accurate in all respects, shall be submitted to Franchisor in accordance with its requirements and will be relied on by Franchisor in determining whether to grant a Franchise for the proposed Krispy Kreme Store or Commissary Facility. Franchisor may refuse to grant Franchisee a Franchise for a Krispy Kreme Store or Commissary Facility if Franchisee fails to demonstrate sufficient financial and management capabilities to properly develop and operate the proposed Krispy Kreme Store or Commissary Facility and the then-existing Krispy Kreme Stores and Commissary Facilities that Franchisee and its Affiliates own. Franchisor will evaluate such financial and management capabilities in accordance with the then-current standards Franchisor uses to establish Krispy Kreme Stores or Commissary Facilities in other comparable market areas.
- 6.4 If Franchisor accepts a proposed site pursuant to Section 6.2, and Franchisee demonstrates the requisite financial and management capabilities (if requested by Franchisor) pursuant to Section 6.3, then Franchisor agrees to offer Franchisee a Franchise to operate a Krispy Kreme Store or Commissary Facility at the proposed site by delivering to Franchisee the Franchise Agreement or Commissary Facility Agreement for the state in which the Krispy Kreme Store or Commissary Facility is to be located. The Franchise Agreement or Commissary Facility Agreement must be executed by Franchisee and its Owners (as applicable) and returned to Franchisor no later than fourteen (14) days after Franchisor delivers them to Franchisee. If Franchisor does not receive the fully executed Franchise Agreement or Commissary Facility Agreement and payment of the Initial Franchise Fee as required hereunder, Franchisor may revoke its offer to grant Franchisee a Franchise to operate a Krispy Kreme Store or Commissary Facility at the proposed site and may revoke its acceptance of the proposed site.

7. FRANCHISOR'S RIGHTS AND LIMITATIONS/EXCLUSIVITY

- 7.1 Provided that Franchisee is in Good Standing, neither Franchisor nor its Affiliates will, during the Term, own or operate, or grant Franchises for the ownership or operation of, Krispy Kreme Stores or Commissary Facilities located in the Development Area, except for: (a) Franchises granted pursuant to this Agreement; (b) any Krispy Kreme Stores and Commissary Facilities open (or under commitment to open) as of the date hereof; (c) any food service establishment using any part or all of the System and/or Marks at special locations within the Development Area, such as college campuses, hospitals, public transportation facilities (e.g. airport facilities or highway rest stops), government (e.g. military bases) or institutional locations, supermarkets, convenience stores or grocery stores, and department stores, as well as mobile units located temporarily at special events, such as sports or entertainment events; and (d) food service establishments that Franchisor purchases (or as to which Franchisor purchases the rights as franchisor) that are part of another franchise system or chain, regardless whether such food services establishments are converted to operate using any of the Marks and/or any or all of the System or whether such food service establishments operate under other trademarks, service marks, or trade dress and/or use other operating systems.
- 7.2 Franchisor and its Affiliates (and their respective successors and assigns, by purchase, merger, consolidation or otherwise) retain all rights not expressly granted to Franchisee in Section 7.1, including those with respect to Krispy Kreme Stores, Commissary Facilities, the Marks, and the sale of Products. Franchisee waives, to the fullest extent permitted under applicable law, all claims, demands or causes of action arising from or related to any of such activities by Franchisor, its Affiliates, or their respective successors and assigns.
- 7.3 Except as provided in Section 7.1, no exclusive territory or protection is expressly or impliedly granted to Franchisee under this Agreement, and Franchisor reserves the right to operate and to grant others the right to operate Krispy Kreme Stores and Commissary Facilities at any location on such terms and conditions as it deems appropriate.
- 7.4 Franchisor reserves the right to acquire, develop, and operate, or be acquired by, any company, including a company operating one or more food service businesses (including food service businesses selling doughnuts or coffee).
- 7.5 Franchisor reserves the right to license, sample, sell, or market by any means whatsoever (including the Internet) the Products and any goods or services identified by the Marks. Such goods and services may be licensed, sampled, sold, or marketed in any and all locations and venues (including within the Development Area), and through any method or channel of distribution Franchisor deems appropriate in its sole discretion (including wholesale distribution of Products to supermarkets, grocery stores, convenience stores, and other retail outlets located within or outside the Development Area).
- 7.6 Franchisee acknowledges and agrees that Franchisor would be unable to (a) protect the Confidential Information against unauthorized use or disclosure; (b) preserve the prestige, integrity, and goodwill of the Products, Marks, and System; or (c) encourage the free exchange of ideas and information among Krispy Kreme Stores and Commissary Facilities if franchisees and owners of Krispy Kreme Stores or Commissary Facilities or their owners were permitted to engage in or benefit from certain competitive activities. Franchisee also acknowledges that Franchisor has granted the franchise rights to Franchisee in consideration of and reliance on Franchisee's agreement that Franchisee and its Owners will deal exclusively with Franchisor. Therefore, except as expressly authorized by this Agreement or another written agreement with Franchisor, Franchisee agrees that during the Term, without Franchisor's prior written consent, neither Franchisee nor any Restricted Person will:
- (i) have any Ownership Interest in a Competitive Business;
 - (ii) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business;
 - (iii) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business, where such services (A) are substantially similar to those provided to Franchisor or Franchisor's Affiliates by Franchisee or the respective Restricted Person or (B) create a relationship

between Franchisee or the Restricted Person and such Competitive Business in which Franchisee or the Restricted Person could be reasonably expected to materially benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;

- (iv) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Franchisee to hire any such Person, then Franchisee agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (v) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility, as the case may be.

8. MARKS / COPYRIGHTS / CONFIDENTIAL INFORMATION

- 8.1 Notwithstanding any provision to the contrary contained herein, it is understood and agreed that this Agreement does not grant Franchisee any right to use the Marks. Further, it is understood and agreed that this Agreement does not grant Franchisee, and Franchisee does not have, any right to any copyrighted work or patent which Franchisor now owns or may hereinafter own. Rights to the Marks, copyrighted works and/ or patents are granted only under the Franchise Agreements to be executed by Franchisor and Franchisee.
- 8.2 Franchisor will disclose parts of its Confidential Information to Franchisee solely for its use in connection with this Agreement. The Confidential Information is proprietary and includes Franchisor's trade secrets. During the Term and thereafter: (a) Franchisee and its Owners may not use the Confidential Information in any other business or capacity (Franchisee acknowledges such use is an unfair method of competition); (b) Franchisee and its Owners must maintain the confidentiality of the Confidential Information; (c) Franchisee and its Owners may not make unauthorized copies of any portion of the Confidential Information disclosed in written, electronic or other form; and (d) Franchisee and its Owners must implement all reasonable procedures Franchisor prescribes from time to time to prevent unauthorized use or disclosure of the Confidential Information, including the use of nondisclosure agreements with Franchisee's Owners, officers, directors, Managing Director, managers, and assistant managers, and Franchisee and its Owners must deliver such agreements to Franchisor.

Without limiting the foregoing, Franchisee, and each of its Owners, as applicable, each (a) acknowledges possibly gaining access to Franchisor's material non-public information and that of Franchisor's parent company, Krispy Kreme Doughnuts, Inc. ("KKDI"), and that the securities laws prohibit trading in KKDI securities while in possession of such information, and (b) agrees to refrain from trading in KKDI securities in violation of such laws.

At the end of the Term, Franchisee and its Owners must deliver to Franchisor all such Confidential Information, except for such information as Franchisee is permitted to retain pursuant to Franchise Agreements then in effect. Franchisee's restrictions on disclosure and use of Confidential Information do not apply to information or techniques which are or become generally known in the restaurant industry (other than through Franchisee's own disclosure), provided Franchisee obtains Franchisor's prior written consent to such disclosure or use.

9. TRANSFERS

- 9.1 This Agreement is fully transferable by Franchisor (without any obligation to provide notice to Franchisee or obtain Franchisee's consent) and will inure to the benefit of any assignee or other legal successor to Franchisor's interests. Franchisee agrees that Franchisor will have the right, from time to time, to delegate the performance of any portion of or all of its obligations and duties under this Agreement to designees, whether the same are Franchisor's agents or independent contractors with which Franchisor has contracted to provide these services.

- 9.2 Franchisee's rights and duties under this Agreement are personal to Franchisee, or if Franchisee is a business corporation, partnership, limited liability company or any other legal entity, its Owners. Accordingly, neither Franchisee nor any of its Owners may Transfer the Development Rights without Franchisor's prior approval and without complying with the terms and conditions of Section 9. Any such Transfer without such approval or compliance constitutes a breach of this Agreement, and is void and of no force or effect. Notwithstanding the foregoing, Franchisee may not under any circumstances directly or indirectly subfranchise or sublicense any of its rights hereunder.
- 9.3 If Franchisor has not exercised its right of first refusal under Section 9.5, Franchisor will not unreasonably withhold its approval of a Transfer of the Development Rights that meets all of the reasonable restrictions, requirements and conditions Franchisor imposes on the Transfer, the transferor(s) and/or the transferee(s) from time to time, which shall in any event include the following:
- (a) Franchisee must be in Good Standing;
 - (b) the proposed transferee and its owners (if the proposed transferee is a corporation, partnership, limited liability company or other legal entity) must provide Franchisor on a timely basis all information Franchisor requests, and must be individuals acting in their individual capacities who are of good character and reputation, who must have sufficient business experience, aptitude and financial resources to develop Franchises pursuant to this Agreement, and who must otherwise meet Franchisor's then-current standards for approval;
 - (c) the proposed transferee may not be an entity, or be affiliated with an entity, that is required to comply with the reporting and information requirements of the Securities Exchange Act of 1934, as amended;
 - (d) the transferee and its owners must agree to be bound by all of the provisions of this Agreement for the remainder of the Term;
 - (e) the transferee must acquire, in a concurrent transaction, all of the rights and obligations of Franchisee and its Affiliates under all agreements between Franchisee or its Affiliates and Franchisor or its Affiliates, including all Franchise Agreements and Commissary Facility Agreements executed by Franchisee or its Affiliates pursuant to this Agreement or pursuant to any other development or similar agreement with Franchisor;
 - (f) Franchisee or the transferee must pay Franchisor a transfer fee in an amount equal to Five Thousand Dollars (\$5,000.00), plus Five Thousand Dollars (\$5,000.00) for each Franchise for which a Franchise Agreement or Commissary Facility Agreement has been executed pursuant hereto (as required under the terms of such agreements), plus any transfer fee required by any other agreement between Franchisee or its Affiliates and Franchisor or its Affiliates;
 - (g) Franchisee and its Owners and Affiliates must, except to the extent limited or prohibited by applicable law, execute a general release, in form and substance satisfactory to Franchisor, of any and all claims against Franchisor, its Affiliates and shareholders, members, managers, officers, directors, employees, agents, successors and assigns;
 - (h) Franchisee must provide Franchisor with all information requested by Franchisor in connection with the Transfer, and Franchisor must not have disapproved the material terms and conditions of such Transfer (including the price and terms of payment and the amount to be financed by the transferee in connection with such Transfer) on the basis that they are so burdensome as to be likely, in Franchisor's reasonable judgment, to adversely affect the transferee's operation of Krispy Kreme Stores and Commissary Facilities or its compliance with this Agreement, all Franchise Agreements and Commissary Facility Agreements being transferred, and any other agreements to be executed by the transferee;
 - (i) if Franchisee (or any of its Owners or Affiliates) finances any part of the sale price of the transferred interest, Franchisee and/or its Owners or Affiliates must agree that all obligations of the transferee, and security interests reserved by any of them in the assets transferred, will be subordinate to

the transferee's obligations to pay all amounts due Franchisor and its Affiliates and to otherwise comply with this Agreement, all Franchise Agreements and Commissary Facility Agreements being transferred, and any other agreements to be executed by the transferee;

- (j) Franchisee and its Owners must execute noncompetition and non-solicitation covenants, in form and substance satisfactory to Franchisor, substantially similar to those contained in Section 11.2 hereof; and
 - (k) Franchisee and its Owners and Affiliates must execute such other documents and do such other things as Franchisor reasonably requires to protect its rights under this Agreement and all Franchise Agreements, Commissary Facility Agreements and other agreements being transferred.
- 9.4 Franchisor's approval of a Transfer of the Development Rights does not constitute: (a) a representation as to the fairness of the terms of any agreement or arrangement between Franchisee or its Owners and the transferee or as to the prospects for success by the transferee; or (b) a release of Franchisee and its Owners, a waiver of any claims against Franchisee or its Owners or a waiver of Franchisor's right to demand the transferee's compliance with this Agreement or any other agreements being transferred. Any approval shall apply only to the specific Transfer of the Development Rights being proposed and shall not constitute Franchisor's approval of, or have any bearing on, any other proposed Transfer of the Development Rights.
- 9.5 If Franchisee or any of its Owners desires to Transfer the Development Rights (other than by gift or bequest), Franchisee or such Owner(s) must obtain a *bona fide*, executed written offer from a responsible and fully disclosed purchaser (which must contain a confidentiality covenant by Franchisee and the prospective buyer to which Franchisor shall be an intended third party beneficiary) and must deliver immediately to Franchisor a complete and accurate copy of such offer. If the offeror proposes to buy any other property or rights from Franchisee or any of its Owners or Affiliates (other than rights under any Development Agreement, Franchise Agreement, or Commissary Facility Agreement for Krispy Kreme Stores) as part of the *bona fide* offer, the proposal for such property or rights must be set forth in a separate, contemporaneous offer that is fully disclosed to Franchisor, and the price and terms of purchase offered to Franchisee or its Owners for the Transfer of the Development Rights must reflect the *bona fide* price offered therefor and not reflect any value for any other property or rights.
- 9.6 Franchisor has the option, exercisable by notice delivered to Franchisee or its Owners within thirty (30) days from the date of delivery of a complete and accurate copy of such offer to Franchisor, to purchase such interest for the price and on the terms and conditions contained in such offer, provided that: (a) Franchisor may substitute cash for any form of payment proposed in such offer; (b) Franchisor's credit shall be deemed at least equal to the credit of any proposed purchaser; (c) Franchisor shall have not less than ninety (90) days from the option exercise date to consummate the transaction; and (d) Franchisor shall not be required to pay deposits (such as earnest money) or to escrow funds prior to closing. Franchisor has the right to investigate and analyze the business, assets and liabilities and all other matters Franchisor deems necessary or desirable in order to make an informed investment decision with respect to the fairness of the terms of the right of first refusal. Franchisor may conduct such investigation and analysis in any manner Franchisor deems reasonably appropriate, and Franchisee and its Owners must cooperate fully with Franchisor in connection therewith.
- 9.7 If Franchisor exercises its option to purchase, Franchisor is entitled to purchase such interest subject to all representations and warranties, closing documents, releases, non-competition covenants and indemnities as Franchisor reasonably may require, provided if Franchisor exercises its option as a result of a written offer reflected in a fully negotiated definitive agreement with the proposed purchaser, Franchisor will not be entitled to any additional representations, warranties, closing documents, or indemnities that will have a materially adverse effect on Franchisee's rights and obligations under the definitive agreement.

If Franchisor does not exercise its option to purchase, Franchisee or its Owners may complete the sale to such offeror pursuant to and on the exact terms of such offer, subject to Franchisor's approval of the Transfer as provided in Sections 9.2 and 9.3, provided that if the sale to such offeror is not completed within ninety (90) days after delivery of such offer to Franchisor, or if there is a change in the terms of the offer, Franchisee must promptly notify Franchisor and Franchisor shall have an additional option to

purchase (on the terms of the revised offer, if any, and otherwise as set forth herein) during the thirty (30) day period following Franchisee's notification of the expiration of the ninety (90) day period or the material change to the terms of the offer.

- 9.8 Neither Franchisee nor any of its Owners or Affiliates may issue or sell, or offer to issue or sell, any of Franchisee's securities or any securities of any of its Affiliates, regardless of whether such sale or offer would be required to be registered pursuant to the provisions of the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction and regardless of the means by which such sale is conducted, directly or indirectly, or by operation of law (including by merger, consolidation, reorganization or otherwise) without obtaining Franchisor's prior consent and complying with all of its requirements and restrictions concerning use of information about Franchisor and its Affiliates. Neither Franchisee nor any of its Owners or Affiliates may issue or sell Franchisee's securities or the securities of any of its Affiliates if: (a) such securities would be required to be registered pursuant to the Securities Act of 1933, as amended, or such securities would be owned by more than 35 persons; or (b) after such issuance or sale, Franchisee or such Affiliate would be required to comply with the reporting and information requirements of the Securities Exchange Act of 1934, as amended. Any memorandum or other communications circulated in connection with any solicitation of offers to purchase that would require Franchisor's consent to Transfer the Development Rights (through whatever form of transaction, whether through direct or indirect sale of assets or securities, by operation of law or otherwise) shall be subject to approval by Franchisor.

10. TERMINATION OF DEVELOPMENT RIGHTS

- 10.1 Franchisee is in material breach of this Agreement, and this Agreement will automatically terminate without notice, at Franchisor's discretion, if: (a) Franchisee becomes insolvent by reason of its inability to pay its debts as they mature; (b) Franchisee is adjudicated bankrupt or insolvent; (c) Franchisee files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or has such a petition filed against Franchisee, which is not discharged within thirty (30) days; (d) a receiver or other custodian, permanent or temporary, is appointed for Franchisee's business, assets or property; (e) Franchisee requests the appointment of a receiver or makes a general assignment for the benefit of creditors; (f) a final judgment against Franchisee in the amount of Fifty Thousand Dollars (\$50,000.00) or more remains unsatisfied of record for sixty (60) days or longer; (g) Franchisee's bank accounts, property or accounts receivable are attached; (h) execution is levied against Franchisee's business or property; (i) suit is filed to foreclose any lien or mortgage against any of Franchisee's assets and such suit is not dismissed within thirty (30) days; or (j) Franchisee voluntarily dissolves or liquidates or has a petition filed for corporate or partnership dissolution and such petition is not dismissed within thirty (30) days; or (k) Franchisee's assets, property or interest are "blocked" under any law, ordinance or regulation relating to terrorist activities or if Franchisee is otherwise in violation of any such law, ordinance or regulation.

- 10.2 In addition to Franchisor's right to terminate pursuant to other provisions of this Agreement or under applicable law, Franchisor may terminate this Agreement, effective upon delivery of notice of termination to Franchisee, if Franchisee or any of its Principal Owners or Affiliates:

- (a) fails to meet any part of the Development Schedule;
- (b) makes an unauthorized Transfer of the Development Rights;
- (c) makes any material misstatement or omission in any Franchise Application or in any other information, report, or summary provided to Franchisor at any time;
- (d) is convicted of, or plead no contest to, a felony or other crime or offense that Franchisor believes, in its sole judgment, may adversely affect the System or the goodwill associated with the Marks;
- (e) makes any unauthorized use or disclosure of the Confidential Information;
- (f) fails to comply with any other provision of this Agreement and does not correct such failure within thirty (30) days after written notice of such failure to comply is delivered to Franchisee;

- (g) is in breach of any Franchise Agreement or Commissary Facility Agreement such that Franchisor has the right to terminate such agreement, whether or not Franchisor elects to exercise its right to do so;
- (h) is in breach of any other agreement between Franchisee or any of its Affiliates and Franchisor or any of its Affiliates such that Franchisor has a right to terminate such agreement, whether or not Franchisor elects to exercise its right to do so; or
- (i) if Franchisor determines that any applicable federal or state statute, regulation, rule or law, which is enacted, promulgated or amended after the date hereof, may have a material adverse effect on its rights, remedies or discretion in franchising Krispy Kreme Stores or Commissary Facilities.

Franchisor has no obligation whatsoever to refund any portion of the Development Fee upon any termination, except that Franchisor will refund a pro rata portion of the Development Fee in the event of a termination solely pursuant to Section 10.2(i).

11. EFFECT OF TERMINATION AND EXPIRATION

- 11.1 All obligations under this Agreement, which expressly or by their nature survive the expiration or termination of this Agreement, shall continue in full force and effect until they are satisfied in full or by their nature expire.
- 11.2 Upon termination or expiration of this Agreement, neither Franchisee nor any Restricted Person will, for a period of two (2) years, starting on the effective date of termination or expiration:
 - (a) have any Ownership Interest in a Competitive Business operating within the Development Area or within a radius of ten (10) miles of any Krispy Kreme Store or Commissary Facility in operation or under construction on the effective date of termination or expiration;
 - (b) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business operating within the Development Area or within a radius of ten (10) miles of any Krispy Kreme Store or Commissary Facility in operation or under construction on the effective date of termination or expiration;
 - (c) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business operating within the Development Area or within a radius of ten (10) miles of any Krispy Kreme Store or Commissary Facility in operation or under construction on the effective date of termination or expiration, where such services: (i) are substantially similar to those provided to Franchisee; or (ii) create a relationship between Franchisee or the Restricted Person and such Competitive Business in which Franchisee or the Restricted Person could be reasonably expected to materially benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;
 - (d) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Franchisee to hire any such Person, then Franchisee agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
 - (e) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility, as the case may be.

Franchisee and each of its Owners expressly acknowledges the possession of skills and abilities of a general nature and other opportunities for exploiting such skills in other ways, so that enforcement of the covenants contained in this Section 11.2 will not deprive any of them their personal goodwill or ability to earn a living. If Franchisee or any of its Owners fails or refuses to abide by any of the foregoing covenants and Franchisor obtains enforcement in a judicial or arbitration proceeding, the obligations under

the breached covenant will be tolled during the period(s) of time that the covenant is breached and/or Franchisor seeks to enforce it and will continue in effect for a period of time ending two (2) years after the date of the order enforcing the covenant.

- 11.3 Franchisor's exercise of any of its rights under Section 11 will be in addition to and not in limitation of any other rights and remedies it may have in the event of any breach or default by Franchisee.

12. RELATIONSHIP OF PARTIES/INDEMNIFICATION

- 12.1 Neither this Agreement nor the dealings of the parties pursuant to this Agreement shall create any fiduciary relationship or any other relationship of trust or confidence between the parties. Franchisor and Franchisee, as between themselves, are and shall be independent contractors.
- 12.2 Franchisee understands and agrees that Franchisor may operate and change the Krispy Kreme System and its business in any manner that is not expressly and specifically prohibited by this Agreement. Whenever Franchisor has expressly reserved in this Agreement or is deemed to have a right and/or discretion to take or withhold an action, or to grant or decline to grant Franchisee a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, Franchisor may make its decision or exercise its right and/or discretion on the basis of its judgment of what is in its best interests, including its judgment of what is in the best interests of its franchise network, at the time its decision is made or its right or discretion is exercised, without regard to whether: (a) other reasonable alternative decisions or actions could have been made by Franchisor; (b) Franchisor's decision or action promotes its financial or other individual interest; (c) Franchisor's decision or action applies differently to Franchisee and one or more other franchisees or its company-owned operations; or (d) Franchisor's decision or the exercise of its right or discretion is adverse to Franchisee's interests. In the absence of an applicable statute, Franchisor will have no liability to Franchisee for any such decision or action. The parties intend that the exercise of Franchisor's right or discretion will not be subject to limitation or review. If applicable law implies a covenant of good faith and fair dealing in this Agreement, the parties agree that such covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants Franchisor the right to make decisions, take actions and/or refrain from taking actions not inconsistent with Franchisee's rights and obligations hereunder.
- 12.3 Nothing contained in this Agreement, or arising from the conduct of the parties hereunder, is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever. Franchisee must conspicuously identify itself in all dealings with customers, lessors, contractors, suppliers, public officials, employees and others as the owner of development rights granted hereunder and must place such other notices of independent ownership on such forms, business cards, stationery, advertising and other materials as we may require from time to time.
- 12.4 Franchisee may not make any express or implied agreements, warranties, guarantees or representations or incur any debt in Franchisor's name or on its behalf or represent that the relationship of the parties hereto is anything other than that of independent contractors. Franchisor will not be obligated by or have any liability under any agreements made by Franchisee with any third party or for any representations made by Franchisee to any third party. Franchisor will not be obligated for any damages to any person or property arising directly or indirectly out of the operation of Franchisee's business hereunder.
- 12.5 Franchisee agrees to indemnify Franchisor, its Affiliates and their respective directors, officers, employees, shareholders, members, managers, agents, successors and assigns (collectively "Indemnified Parties"), and to hold the Indemnified Parties harmless to the fullest extent permitted by law, from any and all losses and expenses (as defined below) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, formal or informal inquiry (regardless of whether it is reduced to judgment) or any settlement thereof which arises directly or indirectly from, or as a result of, a claim of a third party against any one or more of the Indemnified Parties in connection with (a) Franchisee's failure to perform or breach of any covenant, agreement, term or provision of this Agreement; (b) Franchisee's breach of any representation or warranty contained in this Agreement; (c) Franchisee's development, ownership, operation and/or closing of Krispy Kreme Stores or Commissary Facilities; and

(d) any allegedly unauthorized service or act rendered or performed in connection with this Agreement (collectively “Event”), and regardless of whether it resulted from any strict or vicarious liability imposed by law on the Indemnified Parties. The foregoing indemnity shall apply even if it is determined that the Indemnified Parties’ negligence caused such loss, liability or expense, in whole or in part, provided, however, that this indemnity will not apply to any liability arising from a breach of this Agreement by Franchisor or with respect to any Indemnified Party whose gross negligence or willful acts caused such liability (except to the extent that joint liability is involved, in which event the indemnification provided herein will extend to any finding of comparative or contributory negligence attributable to Franchisee). The term “losses and expenses” includes compensatory, exemplary and punitive damages; fines and penalties; attorneys’ fees; experts’ fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensation for damages to Franchisor’s reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. Franchisor agrees to give Franchisee reasonable notice of any Event of which Franchisor becomes aware for which indemnification may be required, and Franchisor may elect (but is not obligated) to direct the defense thereof, provided that the selection of counsel shall be subject to Franchisee’s consent, which consent shall not be unreasonably withheld or delayed. Franchisor may, in its reasonable discretion, take such actions as Franchisor deems necessary and appropriate to investigate, defend or settle any event or take other remedial or corrective actions with respect thereto as may be necessary for the protection of the Indemnified Parties or Krispy Kreme Stores and/or Commissary Facilities generally, provided however, that any settlement shall be subject to Franchisee’s consent, which consent shall not be unreasonably withheld or delayed. Further, notwithstanding the foregoing, if the insurer on a policy or policies obtained in compliance with any Franchise Agreement agrees to undertake the defense of an Event (an “Insured Event”), Franchisor agrees not to exercise its right to select counsel to defend the Event if such would cause Franchisee’s insurer to deny coverage. Franchisor reserves the right to retain counsel to represent Franchisor with respect to an Insured Event at its sole cost and expense. This Section 12.5 shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

13. MISCELLANEOUS

- 13.1 This Agreement and all issues arising from or relating to this Agreement shall be governed by and construed under the laws of the State of North Carolina, provided the foregoing shall not constitute a waiver of Franchisee’s rights under any applicable franchise law of another state. Otherwise, in the event of any conflict of law, North Carolina law will prevail, without regard to the application of North Carolina conflict of law principles, except that any North Carolina law regulating the sale of franchises or business opportunities or governing the relationship of a franchisor and its franchisees will not apply unless its jurisdictional requirements are met independently without reference to this section.
- 13.2 Franchisee and each of its Owners agree that the U.S. District Court for the Middle District of North Carolina, or if such court lacks jurisdiction, the Superior Court (or its successor) for Forsyth County, North Carolina, shall be the venue and exclusive forum in which to adjudicate any case or controversy arising from or relating to this Agreement and any guarantees or covenants by Franchisee’s Owners. In the event a case or controversy is to be heard by the Superior Court (or its successor) for Forsyth County, North Carolina, any party may request that the matter be assigned to the North Carolina Business Court. Franchisee and each of its Owners irrevocably submits to the jurisdiction of such courts and waives any objections to either the jurisdiction of or venue in such courts. Franchisee and each of its Owners irrevocably waives, to the fullest extent they may lawfully do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding and agrees that service of process for purposes of any such suit, action or proceeding need not be personally served or served within the State of North Carolina but may be served with the same effect as if they were served within the State of North Carolina, by certified mail or any other means permitted by law, addressed to Franchisee and its Owners (as applicable) at the address set forth herein. Nothing contained herein shall affect Franchisor’s rights to bring a suit, action or proceeding in any other appropriate jurisdiction, including any suit, action or proceeding brought by Franchisor to enforce any judgment against Franchisee or any of its Owners entered by a State or Federal Court.

- 13.3 Franchisor may obtain at any time in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause Franchisor irreparable harm. Franchisor may have such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and Franchisee's sole remedy in the event of the entry of such injunction, shall be the dissolution of such injunction, if warranted, upon hearing duly had (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). Franchisee and each of its Owners acknowledges that any violation of Sections 7.6, 8.2, 9.3(j) or 11.2 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available. Accordingly, Franchisee and each of its Owners consents to the issuance of an injunction at Franchisor's request (without posting a bond or other security) prohibiting any conduct in violation of any of those sections and agrees that the existence of any claims Franchisee or any of its Owners may have against Franchisor, whether or not arising herefrom, shall not constitute a defense to the enforcement of any of those Sections.
- 13.4 If Franchisor claims in any judicial proceeding that Franchisee owes Franchisor or any of its Affiliates money or that Franchisee has otherwise breached this Agreement and Franchisor prevails on such claims, then Franchisor shall be awarded its costs and expenses incurred in connection with such proceedings, including reasonable attorneys' fees.
- 13.5 Except with respect to any of Franchisee's obligations herein regarding the Confidential Information, the Marks, and any other intellectual property rights of Franchisor, Franchisor and Franchisee and its Owners each waive, to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other. Franchisee and each of its Owners waive, to the fullest extent permitted by applicable law, the right to recover consequential damages for any claim directly or indirectly arising from or relating to this Agreement. **FURTHERMORE, THE PARTIES AGREE THAT ANY LEGAL ACTION IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, AND ALL PARTIES WAIVE ANY RIGHT TO HAVE ANY ACTION TRIED BY JURY.**
- 13.6 Every part of this Agreement shall be considered severable. If for any reason any part of this Agreement is held to be invalid, that determination shall not impair the other parts of this Agreement. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of geographical area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, Franchisee and Franchisor agree that it will be enforced to the fullest extent permissible under applicable law. If any applicable law requires a greater prior notice of the termination of or refusal to enter into a successor franchise than is required hereunder, a different standard of "good cause", or the taking of some other action not required hereunder, the prior notice, "good cause" standard and/or other action required by such law shall be substituted for the comparable provisions hereof. If any provision of this Agreement or any specification, standard or operating procedure prescribed by Franchisor is invalid or unenforceable under applicable law, Franchisor has the right, in its sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to make it valid and enforceable.
- 13.7 Franchisor and Franchisee may, by written instrument signed by the waiving party unilaterally, waive or reduce any obligation of the other under this Agreement. Any waiver granted by Franchisor shall be without prejudice to any other rights Franchisor may have, will be subject to continuing review by Franchisor and may be revoked, in its sole discretion, at any time and for any reason, effective upon delivery to Franchisee of 10 days' prior notice. Franchisee and Franchisor shall not be deemed to have waived any right reserved by this Agreement by virtue of any custom or practice of the parties at variance with it; any failure, refusal or neglect by Franchisee or Franchisor to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder; any waiver, forbearance, delay, failure or omission by Franchisor to exercise any right, whether of the same, similar or different nature, with respect to other Krispy Kreme Stores; or the acceptance by Franchisor of any payments due from Franchisee after any breach of this Agreement.

- 13.8 The rights of Franchisor and Franchisee hereunder are cumulative and no exercise or enforcement by Franchisor or Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by Franchisor or Franchisee of any other right or remedy hereunder which Franchisor or Franchisee is entitled to enforce by law.
- 13.9 The language of this Agreement shall be construed according to its fair meaning and not strictly against any party. The Basic Terms, introduction, personal guarantees and covenants, exhibits, schedules and riders (if any) to this Agreement are a part of this Agreement, which constitutes the entire agreement of the parties with respect to the subject matter hereof. Except as otherwise expressly provided herein, there are no other oral or written agreements, understandings, representations or statements relating to the subject matter of this Agreement, other than the Franchise Disclosure Document, that either party may or does rely on or that will have any force or effect. Nothing in this Agreement shall be deemed to confer any rights or remedies on any person or legal entity not a party hereto. This Agreement shall not be modified except by written agreement signed by both parties.
- 13.10 The headings of sections are for convenience only and do not limit or construe their contents. The word “including” shall be construed to include the words “without limitation.” The term “Franchisee” is applicable to one or more persons, a corporation, limited liability company or a partnership and its owners, as the case may be. If two or more persons are at any time Franchisee hereunder, whether as partners, joint venturers or otherwise, their obligations and liabilities to Franchisor shall be joint and several.
- 13.11 References to a controlling interest in an entity shall mean more than fifty percent (50%) of the equity and voting control of such entity.
- 13.12 This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest. This Agreement may be executed in multiple copies, each of which shall be deemed an original. Time is of the essence in this Agreement.
- 13.13 Whenever this Agreement requires the approval or consent of either party, the other party shall make written request therefor, and such approval or consent shall be obtained in writing; provided however, unless specified otherwise in this Agreement, such party may withhold approval or consent for any reason or for no reason at all. Furthermore, unless specified otherwise in this Agreement, no such approval or consent shall be deemed to constitute a warranty or representation of any kind, express or implied, and the approving or consenting party shall have no responsibility, liability or obligation arising therefrom.
- 13.14 All notices, requests and reports permitted or required to be delivered by this Agreement shall be deemed delivered: (a) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (b) one (1) business day after being placed in the hands of a commercial courier service for guaranteed overnight delivery; or (c) five (5) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing. All payments and reports required by this Agreement shall be sent to Franchisor at the address identified in this Agreement unless and until a different address has been designated by written notice. No restrictive endorsement on any check or in any letter or other communication accompanying any payment shall bind Franchisor, and its acceptance of any such payment shall not constitute an accord and satisfaction.

14. ACKNOWLEDGMENTS

14.1 By initialing below, Franchisee hereby specifically acknowledges the following:

- (a) **Domicile.** Franchisee acknowledges that Franchisee is not a domiciliary or a resident of any state, other than the state where the Development Area is predominantly located or, if different, the state listed in the Basic Terms as Franchisee’s address.

Initials _____ / _____

- (b) **Receipt of Franchise Disclosure Document.** Franchisee acknowledges having received Franchisor's Franchise Disclosure Document at least fourteen (14) calendar days before signing a binding agreement or before making any payment to Franchisor or any of its Affiliates relating to this Agreement. Franchisee has read and understands Franchisor's Franchise Disclosure Document.

Initials _____ / _____

- (c) **No Inconsistent Representations.** Franchisee acknowledges that no representations have been made to Franchisee which are inconsistent with information presented in Franchisor's Franchise Disclosure Document, and Franchisee has not relied on any representations inconsistent with or not contained in Franchisor's Franchise Disclosure Document.

Initials _____ / _____

- (d) **Business Risks; Independent Investigation.** Franchisee recognizes that the nature of Krispy Kreme Stores and Commissary Facilities may change over time, that an investment in a Krispy Kreme Store or Commissary Facility involves business risks and that the success of the investment is largely dependent on Franchisee's own business abilities, efforts and financial resources. Franchisee has conducted an independent investigation of the business contemplated by this Agreement and recognizes that the food service industry is highly competitive.

Initials _____ / _____

- (e) **Independent Counsel.** Franchisee acknowledges having had the opportunity to seek independent counsel concerning the execution of this Agreement.

Initials _____ / _____

- (f) **No Guarantee or Assurance.** Franchisee has not received from Franchisor or its representatives or relied on any statement, representation, guaranty or assurance, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement, nor has Franchisee received from Franchisor or its representatives any information from which Franchisee may easily ascertain a specific level or range of actual or potential sales, income, gross or net profits from franchised or non-franchised Krispy Kreme Stores or Commissary Facilities.

Initials _____ / _____

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement in multiple originals as of the Effective Date set forth in the Basic Terms.

KRISPY KREME DOUGHNUT CORPORATION

[FRANCHISEE]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

**TO THE DEVELOPMENT AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

DEVELOPMENT AREA

The Development Area is the geographic area described as follows and shown on the map attached as Exhibit A-1:

DEVELOPMENT SCHEDULE

Franchisee agrees to have open and operating in the Development Area the **cumulative numbers** of Krispy Kreme Stores (of the types set forth below), and Commissary Facilities as of each of the following dates:

<u>Factory Stores</u>	<u>Hot Shops</u>	<u>Fresh Shops/Kiosks</u>	<u>Commissary Facilities</u>	<u>Date</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

The last date of the table above shall be the expiration date of this Agreement.

For purposes hereof, no Krispy Kreme Store or Commissary Facility that is open and operating as of the date of this Agreement shall be counted for purposes of the Development Schedule. In addition, a Krispy Kreme Store or Commissary Facility that is permanently closed after having been opened, other than as a result of noncompliance by Franchisee with the terms of the applicable Franchise Agreement or Commissary Facility Agreement, shall be deemed open for a period of six (6) months after the last day it was open for business, provided that: (a) during such period of time, Franchisee continuously and diligently takes such actions as may be required to develop and open a substitute Krispy Kreme Store or Commissary Facility within the Development Area pursuant to a new Franchise Agreement or Commissary Facility Agreement, therefor and (b) by the end of such period Franchisee has the substitute Krispy Kreme Store or Commissary Facility, as applicable, open and operating in compliance with the Franchise Agreement or Commissary Facility therefor.

A-1

EXHIBIT A-1

**TO THE DEVELOPMENT AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

MAP OF DEVELOPMENT AREA

A-1-1

EXHIBIT B

**TO THE DEVELOPMENT AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

FRANCHISEE INFORMATION

1. Form of Entity of Franchisee.

(a) Corporation or Limited Liability Company. Franchisee was organized on _____, _____ under the laws of the State of _____. Its Federal Identification Number is _____. It has not conducted business under any name other than its corporate or company name. The following is a list of all of Franchisee's directors and officers or managing members as of _____, _____.

Name of Each Director/Officer/Managing Member

Position(s) Held

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(b) Partnership. Franchisee is a [general] [limited] partnership formed on _____, _____ under the laws of the State of _____. Its Federal Identification Number is _____. It has not conducted business under any name other than its partnership name. The following is a list of all of Franchisee's general partners as of _____, _____.

Name of Each General Partner

2. Owners. Franchisee and each of its Owners represents and warrants that the following is a complete and accurate list of all Owners of Franchisee, including the full name and mailing address of each Owner, and fully describes the nature and extent of each Owner's interest in Franchisee. Franchisee and each Owner as to his/her ownership interest, represents and warrants that each Owner is the sole and exclusive legal and beneficial owner of his/her ownership interest in Franchisee, free and clear of all liens, restrictions, agreements and encumbrances of any kind or nature, other than those required or permitted by this Agreement.

Owner's Name and Mailing Address

Percentage and Nature of
Ownership Interest

Submitted by Franchisee
Accepted by Franchisor and
made a part of the Development
Agreement as of _____, _____.

KRISPY KREME DOUGHNUT
CORPORATION,
a North Carolina corporation

(Name of corporation, limited liability
company or partnership)

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

Owners:

(Signature)

(Print Name)

(Signature)

(Print Name)

EXHIBIT C

**TO THE DEVELOPMENT AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

FORM OF FRANCHISE AGREEMENT

(Please see Exhibit 10.3 to the Company's Annual Report on Form 10-K for fiscal 2008)

C-1

EXHIBIT D

**TO THE DEVELOPMENT AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

FORM OF COMMISSARY FACILITY AGREEMENT

D-1

**KRISPY KREME DOUGHNUT CORPORATION
COMMISSARY FACILITY AGREEMENT
BASIC TERMS**

**FOR USE ONLY TOGETHER WITH A HOT SHOP OR
FRESH SHOP/KIOSK AGREEMENT**

A.	Effective Date (Insert date Franchisee executes the agreement):			
B.	Franchisor:	Krispy Kreme Doughnut Corporation, a North Carolina corporation		
C.	Facility Number:			
D.	Facility Address:			
E.	Franchisee:			
	Franchisee's Address:			
	Telephone:		Fax No.:	
	E-mail Address:			
F.	Principal Owners:			
G.	Managing Director:			
H.	General Manager:			
I.	Term:	The time period commencing on the Effective Date and expiring 15 years after the Effective Date		

Franchisor: _____
(initials)

Franchisee: _____
(initials)

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KRISPY KREME DOUGHNUT CORPORATION
COMMISSARY FACILITY AGREEMENT

THIS COMMISSARY FACILITY AGREEMENT (this “Agreement”) is made and entered into as of the Effective Date by and between Franchisor and Franchisee.

1. BACKGROUND

- 1.1 Franchisor has developed, as a result of considerable time, skill, effort, and money, a distinctive system for operating stores called “Krispy Kreme Stores” that offer and serve a variety of doughnuts, beverages, and other authorized products and services under the Marks.
- 1.2 Franchisor’s Affiliate, HDN Development Corporation, owns the Marks and has granted Franchisor the right to sublicense the Marks to its franchisees for their use in producing the Products.
- 1.3 Franchisor grants franchises to own and operate Krispy Kreme Stores and Commissary Facilities to Persons who meet its qualifications and are willing to undertake the investment and effort to properly develop and operate them.
- 1.4 Franchisee has submitted a Franchise Application to own and operate a Commissary Facility at the Site, and Franchisor has accepted the application in reliance on all information Franchisee has provided in connection therewith.

2. DEFINITIONS

- 2.1 Capitalized terms used in this Agreement have the meanings given to them in this Section and in the Basic Terms.

Account – Franchisee’s bank account as to which Franchisee has provided Franchisor with all appropriate account information and from which Franchisee has authorized Franchisor to withdraw funds by electronic funds transfers.

Affiliate – Any person that directly or indirectly owns or controls, that is directly or indirectly owned or controlled by, or that is under common ownership or control with the referenced person, including parents and subsidiaries.

Authorized Off-Premises Sales – Sales to wholesale customers pursuant to an express authorization by Franchisor, the current form of which is attached as Exhibit E.

Basic Terms – The terms of this Agreement set forth on the Krispy Kreme Doughnut Corporation Commissary Facility Agreement Basic Terms section on the first page hereof.

Brand Fund – As defined in Section 22.

Commissary Facility – A manufacturing facility for doughnuts and other Products that are supplied to Hot Shops and Fresh Shops/Kiosks. Commissary Facilities are not used for retail sales, but may distribute and sell to wholesale customers, subject to Franchisor’s authorization pursuant to the Commissary Facility Agreement.

Commissary Facility Agreement – An agreement, such as this Agreement, used by Franchisor to grant the right to operate a Commissary Facility at a specific location.

Competitive Business – A business, other than a Krispy Kreme Store or Commissary Facility, that: (a) makes, sells or distributes yeast-raised doughnuts, cake doughnuts, or any other types of doughnuts, miniature doughnuts, doughnut holes or any other bakery products in any distribution channel to any customer for consumption or resale, and such sales constitute ten percent (10%) or more of its total sales (or such sales from any single location constitute 10% or more of the total sales of that location) during any calendar quarter or calendar year; (b) sells coffee or coffee drinks in any distribution channel to any customer for consumption or resale, and such sales constitute twenty percent (20%) or more of its total sales (or such sales from any single location constitute 20% or more of the total sales of that location)

during any calendar quarter or calendar year; (c) is the same as, or similar to, the Krispy Kreme Store concept as it evolves over time; or (d) grants franchises or licenses, or establishes joint ventures, for the development and/or operation of any business referred to in (a) through (c), above. Restrictions in this Agreement on having an Ownership Interest in a Competitive Business shall not apply to the ownership of shares of a class of securities listed on a stock exchange or traded on a public stock market that represents less than three percent (3%) of the number of shares of that class of securities issued and outstanding.

Confidential Information – Certain confidential information relating to the development and operation of Krispy Kreme Stores and Commissary Facilities, which includes:

- (a) methods, techniques, equipment, specifications, standards, policies, procedures, information, concepts, and systems relating to and knowledge of and experience in the development, equipping, operation, outfitting, and franchising of Krispy Kreme Stores and Commissary Facilities, as well as expansion, growth and development plans, and prospects;
- (b) marketing and advertising programs for Krispy Kreme Stores and Commissary Facilities;
- (c) knowledge concerning the logic, structure, and operation of computer software programs that Franchisor authorizes for use in connection with the operation of Krispy Kreme Stores and Commissary Facilities, and all additions, modifications and enhancements, and all data generated from use of such programs;
- (d) specifications and standards for, and sources of, buildings, equipment, furnishings, fixtures, signs, products, materials, supplies, and services utilized in the development and operation of Krispy Kreme Stores and Commissary Facilities;
- (e) ingredients, formulas, mixes, recipes for and methods of preparation, cooking, serving, packaging, and delivery of the Products;
- (f) information concerning sales, operating results, financial performance, consumer preferences, inventory requirements, materials and supplies, and other financial data of Krispy Kreme Stores and Commissary Facilities, and customer lists;
- (g) current and concluded research, development and test programs for products, services and operations for use in Krispy Kreme Stores and Commissary Facilities;
- (h) the contents of any System Standards Manuals, System Standards, and site selection criteria; and
- (i) employee training, and staffing levels.

Development Agreement – If applicable, the Krispy Kreme Doughnut Corporation Development Agreement pursuant to which Franchisor has granted Franchisee the right to develop Krispy Kreme Stores and Commissary Facilities in the Development Area and pursuant to which this Agreement has been executed.

Development Area – If applicable, the geographic area in which Franchisee has the right to develop Krispy Kreme Stores and Commissary Facilities, as set forth in the Development Agreement.

FACILITY – The Commissary Facility that Franchisor authorizes Franchisee to operate at the Site pursuant to this Agreement. The term includes all of the assets of the FACILITY.

Factory Store – A retail sales facility with the manufacturing capability to produce fresh doughnuts in accordance with System Standards. Additionally, Factory Stores may have some capacity to supply fresh doughnuts to Hot Shops and Fresh Shops/Kiosks.

Force Majeure – Any of the following events or circumstances: (i) fire, earthquake, storm, hurricane, tornado, flood or other act of God; (ii) war, act of terrorism, insurrection, rebellion, riots or other civil unrest; (iii) epidemics, quarantine restrictions or other public health restrictions or advisories; and (iv) other similar events beyond the reasonable control of the party.

Franchise – The rights granted and the obligations imposed pursuant to this Agreement that relate to the development and operation of the Commissary Facility at the Site.

Franchise Agreement – An agreement used by Franchisor to grant a franchise for the operation of a Krispy Kreme Store at a specific location.

Franchise Application – The application submitted by Franchisee for the Franchise.

Franchise Disclosure Document – The franchise disclosure document required by applicable law.

Franchisee – As defined in the Basic Terms.

Franchisor – As defined in the Basic Terms.

Fresh Shop/Kiosk – A retail sales facility with limited manufacturing capabilities (e.g. icing and filling equipment), or no manufacturing capabilities, that receives doughnuts from a Factory Store or a Commissary Facility and finishes them as necessary to sell in accordance with System Standards.

Fundraising – Sales of doughnuts, redemption cards, or coupons to charitable, educational, and other nonprofit organizations restricted to those located within the FACILITY's local market area (as Franchisor may determine from time to time) for resale (or giving) to consumers.

General Manager – The general manager of the FACILITY. The initial general manager is identified in the Basic Terms.

Good Standing – The condition that Franchisee and its Affiliates: (i) are current with all payments due to Franchisor, its Affiliates and suppliers; and (ii) are not in default of any of their obligations under this Agreement, any Development Agreement (including any Development Schedule), any Franchise Agreement, any Commissary Facility Agreement or any other agreement between the parties hereto or any of their Affiliates.

Hot Shop – A retail sales facility with an impinger oven and limited manufacturing capabilities (e.g., icing and filling equipment) that receives doughnuts from a Factory Store or a Commissary Facility and finishes them as necessary to sell in accordance with System Standards.

Immediate Family – The spouse, parents, brothers, sisters and children, whether natural or adopted, of the referenced Person.

Krispy Kreme Store(s) – Stores which Franchisor or any of its Affiliates own, operate or franchise and which use the Marks and the System. Krispy Kreme Stores include Factory Stores, Hot Shops and Fresh Shops/Kiosks, but do not include Commissary Facilities.

Managing Director – The person designated as managing director of Franchisee's business pursuant to Section 20.2. The initial Managing Director is identified in the Basic Terms.

Marks – The current and future trademarks, service marks, logos, designs, trade names, and other commercial symbols, together with all distinctive trade dress elements, or combinations thereof, used by Franchisor to identify the sources of goods and services offered and sold at Krispy Kreme Stores, including the trademark and service mark KRISPY KREME®.

Net Sales – All the FACILITY's revenue from food, beverages, and other products and merchandise of any type whatsoever sold, whether or not produced at the FACILITY or acquired from a third party, including Products purchased from other Krispy Kreme franchises (regardless whether owned by Franchisee) and services rendered at or away from the FACILITY (whether or not such sales are authorized by Franchisor) or from any use of the Marks, recorded using the accrual basis of accounting and otherwise in accordance with accounting principles generally accepted in the United States. Without limiting the foregoing, and for the avoidance of doubt, "Net Sales" (a) includes all amounts Franchisee receives or has the right to receive from the conveyance of products and services, whether such sales are made for cash or cash equivalents (including credit, debit and gift cards) or on credit terms, but excludes (i) sales and similar taxes collected or which Franchisee has the right to collect from customers and

which Franchisee is required by law to remit to a taxing authority, (ii) customer refunds, (iii) credits for product returns and (iv) sales or delivery of products to Krispy Kreme Stores or Commissary Facilities (regardless whether owned by Franchisee), and (b) shall not be reduced by any charge or other provision for uncollectible accounts. Neither the inclusion of any type of revenue in the definition of Net Sales nor Franchisor's demand or receipt of Royalties or Brand Fund contributions on such revenues shall constitute a waiver or approval of any unauthorized sales by Franchisee hereunder, and Franchisor reserves all rights and remedies with respect thereto.

Owner – Each Person (and permitted transferee of each such Person) holding: (a) a direct or indirect, legal or beneficial Ownership Interest or voting rights in Franchisee or any Affiliate of Franchisee that owns an Ownership Interest or voting rights in Franchisee; (b) a direct or indirect, legal or beneficial interest in this Agreement; (c) a direct or indirect, legal or beneficial interest in the FACILITY; or (d) any other legal or equitable interest, or the power to vest in himself or herself or itself any legal or equitable interest, in the revenue, profits, rights or assets arising from any of the foregoing.

Ownership Interest – Any direct or indirect, legal or beneficial ownership interest of any type, including (a) in relation to a corporation, the ownership of shares in the corporation; (b) in relation to a partnership, the ownership of a general or limited partnership interest; (c) in relation to a limited liability company, the ownership of a membership interest; or (d) in relation to a trust, the ownership of a legal or beneficial interest of such trust.

Payment Day – The day of the Week on which Royalties are due, which day currently is Friday, but may be changed at Franchisor's sole discretion.

Person – Any individual, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity.

Principal Owner – An Owner with an Ownership Interest in Franchisee of ten percent (10%) or more.

Products – The current and future products that Franchisor authorizes to be offered and sold at Krispy Kreme Stores, including (a) fresh doughnuts (including, yeast-raised doughnuts, cake doughnuts, miniature doughnuts, and doughnut holes, which doughnuts have various types and flavors of fillings, glazes, or other coatings); (b) hot or cold fresh-brewed coffee beverages suitable for immediate consumption; (c) hot or cold espresso drinks suitable for immediate consumption; (d) frozen beverages suitable for immediate consumption; and (e) such other products and beverages as we may determine from time to time.

Reporting Day – The day of the Week by which Franchisee is required to report Net Sales to Franchisor, which day currently is Tuesday, but may be changed at Franchisor's sole discretion.

Restricted Person – Franchisee, its Owners and Affiliates, and members of the Immediate Families of Franchisee (if a natural Person), and its Owners and Affiliates.

Royalties – As set forth in Section 13.

Site – The location of the FACILITY with the street address identified in the Basic Terms.

System – Those business formats, methods, procedures, signs, designs, layouts, equipment, and mixes designated by Franchisor from time to time for use in operating Krispy Kreme Stores and Commissary Facilities.

System Standards – The mandatory and suggested specifications, standards, operating procedures and rules that Franchisor prescribes from time to time for the operation of Krispy Kreme Stores and Commissary Facilities, including the standards, specifications and other requirements related to the purchase, preparation, marketing and sale of the Products; on-premises sales, Authorized Off-Premises Sales; customer service; the design, décor and appearance of the FACILITY; the maintenance and remodeling of the FACILITY and the equipment, fixtures and furnishings therein; the use and display of

the Marks; the insurance coverage required to be carried for the FACILITY; the training of FACILITY employees; the days and hours of FACILITY operation; and the content, quality and use of advertising and promotional materials.

System Standards Manuals – The documents and other media that contain the System Standards.

Term – As defined in the Basic Terms.

Transfer or Transfer the Franchise (or similar words) – The direct or indirect sale, assignment, transfer, exchange, conversion, license, sublicense, lease, sublease, mortgage, pledge, collateral assignment, grant of a security, collateral or conditional interest or other encumbrance in or on, or other disposition, whether voluntary, involuntary, by operation of law or otherwise, of this Agreement, of any interest in or right under this Agreement, any form of legal or beneficial ownership interest in Franchisee, or any form of ownership interest or right to participate in or receive the benefits of the assets, revenues, income or profits of Franchisee's business, or any one or more other acts or events not covered by the foregoing that Franchisor reasonably determines to be a form of direct or indirect transfer, including: (a) any transfer, redemption or issuance of a legal or beneficial ownership interest in the capital stock of, a membership interest in, or a partnership interest in, Franchisee or any interest convertible into or exchangeable for capital stock of, a membership interest in or a partnership interest in, Franchisee; (b) any merger or consolidation of Franchisee, whether or not Franchisee is the surviving entity, or any conversion of Franchisee from one form of legal entity into another form of legal entity, or any sale, exchange, encumbrance or other disposition of Franchisee's assets; (c) any transfer in connection with or as a result of a divorce, dissolution of marriage or similar proceeding or a property settlement or legal separation agreement in the context of a divorce, dissolution or marriage or similar proceeding, an insolvency, bankruptcy or assignment for benefit of creditors, a judgment, a corporate, limited liability company or partnership dissolution or otherwise by operation of law; or (d) any transfer by gift, declaration of trust, transfer in trust, revocation of trust, trustee succession, trust termination, discretionary or mandatory trust distribution, occurrence of any event (e.g., death of a person) that affects or ripens the rights of contingent beneficiaries, exercise of a power of appointment, exercise of a withdrawal right, adjudication of Franchisee or any Principal Owner as legally disabled, or upon or after Franchisee's death or the death of any of Franchisee's Principal Owners by will, disclaimer or the laws of intestate succession or otherwise.

Week – Any consecutive seven (7) calendar day period that Franchisor may designate from time to time, currently consisting of each seven (7) calendar day period ending at 11:59 PM on each Sunday.

2.2 Other terms used in this Agreement are defined in the context in which they arise.

3. **ACKNOWLEDGMENTS, REPRESENTATIONS, AND WARRANTIES**

3.1 Franchisee acknowledges that Franchisee has read this Agreement and Franchisor's Franchise Disclosure Document and understands and accepts the terms and conditions contained in this Agreement as being reasonably necessary to maintain Franchisor's high standards of quality and service. Franchisee further acknowledges that the uniformity of those standards at each Krispy Kreme Store is reasonably necessary to protect and preserve the goodwill of the Marks. Franchisee acknowledges that Franchisee has conducted an independent investigation of the business venture contemplated by this Agreement and recognizes that, like any other business, the nature of the business conducted by a Commissary Facility may evolve and change over time, that an investment in a Commissary Facility involves business risks, and that Franchisee's business abilities and efforts are vital to the success of the venture. Any information Franchisee acquires from other Krispy Kreme Store or Commissary Facility franchisees relating to their sales, profits, or cash flows does not constitute information obtained from Franchisor, nor does Franchisor make any representation as to the accuracy of any such information or the likelihood of Franchisee achieving comparable results. Franchisee acknowledges that, in all of its dealings with Franchisor, Franchisor's officers, directors, employees and agents act only in a representative, and not in an individual, capacity. All business dealings between Franchisee and such Persons in connection with

this Agreement are solely between Franchisee and Franchisor. Franchisee further acknowledges that Franchisor has advised Franchisee to have this Agreement reviewed and explained to Franchisee by an attorney.

- 3.2 Franchisee represents and warrants to Franchisor, as an inducement to Franchisor's entry into this Agreement, that all statements Franchisee has made and all materials Franchisee has submitted to Franchisor in connection with Franchisee's Franchise Application for and purchase of the Franchise are accurate and complete and that Franchisee has made no misrepresentations or material omissions to obtain the Franchise. Franchisor has approved Franchisee's Franchise Application for a franchise for a Commissary Facility in reliance on each of Franchisee's representations to Franchisor.
- 3.3 Franchisee represents and warrants to Franchisor that Franchisee has the authority to execute and deliver this Agreement and to perform Franchisee's obligations hereunder.
- 3.4 Franchisee represents and warrants to Franchisor that this Agreement has been duly executed and delivered by Franchisee and, assuming the due authorization, execution and delivery by Franchisor, constitutes a legal, valid and binding obligation of Franchisee, enforceable in accordance with its terms.
- 3.5 Franchisee represents and warrants to Franchisor that Franchisee's execution and delivery of this Agreement does not, and Franchisee's performance of its obligations under this Agreement will not, with or without the giving of notice or the lapse of time or both, (a) conflict with or violate its organizational documents, if applicable, (b) conflict with or violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Franchisee, or (c) conflict with, result in any breach of, or constitute a default under, any contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Franchisee is a party or by which Franchisee is bound.
- 3.6 Franchisee represents and warrants to Franchisor that: (a) Franchisee owns fee simple title to the real property and improvements which comprise the FACILITY; or (b) if Franchisee holds a leasehold interest in the FACILITY, Franchisee has or will have a binding and effective lease with a lease term (plus renewal options) extending at least to the end of the Term and otherwise conforming to Franchisor's requirements in accordance with Section 7.
- 3.7 If Franchisee is, or at any time becomes, a business corporation, partnership, limited liability company or other legal entity, Franchisee and each of its Principal Owners represent, warrant and agree that: (a) Franchisee is duly organized and validly existing under the laws of the state of its organization, and, if a foreign business corporation, partnership, limited liability company or other legal entity, Franchisee is duly qualified to transact business in the state in which the FACILITY is located; (b) Franchisee has the authority to execute and deliver this Agreement and to perform its obligations hereunder; (c) true and complete copies of the articles of incorporation, articles of organization, operating agreement or principles, partnership agreement, bylaws, subscription agreements, buy-sell agreements, voting trust agreements, trust agreements and all other documents relating to Franchisee's ownership, organization, capitalization, management and control ("Organizational Documents") shall be promptly delivered to Franchisor for its approval, which approval shall not be unreasonably withheld; (d) any and all amendments, deletions and additions to Franchisee's Organizational Documents shall be promptly delivered to Franchisor for its approval, which approval shall not be unreasonably withheld; (e) Franchisee's activities are restricted to those necessary solely for the development, ownership and operation of Krispy Kreme Stores and Commissary Facilities in accordance with this Agreement and in accordance with any other agreements entered into with Franchisor or any of its Affiliates; (f) the Organizational Documents recite that the issuance, transfer or pledge of any direct or indirect legal or beneficial ownership interest is restricted by the terms of this Agreement; (g) all certificates representing direct or indirect legal or beneficial ownership interests now or hereafter issued must bear a legend in conformity with applicable law reciting or referring to such restrictions; and (h) Franchisee will deliver to Franchisor a Secretary/Clerk's/Trustee's Certificate or other evidence satisfactory to Franchisor that the execution, delivery and performance of this Agreement and all other agreements and ancillary documents

contemplated hereby or thereby have been duly authorized by all necessary action by the corporation, partnership, limited liability company or other legal entity, as applicable, and are within the legal powers of Franchisee's trustee, if Franchisee is a trust.

- 3.8 Franchisee and each of its Principal Owners represent, warrant, and agree that Exhibit A is current, complete and accurate. Franchisee agrees that an updated Exhibit A will be furnished promptly to Franchisor, so that Exhibit A (as so revised and signed by Franchisee) is at all times current, complete and accurate. Each person who is or becomes a Principal Owner must execute an agreement in the form Franchisor prescribes, undertaking to guarantee and be bound jointly and severally by the terms of this Agreement, the current form of which is attached hereto as Exhibit B. Each person who is or becomes an Owner, whether or not a Principal Owner, must execute an agreement in the form Franchisor prescribes, undertaking to be bound by the confidentiality and non-competition covenants contained in this Agreement, the current form of which is attached hereto as Exhibit C. Each Owner must be an individual acting in his/her individual capacity, unless Franchisor waives this requirement.
- 3.9 The provisions of Section 3 constitute continuing representations and warranties, and Franchisee and Franchisee's Principal Owners shall notify Franchisor immediately in writing of the occurrence of any event or the development of any circumstance that might render any of the foregoing representations and warranties false, inaccurate, or misleading.
- 4. GRANT OF FRANCHISE**
- 4.1 Subject to the terms of and on the conditions contained in this Agreement, Franchisor hereby grants to Franchisee the right to operate the FACILITY during the Term and to use the Marks and the System in the performance of Franchisee's obligations under this Agreement. Franchisee shall use the FACILITY to manufacture certain authorized Products (a) to be distributed to, and offered for sale at, Krispy Kreme Stores that are categorized as Hot Shops, Fresh Shops or Kiosks and established and operated pursuant to Franchise Agreements entered into between Franchisor and Franchisee and (b) to be sold as Authorized Off-Premises Sales.
- 4.2 Franchisee will faithfully, honestly, and diligently perform Franchisee's obligations under this Agreement. Franchisee will continuously exert its best efforts to promote and enhance the operation of the FACILITY and to maximize the sale of Products.
- 4.3 Franchisee may not operate the FACILITY from any location other than the Site without Franchisor's prior written consent. If Franchisor consents to the relocation of the FACILITY, Franchisor has the right to charge Franchisee for its expenses in connection with the relocation.
- 4.4 Franchisee agrees that the FACILITY will be under direct, on-premises management by a trained Managing Director or General Manager or one of Franchisee's other managers, all of whom must have completed training to Franchisor's satisfaction.
- 4.5 Franchisee agrees that the FACILITY will not be closed for five (5) or more consecutive days without Franchisor's prior written consent.
- 4.6 Franchisee expressly acknowledges and agrees that (a) the FACILITY may only produce the Products that Franchisor authorizes from time to time and shall not produce or store any other food products whatsoever; (b) the FACILITY shall only produce authorized Products for distribution to Franchisee's Krispy Kreme Stores that do not have production capabilities for such Products (such as Hot Shops, Fresh Shops and Kiosks) for sale at such stores; and (c) except for Authorized Off-Premises Sales, the FACILITY shall not sell or distribute any Products to any other Persons or locations, including any other Krispy Kreme Stores owned by other franchisees or any sales for Fundraising purposes.
- 4.7 Either party shall have the right at any time to terminate this Agreement without cause, effective ninety (90) days after notice thereof to the other, provided Franchisee no longer operates any Krispy Kreme Stores that are categorized as Hot Shops, Fresh Shops or Kiosks.

5. FRANCHISOR'S RESERVATION OF RIGHTS

- 5.1 Franchisor and its Affiliates (and their respective successors and assigns, by purchase, merger, consolidation or otherwise) retain all rights not expressly granted to Franchisee in this Agreement, including those with respect to Krispy Kreme Stores and Commissary Facilities, the Marks, and the sale of Products, including all rights Franchisor expressly reserves in this Section 5. Franchisee waives, to the fullest extent permitted under applicable law, all claims, demands or causes of action arising from or related to any of such activities by Franchisor or any of its Affiliates.
- 5.2 No exclusive territory, protection, or other right in the contiguous space, area, or market of the FACILITY is expressly or impliedly granted to Franchisee under this Agreement, and Franchisor reserves the right to operate and to grant others the right to operate Krispy Kreme Stores or Commissary Facilities at any location on such terms and conditions as it deems appropriate. Franchisee acknowledges and agrees that such Krispy Kreme Stores or Commissary Facility may be in direct competition with the FACILITY, without regard to any adverse effect on the FACILITY and without any obligation or liability to Franchisee.
- 5.3 Franchisor reserves the right to acquire, develop, and operate, or be acquired by, any company, including a company operating one or more food service businesses (including food service businesses selling doughnuts or coffee).
- 5.4 Franchisor reserves the right to license, sample, sell, or market by any means whatsoever (including the Internet) the Products and any goods or services identified by the Marks. Such goods and services may be licensed, sampled, sold, or marketed in any and all locations and venues, and through any method or channel of distribution Franchisor deems appropriate in its sole discretion (including wholesale distribution of Products to supermarkets, grocery stores, convenience stores, and other retail outlets). Such sales may be in direct competition with the FACILITY, without regard to any adverse effect on the FACILITY and without any obligation or liability to Franchisee.

6. SITE SELECTION

- 6.1 Franchisee acknowledges that, prior to signing this Agreement, Franchisee (with or without Franchisor assistance) located, and Franchisor approved, the Site. Franchisee acknowledges and agrees that Franchisor's recommendation or approval of the Site, and any information regarding the Site communicated to Franchisee, do not constitute any acknowledgement, warranty or representation of any kind, express or implied, including any warranty or representation as to the potential access, visibility or profitability of a Commissary Facility at that Site, or for any other purpose. Franchisor's approval of the Site merely signifies that Franchisor is willing to grant a Franchise for a Commissary Facility at that location. Application of criteria that have appeared effective with respect to other sites may not accurately reflect the potential for all sites, and, after Franchisor's approval of a site, demographic and/ or other factors included in or excluded from Franchisor's criteria could change, thereby altering the potential of a site. The uncertainty and instability of such criteria are beyond Franchisor's control, and Franchisor will not be responsible for the failure of a site Franchisor has recommended or approved to meet expectations as to potential revenue or operational criteria. Neither Franchisor's approval of the Site nor any assistance Franchisor may give Franchisee in identifying the Site, constitutes a warranty or representation of any kind, express or implied, as to the suitability of the proposed Site for a Commissary Facility or for any other purpose. Franchisee's decision to develop and operate the FACILITY at the Site is based solely on Franchisee's own independent investigation of the suitability of the Site for a Commissary Facility.
- 6.2 Franchisee must also cause to be prepared, and submit for approval by Franchisor, a site plan and basic plans and specifications for the FACILITY, including requirements for dimensions, exterior design, materials, interior layout, equipment, fixtures, furniture, signs and decorating. Franchisor's exercise of its right to approve the Site layout, to approve any plans, to inspect the construction or conversion of the FACILITY shall be solely for the purpose of assuring compliance with the System Standards and shall not be construed as any express or implied representation or warranty that the FACILITY complies with any

applicable laws, codes or regulations (including the Americans with Disabilities Act (“ADA”) or any other federal, state, or local law or ordinance regulating standards for the access to, use of, or modification of buildings for and by persons whose disabilities are protected by law) or that the construction thereof is sound or free from defects. Franchisor’s criteria for approval or disapproval do not encompass technical, architectural or engineering considerations. Franchisor shall have no liability or obligation with respect to the construction or conversion of the FACILITY.

7. LEASE OR PURCHASE OF SITE

- 7.1 Franchisee must lease, sublease or purchase the Site within one-hundred and eighty (180) days after the date of Franchisor’s site acceptance letter. Franchisor has the right to approve the terms of any lease, sublease or purchase contract for the Site, and Franchisee agrees to deliver a copy to Franchisor for Franchisor’s approval before Franchisee signs it. Franchisee agrees that any lease or sublease for the Site must, in form and substance satisfactory to Franchisor, (a) provide for notice to Franchisor of Franchisee’s default under the lease or sublease and an opportunity for Franchisor to cure such default; (b) require the lessor or sublessor to disclose to Franchisor, on its request, sales and other information furnished by Franchisee; (c) give Franchisor the right on any termination or expiration (without renewal) of this Agreement to assume the lease or sublease without the lessor’s or sublessor’s consent; (d) give Franchisor the right to enter the FACILITY to remove signs and other tangible property that embodies any of the Marks or that contains or embodies patents owned by Franchisor or any of its Affiliates, and provide that the lessor and/or sublessor relinquishes to Franchisor, on any termination or expiration (without renewal) of this Agreement, any lien or other ownership interest, whether by operation of law or otherwise, in and to any tangible property, including any outdoor sign, that embodies any of the Marks; and (e) require that the lessor and/or sublessor acknowledges that Franchisor has no liability or obligation whatsoever under the lease or sublease until and unless Franchisor assumes the lease or sublease on termination or expiration of this Agreement.

Franchisee may not execute a lease, sublease or purchase contract pertaining to the Site for the FACILITY or any modification thereof without Franchisor’s approval. Franchisor’s approval of the lease, sublease or purchase contract does not constitute a warranty or representation of any kind, express or implied, as to its fairness or suitability or as to Franchisee’s ability to comply with its terms. Franchisor does not, by virtue of approving the lease, sublease or purchase contract, assume any liability or responsibility to Franchisee or to any third parties. Franchisee must deliver a copy of the fully signed lease, sublease or purchase contract to Franchisor within five (5) days after its execution.

8. FACILITY DEVELOPMENT

- 8.1 Franchisee is responsible for developing the FACILITY. Franchisee is obligated to have prepared all required construction plans and specifications to suit the shape and dimensions of the Site and to insure that such plans and specifications comply with all applicable state, federal, and local laws, codes, ordinances, regulations (including building codes, permit requirements, and regulations and the ADA or similar rules governing accommodations for persons with disabilities). Franchisee is obligated to submit construction plans and specifications to Franchisor for approval before construction of the FACILITY is commenced and, at Franchisor’s request, to submit all revised plans and specifications during the course of such construction with “as built” plans to be provided upon completion. Franchisor may be willing to assist Franchisee in developing the FACILITY by recommending engineers and architects and otherwise furnishing information to assist Franchisee in developing the FACILITY in accordance with Franchisor’s specifications.
- 8.2 Franchisee agrees, at its own expense, to do the following with respect to developing the FACILITY at the Site:
- (a) secure all financing required to develop and operate the FACILITY;
 - (b) obtain all building, utility, sign, health, sanitation, business and other permits and licenses required to construct and operate the FACILITY;

- (c) construct all required improvements to the Site and decorate the FACILITY in compliance with plans and specifications and designs Franchisor has approved;
- (d) purchase or lease and install all required equipment, fixtures, furnishings, and signs required for the FACILITY; and
- (e) purchase an opening inventory of authorized and approved materials and supplies, certain of which items must be purchased from Franchisor, its Affiliates, or suppliers designated by Franchisor, all as described in the System Standards Manuals.

8.3 Franchisee acknowledges that Franchisor is not responsible for, and shall have no liability for, the architecture, design, engineering, or construction of the FACILITY, for the FACILITY's compliance with any federal, state, or local law (including the ADA and any other federal, state or local law or ordinance regulating standards for access to, use of the, or modification of buildings for and by persons who are protected by law by virtue of such disability or whose disabilities are otherwise recognized by law), for any errors, omissions or discrepancies of any nature in any drawings or specifications with respect to the FACILITY, or for any other matter relating to the development, use or operation of the FACILITY, even if Franchisor assists in the development of the FACILITY.

9. **BUILDING, EQUIPMENT, FIXTURES, FURNISHINGS, SIGNS AND SUPPLIES**

9.1 Franchisee acknowledges that the Products, Marks, and System have established significant prestige and goodwill and are well-recognized in the mind of the public and the trade. In order to preserve such prestige and goodwill, Franchisee understands and agrees that it is necessary and appropriate for Franchisor to closely control the supply chain for all equipment (including production equipment and fixtures, cash register, POS system and computer), fixtures, furnishings, signs, delivery vehicles, raw materials (including doughnut mixes and coffee beans), supplies, and any other items used or useful in developing or operating the FACILITY or producing, marketing, or selling the Products or other goods Franchisor requires Franchisee to sell.

9.2 Franchisee agrees to use in developing and operating the FACILITY (and producing, marketing, and selling the Products and other goods Franchisor requires Franchisee to sell) only the equipment, fixtures, furnishings, signs, delivery vehicles, raw materials, supplies, cash register, POS system, and computers and other items that Franchisor has approved from time to time for Franchisee to use in conjunction with the FACILITY as meeting its specifications and standards for quality, design, appearance, function and performance in accordance with the System Standards. Any deviation from Franchisor's mandatory specifications and standards as prescribed by the System Standards must receive prior written approval from Franchisor. Approval of any item for use by Franchisor, its Affiliates, or other developers or franchisees will not be construed as approval of such item for Franchisee's use.

9.3 Notwithstanding Section 9.2, Franchisor may require Franchisee to purchase any or all of the equipment, fixtures, furnishings, signs, delivery vehicles, raw materials, supplies, and other items for the FACILITY directly from Franchisor or its Affiliates or other suppliers it may designate from time to time. Franchisee agrees to purchase all such items from Franchisor, its Affiliates or designated suppliers, as Franchisor may require. Franchisee acknowledges and agrees that Franchisor, its Affiliates and designated suppliers have the right to profit from the sale of such items and that Franchisor does not act as agent, representative or in any other intermediary or fiduciary capacity for Franchisee in Franchisor's relationship with any designated suppliers. Franchisee acknowledges and agrees that (a) Franchisor and/ or its Affiliates may receive payments, fees, commission or reimbursements from designated suppliers and third parties in respect to such purchases, (b) Franchisor and/or its Affiliates may have investments in designated suppliers, and (c) Franchisor and/or its Affiliates may profit from Franchisee's purchases from designated suppliers. Franchisor, its Affiliates and designated suppliers shall not be liable for any delay in the delivery of ingredients as a result of any Force Majeure. Franchisor, its Affiliates and designated suppliers may establish policies and procedures from time to time for the allocation and distribution of items among Krispy Kreme Stores and Commissary Facilities.

- 9.4 All equipment (including production equipment), fixtures, furnishings, raw materials (including doughnut mixes and coffee beans) that Franchisee purchases from Franchisor, its Affiliates or designated suppliers shall be at such prices and on such purchase terms (including credit, such as COD, and shipping) and conditions as Franchisor, its Affiliates or designated suppliers may determine from time to time. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY PURCHASE ORDER ISSUED BY FRANCHISOR OR ITS AFFILIATES OR DESIGNATED SUPPLIERS, NEITHER FRANCHISOR, ANY OF ITS AFFILIATES NOR ANY DESIGNATED SUPPLIER MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR OTHERWISE WITH RESPECT ANY ITEMS FRANCHISEE IS REQUIRED TO PURCHASE FROM ANY OF THEM. NEITHER FRANCHISOR, ANY OF ITS AFFILIATES NOR ANY DESIGNATED SUPPLIER WILL HAVE ANY LIABILITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH ANY SUCH ITEMS, INCLUDING FRANCHISEE'S PURCHASE, USE OR RESALE OF ANY SUCH ITEMS.**
- 9.5 In the event Franchisor does not require Franchisee to purchase a particular item from Franchisor, its Affiliates, or a designated supplier, Franchisee may purchase such item from a supplier Franchisor has approved. If Franchisee proposes to purchase any such item from any supplier who is not then approved by Franchisor, Franchisee and the proposed supplier must submit to Franchisor all information that Franchisor may request in order to determine whether to approve the supplier. Franchisor will have the unconditional right to approve or disapprove any proposed supplier, and Franchisor may approve a supplier conditionally. Within one thirty (30) days after Franchisor receives all requested information, Franchisor will communicate to Franchisee in writing Franchisor's decision to approve or disapprove Franchisee's proposed supplier. Franchisor will evaluate proposed suppliers on their ability to comply with applicable standards, specifications and procedures, and Franchisor will only approve those proposed suppliers that meet Franchisor's high standards. Franchisor may disapprove any supplier who Franchisor previously approved, and Franchisee may not, after receipt of notice of disapproval, reorder from any supplier Franchisor has disapproved. Franchisor may prescribe procedures for the submission of requests for approval and impose obligations on approved suppliers, which will be incorporated in a written license agreement with the supplier. Franchisor may obtain from Franchisee and/or such approved suppliers reimbursement of Franchisor's reasonable costs and expenses incurred in connection with the approval process of the supplier's compliance with Franchisor's requirements. Franchisee acknowledges and agrees that Franchisor does not act as agent, representative or in any other intermediary or fiduciary capacity for Franchisee in Franchisor's relationship with approved suppliers. Franchisor may impose limits on the number of approved suppliers. Franchisor has the right to monitor the quality of services provided by approved suppliers in a manner Franchisor deems appropriate and may terminate any approved supplier that does not meet Franchisor's quality standards and specifications, as may be in effect from time to time.
- 9.6 Franchisee agrees to place or display at the Sites (interior and exterior) only such signs, emblems, lettering, logos, and display materials that Franchisor approves from time to time.
10. **COMPUTER SYSTEM**
- 10.1 Franchisee agrees to use in the development and operation of the FACILITY the POS, cash register/ computer terminals and operating software ("Computer System") that Franchisor specifies from time to time. Franchisee agrees to install and use at the FACILITY the Computer System that Franchisor specifies from time to time and to transmit to Franchisor (and otherwise permit Franchisor to collect) in the form and at frequencies it specifies from time to time, electronic information from the Computer System. Franchisee also agrees to identify Product categories and other items in the Computer System in a form that Franchisor specifies. Franchisee agrees to install and maintain at the FACILITY a DSL or cable modem, or similar means of networking, and dedicated line that Franchisor may use to access sales information and other data on the Computer System. Franchisee is responsible for maintaining a secure network environment consistent with this Agreement and all applicable legal requirements.

- 10.2 Franchisee acknowledges that Franchisor has developed specifications for certain components of the Computer System and may modify such specifications and the components of the Computer System from time to time. As part of the Computer System, Franchisor may require Franchisee to obtain specified computer hardware and/or software, including a license to use proprietary software developed by Franchisor or others. Franchisor's modification of such specifications for the components of the Computer System may require Franchisee to incur costs to purchase, lease and/or license new or modified computer hardware and/or software and to obtain service and support for the Computer System during the term of this Agreement. Franchisee acknowledges that Franchisor cannot estimate the future costs of the Computer System (or additions or modifications thereto) and that the cost to Franchisee of obtaining the Computer System (including software licenses) (or additions or modification thereto) may not be fully amortizable over the remaining term of this Agreement. Within sixty (60) days after Franchisee receives notice from Franchisor, Franchisee agrees to obtain the components of the Computer System that Franchisor designates and requires.
- 10.3 Franchisee further acknowledges and agrees that Franchisor has the right to charge a reasonable systems fee for software or systems, modifications and enhancements specifically made for Franchisor that are licensed to Franchisee and other maintenance and support services that Franchisor or its Affiliates furnish to Franchisee related to the Computer System.
11. **FACILITY OPENING**
- 11.1 Franchisee agrees not to open the FACILITY for business until:
- (a) Franchisor approves the FACILITY and site plan as developed in accordance with Franchisor's specifications and System Standards;
 - (b) All required training has been completed to Franchisor's satisfaction;
 - (c) Franchisee is in compliance with all Franchise Agreements, Development Agreements, and Commissary Facility Agreements, including the payment of all amounts then due to Franchisor;
 - (d) Franchisor has been furnished with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor requests or accepts; and
 - (e) Other items which Franchisor may reasonably require have been furnished to Franchisor.
- 11.2 Franchisee must properly staff the FACILITY prior to opening. Franchisor will supply at no charge an operating team that will assist Franchisee for a minimum of seven (7) days in the opening of the FACILITY. However, if Franchisee is developing several Krispy Kreme Stores or Commissary Facilities pursuant to a Development Agreement, this team will be made available at no charge for the first Krispy Kreme Store or Commissary Facility, one-half of a team will be made available at no charge for the second Krispy Kreme Store or Commissary Facility, a field consultant will be made available at no charge for the third Krispy Kreme Store or Commissary Facility and a field consultant may or may not be made available at no charge for any subsequent Krispy Kreme Stores or Commissary Facilities, at Franchisor's sole discretion. "No charge" means Franchisor will be responsible for the team's travel, room and board, and salaries, but Franchisee will be responsible for all other charges or expenses.
12. **CAPITAL IMPROVEMENTS**
- 12.1 In addition to the requirements of Section 10 pertaining to the Computer System, Franchisor may, from time to time, require Franchisee to make certain capital improvements with respect to developing or operating the FACILITY, including: (a) the acquisition of new equipment (whether for the Products or other goods Franchisor requires Franchisee to sell or otherwise), fixtures, furnishings, signs, delivery vehicles, or other fixed assets; (b) periodic remodeling; and (c) replacement of obsolete or worn-out improvements, equipment, fixtures, furnishings, signs, delivery vehicles, or other fixed assets ("Capital Improvements"). Franchisee agrees to make such Capital Improvements as Franchisor may specify from time to time in Franchisor's sole discretion. Franchisee agrees not to make any modifications to any

required Capital Improvements without Franchisor's prior written approval. Franchisee further agrees that all intellectual property rights to any such Capital Improvements, if applicable, will be the exclusive property of Franchisor or its Affiliates.

13. ROYALTIES

13.1 [THIS SECTION HAS BEEN INTENTIONALLY DELETED]

- 13.2 On or before the Payment Day each Week, Franchisee will pay Franchisor an amount equal to the following percentage of Net Sales ("Royalties") for the preceding Week: three and one-half percent (3½%) of Net Sales incurred during 2008; two and one-half percent (2½%) of Net Sales incurred during 2009; and one percent (1%) of Net Sales incurred during 2010 and thereafter. On or before the Reporting Day each Week, Franchisee will report to Franchisor, in the form it may require from time to time, the true and correct Net Sales of the FACILITY for the preceding Week.
- 13.3 Franchisee agrees to give Franchisor authorization, in the form that Franchisor designates from time to time (the current form is attached as Exhibit D), for direct debits from, or credits to, the Account. Franchisee shall not close the Account (or allow the Account to be closed) without first opening and notifying Franchisor of an alternate Account, nor shall Franchisee terminate any direct debit authorization from the Account without a replacement authorization approved by Franchisor. Franchisee hereby authorizes Franchisor to initiate debit entries and/or credit entries to the Account for payments of Royalties and other amounts payable under this Agreement, including purchases for production equipment, fixtures, furnishings, doughnut mixes and other ingredients, packaging and all supplies purchased from Franchisor and any interest charges due thereon. Franchisee agrees to make the funds available in the Account for withdrawal no later than the due date for payment. The amount actually transferred from the Account to pay Royalties will be based on the FACILITY's Net Sales reported to Franchisor or determined by Franchisor from the records contained in the cash register/computer terminals of the FACILITY. If Franchisee has not reported Net Sales of the FACILITY to Franchisor for any reporting period as required above, Franchisee hereby authorizes Franchisor to debit the Account in an estimated amount based on prior reports of Net Sales.
- 13.4 If at any time Franchisor determines that Franchisee has under-reported the Net Sales of the FACILITY, or underpaid Royalties or any other amounts due to Franchisor under this Agreement, Franchisee hereby authorizes Franchisor to initiate immediately a debit to the Account in the appropriate amount, including interest as provided for in this Agreement. Any overpayment will be credited to the Account through a credit effective as of the first reporting date after Franchisor and Franchisee determine that such credit is due.
- 13.5 All amounts that Franchisee owes Franchisor will bear interest after their due date at the rate of one and one-half percent (1.5%) per month or the highest contract rate of interest permitted by law, whichever is less. Franchisee acknowledges that this Section does not constitute Franchisor's agreement to accept any payments after they are due or Franchisor's commitment to extend credit to, or otherwise finance Franchisee's operation of, the FACILITY. Franchisee's failure to pay all amounts when due constitutes a material breach and grounds for termination of this Agreement, as provided in Section 26 hereof, notwithstanding the provisions of this Section 13.5.
- 13.6 Notwithstanding any designation Franchisee might make, Franchisor has sole discretion to apply any of Franchisee's payments to any of its past due indebtedness to Franchisor in any sequence. Franchisee acknowledges and agrees that Franchisee has no right to set off any amounts that Franchisee claims Franchisor owes Franchisee against Royalties, Brand Fund contributions, payments for purchases, or any other amounts Franchisee owes Franchisor under this Agreement or otherwise.

14. TRAINING AND GUIDANCE

- 14.1 Before the FACILITY begins operating, Franchisor will furnish training on the operation of a Commissary Facility as follows. Franchisor will furnish a training program for up to two (2) FACILITY managers furnished at Franchisor's designated training facility and/or at an operating Commissary

Facility, at Franchisor's discretion. The FACILITY managers are required to complete training to Franchisor's satisfaction. Although Franchisor will furnish training to these managers of the FACILITY at no additional fee or other charge, Franchisee will be responsible for the managers' wages, salaries, travel, room and board, and living expenses during training. Franchisee agrees to replace a manager immediately if Franchisor determines that he or she is not qualified to serve in this capacity at the FACILITY. Franchisor will furnish the same training program to one (1) additional manager of the FACILITY per year that Franchisee hires after the FACILITY is open, without fee or other charge, subject to the schedules for the training program in effect from time to time. Franchisee will be responsible for the managers' wages, salaries, travel, room and board, and living expenses during training.

- 14.2 Franchisor may require managers of the FACILITY to attend and successfully complete periodic or additional training programs, and Franchisor may also offer optional training programs. Except as provided in Section 14.1, Franchisor has the right to charge reasonable fees for providing any such initial, periodic or additional training programs. Franchisee will be responsible for the managers' wages, salaries, travel, room and board, and living expenses during incurred by Franchisee and Franchisee's personnel in attending any training programs. Franchisee shall immediately replace any managers who fail to successfully complete any training program.
- 14.3 Franchisor will furnish Franchisee periodic guidance with respect to the System, including improvements and changes to the System. Such guidance, at Franchisor's discretion, will be furnished in the form of the System Standards Manuals, bulletins and other written materials, consultations by telephone or in person at Franchisor's offices or at the FACILITY, or by any other means of communications. At Franchisee's request, Franchisor may provide special assistance for which Franchisee will be required to pay the fees and charges Franchisor may establish from time to time. If Franchisee requests or Franchisor requires additional or special training for Franchisee's employees, all of the expenses that Franchisor incurs in connection with such training, including per diem charges and travel and living expenses for Franchisor's personnel, will be Franchisee's responsibility.

15. **SYSTEM STANDARDS**

- 15.1 Franchisor will loan Franchisee one (1) copy of its System Standards Manuals solely for use in operating the FACILITY during the Term. The System Standards Manuals at all times will remain Franchisor's property, and they are protected by copyright. Franchisee will keep its copy of the System Standards Manuals current and in a secure location at the FACILITY and shall return them to Franchisor immediately upon request, upon termination, or expiration of this Agreement or upon any Transfer. If any copies of the System Standards Manuals in Franchisee's possession are lost, destroyed or significantly damaged, Franchisee will obtain a replacement copy at Franchisor's then applicable charge. Franchisee may not at any time copy, duplicate, record, or otherwise reproduce any part of the System Standards Manuals or allow any unauthorized persons access to any System Standards Manuals, including those that are made available electronically, nor may Franchisee post all or any part of the System Standards Manuals on any limited access intranet sites without Franchisor's approval. Franchisee may not distribute any part of the System Standards Manuals and may not disclose any part of the System Standards Manuals to any person, other than its employees who have a need to know the contents of the System Standards Manuals in order to perform their jobs.
- 15.2 During the Term, Franchisee will comply with all of the System Standards and other requirements contained in System Standards Manuals, in addition to all applicable laws, regulations, rules, by-laws, orders and ordinances in connection with its operation of the FACILITY. In the event of a dispute relating to the contents of the System Standards Manuals, the master copy of the System Standards Manuals maintained by Franchisor at its principal office is controlling. Franchisor may at any time and from time to time change the System Standards Manuals to reflect changes in System Standards.
- 15.3 To determine whether Franchisee is in compliance with this Agreement and all System Standards, Franchisor and/or Franchisor's agents have the right at any time during regular business hours, and without prior notice to Franchisee, to: (a) inspect the FACILITY; (b) observe, photograph and videotape

the operations of the FACILITY; (c) remove samples of any Products, materials or supplies for testing and analysis; (d) interview personnel of the FACILITY; (e) interview customers of the FACILITY and to require Franchisee to present to Franchisee customers any evaluation forms periodically prescribed by Franchisor and to participate in and/or request its customers to participate in any surveys performed by or on behalf of Franchisor; and (f) inspect and copy any books, records and documents relating to the operation of the FACILITY.

16. MARKS

- 16.1 Franchisee acknowledges that HDN Development Corporation is the Owner of the Marks and that Franchisor has the right to sublicense the use of the Marks. Franchisee further acknowledges that Franchisee's right to use the Marks is derived solely from this Agreement and is limited to the performance of Franchisee's responsibilities and obligations hereunder in accordance with the terms hereof. Franchisee acknowledges that its unauthorized use of any of the Marks will constitute a material breach of this Agreement, warranting immediate termination of this Agreement by Franchisor at Franchisor's election. Franchisee acknowledges and agrees that its usage of the Marks and any goodwill established thereby shall inure solely to the benefit of the Owner of the Marks and that this Agreement does not confer any goodwill or other interests in any of the Marks upon Franchisee or Franchisee's Owners (other than the rights specifically granted by this Agreement). All provisions of this Agreement applicable to the Marks apply to any additional trademarks, service marks, logos, trade dress and commercial symbols Franchisor authorizes Franchisee to use. Franchisee may not at any time during or after the Term contest, or assist any other person in contesting, the validity or ownership of any of the Marks.
- 16.2 Franchisee shall use the Marks as the sole brand and other source identifier of the FACILITY, provided Franchisee shall identify itself as the independent owner and operator of the FACILITY in the manner Franchisor prescribes. Franchisee shall use the Marks only as Franchisor prescribes or allows in writing, whether in connection with the sale of Products and the operation of the FACILITY, or otherwise.
- 16.3 Franchisee and Franchisee's Owners, affiliates and agents may not: (a) challenge the validity of any of the Marks or any registration or application for registration therefore, or attempt to claim ownership of or to register anywhere any of the Marks or any derivation or colorable imitation thereof; (b) attempt to claim ownership of or to register anywhere any trademark, service mark, trade name, or trade dress confusingly similar to any of the Marks; (c) use any of the Marks or any other trademark or trade dress confusingly similar thereto in any manner that would jeopardize or Franchisor's rights in the Marks; or (d) do any act that would invalidate registration for any of the Marks. Franchisee may not use any of the Marks as part of any corporate or legal business name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to Franchisee hereunder), or in any modified form, nor may Franchisee use any of the Marks in connection with the performance or sale of any unauthorized products or services or in any other manner Franchisor has not expressly authorized in writing. Franchisee agrees to display the Marks prominently in the manner Franchisor prescribes, including at the FACILITY, on packaging and serving materials that Franchisor designates and in connection with forms and advertising and marketing materials. Franchisee agrees to give such notices of trademark and service mark registrations and such other trademark and service mark notices as Franchisor specifies and to obtain any fictitious or assumed name registrations required under applicable law.
- 16.4 Franchisee agrees to notify Franchisor immediately of any apparent infringement of, or challenge to, any of the Marks, or of any claim by any Person of any rights in any of the Marks, and Franchisee agrees not to communicate with any Person other than Franchisor, Franchisor's attorneys and Franchisee's attorneys in connection with any such apparent infringement, challenge or claim. Franchisor has sole discretion to take such action as Franchisor deems appropriate and the right to control exclusively any litigation, U.S. Patent and Trademark Office proceeding or any other proceeding arising out of any such apparent infringement, challenge or claim or otherwise relating to any of the Marks, including the exclusive right to utilize counsel of Franchisor's choice to prosecute or defend any such litigation or proceeding. Any award recovered in any such action or proceeding shall belong exclusively to Franchisor, or, as

appropriate, Franchisor's Affiliates. Franchisee agrees to sign any and all instruments and documents, render such assistance and do such acts and things as, in the opinion of Franchisor and/or Franchisor's attorneys, may be necessary or advisable to protect and maintain Franchisor's interests in any litigation or U.S. Patent and Trademark Office proceeding or other proceeding or otherwise to protect and maintain Franchisor's interests in the Marks.

- 16.5 Franchisee may not register, or attempt to register, any of the Marks as part of any Internet domain name or URL, and may neither display nor use any of the Marks or other of Franchisor's or its Affiliates' intellectual property in connection with, or associate the System with (through a link or otherwise) any website advertising, address or listing on the World Wide Web or any other portion of the Internet without Franchisor's prior written consent.
- 16.6 Franchisee may not use any of the Marks to incur any obligation or indebtedness on behalf of Franchisor or its Affiliates.
- 16.7 Franchisee hereby assigns to Franchisor all tangible media of expression derived from any of the Marks, and agrees to execute such further assignments as Franchisor may request. Franchisee shall take all actions and sign all documents necessary to give effect to the purpose and intent of this Section 16. Franchisee irrevocably appoints Franchisor as the true and lawful attorney-in-fact for Franchisee and authorizes Franchisor to take such actions and to execute, acknowledge and deliver all such documents as may from time to time be necessary to convey to Franchisor all rights granted by this Agreement.
- 16.8 Franchisor may, in its sole discretion, modify or discontinue the use of any of the Marks and/or to use one or more additional or substitute trademarks or service marks. Franchisee agrees to comply with Franchisor's directions with regard to such modification, discontinuance, addition, or substitution of use of any Mark. Franchisor will not be obligated to reimburse Franchisee for any expense or loss of revenue related thereto.
- 16.9 Franchisee acknowledges that the Marks have established prestige and goodwill and are well recognized in the mind of the public and the trade, and that it is of great importance to Franchisor that the high standards and reputation symbolized by the Marks be maintained in the manufacture, marketing, and sale of the various Products and other authorized goods bearing and services utilizing the Marks. Accordingly, all items of Products manufactured, marketed, or sold, and services rendered, by Franchisee pursuant to this Agreement shall be of high quality as determined by Franchisor in its sole discretion. They shall be suitable for the exploitation of the Marks to the best advantage and the protection and enhancement of the Marks and the goodwill associated therewith. Franchisor shall have the right to, and shall, exercise quality control over Franchisee's use of the Marks to the degree reasonably necessary to maintain the validity thereof and to protect the goodwill associated therewith, including but not limited to the right to inspect and monitor Franchisee's use of the Marks in any manner and time prescribed by Franchisor.
17. **CONFIDENTIAL INFORMATION**
- 17.1 Franchisor will disclose to Franchisee such parts of the Confidential Information as Franchisor deems necessary or advisable from time to time for the performance of Franchisee's obligations under this Agreement. Franchisee acknowledges and agrees that Franchisee and its Owners and Affiliates will not acquire any interest in or right to use the Confidential Information, other than the right to use it in the performance of Franchisee's obligations under this Agreement, and that the use or duplication of the Confidential Information in any other business would constitute an unfair method of competition with Franchisor and with other developers and Franchisees of Krispy Kreme Stores. Franchisee agrees to disclose the Confidential Information to Franchisee's Owners and to Franchisee's employees only to the extent reasonably necessary for the performance of Franchisee obligations under this Agreement. Franchisee's Owners must execute the form of Investor Personal Covenants Regarding Confidentiality, Non-Competition and Non-Solicitation attached hereto as Exhibit C.

- 17.2 Franchisee acknowledges and agrees that the Confidential Information is confidential, is Franchisor's proprietary and valuable asset, includes trade secrets owned by Franchisor and Franchisor Affiliates and is disclosed to Franchisee solely on the condition that Franchisee, Franchisee's Owners and employees who have access to the Confidential Information agree, and Franchisee agrees that, during and after the Term, Franchisee, Franchisee's Owners, Franchisee's Affiliates and Franchisee's employees:
- (a) will not use Confidential Information in any other business or capacity;
 - (b) will maintain the absolute confidentiality of Confidential Information during and after the Term;
 - (c) will not make unauthorized copies of any portion of Confidential Information whether through electronic media, writings, or other tangible or intangible means of expression; and
 - (d) will adopt and implement all reasonable procedures that Franchisor prescribes from time to time to prevent unauthorized use or disclosure of Confidential Information, including restrictions on disclosure thereof to FACILITY personnel and others.

Without limiting the foregoing, Franchisee, and each of its Owners, as applicable, each (i) acknowledge the possibility that they may gain access to Franchisor's material non-public information and/or that of Franchisor's parent company, Krispy Kreme Doughnuts, Inc. ("KKDI"), and that the securities laws prohibit trading in KKDI securities while in possession of such information, and (ii) agree to refrain from trading in KKDI securities in violation of such laws.

- 17.3 Notwithstanding anything to the contrary contained in this Agreement and provided Franchisee has obtained Franchisor's prior written consent, the restrictions on Franchisee disclosure and use of the Confidential Information will not apply to the following:
- (a) information, methods, procedures, techniques and knowledge which are or become generally known in the food service business, other than through disclosure (whether deliberate or inadvertent) by Franchisee, Franchisee's Owners, agents, or employees; and
 - (b) the disclosure of the Confidential Information in judicial, arbitration or administrative proceedings to the extent that Franchisee is legally compelled to disclose such information, provided Franchisee has notified Franchisor prior to such disclosure and has used Franchisee's best efforts to obtain, and has afforded Franchisor sufficient opportunity to seek an appropriate protective order and obtain, assurances satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

18. PATENTS AND INVENTIONS

- 18.1 Franchisor and/or its Affiliates have obtained certain patent protection and may seek additional patent protections for other aspects of the System, the Products, and/or other technology related to the development and operation of Krispy Kreme Stores and Commissary Facilities and the production, marketing, and sale of the Products, or otherwise, including all improvements thereto. Nothing in this Agreement shall be construed as transferring ownership of any patents or patent applications from Franchisor or its Affiliates to Franchisee. Nothing in this Agreement shall be construed as transferring the right to sublicense any patents or patent applications from Franchisor or its Affiliates to Franchisee.
- 18.2 Franchisee agrees to promptly disclose to Franchisor and/or its Affiliates, and Franchisee agrees not to disclose to any other Person or permit any other Person to use (absent Franchisor's prior written consent), any and all inventions (which term "inventions" includes any invention, idea, concept, method, technique, material, design, discovery, know-how, development, improvement, product, process, or innovation), including all improvements thereto, which are developed by Franchisee, Franchisee's Owners, or Franchisee's Affiliates, whether or not constituting protectable intellectual property, which are in any way related to the System, the Products, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products.

- 18.3 Franchisee hereby agrees to assign, and does assign, to Franchisor and/or the Affiliates Franchisor designates all right, title, and interest in any invention, patent application, or patent conceived of or reduced to practice which is in any way related to the System, the Products, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products. Franchisor will have no obligation to make payments to Franchisee or any other Person with respect to any such assignments. Franchisee agrees that all such inventions, patent applications, and patents referenced above shall belong to Franchisor and/or Franchisor's Affiliates, and that all right, title, and interest therein shall be the sole and exclusive property of Franchisor and/or Franchisor's Affiliates, except that Franchisee shall be entitled to use all such inventions without charge by Franchisor in connection with this Agreement for the Term.
- 18.4 Franchisee agrees to assist Franchisor and/or Franchisor's Affiliates in the evaluation and documentation of any such inventions, patent applications, and patents referred to above. Franchisee also agrees to assist Franchisor and/or Franchisor's Affiliates in the documentation of such assignment in any way necessary to transfer such interest to Franchisor and/or Franchisor's Affiliates. Franchisee also agrees to assist Franchisor and/or Franchisor's Affiliates in obtaining and maintaining such interest, including signing any declaration, patent application, assignment of rights, power of attorney, or other documents in such form and substance as Franchisor may require related to such invention or interest. Franchisee further agrees to assist Franchisor and/or Franchisor's Affiliates in the protection and enforcement of any such interest, including testifying in any court action brought to enforce, protect, or defend such interest or invention.
19. **WORKS OF AUTHORSHIP AND COPYRIGHTS**
- 19.1 Franchisee agrees that all works (defined herein as including works of authorship, works in any tangible medium, writings, documents, and computer programs) authored, made, or produced by Franchisee, Franchisee's Owners, or Franchisee's Affiliates that are in any way related to the System, the Products, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products, whether or not such works are copyrightable, are "works-made-for-hire" and that Franchisee will not have, under this Agreement or otherwise, any right, title, or interest of any kind or nature in and to such works, and that all rights therein are the sole and exclusive property of Franchisor and/or its Affiliates.
- 19.2 If any portion of any work described above is not considered a work-made-for-hire for Franchisor or its Affiliates, Franchisee hereby agrees to assign, and does assign, to Franchisor and/or the Affiliates Franchisor designates, all right, title, and interest in any work authored, made, or produced by Franchisee or its Owners or Affiliates (whether alone or in conjunction with one or more other persons) in the course of involvement with Franchisor under this Agreement or otherwise relating to the System, the Products, the Marks, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products. Franchisor will have no obligation to make payments to Franchisee or any other Person with respect to any such assignment. Franchisee agrees that all such works referenced above shall belong to Franchisor and/or its Affiliates, and that all right, title, and interest therein, including any copyrights, shall be the sole and exclusive property of Franchisor and/or its Affiliates, except that Franchisee shall be entitled to use all such works at the FACILITY (if authorized by Franchisor) without charge by Franchisor.
- 19.3 Franchisee agrees to assist Franchisor in the evaluation, documentation, and registration of any such work described above. Franchisee also agrees to assist Franchisor in the documentation of such assignment in any way necessary to transfer such interest to Franchisor or its Affiliates. Franchisee also agrees to assist Franchisor in obtaining and maintaining such interest, including signing any assignment of rights, copyright application, power of attorney, or other document in such form and substance as Franchisor may require related to such work or interest. Franchisee further agrees to assist Franchisor in the protection and enforcement of any such interest, including testifying in any court action brought to enforce, protect, or defend such work.

20. **EXCLUSIVE RELATIONSHIP**

20.1 Franchisee acknowledges and agrees that Franchisor would be unable to (a) protect the Confidential Information against unauthorized use or disclosure; (b) preserve the prestige, integrity, and goodwill of the Products, Marks, and System; or (c) encourage the free exchange of ideas and information among Krispy Kreme Stores and Commissary Facilities if franchisees and owners of Krispy Kreme Stores and Commissary Facilities or their owners were permitted to engage in or benefit from certain competitive activities. Franchisee also acknowledges that Franchisor has granted the franchise rights to Franchisee in consideration of and reliance on Franchisee's agreement that Franchisee and its Owners will deal exclusively with Franchisor. Therefore, except as expressly authorized by this Agreement or another written agreement with Franchisor, Franchisee agrees that during the term of this Agreement, without Franchisor's prior written consent, neither Franchisee, nor any other Restricted Person will:

- (i) have any Ownership Interest in a Competitive Business;
- (ii) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business;
- (iii) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business, where such services (A) are substantially similar to those provided to Franchisor or Franchisor Affiliates by Franchisee or the respective Restricted Person; or (B) create a relationship between Franchisee or the Restricted Person and such Competitive Business in which Franchisee or the Restricted Person could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any material Confidential Information to such Competitive Business;
- (iv) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility, or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Franchisee to hire any such Person, then Franchisee agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (v) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

20.2 At all times during the Term, Franchisee will designate a Managing Director of its business pursuant to this Agreement who shall complete Franchisor's mandatory training program to Franchisor's satisfaction. The initial Managing Director is identified in the Basic Terms. The Managing Director will use his or her full-time efforts to fulfill Franchisee's obligations under this Agreement and under Franchise Agreements and any other Commissary Facility Agreements, and will not directly or indirectly engage in any other business or activity that requires any significant management responsibility or time commitments, or that otherwise conflicts with Franchisee's obligations under this Agreement. If the Managing Director is terminated in that role, or if the Managing Director does not carry out his or her responsibilities or otherwise perform in accordance with this Agreement, Franchisee will promptly designate a replacement, and each such replacement shall complete Franchisor's mandatory training program to Franchisor's satisfaction.

21. **COMPLIANCE WITH LAW**

21.1 In operating the FACILITY, Franchisee agrees to comply with all laws, including, but not limited to, all federal, state, and local laws, rules, regulations, ordinances, court orders, and decrees. Franchisee agrees that its failure to comply with these laws is a material breach and grounds for termination of this Agreement.

- 21.2 Franchisee and Franchisee's Principal Owners represent and warrant to Franchisor that neither Franchisee nor any Principal Owner is identified, either by name or an alias, pseudonym or nickname, on the lists of "Specially Designated Nationals" or "Blocked Persons" maintained by the U.S. Treasury Department's Office of Foreign Assets Control. Further, Franchisee and Franchisee's Principal Owners represent and warrant that neither has violated and agree that neither will violate any law (in effect now or which may become effective in the future) prohibiting corrupt business practices, money laundering or the aid or support of persons or entities who conspire to commit acts of terror against any person or government, including acts prohibited by the U.S. Patriot Act, U.S. Executive Order 13244, or similar law.
22. **MARKETING AND ADVERTISING**
- 22.1 Franchisor has established a fund (the "Brand Fund") for the creation, production and/or implementation of advertising, promotional, marketing, and public relations programs and materials Franchisor deems appropriate. Franchisee agrees to contribute to the Brand Fund amounts (as determined by Franchisor from time to time) not more than one percent (1%) of the Net Sales of the FACILITY, payable by electronic funds transfer in the same manner as the Royalties. Krispy Kreme Stores and Commissary Facilities located in the U.S. and owned or operated by Franchisor shall contribute to the Brand Fund at least on the same basis.
- 22.2 Franchisor will direct all programs funded by the Brand Fund. Periodically, Franchisor may give Franchisee, at no cost, samples of advertising, marketing, and promotional formats and materials produced and funded by the Brand Fund. Franchisee may purchase additional copies of these materials at cost.
- 22.3 The Brand Fund will be accounted for separately from Franchisor's other funds and will not be used to defray any of its general operating expenses, except for reasonable salaries, administrative costs and overhead Franchisor may incur in activities related to the administration of the Brand Fund and its programs, including conducting market research, preparing advertising and marketing materials and collecting and accounting for contributions to the Brand Fund. Franchisor may spend in any fiscal year an amount greater or less than the aggregate contributions of all Krispy Kreme Stores and Commissary Facilities to the Brand Fund in that year, and the Brand Fund may borrow from Franchisor or other lenders to cover deficits in the Brand Fund or cause the Brand Fund to invest any surplus for future use by the Brand Fund.
- 22.4 Franchisor will prepare annually a statement of monies collected and costs incurred by the Brand Fund and furnish Franchisee a copy upon Franchisee's written request. Except as otherwise expressly provided in this Section 22, Franchisor assumes no direct or indirect liability or obligation with respect to the maintenance, direction or administration of the Brand Fund. Franchisor does not act as trustee or in any other fiduciary capacity with respect to the Brand Fund.
- 22.5 Franchisor may operate the Brand Fund through a separate entity whenever it deems appropriate. The successor entity will have all of the rights and duties specified in Sections 22.1 through 22.8.
- 22.6 Franchisor cannot ensure that Brand Fund expenditures in or affecting any geographic area are proportionate or equivalent to Brand Fund contributions by contributors operating in that geographic area or that any contributor benefits directly or in proportion to its Brand Fund contribution.
- 22.7 Franchisor has the right, but no obligation, to use collection agents and institute legal proceedings to collect Brand Fund contributions at the Brand Fund's expense. Franchisor may also forgive, waive, settle and compromise any and all claims for contributions to the Brand Fund. Except as expressly provided in Sections 22.1 through 22.8, Franchisor assumes no direct or indirect liability or obligation to Franchisee for collecting amounts due to, maintaining, directing or administering the Brand Fund.
- 22.8 Franchisor may at any time defer or reduce the Brand Fund contributions of one or more franchisees and, upon thirty (30) days' prior written notice to Franchisee, reduce or suspend Brand Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand

Fund. If Franchisor terminates the Brand Fund, it will distribute all unspent monies to its franchisees, and to Franchisor and its Affiliates, in proportion to their, and Franchisor's, respective Brand Fund contributions during the preceding twelve (12) month period.

- 22.9 Franchisee will not execute or conduct any advertising or promotional activity in relation to the FACILITY or the System without Franchisor's prior written approval. Franchisee must submit annual marketing plans to Franchisor in a form Franchisor specifies. Such annual marketing plans require Franchisor approval.
- 22.10 **[THIS SECTION HAS BEEN INTENTIONALLY DELETED]**
- 22.11 **[THIS SECTION HAS BEEN INTENTIONALLY DELETED]**
- 22.12 Before Franchisee uses any advertising, promotional or marketing materials that Franchisor has not prepared or previously approved, Franchisee must send samples of all such materials to Franchisor for approval. If Franchisee does not receive Franchisor's written approval within thirty (30) days after Franchisor receives the materials, they are deemed approved. Franchisee may not use any advertising, promotional, or marketing materials that Franchisor has disapproved.
- 22.13 Franchisee agrees that any advertising, promotion and marketing it conducts will be completely clear and factual and not misleading and conform to the highest standards of ethical marketing and the promotion policies and System Standards that Franchisor prescribes from time to time.
- 22.14 At Franchisor's option, Franchisor may establish one or more websites to advertise, market, and promote Krispy Kreme Stores, the Products, and/or the Krispy Kreme franchise system (each a "System Website"). If Franchisor establishes a System Website, Franchisor may require Franchisee to participate in such System Website by including information relating to the FACILITY. Franchisor will control website traffic and registration of additional domain names.
- 22.15 Franchisee may not develop, maintain, or authorize any other website that mentions or describes Franchisee or the FACILITY or that displays any of the Marks without obtaining written approval from Franchisor.
- 22.16 **[THIS SECTION HAS BEEN INTENTIONALLY DELETED]**
23. **ACCOUNTING, REPORTS AND FINANCIAL STATEMENTS**
- 23.1 Franchisee will, at Franchisee's expense, retain all records relating to the development and operation of the FACILITY. All such records shall be kept at the premises of the FACILITY, unless Franchisor otherwise approves. Franchisee will furnish to Franchisor via the medium Franchisor prescribes from time to time, in a form consistent with its then-current accounting practices and procedures: (a) by each Reporting Day, reports of the FACILITY's sales, distribution of Products (including number of units and Stores to which distributed), cost of goods sold, labor expense and number of transactions for the preceding Week; (b) within thirty (30) days after the end of each month, an operating income statement of Franchisee, the FACILITY, or both for such month and fiscal year to date, prepared in accordance with generally accepted accounting principles consistently applied; (c) within forty-five (45) days after the end of each fiscal quarter, a balance sheet and income statement of Franchisee, the FACILITY, or both for such quarter and fiscal year to date, prepared in accordance with generally accepted accounting principles consistently applied; (d) within one hundred twenty days (120) days after the end of Franchisee's fiscal year, a balance sheet and an income statement for the FACILITY and/or Franchisee for such fiscal year (reflecting all year-end adjustments), and a statement of cash flow of the FACILITY, prepared in accordance with generally accepted accounting principles consistently applied; and (e) upon request by Franchisor, such other data, reports, information and supporting records as Franchisor may from time to time prescribe.
- 23.2 Franchisee agrees to maintain and to furnish to Franchisor, upon request, complete copies of all withholding, income, sales, value added, use and service tax returns filed by Franchisee reflecting activities of the FACILITY.

- 23.3 Franchisor has the right to (a) disclose data derived from all reports; (b) require Franchisee to have audited financial statements prepared on an annual basis; and (c) to access all cash registers/computer terminals and Franchisee's Computer System and retrieve all information relating to the FACILITY, as often as it deems appropriate. Franchisee will take such action as may be necessary to provide such access to Franchisor. Furthermore, Franchisee will immediately report to Franchisor any events or developments which may have a significant or material adverse impact on the operation of the FACILITY, Franchisee's performance under this Agreement, or the goodwill associated with the Marks and Krispy Kreme Stores. Franchisee will sign and verify as correct and complete each report and financial statement submitted by Franchisee in the manner prescribed by Franchisor.
- 23.4 Each year, Franchisor requires that Franchisee submit an annual business plan for Franchisor's review. Further, Franchisor has the right to audit at any time during regular business hours, and without prior notice to Franchisee, to inspect and audit, or cause to be inspected and audited, the business, financial and tax records of the FACILITY and Franchisee. Franchisee will fully cooperate and cause its employees and agents to fully cooperate with Franchisor's representatives and independent accountants hired by Franchisor to conduct any such inspection or audit. Franchisor's right to audit includes the right to access the Computer System. In the event any such inspection or audit reveals an understatement of the Net Sales of the FACILITY, Franchisee will pay to Franchisor, within fifteen (15) days after receipt of the inspection or audit report, the Royalty payments and Brand Fund contributions due on the amount of such understatement, plus interest (at the rate and on the terms provided in this Agreement) from the date originally due until the date of payment. Further, in the event such inspection or audit is made necessary by Franchisee's failure to furnish timely any reports or supporting records required to be submitted under this Agreement or if an understatement of Net Sales for the period of any audit is determined by any such audit or inspection to be greater than two percent (2%), Franchisee will reimburse Franchisor for the cost of such inspection or audit, including legal fees, accountants' fees and the travel expenses, room and board, per diem charges, and other associated expenses for Franchisor's employees. The foregoing remedies are in addition to all other remedies and rights contained in this Agreement or under applicable law.
24. **TRANSFER**
- 24.1 This Agreement is fully transferable by Franchisor (without any obligation to provide notice to Franchisee or obtain Franchisee's consent) and will inure to the benefit of any assignee or other legal successor to Franchisor's interests. Franchisee agrees that Franchisor will have the right, from time to time, to delegate the performance of any portion of or all of its obligations and duties under this Agreement or otherwise in connection with the System to designees, whether the same are Franchisor's agents or independent contractors with which Franchisor has contracted to provide such services or perform such duties.
- 24.2 Franchisee's rights and duties under this Agreement are personal to Franchisee, or if Franchisee is a business corporation, partnership, limited liability company or any other legal entity, its Owners. Accordingly, neither Franchisee nor any of its Owners may Transfer the Franchise without Franchisor's prior approval and without complying with the terms and conditions of Section 24. Any Transfer without such approval or compliance constitutes a breach of this Agreement, and is void and of no force or effect. Notwithstanding the foregoing, Franchisee may not under any circumstances directly or indirectly subfranchise or sublicense any of its rights hereunder.
- 24.3 If Franchisor has not exercised its right of first refusal under Section 24.5, Franchisor will not unreasonably withhold its approval of a Transfer of the Franchise that meets all of the reasonable restrictions, requirements and conditions Franchisor imposes on the Transfer, the transferor(s) and/or the transferee(s) from time to time, which shall in any event include, the following:
- (a) Franchisee must be in Good Standing;
 - (b) the proposed transferee and its owners (if the proposed transferee is a corporation, partnership, limited liability company or other legal entity) must provide Franchisor on a timely basis all information Franchisor requests, and must be individuals acting in their individual capacities

who are of good character and reputation, who must have sufficient business experience, aptitude and financial resources to operate the FACILITY pursuant to this Agreement and to develop Krispy Kreme Stores and Commissary Facilities pursuant to the Development Agreement, if applicable, and who must otherwise meet Franchisor's then-current standards for approval;

- (c) the proposed transferee may not be an entity, or be affiliated with an entity, that is required to comply with the reporting and information requirements of the Securities Exchange Act of 1934, as amended;
- (d) the transferee (and its owners) must agree to be bound by all of the provisions of this Agreement for the remainder of the Term or, at Franchisor's option, execute Franchisor's then current Commissary Facility Agreement and related documents used in the state where the FACILITY is located (which may provide for different royalties, advertising contributions, duration and other rights and obligations than those provided in this Agreement);
- (e) the transferee must acquire, in a concurrent transaction, all of the rights and obligations of Franchisee and its Affiliates under all agreements between Franchisee or its Affiliates and Franchisor or its Affiliates, including any Development Agreement and all Franchise Agreements and Commissary Facility Agreements executed by Franchisee or its Affiliates pursuant to the Development Agreement or pursuant to any other development or similar agreement with Franchisor;
- (f) Franchisee or the transferee must pay Franchisor a transfer fee in an amount equal to Five Thousand Dollars (\$5,000.00);
- (g) Franchisee and its Owners and Affiliates must, except to the extent limited or prohibited by applicable law, execute a general release, in form and substance satisfactory to Franchisor, of any and all claims against Franchisor, its Affiliates and shareholders, members, managers, officers, directors, employees, agents, successors and assigns;
- (h) Franchisee must provide Franchisor with all information requested by Franchisor in connection with the Transfer, and Franchisor must not have disapproved the material terms and conditions of such Transfer (including the price and terms of payment and the amount to be financed by the transferee in connection with such Transfer) on the basis that they are so burdensome as to be likely, in Franchisor's reasonable judgment, to adversely affect the transferee's operation of the FACILITY or its compliance with this Agreement, all Franchise Agreements, Commissary Facility Agreements, and Development Agreements being transferred and any other agreements to be executed by the transferee;
- (i) If Franchisee (or any of its Owners or Affiliates) finances any part of the sales price of the transferred interest, Franchisee and/or its Owners or Affiliates must agree that all obligations of the transferee, and security interests reserved by any of them in the assets transferred, will be subordinate to the transferee's obligations to pay all amounts due Franchisor and its Affiliates and to otherwise comply with this Agreement, all Franchise Agreements, Commissary Facility Agreements, and Development Agreements being transferred and any other agreements to be executed by the transferee;
- (j) Franchisee and its Owners must execute non-competition and non-solicitation covenants, in form and substance satisfactory to Franchisor, substantially similar to those contained in Section 27.3; and
- (k) Franchisee and its Owners and Affiliates must execute such other documents and do such other things as Franchisor reasonably requires to protect its rights under this Agreement and all Development Agreements, Franchise Agreements, Commissary Facility Agreements and other agreements being transferred.

- 24.4 Franchisor's approval of a Transfer of the Franchise does not constitute: (a) a representation as to the fairness of the terms of any agreement or arrangement between Franchisee or its Owners and the transferee or as to the prospects for success by the transferee; or (b) a release of Franchisee and its Owners, a waiver of any claims against Franchisee or its Owners or a waiver of Franchisor's right to demand the transferee's compliance with this Agreement or any other agreements being transferred. Any approval shall apply only to the specific Transfer of the Franchise being proposed and shall not constitute Franchisor's approval of, or have any bearing on, any other proposed Transfer of the Franchise.
- 24.5 If Franchisee or any of its Owners desires to Transfer the Franchise (other than by gift or bequest), Franchisee or such Owners must obtain a *bona fide*, executed written offer from a responsible and fully disclosed purchaser (which must contain a confidentiality covenant by Franchisee and the prospective buyer to which Franchisor shall be an intended third party beneficiary) and must deliver immediately to Franchisor a complete and accurate copy of such offer. If the offeror proposes to buy any other property or rights from Franchisee or any of its Owners or Affiliates (other than rights under any Development Agreements, Franchise Agreements or Commissary Facility Agreements) as part of the *bona fide* offer, the proposal for such property or rights must be set forth in a separate, contemporaneous offer that is fully disclosed to Franchisor, and the price and terms of purchase offered to Franchisee or its Owners for the Transfer of the Franchise must reflect the *bona fide* price offered therefor and not reflect any value for any other property or rights.
- 24.6 Franchisor has the option, exercisable by notice delivered to Franchisee or its Owners within thirty (30) days from the date of delivery of a complete and accurate copy of such offer to Franchisor, to purchase such interest for the price and on the terms and conditions contained in such offer, provided that: (a) Franchisor may substitute cash for any form of payment proposed in such offer; (b) Franchisor's credit shall be deemed equal to the credit of any proposed purchaser; (c) Franchisor shall have not less than ninety (90) days from the option exercise date to consummate the transaction; and (d) Franchisor shall not be required to pay deposits (such as earnest money) or to escrow funds prior to closing. Franchisor has the right to investigate and analyze the business, assets and liabilities and all other matters Franchisor deems necessary or desirable in order to make an informed investment decision with respect to the fairness of the terms of the right of first refusal. Franchisor may conduct such investigation and analysis in any manner Franchisor deems reasonably appropriate, and Franchisee and its Owners must cooperate fully with Franchisor in connection therewith.
- 24.7 If Franchisor exercises its option to purchase, Franchisor is entitled to purchase such interest subject to all representations and warranties, closing documents, releases, non-competition covenants and indemnities as Franchisor reasonably may require, provided if Franchisor exercises its option as a result of a written offer reflected in a fully negotiated definitive agreement with the proposed purchaser, Franchisor will not be entitled to any additional representations, warranties, closing documents or indemnities that will have a materially adverse effect on Franchisee's rights and obligations under the definitive agreement.
- If Franchisor does not exercise its option to purchase, Franchisee or its Owners may complete the sale to such offeror pursuant to and on the exact terms of such offer, subject to Franchisor's approval of the Transfer as provided in Sections 24.2 and 24.3, provided that if the sale to such offeror is not completed within ninety (90) days after delivery of such offer to Franchisor, or if there is a change in the terms of the offer, Franchisee must promptly notify Franchisor and Franchisor shall have an additional option to purchase (on the terms of the revised offer, if any, and otherwise as set forth herein) during the thirty (30)-day period following Franchisee's notification of the expiration of the ninety (90)-day period or the change to the terms of the offer.
- 24.8 Neither Franchisee nor any of its Owners or Affiliate may issue or sell, or offer to issue or sell, any of Franchisee's securities or any securities of any of its Affiliates, regardless of whether such sale or offer would be required to be registered pursuant to the provisions of the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction and regardless of the means by which such sale is conducted, directly or indirectly, or by operation of law (including by merger, consolidation, reorganization or otherwise) without obtaining Franchisor's prior consent and complying with all of its requirements

and restrictions concerning use of information about Franchisor and its Affiliates. Neither Franchisee nor any of its Owners or Affiliates may issue or sell Franchisee's securities or the securities of any of its Affiliates if: (1) such securities would be required to be registered pursuant to the Securities Act of 1933, as amended, or such securities would be owned by more than 35 persons; or (2) after such issuance or sale, Franchisee or such Affiliate would be required to comply with the reporting and information requirements of the Securities Exchange Act of 1934, as amended. Any memorandum or other communications circulated in connection with any solicitation of offers to purchase that would require Franchisor's consent to Transfer the Franchise (through whatever form of transaction, whether through direct or indirect sale of assets or securities, by operation of law or otherwise) shall be subject to approval by Franchisor.

25. **SUCCESSOR FRANCHISE**

25.1 Upon expiration of the Term, Franchisor will grant Franchisee a successor franchise on Franchisor's then-current terms if Franchisee and each of its Owners and Affiliates are in full compliance with the provisions of this Agreement and any other agreements with Franchisor or any of its Affiliates, and provided that the following conditions are met:

- (a) Franchisee needs to continue to operate the Facility to support its Hot Shops, Fresh Shops and / or Kiosks, maintains possession of the Site and agrees to upgrade the FACILITY to Franchisor's then-current standards for Commissary Facilities;
- (b) If Franchisee is unable to maintain possession of the Site, or if in Franchisor's judgment the FACILITY should be relocated, and Franchisee secures a substitute site approved by Franchisor, Franchisee develops such site in compliance with Franchisor's then-current standards for Commissary Facilities, and continues to operate the FACILITY at the Site until operations are transferred to the substitute site;
- (c) Franchisee gives Franchisor written notice of its election to acquire a successor franchise at least six (6) months but not more than twelve (12) months prior to the expiration of the term of the Franchise;
- (d) Franchisee and its Owners and Affiliates are then in compliance with all of the terms and conditions of this Agreement and all other agreements between such parties and Franchisor and its Affiliates, and have been in substantial compliance with all such agreements throughout their respective terms;
- (e) Franchisee and its Owners will execute the terms and conditions of the agreements Franchisor then customarily uses in connection with the grant of successor franchises for Commissary Facilities in the state where the FACILITY is located; and
- (f) Franchisee and its Owners and Affiliates will execute and deliver general releases, in form and substance satisfactory to Franchisor, of any and all claims against Franchisor and its Affiliates, shareholders, officers, directors, employees, agents, successors, and assigns.

25.2 Once Franchisor receives notice from Franchisee in accordance with Section 25.1(c) above, Franchisor will give Franchisee notice, within ninety (90) days after Franchisor's receipt of Franchisee's notice and any supporting information requested by Franchisor, of Franchisor's decision: (a) to grant Franchisee a successor franchise; (b) to grant Franchisee a successor franchise on the condition that deficiencies of the FACILITY, and/or in its operation of the FACILITY, or such other matters as Franchisor may indicate are deficient in its sole discretion are corrected; or (c) not to grant Franchisee a successor franchise. If Franchisor's notice states that Franchisee must cure certain deficiencies of the FACILITY, its operation or otherwise as a condition to the grant of a successor franchise, Franchisee will have thirty (30) days from the receipt of such notice to cure such deficiencies. If Franchisee does not cure such deficiencies, Franchisor will give Franchisee written notice of a decision not to grant a successor franchise, based upon Franchisee failure to cure such deficiencies, within thirty (30) days after the expiration of the cure period,

provided, however, that Franchisor will not be required to give Franchisee such notice if Franchisor decides not to grant Franchisee a successor franchise due to Franchisee's breach of this Agreement during the cure period or the thirty (30) day period thereafter.

26. TERMINATION OF FRANCHISE

- 26.1 Franchisee is in material breach of this Agreement, and this Agreement will automatically terminate without notice, at Franchisor's discretion, if: (a) Franchisee becomes insolvent by reason of its inability to pay its debts as they mature; (b) Franchisee is adjudicated bankrupt or insolvent; (c) Franchisee files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or has such a petition filed against Franchisee, which is not discharged within thirty (30) days; (d) a receiver or other custodian, permanent or temporary, is appointed for Franchisee's business, assets or property; (e) Franchisee requests the appointment of a receiver or makes a general assignment for the benefit of creditors; (f) a final judgment against Franchisee in the amount of Fifty Thousand Dollars (\$50,000.00) or more remains unsatisfied of record for sixty (60) days or longer; (g) Franchisee's bank accounts, property or accounts receivable are attached; (h) execution is levied against Franchisee's business or property; (i) suit is filed to foreclose any lien or mortgage against any of Franchisee's assets and such suit is not dismissed within thirty (30) days; (j) Franchisee voluntarily dissolves or liquidates or has a petition filed for corporate or partnership dissolution and such petition is not dismissed within thirty (30) days; or (k) Franchisee's assets, property or interest are "blocked" under any law, ordinance or regulation relating to terrorist activities or if Franchisee is otherwise in violation of any such law, ordinance or regulation.
- 26.2 In addition to Franchisor's right to terminate pursuant to other provisions of this Agreement and under applicable law, Franchisor has the right to terminate this Agreement, effective upon delivery of notice of termination to Franchisee, if Franchisee or any of its Principal Owners or Affiliates:
- (a) opens the FACILITY in violation of Section 11.1;
 - (b) abandons or fails actively to operate the FACILITY for five (5) consecutive days, unless a closing of the FACILITY has been approved by Franchisor;
 - (c) makes any material misstatement or omission in the Franchise Application or in any other information, report, or summary provided to Franchisor at any time;
 - (d) suffers cancellation or termination of the lease or sublease for the FACILITY;
 - (e) is convicted of, or pleads no contest to, a felony or other crime or offense that Franchisor believes, in its sole judgment, may adversely affect the System or the goodwill associated with the Marks;
 - (f) makes an unauthorized Transfer of the Franchise;
 - (g) makes any unauthorized use or disclosure of any Confidential Information or uses, duplicates or discloses any portion of the System Standards Manuals in violation of this Agreement;
 - (h) fails or refuses to comply with any mandatory specification, standard, or operating procedure prescribed by Franchisor relating to the cleanliness or sanitation of the FACILITY or violates any applicable health, safety or sanitation law, ordinance or regulation that Franchisor in its sole judgment believes may pose harm to the public or to its reputation, and does not correct such failure, refusal or violation within 24 hours after written notice thereof is delivered to Franchisee;
 - (i) fails to report accurately Net Sales, to establish, maintain and/or have sufficient funds available in the Account as required by Section 13.3 or fails to make payment of any amounts due Franchisor or any of its Affiliates, and does not correct such failure within ten (10) days after written notice of such failure is delivered to Franchisee;

- (j) fails to make a timely payment of any amount due to a supplier unaffiliated with Franchisor (other than payments which are subject to bona fide dispute), and does not correct such failure within thirty (30) days after Franchisor delivers to Franchisee notice of such failure to comply;
- (k) fails to comply with any other provision of this Agreement or any other mandatory specification, standard or operating procedure or other obligation prescribed in the System Standards Manuals and does not correct such failure within thirty (30) days after notice of such failure to comply is delivered to Franchisee; or
- (l) fails on three (3) or more separate occasions within any period of twelve (12) consecutive months to submit when due reports or other data, information or supporting records or to pay when due Royalties, Brand Fund contributions or other payments due Franchisor, any of its Affiliates or any unaffiliated suppliers or otherwise fails to comply with this Agreement or any mandatory specification, standard or operating procedure or other obligation prescribed in the System Standards Manuals, whether or not such failure is corrected after notice is delivered to Franchisee.

26.3 Franchisor has the option, but not the obligation, to cure any of Franchisee's default under Section 26.2. If Franchisor chooses to exercise such option, then within five (5) days of the date Franchisor sends Franchisee notice of Franchisor's expenses incurred in curing Franchisee's default, Franchisee shall reimburse Franchisor for all such expenses.

27. **EFFECT OF TERMINATION OR EXPIRATION**

27.1 Within ten (10) days after the effective date of termination or expiration (without renewal) of this Agreement, Franchisee must pay Franchisor and its Affiliates all Royalties, Brand Fund contributions, amounts owed for purchases from Franchisor or its Affiliates, interest due on any of the foregoing and all other amounts owed to Franchisor or its Affiliates which are then unpaid.

27.2 Upon the termination or expiration (without renewal) of this Agreement, Franchisee will:

- (a) not directly or indirectly at any time or in any manner use any Mark; any colorable imitation of any Mark or any other indicia of a Krispy Kreme Store or Commissary Facility;
- (b) take such action as may be required to cancel all fictitious or assumed name registrations relating to Franchisee's use of any Mark;
- (c) notify the telephone company and all telephone directory publishers of the termination or expiration of Franchisee's right to use any telephone number and any regular, classified or other telephone directory listings associated with any Mark and to authorize transfer of the number to Franchisor or at its direction;
- (d) if Franchisor does not exercise its option to purchase the FACILITY pursuant to Section 27.5, promptly remove from the Site, and discontinue using for any purpose, all signs, fixtures, furniture, decor items, advertising materials, forms and other materials and supplies which display any of the Marks or any distinctive features, images, or designs associated with Krispy Kreme Stores or Commissary Facilities, at Franchisee's expense, make such alterations as may be necessary to distinguish the Site so clearly from its former appearance as a Commissary Facility as to prevent any possibility of confusion by the public;
- (e) immediately cease to use all Confidential Information and return to Franchisor all copies of the System Standards Manuals and any other confidential materials which have been loaned to Franchisee;
- (f) immediately discontinue any mode of communications on the Internet directly or indirectly relating to the FACILITY, including any websites or web pages, and immediately take all steps required by Franchisor to transfer to Franchisor any domain name associated with the FACILITY

(such as executing a registrant name change agreement with the applicable registrar). Franchisee irrevocably appoints an authorized officer of Franchisor as Franchisee's duly authorized agent and attorney-in-fact to execute all instruments and take all steps to transfer such domain names;

- (g) immediately discontinue the use of any proprietary software; and
- (h) within thirty (30) days after the effective date of termination or expiration, furnish evidence satisfactory to Franchisor of Franchisee's compliance with the foregoing obligations.

27.3 Upon termination or expiration (without renewal) of this Agreement, neither Franchisee nor any Restricted Person will, for a period of two (2) years commencing on the effective date of such termination or expiration or the date on which Franchisee ceases to conduct its activities under this Agreement, whichever is later:

- (a) have any Ownership Interest in a Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility then open or under construction;
- (b) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility open or under construction on the effective date of termination or expiration;
- (c) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility then open or under construction, where such services: (i) are substantially similar to those provided to Franchisor or Franchisor Affiliates by Franchisee or the respective Restricted Person; or (ii) create a relationship between Franchisee or the Restricted Person and such Competitive Business in which Franchisee or the Restricted Person could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;
- (d) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility, or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Franchisee to hire any such Person, then Franchisee agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (e) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

Franchisee and each of its Owners expressly acknowledges the possession of skills and abilities of a general nature and other opportunities for exploiting such skills in other ways, so that enforcement of the covenants contained in Section 27.3 will not deprive any of them their personal goodwill or ability to earn a living. If Franchisee or any of its Owners fails or refuses to abide by any of the foregoing covenants and Franchisor obtains enforcement in a judicial or arbitration proceeding, the obligations under the breached covenant will be tolled during the period(s) of time that the covenant is breached and/or Franchisor seeks to enforce it and will continue in effect for a period of time ending two (2) years after the date of the order enforcing the covenant.

27.4 Upon termination or expiration (without renewal) of this Agreement, Franchisor shall have the right, exercisable by giving notice thereof within thirty (30) days after the date of such termination or expiration, to purchase (and, if necessary, take possession of and remove from the Site) any and all equipment used or useable at the FACILITY (including all equipment that contains or embodies patents

owned by Franchisor or any of its Affiliates) at its net book value, determined in accordance with generally accepted accounting principles, consistently applied. This right is separate and apart from Franchisor's rights under Section 27.5.

- 27.5 Upon termination or expiration (without renewal) of this Agreement, Franchisor shall have the right, exercisable by giving notice thereof ("Appraisal Notice") within thirty (30) days after the date of such termination or expiration, to require that a determination be made of the "Fair Market Value" (as defined below) of any or all of the assets of the FACILITY which Franchisee owns, including inventory of non-perishable products, materials, supplies, furniture, equipment, signs, and any and all leasehold improvements, fixtures, building and land, but excluding any cash and short-term investments and any items not meeting Franchisor's specifications for Commissary Facilities (the "Purchased Assets"). Notwithstanding the foregoing, if Franchisee notifies Franchisor not less than one hundred eighty (180) days nor more than two hundred seventy (270) days prior to the expiration of this Agreement that Franchisee does not desire to enter into a successor franchise agreement on expiration, then Franchisor agrees, if Franchisor desires to exercise its right to purchase, to give Franchisee the Appraisal Notice at least one hundred twenty (120) days prior to the date of expiration of this Agreement.
- 27.6 Upon delivery of the Appraisal Notice, Franchisee may not sell or remove any of the assets of the FACILITY from the Premises (other than in the ordinary course of business) and must give Franchisor, its designated agents and the "Appraisers" (as defined below) full access to the FACILITY and all of Franchisee's books and records at any times during customary business hours in order to conduct inventories and determine the purchase price for the Purchased Assets.
- 27.7 The Fair Market Value shall be defined as the amount at which an arm's length purchaser would be willing to pay for the Purchased Assets, assuming that the Purchased Assets would be used for the operation of a Commissary Facility under a valid franchise agreement reflecting the then-current (or if Franchisor is not offering franchises at that time, then the most recent) standard terms upon which Franchisor offers franchises for Commissary Facilities. Under no circumstances will any value be attributed to any goodwill associated with the Marks or any value attributed to the System (all of which Franchisee acknowledges to be owned by Franchisor and its Affiliates). In the first instance, Fair Market Value shall be determined by consultation between Franchisor and Franchisee. If Franchisee and Franchisor are unable to agree on the Fair Market Value of the Purchased Assets within fifteen (15) days after the Appraisal Notice, then Fair Market Value will be determined by calculating the mean average of three (3) separate appraisals done by three (3) independent appraisers ("Appraisers"). Franchisor and Franchisee shall each designate one (1) Appraiser within thirty (30) days of the Appraisal Notice and the two (2) Appraisers so designated will select a third (3rd) Appraiser within ten (10) days thereafter. If the two designated Appraisers are unable to select a third (3rd) Appraiser within such ten (10) days, then the third (3rd) Appraiser shall be selected, on demand of either party, by the director of the Regional Office of the American Arbitration Association located nearest to Winston-Salem, North Carolina.
- 27.8 Each Appraiser will make his or her determination and submit a written report ("Appraisal Report") to Franchisee and Franchisor as soon as practicable, but in no event more than thirty (30) days after his or her appointment. Each party may submit in writing to the Appraisers its judgment of Fair Market Value (together with its reasons therefor and with copies to each other); however, the Appraisers shall not be limited to these submissions and may make such independent investigations as they reasonably determine to be necessary. The Appraisers' fees and costs shall be borne equally by the parties.
- 27.9 Franchisor has the option, exercisable by delivering notice thereof within thirty (30) days after submission of the last Appraisal Report (or the date that an agreement is reached, if the parties agree to the Fair Market Value), to agree to purchase the Purchased Assets at the Fair Market Value, as so determined. Franchisor shall have the unrestricted right to assign this option to purchase separate and apart from the remainder of this Agreement.

- 27.10 If Franchisor exercises its option to purchase, the purchase price for the Purchased Assets will be paid in cash at the closing, which will occur at the place, time and date Franchisor designates, but not later than sixty (60) days after the exercise of Franchisor's option to purchase the Purchased Assets. At the closing, Franchisor will be entitled to all representations, warranties, covenants, title insurance policies and other closing documents and post-closing indemnifications and hold-backs as Franchisor reasonably requires, including: (a) instruments transferring good and marketable title to the Purchased Assets, free and clear of all liens, encumbrances, and liabilities, to Franchisor or its designee, with all sales and other transfer taxes paid by Franchisee; (b) an assignment of all leases of assets used in the operation of the FACILITY, including land, building and/or equipment (or if an assignment is prohibited, a sublease to Franchisor or its designee for the full remaining term and on the same terms and conditions as Franchisee's lease, including renewal and/or purchase options), provided, however, that if any of Franchisee's Owners or Affiliates directly or indirectly owns the land, building and/or equipment of the FACILITY, Franchisee will, at Franchisor's option, cause such Owner or Affiliate to grant to Franchisor a lease at reasonable and customary rental rates and other terms prevailing in the community where the FACILITY is located; and (c) a general release by Franchisee and its Owners and Affiliates in form and substance satisfactory to Franchisor.
- 27.11 If Franchisee cannot deliver clear title to all of the Purchased Assets, or if there are other unresolved issues, the closing of the sale may, at Franchisor's option, be accomplished through an escrow on such terms and conditions as Franchisor deems appropriate, including the making of payments, to be deducted from the purchase price, directly to third parties in order to obtain clear title to all of the Purchased Assets. Further, Franchisee and Franchisor shall comply with any applicable Bulk Sales provisions of the Uniform Commercial Code as enacted in the state where the FACILITY is located and all applicable state and local sales and income tax notification and/or escrow procedures. Franchisor has the right to set off against and reduce the purchase price by any and all amounts owed by Franchisee or any of its Owners or Affiliates to Franchisor or any of its Affiliates.
- 27.12 Upon delivery of the Appraisal Notice and pending (a) determination of Fair Market Value, (b) Franchisor's option period, and (c) the closing of the purchase, Franchisor may authorize continued temporary operations of the FACILITY pursuant to the terms of this Agreement, subject to the supervision and control of one or more of Franchisor's appointed managers.
- 27.13 Franchisor's exercise of any of its rights under Section 27 will be in addition to and not in limitation of any other rights and remedies it may have in the event of any breach or default by Franchisee.
- 27.14 All the obligations of Franchisee and its Owners and Affiliates under this Agreement, which expressly or by their nature survive or are intended to survive the termination or expiration of this Agreement, will continue in full force and effect subsequent to and notwithstanding the termination or expiration until they are satisfied in full or by their nature expire.

28. RELATIONSHIP OF PARTIES/INDEMNIFICATION

- 28.1 Neither this Agreement nor the dealings of the parties pursuant to this Agreement shall create any fiduciary relationship or any other relationship of trust or confidence between the parties hereto. Franchisor and Franchisee, as between themselves, are and shall be independent contractors.
- 28.2 Franchisee understands and agrees that Franchisor may operate and change the System and its business in any manner that is not expressly and specifically prohibited by this Agreement. Whenever Franchisor has expressly reserved in this Agreement or is deemed to have a right and/or discretion to take or withhold an action, or to grant or decline to grant Franchisee a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, Franchisor may make its decision or exercise its right and/or discretion on the basis of its judgment of what is in its best interests, including its judgment of what is in the best interests of its franchise network, at the time its decision is made or its right or discretion is exercised, without regard to whether: (a) other reasonable alternative decisions or actions could have been made by Franchisor; (b) Franchisor's decision or action promotes its financial or other individual interest; (c) Franchisor's decision or action applies differently to Franchisee and one

or more other franchisees or its company-owned operations; or (d) Franchisor's decision or the exercise of its right or discretion is adverse to Franchisee's interests. In the absence of an applicable statute, Franchisor will have no liability to Franchisee for any such decision or action. The parties intend that the exercise of Franchisor's right or discretion will not be subject to limitation or review. If applicable law implies a covenant of good faith and fair dealing in this Agreement, the parties agree that such covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants Franchisor the right to make decisions, take actions and/or refrain from taking actions not inconsistent with Franchisee's rights and obligations hereunder.

Nothing contained in this Agreement, nor arising from the conduct of the parties hereunder, is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever. Franchisee must conspicuously identify itself in all dealings with customers, lessors, contractors, suppliers, public officials, employees and others as the owner of the rights granted hereunder and must place such other notices of independent ownership on such forms, business cards, stationery, advertising and other materials as we may require from time to time. Franchisee is solely responsible for all employment decisions with respect to its personnel, including hiring, firing, compensation, training, supervision and discipline, and regardless whether Franchisee receives advice from Franchisor on any of these subjects.

- 28.3 Franchisee may not make any express or implied agreements, warranties, guarantees or representations or incur any debt in Franchisor's name or on its behalf or represent that the relationship of the parties hereto is anything other than that of independent contractors. Franchisor will not be obligated by or have any liability under any agreements made by Franchisee with any third party or for any representations made by Franchisee to any third party. Franchisor will not be obligated for any damages to any person or property arising directly or indirectly out of the operation of Franchisee's business hereunder.
- 28.4 Franchisor will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon Franchisee or the FACILITY, in connection with the business Franchisee conducts (except for taxes Franchisor is required by law to collect from Franchisee with respect to purchases from Franchisor). Payment of all such taxes is Franchisee's responsibility.
- 28.5 Franchisor agrees to indemnify Franchisee against, and to reimburse Franchisee for, all damages for which Franchisee is held liable as a result of a claim that Franchisee's authorized use of any Mark or of any of Franchisor's other intellectual property rights pursuant to and in full compliance with this Agreement infringes on the rights of another person and, except as provided herein, for all costs Franchisee reasonably incurs in defending any such claim brought against Franchisee, provided that Franchisee has timely notified Franchisor of such claim and provided further that Franchisee and Franchisee's Principal Owners and Affiliates are in full compliance with this Agreement and with all other agreements entered into with Franchisor or any of its Affiliates. HDN Development Corporation or its agent or assignee, at its sole discretion, is entitled to prosecute, defend and/or settle any such proceeding arising out of Franchisee's use of any Mark or other intellectual property right pursuant to this Agreement and, if HDN Development Corporation or its agent or assignee undertakes to prosecute, defend and/or settle any such matter, Franchisor, HDN Development Corporation or its agent or assignee, has no obligation to indemnify or reimburse Franchisee for any fees or disbursements of any legal counsel retained by Franchisee.
- 28.6 Franchisee agrees to indemnify Franchisor, its Affiliates and their respective directors, officers, employees, shareholders, members, managers, agents, successors and assigns (collectively "Indemnified Parties"), and to hold the Indemnified Parties harmless to the fullest extent permitted by law, from any and all losses and expenses (as defined below) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, or formal or informal inquiry (regardless of whether it is reduced to judgment) or any settlement thereof which arises directly or indirectly from, or as a result of, a claim of a third party against any one or more of the Indemnified Parties, including those in connection with (a) Franchisee's failure to perform or breach of any covenant, agreement, term or provision of this Agreement, (b) Franchisee's breach of any representation or warranty contained in this Agreement, (c)

Franchisee's marketing, promotion, advertisement or sale of any of the products and services offered by the FACILITY, including unfair or fraudulent advertising claims (whether in print advertising, electronic media or otherwise), and product liability claims, (d) Franchisee's development, ownership, operation and/or closing of the FACILITY, (e) Franchisee's failure to pay any amounts owed to a supplier, (f) claims by Franchisee's employees (including workers' or unemployment compensation), (g) personal injury claims, (h) Franchisee's failure to comply with any law, and (i) any allegedly unauthorized service or act, rendered or performed in connection with this Agreement, (collectively "Event") and regardless of whether it resulted from any strict or vicarious liability imposed by law on the Indemnified Parties. The foregoing indemnity shall apply even if it is determined that the Indemnified Parties' negligence caused such loss, liability or expense, in whole or in part, provided, however, that this indemnity will not apply to any liability arising from a breach of this Agreement by Franchisor or with respect to any Indemnified Party whose gross negligence or willful acts caused such liability (except to the extent that joint liability is involved, in which event the indemnification provided herein will extend to any finding of comparative or contributory negligence attributable to Franchisee). The term "losses and expenses" includes compensatory, exemplary, and punitive damages; fines and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensation for damages to our reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. Franchisor agrees to give Franchisee reasonable notice of any event of which Franchisor becomes aware for which indemnification may be required, and Franchisor may elect (but is not obligated) to direct the defense thereof, provided that the selection of counsel shall be subject to Franchisee's consent, which consent shall not be unreasonably withheld or delayed. Franchisor may, in its reasonable discretion, take such actions as Franchisor deems necessary and appropriate to investigate, defend, or settle any Event or take other remedial or corrective actions with respect thereto as may be necessary for the protection of the Indemnified Parties or Krispy Kreme Stores generally, provided however, that any settlement (to the extent payment is made by Franchisee) shall be subject to Franchisee's consent, which consent shall not be unreasonably withheld or delayed. Further, notwithstanding the foregoing, if the insurer on a policy or policies obtained in compliance with this Agreement agrees to undertake the defense of an Event (an "Insured Event"), Franchisor agrees not to exercise its right to select counsel to defend the Event if such would cause Franchisee's insurer to deny coverage. Franchisor reserves the right to retain counsel to represent Franchisor with respect to an Insured Event at Franchisor's sole cost and expense.

28.7 In furtherance of the indemnity contained in Section 28.6, during the Term, Franchisee agrees to maintain commercial general liability insurance, product liability coverage, automobile liability insurance, worker's compensation insurance, employer's liability insurance and any other insurance policies as Franchisor may require from time to time, insuring Franchisee and the Indemnified Parties against the matters described in Section 28.6, including claims for bodily and personal injury, death and property damage, among other things, caused by or occurring in conjunction with the conduct of business by Franchisee pursuant to this Agreement, under one or more policies of insurance acceptable to Franchisor and containing minimum liability coverage Franchisor prescribes from time to time. Each such insurance policy will name Franchisor as an additional insured and will provide for thirty (30) days' prior written notice to Franchisor of any material modification, cancellation, or expiration of such policy. Each such insurance policy will give Franchisor notice of default under the policy and the opportunity to cure such default on Franchisee's behalf. Simultaneous with the execution of this Agreement, Franchisee will provide Franchisor with evidence of such insurance; thereafter, Franchisee will furnish to Franchisor annually and upon the replacement or material modification of any insurance policy providing the coverage required under this Agreement, a copy of the certificate of insurance or other evidence requested by Franchisor that such insurance coverage is continuously in force without interruption. The maintenance of sufficient insurance coverage (both as to the type and limits of coverage) for the FACILITY is Franchisee's sole responsibility.

28.8 The terms of Section 28 will survive the termination or expiration of this Agreement.

29. MISCELLANEOUS

- 29.1 This Agreement and all issues arising from or relating to this Agreement shall be governed by and construed under the laws of the State of North Carolina, provided the foregoing shall not constitute a waiver of Franchisee's rights under any applicable franchise law of another state. Otherwise, in the event of any conflict of law, North Carolina law will prevail, without regard to the application of North Carolina conflict of law principles, except that any North Carolina law regulating the sale of franchises or business opportunities or governing the relationship of a franchisor and its franchisees will not apply unless its jurisdictional requirements are met independently without reference to this section.
- 29.2 Franchisee and each of its Owners agree that the U.S. District Court for the Middle District of North Carolina, or if such court lacks jurisdiction, the Superior Court (or its successor) for Forsyth County North Carolina, shall be the venue and exclusive forum in which to adjudicate any case or controversy arising from or relating to this Agreement, or any Development Agreement, Franchise Agreement or any other Commissary Facility Agreement, including any guarantees or covenants by Franchisee's Owners. In the event a case or controversy is to be heard by the Superior Court (or its successor) for Forsyth County North Carolina, any party may request that the matter be assigned to the North Carolina Business Court. Franchisee and each of its Owners irrevocably submit to the jurisdiction of such courts and waive any objections to either the jurisdiction of or venue in such courts. Franchisee and each of its Owners irrevocably waive, to the fullest extent they may lawfully do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding and agree that service of process for purposes of any such suit, action or proceeding need not be personally served or served within the State of North Carolina but may be served with the same effect as if they were served within the State of North Carolina, by certified mail or any other means permitted by law, addressed to Franchisee and its Owners (as applicable) at the address set forth herein. Nothing contained herein shall affect Franchisor's rights to bring a suit, action or proceeding in any other appropriate jurisdiction, including any suit, action or proceeding brought by Franchisor to enforce any judgment against Franchisee or any of its Owners entered by a State or Federal Court.
- 29.3 Franchisor may obtain at any time in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause Franchisor irreparable harm. Franchisor may have such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or in law, and Franchisee's sole remedy in the event of the entry of such injunction, shall be the dissolution of such injunction, if warranted, upon hearing duly had (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). Franchisee and each of its Owners acknowledges that any violation of Sections 16, 17.3, 18, 19, 20, 24.3(j) or 27.3 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available. Accordingly, Franchisee and each of its Owners consent to the issuance of an injunction at Franchisor's request (without posting a bond or other security) prohibiting any conduct in violation of any of those sections and agree that the existence of any claims Franchisee or any of its Owners may have against Franchisor, whether or not arising herefrom, shall not constitute a defense to the enforcement of any of those Sections.
- 29.4 If Franchisor claims in any judicial proceeding that Franchisee owes Franchisor or any of its Affiliates money or that Franchisee has otherwise breached this Agreement and Franchisor prevails on such claims, then Franchisor shall be awarded its costs and expenses incurred in connection with such proceedings, including reasonable attorneys' fees.
- 29.5 Except with respect to any of Franchisee's obligations herein regarding the Confidential Information, the Marks, and any other intellectual property rights of Franchisor, Franchisor and Franchisee (and its Owners) each waives, to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other. Franchisee and each of its Owners waives, to the fullest extent permitted by applicable law, the right to recover consequential damages for any claim directly or indirectly arising from or relating to this Agreement. **FURTHERMORE, THE PARTIES AGREE**

THAT ANY LEGAL ACTION IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, AND ALL PARTIES WAIVE ANY RIGHT TO HAVE ANY ACTION TRIED BY JURY.

- 29.6 Every part of this Agreement shall be considered severable. If for any reason any part of this Agreement is held to be invalid, that determination shall not impair the other parts of this Agreement. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of geographical area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, Franchisee and Franchisor agree that it will be so modified as to remain enforceable to the fullest extent permissible under applicable law. If any applicable law requires a greater prior notice of the termination of or refusal to enter into a successor franchise than is required hereunder, a different standard of “good cause”, or the taking of some other action not required hereunder, the prior notice, “good cause” standard and/or other action required by such law shall be substituted for the comparable provisions hereof. If any provision of this Agreement or any specification, standard or operating procedure prescribed by Franchisor is invalid or unenforceable under applicable law, Franchisor has the right, in its sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to make it valid and enforceable.
- 29.7 Franchisor and Franchisee may by written instrument signed by the waiving party unilaterally waive or reduce any obligation of the other under this Agreement. Any waiver granted by Franchisor shall be without prejudice to any other rights Franchisor may have, will be subject to continuing review by Franchisor and may be revoked, in its sole discretion, at any time and for any reason, effective upon delivery to Franchisee of 10 days’ prior notice. Franchisee and Franchisor shall not be deemed to have waived any right reserved by this Agreement by virtue of any custom or practice of the parties at variance with it; any failure, refusal or neglect by Franchisee or Franchisor to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder; any waiver, forbearance, delay, failure or omission by Franchisor to exercise any right, whether of the same, similar or different nature, with respect to other Commissary Facilities; or the acceptance by Franchisor of any payments due from Franchisee after any breach of this Agreement.
- 29.8 The rights of Franchisor and Franchisee hereunder are cumulative and no exercise or enforcement by Franchisor or Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by Franchisor or Franchisee of any other right or remedy hereunder which Franchisor or Franchisee is entitled to enforce by law.
- 29.9 The language of this Agreement shall be construed according to its fair meaning and not more strictly against any one party than the other. The Basic Terms, introduction, personal guarantees and covenants, exhibits, schedules and riders (if any) to this Agreement are a part of this Agreement, which constitutes the entire agreement of the parties with respect to the subject matter hereof. Except as otherwise expressly provided herein, there are no other oral or written agreements, understandings, representations or statements relating to the subject matter of this Agreement, other than the Franchise Disclosure Document, that either party may or does rely on or that will have any force or effect. Nothing in this Agreement shall be deemed to confer any rights or remedies on any person or legal entity not a party hereto. This Agreement shall not be modified except by written agreement signed by both parties.
- 29.10 The headings of sections are for convenience only and do not limit or construe their contents. The word “including” shall be construed to include the words “without limitation.” The term “Franchisee” is applicable to one or more persons, a corporation, limited liability company or a partnership and its owners, as the case may be. If two or more persons are at any time Franchisee hereunder, whether as partners, joint venturers or otherwise, their obligations and liabilities to Franchisor shall be joint and several.
- 29.11 References to a controlling interest in an entity shall mean more than fifty percent (50%) of the equity and voting control of such entity.

- 29.12 This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest. This Agreement may be executed in multiple copies, each of which shall be deemed an original. Time is of the essence in this Agreement.
- 29.13 Whenever this Agreement requires the approval or consent of either party, the other party shall make written request therefor, and such approval or consent shall be obtained in writing; provided however, unless specified otherwise in this Agreement, such party may withhold approval or consent for any reason or for no reason at all. Furthermore, unless specified otherwise in this Agreement, no such approval or consent shall be deemed to constitute a warranty or representation of any kind, express or implied, and the approving or consenting party shall have no responsibility, liability or obligation arising therefrom.
- 29.14 All notices, requests and reports permitted or required to be delivered by this Agreement shall be deemed delivered: (a) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (b) one (1) business day after being placed in the hands of a commercial courier service for guaranteed overnight delivery; or (c) five (5) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing. All payments and reports required by this Agreement shall be sent to Franchisor at the address identified in this Agreement unless and until a different address has been designated by written notice. No restrictive endorsement on any check or in any letter or other communication accompanying any payment shall bind Franchisor, and its acceptance of any such payment shall not constitute an accord and satisfaction.

30. ACKNOWLEDGMENTS

30.1 By initialing below, Franchisee hereby specifically acknowledges the following:

- (a) **Domicile.** Franchisee acknowledges that Franchisee is not a domiciliary or a resident of any state, other than the state where the FACILITY is located or, if different, the state listed in the Basic Terms as Franchisee's address.

Initials _____ / _____

- (b) **Receipt of Franchise Disclosure Document.** Franchisee acknowledges having received Franchisor's Franchise Disclosure Document at least fourteen (14) calendar days before signing a binding agreement or before making any payment to Franchisor or any of its Affiliates relating to this Agreement. Franchisee has read and understands Franchisor's Franchise Disclosure Document.

Initials _____ / _____

- (c) **No Inconsistent Representations.** Franchisee acknowledges that no representations have been made to Franchisee which are inconsistent with information presented in Franchisor's Franchise Disclosure Document, and Franchisee has not relied on any representations inconsistent with or not contained in Franchisor's Franchise Disclosure Document.

Initials _____ / _____

- (d) **Business Risks; Independent Investigation.** Franchisee recognizes that the nature of Krispy Kreme Stores and Commissary Facilities may change over time, that an investment in a Krispy Kreme Store or Commissary Facility involves business risks and that the success of the investment is largely dependent on Franchisee's own business abilities, efforts and financial resources. Franchisee has conducted an independent investigation of the business contemplated by this Agreement and recognizes that the food service industry is highly competitive.

Initials _____ / _____

- (e) **Independent Counsel.** Franchisee acknowledges having had the opportunity to seek independent counsel concerning the execution of this Agreement and the operation of the Franchise.

Initials _____ / _____

- (f) **No Guarantee or Assurance.** Franchisee has not received from Franchisor or its representatives or relied on any statement, representation, guaranty or assurance, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement, nor has Franchisee received from Franchisor or its representatives any information from which Franchisee may easily ascertain a specific level or range of actual or potential sales, income, gross or net profits from franchised or non-franchised Krispy Kreme Stores or Commissary Facilities.

Initials _____ / _____

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.

**KRISPY KREME DOUGHNUT
CORPORATION**

[FRANCHISEE]

By: _____

By: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

D-40

EXHIBIT E

**TO THE DEVELOPMENT AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

**PRINCIPAL OWNERS' PERSONAL GUARANTY
OF FRANCHISEE'S OBLIGATIONS ("Guaranty")**

In consideration of, and as an inducement to, the execution of the Krispy Kreme Doughnut Corporation Development Agreement dated as of _____, (the "Agreement") by and between KRISPY KREME DOUGHNUT CORPORATION ("Franchisor"), and _____ ("Franchisee"), each of the undersigned Principal Owners of a ten percent (10%) or greater interest in Franchisee hereby personally and unconditionally: (a) guarantees to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement (and any amendments) and that each and every representation of Franchisee made in connection with the Agreement (and any amendments) are true, correct and complete in all respects at and as of the time given; and (b) agrees personally to be bound by each and every provision in the Agreement (and any amendments).

Each of the undersigned waives: (a) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (b) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (d) any right that the undersigned may have to require that an action be brought against Franchisee or any other person as a condition of liability; (e) notice of any amendment to the Agreement; (f) any and all other notices and legal or equitable defenses to which that the undersigned may be entitled; and (g) the provisions of N.C. General Statutes § 26.7 *et seq.*

Each of the undersigned consents and agrees that: (a) that the undersigned's direct and immediate liability under this guaranty shall be joint and several; (b) that the undersigned shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses to do so punctually; (c) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (d) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person including the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable until satisfied in full.

Each of the undersigned agrees that the U.S. District Court for the Middle District of North Carolina, or if such court lacks jurisdiction, the Superior Court (or its successor) for Forsyth County, North Carolina, shall be the venue and exclusive forum in which to adjudicate any case or controversy arising from or relating to this Guaranty. In the event a case or controversy is to be heard by the Superior Court (or its successor) for Forsyth County, North Carolina, any party may request that the matter be assigned to the North Carolina Business Court. Each of the undersigned irrevocably submits to the jurisdiction of such courts and waives any objections to either the jurisdiction of or venue in such courts. Each of the undersigned irrevocably waives, to the fullest extent he/she may lawfully do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding and agrees that service of process for purposes of any such suit, action or proceeding need not be personally served or served within the State of North Carolina but may be served with the same effect as if the undersigned were served within the State of North Carolina, by certified mail or any other means permitted by law addressed to the

undersigned at the address set forth herein. Nothing contained herein shall affect Franchisor's rights to bring a suit, action or proceeding in any other appropriate jurisdiction, including any suit, action or proceeding brought by Franchisor to enforce any judgment against the undersigned entered by a State or Federal Court.

Each of the undersigned waives all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the undersigned's execution of and performance under this Guaranty.

[This space intentionally left blank.]

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed his/her signature as of the ____ day of _____, _____.

**PERCENTAGE OF OWNERSHIP
INTERESTS IN FRANCHISEE**

GUARANTOR(S)

(Signature)

(Print Name)

(Address)

(Signature)

(Print Name)

(Address)

(Signature)

(Print Name)

(Address)

(Signature)

(Print Name)

(Address)

Subscribed and sworn to before me
this ____ day of _____, _____.

Notary Public
My Commission expires: _____

EXHIBIT F

**TO THE DEVELOPMENT AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

**INVESTOR PERSONAL COVENANTS REGARDING
CONFIDENTIALITY, NON-COMPETITION AND NON-SOLICITATION**

In conjunction with your investment in _____ ("Franchisee") a _____, the undersigned _____ ("Owner"), acknowledges and agrees as follows:

1. Franchisee owns and operates, or is developing, Krispy Kreme Stores pursuant to a development agreement dated _____, _____ ("Development Agreement") with Krispy Kreme Doughnut Corporation ("Franchisor"), which Development Agreement requires persons with legal or beneficial ownership interests in Franchisee under certain circumstances to be personally bound by the confidentiality and noncompetition covenants contained in the Development Agreement. All capitalized terms contained herein shall have the same meaning set forth in the Development Agreement.

2. Owner owns or intends to own a _____ percent (___ %) legal or beneficial ownership interest in Franchisee and acknowledges and agrees that the execution of this Agreement is a condition to such ownership interest and that Owner has received good and valuable consideration for executing this Agreement. Franchisor may enforce this Agreement directly against Owner.

3. Owner may gain access to information comprising Franchisor's Confidential Information as a result of investing in Franchisee. The Confidential Information is proprietary and includes Franchisor's trade secrets. Owner hereby agrees that while Owner has a legal or beneficial ownership interest in Franchisee and thereafter, Owner: (a) will not use the Confidential Information in any other business or capacity; (b) will maintain the confidentiality of the Confidential Information; and (c) will not make unauthorized copies of any portion of the Confidential Information, whether through electronic media, writings, or other tangible or intangible means of expression. Without limiting the foregoing, Owner (i) acknowledges that he/she may have access to Franchisor's material non-public information and that of its parent, Krispy Kreme Doughnut Inc. ("KKDI"), and that the securities laws prohibit trading in KKDI securities while in possession of such information, and (ii) agrees to refrain from trading in KKDI securities in violation of such laws. If Owner ceases to have an interest in Franchisee, Owner must deliver to Franchisor any such Confidential Information in his/her possession or control.

4. Notwithstanding anything to the contrary contained herein and provided Owner has obtained Franchisor's prior written consent, the restrictions on Owner's disclosure and use of the Confidential Information will not apply to the following:

- (a) information, methods, procedures, techniques and knowledge which are or become generally known in the food service business, other than through disclosure (whether deliberate or inadvertent) by Franchisee, Franchisee's Owners, agents, or employees; and
- (b) the disclosure of the Confidential Information in judicial, arbitration or administrative proceedings to the extent that Owner is legally compelled to disclose such information, provided Owner has notified Franchisor prior to such disclosure and has used its best efforts to obtain, and has afforded Franchisor sufficient opportunity to seek an appropriate protective order and obtain, assurances satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

5. Owner acknowledges and agrees that Franchisor would be unable to (a) protect the Confidential Information against unauthorized use or disclosure; (b) preserve the prestige, integrity, and goodwill of the Products, Marks, and System; or (c) encourage the free exchange of ideas and information among Krispy Kreme Stores and Commissary Facilities if franchisees and owners of Krispy Kreme Stores and Commissary Facilities or their owners were permitted to engage in or benefit from certain competitive activities. Therefore, except as expressly authorized by another written agreement with Franchisor, Owner agrees that during the term of the Development Agreement or during such time as Owner has an Ownership Interest in Franchisee (whichever is shorter), without Franchisor's prior written consent, Owner shall not directly or indirectly (including through a Restricted Person):

- (i) have any Ownership Interest in a Competitive Business;
- (ii) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business;
- (iii) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business, where such services could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;
- (iv) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility, or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Owner to hire any such Person, then Owner agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (v) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

6. Upon termination of the Development Agreement or Owner's Ownership Interest in Franchisee (whichever first occurs), Owner shall not directly or indirectly (including through a Restricted Person) for a period of two (2) years commencing on the effective date of such termination:

- (a) have any Ownership Interest in a Competitive Business within the Development Area or within a radius of ten (10) miles of any Krispy Kreme Store or Commissary Facility then open or under construction;
- (b) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business within the Development Area or within a radius of ten (10) miles of any Krispy Kreme Store or Commissary Facility then open or under construction;
- (c) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business within the Development Area or within a radius of ten (10) miles of any Krispy Kreme Store or Commissary Facility then open or under construction, where such services could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;
- (d) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility, or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Owner to hire any such Person, then Owner agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (e) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

7. Owner expressly acknowledges the possession of skills and abilities of a general nature and the opportunity to exploit such skills in other ways, so that enforcement of the covenants contained in Sections 5 and 6 of these covenants will not deprive him/her of his/her personal goodwill or ability to earn a living. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope or in terms of geographic area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, Owner agrees that it will be enforced to the fullest extent permissible under applicable law and public policy. Franchisor may obtain in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause it irreparable harm. Owner acknowledges that any violation of Sections 4, 5, or 6 of these covenants would result in irreparable injury for which no adequate remedy at law may be available. If Franchisor files a claim to enforce this Agreement and prevails in such proceeding, Owner agrees to reimburse Franchisor for all its costs and expenses, including reasonable attorneys' fees.

8. Owner agrees that the U.S. District Court for the Middle District of North Carolina, or if such court lacks jurisdiction, the Superior Court (or its successor) for Forsyth County, North Carolina, shall be the venue and exclusive forum in which to adjudicate any case or controversy arising from or relating to these covenants. In the event a case or controversy is to be heard by the Superior Court (or its successor) for Forsyth County, North Carolina, any party may request that the matter be assigned to the North Carolina Business Court. Owner irrevocably submits to the jurisdiction of such courts and waives any objections to either the jurisdiction of or venue in such courts. Owner irrevocably waives, to the fullest extent he or she may lawfully do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding and agrees that service of process for purposes of any such suit, action or proceeding need not be personally served or served within the State of North Carolina but may be served with the same effect as if he or she were served within the State of North Carolina, by certified mail or any other means permitted by law, addressed to Owner at the address set forth herein. Nothing contained herein shall affect Franchisor's rights to bring a suit, action or proceeding in any other appropriate jurisdiction, including any suit, action or proceeding brought by Franchisor to enforce any judgment against Owner entered by a State or Federal Court.

9. If Franchisor claims in any judicial proceeding that Owner has breached any of the covenants contained herein, and Franchisor prevails on such claims, then Franchisor shall be awarded its costs and expenses incurred in connection with such proceedings, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement on the ____ day of _____, _____.

OWNER

(Signature)

(Print Name)

(Address)

**KRISPY KREME DOUGHNUT CORPORATION
FRANCHISE AGREEMENT
BASIC TERMS**

A.	Effective Date (Insert date Franchisee executes the agreement):			
B.	Franchisor:	Krispy Kreme Doughnut Corporation, a North Carolina corporation		
C.	Store Number:			
D.	Store Address:			
E.	Store Type & Initial Franchise Fee:			
		Factory Store		\$50,000
		Hot Shop		\$30,000
		Fresh Shop/Kiosk		\$20,000
F.	Franchisee:			
	Franchisee's Address:			
	Telephone:		Fax No.:	
	E-mail Address:			
G.	Principal Owners:			
H.	Managing Director:			
I.	General Manager:			
J.	Term:	The time period commencing on the Effective Date and expiring 15 years after the Effective Date.		

Franchisor: _____
(initials)

Franchisee: _____
(initials)

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KRISPY KREME DOUGHNUT CORPORATION
FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (this “Agreement”) is made and entered into as of the Effective Date by and between Franchisor and Franchisee.

1. BACKGROUND

- 1.1 Franchisor has developed, as a result of considerable time, skill, effort, and money, a distinctive system for operating stores called “Krispy Kreme Stores” that offer and serve a variety of doughnuts, beverages, and other authorized products and services under the Marks.
- 1.2 Franchisor’s Affiliate, HDN Development Corporation, owns the Marks and has granted Franchisor the right to sublicense the Marks to its franchisees for their use in operating Krispy Kreme Stores and Commissary Facilities.
- 1.3 Franchisor grants Franchises to own and operate Krispy Kreme Stores and Commissary Facilities to Persons who meet its qualifications and are willing to undertake the investment and effort to properly develop and operate them.
- 1.4 Franchisee has submitted a Franchise Application to own and operate a Krispy Kreme Store at the Site, and Franchisor has accepted the application in reliance on all information Franchisee has provided in connection therewith.

2. DEFINITIONS

- 2.1 Capitalized terms used in this Agreement have the meanings given to them in this Section and in the Basic Terms.

Account – Franchisee’s bank account as to which Franchisee has provided Franchisor with all appropriate account information and from which Franchisee has authorized Franchisor to withdraw funds by electronic funds transfers.

Affiliate – Any person that directly or indirectly owns or controls, that is directly or indirectly owned or controlled by, or that is under common ownership or control with the referenced person, including parents and subsidiaries.

Authorized Off-Premises Sales – Sales to wholesale customers pursuant to an express authorization by Franchisor, the current form of which is attached as Exhibit E.

Basic Terms – The terms of this Agreement set forth on the Krispy Kreme Doughnut Corporation Franchise Agreement Basic Terms section on the first page hereof.

Brand Fund – As defined in Section 22.

Commissary Facility – A manufacturing facility for doughnuts and other Products that are supplied to Hot Shops and Fresh Shops/Kiosks. Commissary Facilities are not used for retail sales, but may distribute and sell to wholesale customers, subject to Franchisor’s authorization pursuant to the Commissary Facility Agreement.

Commissary Facility Agreement – An agreement used by Franchisor to grant the right to operate a Commissary Facility at a specific location.

Competitive Business – A business, other than a Krispy Kreme Store or Commissary Facility, that: (a) makes, sells or distributes yeast-raised doughnuts, cake doughnuts, or any other types of doughnuts, miniature doughnuts, doughnut holes or any other bakery products in any distribution channel to any customer for consumption or resale, and such sales constitute ten percent (10%) or more of its total sales (or such sales from any single location constitute 10% or more of the total sales of that location) during any calendar quarter or calendar year; (b) sells coffee or coffee drinks in any distribution channel to any

customer for consumption or resale, and such sales constitute twenty percent (20%) or more of its total sales (or such sales from any single location constitute 20% or more of the total sales of that location) during any calendar quarter or calendar year; (c) is the same as, or similar to, the Krispy Kreme Store concept as it evolves over time; or (d) grants franchises or licenses, or establishes joint ventures, for the development and/or operation of any business referred to in (a) through (c), above. Restrictions in this Agreement on having an Ownership Interest in a Competitive Business shall not apply to the ownership of shares of a class of securities listed on a stock exchange or traded on a public stock market that represents less than three percent (3%) of the number of shares of that class of securities issued and outstanding.

Confidential Information – Certain confidential information relating to the development and operation of Krispy Kreme Stores and Commissary Facilities, which includes:

- (a) methods, techniques, equipment, specifications, standards, policies, procedures, information, concepts, and systems relating to and knowledge of and experience in the development, equipping, operation, outfitting and franchising of Krispy Kreme Stores and Commissary Facilities, as well as expansion, growth and development plans, and prospects;
- (b) marketing and advertising programs for Krispy Kreme Stores and Commissary Facilities;
- (c) knowledge concerning the logic, structure and operation of computer software programs which Franchisor authorizes for use in connection with the operation of Krispy Kreme Stores and Commissary Facilities, and all additions, modifications and enhancements, and all data generated from use of such programs;
- (d) specifications and standards for, and sources of, buildings, equipment, furnishings, fixtures, signs, products, materials, supplies, and services utilized in the development and operation of Krispy Kreme Stores and Commissary Facilities;
- (e) ingredients, formulas, mixes, recipes for and methods of preparation, cooking, serving, packaging, and delivery of the Products;
- (f) information concerning sales, operating results, financial performance, consumer preferences, inventory requirements, materials and supplies, and other financial data of Krispy Kreme Stores and Commissary Facilities, and customer lists;
- (g) current and concluded research, development and test programs for products, services and operations for use in Krispy Kreme Stores and Commissary Facilities;
- (h) the contents of any System Standards Manuals, System Standards, and site selection criteria; and
- (i) employee training, and staffing levels.

Development Agreement – If applicable, the Krispy Kreme Doughnut Corporation Development Agreement pursuant to which Franchisor has granted Franchisee the right to develop Krispy Kreme Stores and Commissary Facilities in the Development Area and pursuant to which this Agreement has been executed.

Development Area – If applicable, the geographic area in which Franchisee has the right to develop Krispy Kreme Stores and Commissary Facilities, as set forth in the Development Agreement.

Factory Store – A retail sales facility with the manufacturing capability to produce fresh doughnuts in accordance with System Standards. Additionally, Factory Stores may have some capacity to supply fresh doughnuts to Hot Shops and Fresh Shops/Kiosks.

Force Majeure – Any of the following events or circumstances: (a) fire, earthquake, storm, hurricane, tornado, flood or other act of God; (b) war, act of terrorism, insurrection, rebellion, riots or other civil unrest; (c) epidemics, quarantine restrictions or other public health restrictions or advisories; and (d) other similar events beyond the reasonable control of the party.

Franchise – The rights granted and the obligations imposed pursuant to this Agreement that relate to the development and operation of the Krispy Kreme Store at the Site.

Franchise Agreement – An agreement, such as this Agreement, used by Franchisor to grant franchises for the operation of Krispy Kreme Stores at specific locations (including all exhibits, riders, guarantees and other agreements used in connection therewith).

Franchise Application – The application submitted by Franchisee for the Franchise.

Franchise Disclosure Document – The franchise disclosure document required by applicable law.

Franchisee – As defined in the Basic Terms.

Franchisor – As defined in the Basic Terms.

Fresh Shop/Kiosk – A retail sales facility with limited manufacturing capabilities (e.g. icing and filling equipment), or no manufacturing capabilities, that receives doughnuts from a Factory Store or a Commissary Facility and finishes them as necessary to sell in accordance with System Standards.

Fundraising – Sales of doughnuts, redemption cards, or coupons to charitable, educational, and other nonprofit organizations restricted to those located within the STORE's local market area (as Franchisor may determine from time to time) for resale (or giving) to consumers.

General Manager – The general manager of the STORE. The initial general manager is identified in the Basic Terms.

Good Standing – The condition that Franchisee and its Affiliates: (a) are current with all payments due to Franchisor, its Affiliates and suppliers; and (b) are not in default of any of their obligations under this Agreement, any Development Agreement (including any Development Schedule), any Franchise Agreement, any Commissary Facility Agreement or any other agreement between the parties hereto or any of their Affiliates.

Hot Shop – A retail sales facility with an impinger oven and limited manufacturing capabilities (e.g., icing and filling equipment) that receives doughnuts from a Factory Store or a Commissary Facility and finishes them as necessary to sell in accordance with System Standards.

Immediate Family – The spouse, parents, brothers, sisters and children, whether natural or adopted, of the referenced Person.

Initial Franchise Fee – As defined in [Section 13.1](#)

Krispy Kreme Store(s) – Stores which Franchisor or any of its Affiliates own, operate or franchise and which use the Marks and the System. Krispy Kreme Stores include Factory Stores, Hot Shops and Fresh Shops/Kiosks, but do not include Commissary Facilities.

Managing Director – The person designated as managing director of Franchisee's business pursuant to [Section 20.2](#). The initial Managing Director is identified in the Basic Terms.

Marks – The current and future trademarks, service marks, logos, designs, trade names, and other commercial symbols, together with all distinctive trade dress elements, or combinations thereof, used by Franchisor to identify the sources of goods and services offered and sold at Krispy Kreme Stores, including the trademark and service mark KRISPY KREME®.

Net Sales – All the STORE's revenue from food, beverages, and other products and merchandise of any type whatsoever sold, whether or not produced at the STORE or acquired from a third party, including Products purchased from other Krispy Kreme franchises (regardless whether owned by Franchisee) and services rendered at or away from the STORE (whether or not such sales are authorized by Franchisor) or from any use of the Marks, recorded using the accrual basis of accounting and otherwise in accordance with accounting principles generally accepted in the United States. Without limiting the foregoing, and for

the avoidance of doubt, “Net Sales” (a) includes all amounts Franchisee receives or has the right to receive from the conveyance of products and services, whether such sales are made for cash or cash equivalents (including credit, debit and gift cards) or on credit terms, but excludes (i) sales and similar taxes collected or which Franchisee has the right to collect from customers and which Franchisee is required by law to remit to a taxing authority, (ii) customer refunds, (iii) credits for product returns and (iv) sales or delivery of products to other Krispy Kreme Stores or Commissary Facilities (regardless whether owned by Franchisee), and (b) shall not be reduced by any charge or other provision for uncollectible accounts. Neither the inclusion of any type of revenue in the definition of Net Sales nor Franchisor’s demand or receipt of Royalties or Brand Fund contributions on such revenues shall constitute waiver or approval of any unauthorized sales by Franchisee hereunder, and Franchisor reserves all rights and remedies with respect thereto.

On-Premises Sales – Sales conducted on-premises to retail customers visiting the STORE.

Owner – Each Person (and permitted transferee of each such Person) holding: (a) a direct or indirect, legal or beneficial Ownership Interest or voting rights in Franchisee or any Affiliate of Franchisee that owns an Ownership Interest or voting rights in Franchisee; (b) a direct or indirect, legal or beneficial interest in this Agreement; (c) a direct or indirect, legal or beneficial interest in the STORE; or (d) any other legal or equitable interest, or the power to vest in himself or herself or itself any legal or equitable interest, in the revenue, profits, rights or assets arising from any of the foregoing.

Ownership Interest – Any direct or indirect, legal or beneficial ownership interest of any type, including (a) in relation to a corporation, the ownership of shares in the corporation; (b) in relation to a partnership, the ownership of a general or limited partnership interest; (c) in relation to a limited liability company, the ownership of a membership interest; or (d) in relation to a trust, the ownership of a legal or beneficial interest of such trust.

Payment Day – The day of the Week on which Royalties are due, which day currently is Friday, but may be changed at Franchisor’s sole discretion.

Person – Any individual, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity.

Principal Owner – An Owner with an Ownership Interest in Franchisee of ten percent (10%) or more.

Products – The current and future products that Franchisor authorizes to be offered and sold at Krispy Kreme Stores, including (a) fresh doughnuts (including, yeast-raised doughnuts, cake doughnuts, miniature doughnuts, and doughnut holes, which doughnuts have various types and flavors of fillings, glazes, or other coatings); (b) hot or cold fresh-brewed coffee beverages suitable for immediate consumption; (c) hot or cold espresso drinks suitable for immediate consumption; (d) frozen beverages suitable for immediate consumption; and (e) such other products and beverages as we may determine from time to time.

Reporting Day – The day of the Week by which Franchisee is required to report Net Sales to Franchisor, which day currently is Tuesday, but may be changed at Franchisor’s sole discretion.

Restricted Person – Franchisee, its Owners and Affiliates, and members of the Immediate Families of Franchisee (if a natural Person), and its Owners and Affiliates.

Royalties – As set forth in [Section 13](#).

Site – The location of the STORE with the street address identified in the Basic Terms.

STORE – The Krispy Kreme Store of the type identified in the Basic Terms that Franchisor authorizes Franchisee to operate at the Site pursuant to this Agreement. The term includes all of the assets of the STORE, including its revenue and income.

System – Those business formats, methods, procedures, signs, designs, layouts, equipment, and mixes designated by Franchisor from time to time for use in operating Krispy Kreme Stores and Commissary Facilities.

System Standards – The mandatory and suggested specifications, standards, operating procedures and rules that Franchisor prescribes from time to time for the operation of Krispy Kreme Stores and Commissary Facilities, including the standards, specifications and other requirements related to the purchase, preparation, marketing and sale of the Products; On-Premises Sales, Authorized Off-Premises Sales; customer service; the design, décor and appearance of the STORE; the maintenance and remodeling of the STORE and the equipment, fixtures and furnishings therein; the use and display of the Marks; the insurance coverage required to be carried for the STORE; the training of STORE employees; the days and hours of STORE operation; and the content, quality and use of advertising and promotional materials.

System Standards Manuals – The documents and other media that contain the System Standards.

Term – As defined in the Basic Terms.

Transfer or Transfer the Franchise (or similar words) – The direct or indirect sale, assignment, transfer, exchange, conversion, license, sublicense, lease, sublease, mortgage, pledge, collateral assignment, grant of a security, collateral or conditional interest or other encumbrance in or on, or other disposition, whether voluntary, involuntary, by operation of law or otherwise, of this Agreement, of any interest in or right under this Agreement, any form of legal or beneficial ownership interest in Franchisee, or any form of ownership interest or right to participate in or receive the benefits of the assets, revenues, income or profits of Franchisee's business, or any one or more other acts or events not covered by the foregoing that Franchisor reasonably determines to be a form of direct or indirect transfer, including: (a) any transfer, redemption or issuance of a legal or beneficial ownership interest in the capital stock of, a membership interest in, or a partnership interest in, Franchisee or any interest convertible into or exchangeable for capital stock of, a membership interest in or a partnership interest in, Franchisee; (b) any merger or consolidation of Franchisee, whether or not Franchisee is the surviving entity, or any conversion of Franchisee from one form of legal entity into another form of legal entity, or any sale, exchange, encumbrance or other disposition of Franchisee's assets; (c) any transfer in connection with or as a result of a divorce, dissolution of marriage or similar proceeding or a property settlement or legal separation agreement in the context of a divorce, dissolution or marriage or similar proceeding, an insolvency, bankruptcy or assignment for benefit of creditors, a judgment, a corporate, limited liability company or partnership dissolution or otherwise by operation of law; or (d) any transfer by gift, declaration of trust, transfer in trust, revocation of trust, trustee succession, trust termination, discretionary or mandatory trust distribution, occurrence of any event (*e.g.*, death of a person) that affects or ripens the rights of contingent beneficiaries, exercise of a power of appointment, exercise of a withdrawal right, adjudication of Franchisee or any Principal Owner as legally disabled, or upon or after Franchisee's death or the death of any of Franchisee's Principal Owners by will, disclaimer or the laws of intestate succession or otherwise.

Week – Any consecutive seven (7) calendar day period that Franchisor may designate from time to time, currently consisting of each seven (7) calendar day period ending at 11:59 PM on each Sunday.

2.2 Other terms used in this Agreement are defined in the context in which they arise.

3. **ACKNOWLEDGMENTS, REPRESENTATIONS, AND WARRANTIES**

3.1 Franchisee acknowledges that Franchisee has read this Agreement and Franchisor's Franchise Disclosure Document and understands and accepts the terms and conditions contained in this Agreement as being reasonably necessary to maintain Franchisor's high standards of quality and service. Franchisee further acknowledges that the uniformity of those standards at each Krispy Kreme Store is reasonably necessary to protect and preserve the goodwill of the Marks. Franchisee acknowledges that Franchisee has conducted an independent investigation of the business venture contemplated by this Agreement and recognizes that, like any other business, the nature of the business conducted by a Krispy Kreme Store may evolve and change over time, that an investment in a Krispy Kreme Store involves business risks, and that Franchisee's business abilities and efforts are vital to the success of the venture. Any information Franchisee acquires from other Krispy Kreme Store franchisees relating to their sales, profits, or cash flows does not constitute information obtained from Franchisor, nor does Franchisor make any representation as

to the accuracy of any such information or the likelihood of Franchisee achieving comparable results. Franchisee acknowledges that, in all of its dealings with Franchisor, Franchisor's officers, directors, employees and agents act only in a representative, and not in an individual, capacity. All business dealings between Franchisee and such Persons in connection with this Agreement are solely between Franchisee and Franchisor. Franchisee further acknowledges that Franchisor has advised Franchisee to have this Agreement reviewed and explained to Franchisee by an attorney.

- 3.2 Franchisee represents and warrants to Franchisor, as an inducement to Franchisor's entry into this Agreement, that all statements Franchisee has made and all materials Franchisee has submitted to Franchisor in connection with Franchisee's Franchise Application for and purchase of the Franchise are accurate and complete and that Franchisee has made no misrepresentations or material omissions to obtain the Franchise. Franchisor has approved Franchisee's Franchise Application for a franchise for a Krispy Kreme Store in reliance on each of Franchisee's representations to Franchisor.
- 3.3 Franchisee represents and warrants to Franchisor that Franchisee has the authority to execute and deliver this Agreement and to perform Franchisee's obligations hereunder.
- 3.4 Franchisee represents and warrants to Franchisor that this Agreement has been duly executed and delivered by Franchisee and, assuming the due authorization, execution and delivery by Franchisor, constitutes a legal, valid and binding obligation of Franchisee, enforceable in accordance with its terms.
- 3.5 Franchisee represents and warrants to Franchisor that Franchisee's execution and delivery of this Agreement does not, and Franchisee's performance of its obligations under this Agreement will not, with or without the giving of notice or the lapse of time or both, (a) conflict with or violate its organizational documents, if applicable, (b) conflict with or violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Franchisee, or (c) conflict with, result in any breach of, or constitute a default under, any contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Franchisee is a party or by which Franchisee is bound.
- 3.6 Franchisee represents and warrants to Franchisor that: (a) Franchisee owns fee simple title to the real property and improvements which comprise the STORE; or (b) if Franchisee holds a leasehold interest in the STORE, Franchisee has or will have a binding and effective lease with a lease term (plus renewal options) extending at least to the end of the Term and otherwise conforming to Franchisor's requirements in accordance with Section 7.
- 3.7 If Franchisee is, or at any time becomes, a business corporation, partnership, limited liability company or other legal entity, Franchisee and each of its Principal Owners represent, warrant and agree that: (a) Franchisee is duly organized and validly existing under the laws of the state of its organization, and, if a foreign business corporation, partnership, limited liability company or other legal entity, Franchisee is duly qualified to transact business in the state in which the STORE is located; (b) Franchisee has the authority to execute and deliver this Agreement and to perform its obligations hereunder; (c) true and complete copies of the articles of incorporation, articles of organization, operating agreement or principles, partnership agreement, bylaws, subscription agreements, buy-sell agreements, voting trust agreements, trust agreements and all other documents relating to Franchisee's ownership, organization, capitalization, management and control ("Organizational Documents") shall be promptly delivered to Franchisor for its approval, which approval shall not be unreasonably withheld; (d) any and all amendments, deletions and additions to Franchisee's Organizational Documents shall be promptly delivered to Franchisor for its approval, which approval shall not be unreasonably withheld; (e) Franchisee's activities are restricted to those necessary solely for the development, ownership and operation of Krispy Kreme Stores and Commissary Facilities in accordance with this Agreement and in accordance with any other agreements entered into with Franchisor or any of its Affiliates; (f) the Organizational Documents recite that the issuance, transfer or pledge of any direct or indirect legal or beneficial ownership interest is restricted by the terms of this Agreement; (g) all certificates representing direct or indirect legal or beneficial ownership interests now or hereafter issued must bear a legend in conformity with applicable law reciting or referring to such restrictions; and (h) Franchisee will deliver to Franchisor a Secretary/Clerk's/Trustee's Certificate

or other evidence satisfactory to Franchisor that the execution, delivery and performance of this Agreement and all other agreements and ancillary documents contemplated hereby or thereby have been duly authorized by all necessary action by the corporation, partnership, limited liability company or other legal entity, as applicable, and are within the legal powers of Franchisee's trustee, if Franchisee is a trust.

- 3.8 Franchisee and each of its Principal Owners represent, warrant, and agree that Exhibit A is current, complete and accurate. Franchisee agrees that an updated Exhibit A will be furnished promptly to Franchisor, so that Exhibit A (as so revised and signed by Franchisee) is at all times current, complete and accurate. Each person who is or becomes a Principal Owner must execute an agreement in the form Franchisor prescribes, undertaking to guarantee and be bound jointly and severally by the terms of this Agreement, the current form of which is attached hereto as Exhibit B. Each person who is or becomes an Owner, whether or not a Principal Owner, must execute an agreement in the form Franchisor prescribes, undertaking to be bound by the confidentiality and non-competition covenants contained in this Agreement, the current form of which is attached hereto as Exhibit C. Each Owner must be an individual acting in his/her individual capacity, unless Franchisor waives this requirement.
- 3.9 The provisions of Section 3 constitute continuing representations and warranties, and Franchisee and Franchisee's Principal Owners shall notify Franchisor immediately in writing of the occurrence of any event or the development of any circumstance that might render any of the foregoing representations and warranties false, inaccurate or misleading.

4. GRANT OF FRANCHISE

- 4.1 Subject to the terms of and on the conditions contained in this Agreement, Franchisor hereby grants to Franchisee the right to operate the STORE during the Term and to use the Marks and the System in the performance of Franchisee's obligations under this Agreement.
- 4.2 Franchisee will faithfully, honestly, and diligently perform Franchisee's obligations under this Agreement. Franchisee will continuously exert its best efforts to promote and enhance the operation of the STORE and to maximize the sale of Products.
- 4.3 Franchisee may not operate the STORE from any location other than the Site without Franchisor's prior written consent. If Franchisor consents to the relocation of the STORE, Franchisor has the right to charge Franchisee for its expenses in connection with the relocation.
- 4.4 Franchisee agrees that the STORE will be under direct, on-premises management by a trained Managing Director or General Manager or one of Franchisee's other managers, all of whom must have completed training to Franchisor's satisfaction.
- 4.5 Franchisee agrees that the STORE will not be closed for five (5) or more consecutive days without Franchisor's prior written consent.
- 4.6 In addition to selling the Products, Franchisee agrees to offer and sell such other goods and services as Franchisor may require from time to time in Franchisor's sole discretion. Franchisee will not, however, sell anything at, from or in connection with the STORE, other than the Products and other goods or services Franchisor authorizes Franchisee to offer or sell.
- 4.7 Franchisee may engage only in On-Premises Sales at and from the STORE and Authorized Off-Premises Sales, and shall not engage in any other types of sales or distribution of Products.

5. FRANCHISOR'S RESERVATION OF RIGHTS

- 5.1 Franchisor and its Affiliates (and their respective successors and assigns, by purchase, merger, consolidation or otherwise) retain all rights not expressly granted to Franchisee in this Agreement, including those with respect to Krispy Kreme Stores and Commissary Facilities, the Marks, and the sale of Products, including all rights Franchisor expressly reserves in this Section 5. Franchisee waives, to the fullest extent permitted under applicable law, all claims, demands or causes of action arising from or related to any of such activities by Franchisor or any of its Affiliates.

- 5.2 No exclusive territory, protection, or other right in the contiguous space, area, or market of the STORE is expressly or impliedly granted to Franchisee under this Agreement, and Franchisor reserves the right to operate and to grant others the right to operate Krispy Kreme Stores at any location on such terms and conditions as it deems appropriate. Franchisee acknowledges and agrees that such Krispy Kreme Stores and Commissary Facilities may be in direct competition with the STORE, without regard to any adverse effect on the STORE and without any obligation or liability to Franchisee.
- 5.3 Franchisor reserves the right to acquire, develop, and operate, or be acquired by, any company, including a company operating one or more food service businesses (including food service businesses selling doughnuts or coffee).
- 5.4 Franchisor reserves the right to license, sample, sell, or market by any means whatsoever (including the Internet) the Products and any goods or services identified by the Marks. Such goods and services may be licensed, sampled, sold, or marketed in any and all locations and venues, and through any method or channel of distribution Franchisor deems appropriate in its sole discretion (including wholesale distribution of Products to supermarkets, grocery stores, convenience stores, and other retail outlets). Such sales may be in direct competition with the STORE, without regard to any adverse effect on the STORE and without any obligation or liability to Franchisee.

6. SITE SELECTION

- 6.1 Franchisee acknowledges that, prior to signing this Agreement, Franchisee (with or without Franchisor assistance) located, and Franchisor approved, the Site. Franchisee acknowledges and agrees that Franchisor's recommendation or approval of the Site, and any information regarding the Site communicated to Franchisee, do not constitute any acknowledgement, warranty or representation of any kind, express or implied, including any warranty or representation as to the potential access, visibility or profitability of a Krispy Kreme Store at that Site, or for any other purpose. Franchisor's approval of the Site merely signifies that Franchisor is willing to grant a Franchise for a Krispy Kreme Store at that location. Application of criteria that have appeared effective with respect to other sites may not accurately reflect the potential for all sites, and, after Franchisor's approval of a site, demographic and/or other factors included in or excluded from Franchisor's criteria could change, thereby altering the potential of a site. The uncertainty and instability of such criteria are beyond Franchisor's control, and Franchisor will not be responsible for the failure of a site Franchisor has recommended or approved to meet expectations as to potential revenue or operational criteria. Neither Franchisor's approval of the Site nor any assistance Franchisor may give Franchisee in identifying the Site, constitutes a warranty or representation of any kind, express or implied, as to the suitability of the proposed Site for a Krispy Kreme Store or for any other purpose. Franchisee's decision to develop and operate the STORE at the Site is based solely on Franchisee's own independent investigation of the suitability of the Site for a Krispy Kreme Store.
- 6.2 Franchisee must also cause to be prepared, and submit for approval by Franchisor, a site plan and any modifications to Franchisor's basic plans and specifications for the STORE, including requirements for dimensions, exterior design, materials, interior layout, equipment, fixtures, furniture, signs and decorating. Franchisee understands that Franchisee may modify Franchisor's basic plans and specifications only to the extent required to comply with applicable ordinances, building codes and permit requirements and only with Franchisor's prior written approval. Franchisor's exercise of its right to approve the Site layout, to approve any plans, to inspect the construction or conversion of the STORE shall be solely for the purpose of assuring compliance with the System Standards and shall not be construed as any express or implied representation or warranty that the STORE complies with any applicable laws, codes or regulations (including the Americans with Disabilities Act ("ADA") or any other federal, state, or local law or ordinance regulating standards for the access to, use of, or modification of buildings for and by persons whose disabilities are protected by law) or that the construction thereof is sound or free from defects. Franchisor's criteria for approval or disapproval do not encompass technical, architectural or engineering considerations. Franchisor shall have no liability or obligation with respect to the construction or conversion of the STORE.

7. LEASE OR PURCHASE OF SITE

- 7.1 Franchisee must lease, sublease or purchase the Site within one-hundred and eighty (180) days after the date of Franchisor's site acceptance letter. Franchisor has the right to approve the terms of any lease, sublease or purchase contract for the Site, and Franchisee agrees to deliver a copy to Franchisor for Franchisor's approval before Franchisee signs it. Franchisee agrees that any lease or sublease for the Site must, in form and substance satisfactory to Franchisor, (a) provide for notice to Franchisor of Franchisee's default under the lease or sublease and an opportunity for Franchisor to cure such default; (b) require the lessor or sublessor to disclose to Franchisor, on its request, sales and other information furnished by Franchisee; (c) give Franchisor the right on any termination or expiration (without renewal) of this Agreement to assume the lease or sublease without the lessor's or sublessor's consent; (d) give Franchisor the right to enter the STORE to remove signs and other tangible property that embodies any of the Marks or that contains or embodies patents owned by Franchisor or any of its Affiliates, and provide that the lessor and/or sublessor relinquishes to Franchisor, on any termination or expiration (without renewal) of this Agreement, any lien or other ownership interest, whether by operation of law or otherwise, in and to any tangible property, including any outdoor sign, that embodies any of the Marks; and (e) require that the lessor and/or sublessor acknowledges that Franchisor has no liability or obligation whatsoever under the lease or sublease until and unless Franchisor assumes the lease or sublease on termination or expiration of this Agreement.

Franchisee may not execute a lease, sublease or purchase contract pertaining to the Site for the STORE or any modification thereof without Franchisor's approval. Franchisor's approval of the lease, sublease or purchase contract does not constitute a warranty or representation of any kind, express or implied, as to its fairness or suitability or as to Franchisee's ability to comply with its terms. Franchisor does not, by virtue of approving the lease, sublease or purchase contract, assume any liability or responsibility to Franchisee or to any third parties. Franchisee must deliver a copy of the fully signed lease, sublease or purchase contract to Franchisor within five (5) days after its execution.

8. STORE DEVELOPMENT

- 8.1 Franchisee is responsible for developing the STORE. In the System Standards Manuals, Franchisor will furnish Franchisee with mandatory and suggested specifications and layouts for a Krispy Kreme Store, including requirements for dimensions, design, image, interior layout, decor, equipment, fixtures, furnishings, construction materials, and signs. Franchisee acknowledges that the System Standards Manuals do not contain the requirements of any federal, state, or local law, code, ordinance or regulation (including building codes, permit requirements, and regulations and the ADA or similar rules governing accommodations for persons with disabilities). Franchisee is obligated to have prepared all required construction plans and specifications to suit the shape and dimensions of the Site and to insure that such plans and specifications comply with all applicable state, federal, and local laws, codes, ordinances, regulations (including building codes, permit requirements, and regulations and the ADA or similar rules governing accommodations for persons with disabilities). Franchisee is obligated to submit construction plans and specifications to Franchisor for approval before construction of the STORE is commenced and, at Franchisor's request, to submit all revised plans and specifications during the course of such construction with "as built" plans to be provided upon completion. Franchisor may be willing to assist Franchisee in developing the STORE by recommending engineers and architects and otherwise furnishing information to assist Franchisee in developing the STORE in accordance with Franchisor's specifications.
- 8.2 Franchisee agrees, at its own expense, to do the following with respect to developing the STORE at the Site:
- (a) secure all financing required to develop and operate the STORE;
 - (b) obtain all building, utility, sign, health, sanitation, business and other permits and licenses required to construct and operate the STORE;
 - (c) construct all required improvements to the Site and decorate the STORE in compliance with plans and specifications and designs Franchisor has approved;

- (d) purchase or lease and install all required equipment, fixtures, furnishings, and signs required for the STORE; and
 - (e) purchase an opening inventory of authorized and approved materials and supplies, certain of which items must be purchased from Franchisor, its Affiliates, or suppliers designated by Franchisor, all as described in the System Standards Manuals.
- 8.3 Franchisee acknowledges that Franchisor is not responsible for, and shall have no liability for, the architecture, design, engineering, or construction of the STORE, for the STORE's compliance with any federal, state, or local law (including the ADA and any other federal, state or local law or ordinance regulating standards for access to, use of the, or modification of buildings for and by persons who are protected by law by virtue of such disability or whose disabilities are otherwise recognized by law), for any errors, omissions or discrepancies of any nature in any drawings or specifications with respect to the STORE, or for any other matter relating to the development, use or operation of the STORE, even if Franchisor assists in the development of the STORE.

9. BUILDING, EQUIPMENT, FIXTURES, FURNISHINGS, SIGNS AND SUPPLIES

- 9.1 Franchisee acknowledges that the Products, Marks, and System have established significant prestige and goodwill and are well-recognized in the mind of the public and the trade. In order to preserve such prestige and goodwill, Franchisee understands and agrees that it is necessary and appropriate for Franchisor to closely control the supply chain for all equipment (including production equipment and fixtures, cash register, POS system and computer), fixtures, furnishings, signs, delivery vehicles, raw materials (including doughnut mixes and coffee beans), supplies, and any other items used or useful in developing or operating the STORE or producing, marketing, or selling the Products or other goods Franchisor requires Franchisee to sell.
- 9.2 Franchisee agrees to use in developing and operating the STORE (and producing, marketing, and selling the Products and other goods Franchisor requires Franchisee to sell) only the equipment, fixtures, furnishings, signs, delivery vehicles, raw materials, supplies, cash register, POS system, and computers and other items that Franchisor has approved from time to time for Franchisee to use in conjunction with the STORE as meeting its specifications and standards for quality, design, appearance, function and performance in accordance with the System Standards. Any deviation from Franchisor's mandatory specifications and standards as prescribed by the System Standards must receive prior written approval from Franchisor. Approval of any item for use by Franchisor, its Affiliates, or other developers or franchisees will not be construed as approval of such item for Franchisee's use.
- 9.3 Notwithstanding Section 9.2, Franchisor may require Franchisee to purchase any or all of the equipment, fixtures, furnishings, signs, delivery vehicles, raw materials, supplies, and other items for the STORE directly from Franchisor or its Affiliates or other suppliers it may designate from time to time. Franchisee agrees to purchase all such items from Franchisor, its Affiliates or designated suppliers, as Franchisor may require. Franchisee acknowledges and agrees that Franchisor, its Affiliates and designated suppliers have the right to profit from the sale of such items and that Franchisor does not act as agent, representative or in any other intermediary or fiduciary capacity for Franchisee in Franchisor's relationship with any designated suppliers. Franchisee acknowledges and agrees that (a) Franchisor and/or its Affiliates may receive payments, fees, commission or reimbursements from designated suppliers and third parties in respect to such purchases, (b) Franchisor and/or its Affiliates may have investments in designated suppliers, and (c) Franchisor and/or its Affiliates may profit from Franchisee's purchases from designated suppliers. Franchisor, its Affiliates and designated suppliers shall not be liable for any delay in the delivery of ingredients as a result of any Force Majeure. Franchisor, its Affiliates and designated suppliers may establish policies and procedures from time to time for the allocation and distribution of items among Krispy Kreme Stores and Commissary Facilities.

- 9.4 All equipment (including production equipment), fixtures, furnishings, raw materials (including doughnut mixes and coffee beans) that Franchisee purchases from Franchisor, its Affiliates or designated suppliers shall be at such prices and on such purchase terms (including credit, such as COD, and shipping) and conditions as Franchisor, its Affiliates or designated suppliers may determine from time to time. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY PURCHASE ORDER ISSUED BY FRANCHISOR OR ITS AFFILIATES OR DESIGNATED SUPPLIERS, NEITHER FRANCHISOR, ANY OF ITS AFFILIATES NOR ANY DESIGNATED SUPPLIER MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR OTHERWISE WITH RESPECT ANY ITEMS FRANCHISEE IS REQUIRED TO PURCHASE FROM ANY OF THEM. NEITHER FRANCHISOR, ANY OF ITS AFFILIATES NOR ANY DESIGNATED SUPPLIER WILL HAVE ANY LIABILITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH ANY SUCH ITEMS, INCLUDING FRANCHISEE'S PURCHASE, USE OR RESALE OF ANY SUCH ITEMS.**
- 9.5 In the event Franchisor does not require Franchisee to purchase a particular item from Franchisor, its Affiliates, or a designated supplier, Franchisee may purchase such item from a supplier Franchisor has approved. If Franchisee proposes to purchase any such item from any supplier who is not then approved by Franchisor, Franchisee and the proposed supplier must submit to Franchisor all information that Franchisor may request in order to determine whether to approve the supplier. Franchisor will have the unconditional right to approve or disapprove any proposed supplier, and Franchisor may approve a supplier conditionally. Within thirty (30) days after Franchisor receives all requested information, Franchisor will communicate to Franchisee in writing Franchisor's decision to approve or disapprove Franchisee's proposed supplier. Franchisor will evaluate proposed suppliers on their ability to comply with applicable standards, specifications and procedures, and Franchisor will only approve those proposed suppliers that meet Franchisor's high standards. Franchisor may disapprove any supplier who Franchisor previously approved, and Franchisee may not, after receipt of notice of disapproval, reorder from any supplier Franchisor has disapproved. Franchisor may prescribe procedures for the submission of requests for approval and impose obligations on approved suppliers, which will be incorporated in a written license agreement with the supplier. Franchisor may obtain from Franchisee and/or such approved suppliers reimbursement of Franchisor's reasonable costs and expenses incurred in connection with the approval process of the supplier's compliance with Franchisor's requirements. Franchisee acknowledges and agrees that Franchisor does not act as agent, representative or in any other intermediary or fiduciary capacity for Franchisee in Franchisor's relationship with approved suppliers. Franchisor may impose limits on the number of approved suppliers. Franchisor has the right to monitor the quality of services provided by approved suppliers in a manner Franchisor deems appropriate and may terminate any approved supplier that does not meet Franchisor's quality standards and specifications, as may be in effect from time to time.
- 9.6 Franchisee agrees to place or display at the Sites (interior and exterior) only such signs, emblems, lettering, logos, and display materials that Franchisor approves from time to time.
10. **COMPUTER SYSTEM**
- 10.1 Franchisee agrees to use in the development and operation of the STORE the POS, cash register/computer terminals and operating software ("Computer System") that Franchisor specifies from time to time. Franchisee agrees to install and use at the STORE the Computer System that Franchisor specifies from time to time and to transmit to Franchisor (and otherwise permit Franchisor to collect) in the form and at frequencies it specifies from time to time, electronic information from the Computer System. Franchisee also agrees to identify Product categories and other items in the Computer System in a form that Franchisor specifies. Franchisee agrees to install and maintain at the STORE a DSL or cable modem, or similar means of networking, and dedicated line that Franchisor may use to access sales information and other data on the Computer System. Franchisee is responsible for maintaining a secure network environment consistent with this Agreement and all applicable legal requirements.

- 10.2 Franchisee acknowledges that Franchisor has developed specifications for certain components of the Computer System and may modify such specifications and the components of the Computer System from time to time. As part of the Computer System, Franchisor may require Franchisee to obtain specified computer hardware and/or software, including a license to use proprietary software developed by Franchisor or others. Franchisor's modification of such specifications for the components of the Computer System may require Franchisee to incur costs to purchase, lease and/or license new or modified computer hardware and/or software and to obtain service and support for the Computer System during the term of this Agreement. Franchisee acknowledges that Franchisor cannot estimate the future costs of the Computer System (or additions or modifications thereto) and that the cost to Franchisee of obtaining the Computer System (including software licenses) (or additions or modification thereto) may not be fully amortizable over the remaining term of this Agreement. Within sixty (60) days after Franchisee receives notice from Franchisor, Franchisee agrees to obtain the components of the Computer System that Franchisor designates and requires.
- 10.3 Franchisee further acknowledges and agrees that Franchisor has the right to charge a reasonable systems fee for software or systems, modifications and enhancements specifically made for Franchisor that are licensed to Franchisee and other maintenance and support services that Franchisor or its Affiliates furnish to Franchisee related to the Computer System.
11. **STORE OPENING**
- 11.1 Franchisee agrees not to open the STORE for business until:
- (a) Franchisor approves the STORE and site plan as developed in accordance with Franchisor's specifications and System Standards;
 - (b) All required training has been completed to Franchisor's satisfaction;
 - (c) Franchisee is in compliance with all Franchise Agreements, Development Agreements, and Commissary Facility Agreements, including the payment of the Initial Franchise Fee and all other amounts then due to Franchisor;
 - (d) Franchisor has been furnished with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor requests or accepts; and
 - (e) Other items which Franchisor may reasonably require have been furnished to Franchisor.
- 11.2 Franchisee must properly staff the STORE prior to opening. Franchisor will supply at no charge an opening team that will assist Franchisee for a minimum of seven (7) days in the opening of the STORE. However, if Franchisee is developing several Krispy Kreme Stores or Commissary Facilities pursuant to a Development Agreement, this team will be made available at no charge for the first Krispy Kreme Store or Commissary Facility, one-half of a team will be made available at no charge for the second Krispy Kreme Store or Commissary Facility, a field consultant will be made available at no charge for the third Krispy Kreme Store or Commissary Facility and a field consultant may or may not be made available at no charge for any subsequent Krispy Kreme Stores or Commissary Facilities, at Franchisor's sole discretion. "No charge" means Franchisor will be responsible for the team's travel, room and board, and salaries, but Franchisee will be responsible for all other charges or expenses.
12. **CAPITAL IMPROVEMENTS**
- 12.1 In addition to the requirements of Section 10 pertaining to the Computer System, Franchisor may, from time to time, require Franchisee to make certain capital improvements with respect to developing or operating the STORE, including: (a) the acquisition of new equipment (whether for the Products or other goods Franchisor requires Franchisee to sell or otherwise), fixtures, furnishings, signs, delivery vehicles, or other fixed assets; (b) periodic remodeling; and (c) replacement of obsolete or worn-out improvements, equipment, fixtures, furnishings, signs, delivery vehicles, or other fixed assets ("Capital Improvements").

Franchisee agrees to make such Capital Improvements as Franchisor may specify from time to time in Franchisor's sole discretion. Franchisee agrees not to make any modifications to any required Capital Improvements without Franchisor's prior written approval. Franchisee further agrees that all intellectual property rights to any such Capital Improvements, if applicable, will be the exclusive property of Franchisor or its Affiliates.

13. INITIAL FRANCHISE FEE AND ROYALTIES

- 13.1 Concurrently with the signing of this Agreement, Franchisee agrees to pay Franchisor a nonrecurring initial franchise fee in the amount specified in the Basic Terms ("Initial Franchise Fee"). The Initial Franchise Fee is fully-earned, non-refundable, and payable to Franchisor on the Effective Date.
- 13.2 On or before the Payment Day each Week, Franchisee will pay Franchisor an amount equal to four and one-half percent (4.5%) of Net Sales ("Royalties") for the preceding Week, provided however, Royalties on Authorized Off-Premises Sales shall be the following percentages of Net Sales: three and one half (3 ½ %) of Net Sales incurred during 2008; two and one-half percent (2 ½%) of Net Sales incurred during 2009; and one percent (1%) of Net Sales incurred during 2010 and thereafter. On or before the Reporting Day each Week, Franchisee will report to Franchisor, in the form it may require from time to time, the true and correct Net Sales of the STORE for the preceding Week.
- 13.3 Franchisee agrees to give Franchisor authorization, in the form that Franchisor designates from time to time (the current form is attached as Exhibit D), for direct debits from, or credits to, the Account. Franchisee shall not close the Account (or allow the Account to be closed) without first opening and notifying Franchisor of an alternate Account, nor shall Franchisee terminate any direct debit authorization from the Account without a replacement authorization approved by Franchisor. Franchisee hereby authorizes Franchisor to initiate debit entries and/or credit entries to the Account for payments of Royalties and other amounts payable under this Agreement, including purchases for production equipment, fixtures, furnishings, doughnut mixes and other ingredients, packaging and all supplies purchased from Franchisor and any interest charges due thereon. Franchisee agrees to make the funds available in the Account for withdrawal no later than the due date for payment. The amount actually transferred from the Account to pay Royalties will be based on the STORE's Net Sales reported to Franchisor or determined by Franchisor from the records contained in the cash register/computer terminals of the STORE. If Franchisee has not reported Net Sales of the STORE to Franchisor for any reporting period as required above, Franchisee hereby authorizes Franchisor to debit the Account in an estimated amount based on prior reports of Net Sales.
- 13.4 If at any time Franchisor determines that Franchisee has under-reported the Net Sales of the STORE, or underpaid Royalties or any other amounts due to Franchisor under this Agreement, Franchisee hereby authorizes Franchisor to initiate immediately a debit to the Account in the appropriate amount, including interest as provided for in this Agreement. Any overpayment will be credited to the Account through a credit effective as of the first reporting date after Franchisor and Franchisee determine that such credit is due.
- 13.5 All amounts that Franchisee owes Franchisor will bear interest after their due date at the rate of one and one-half percent (1.5%) per month or the highest contract rate of interest permitted by law, whichever is less. Franchisee acknowledges that this Section does not constitute Franchisor's agreement to accept any payments after they are due or Franchisor's commitment to extend credit to, or otherwise finance Franchisee's operation of, the STORE. Franchisee's failure to pay all amounts when due constitutes a material breach and grounds for termination of this Agreement, as provided in Section 26 hereof, notwithstanding the provisions of this Section 13.5.
- 13.6 Notwithstanding any designation Franchisee might make, Franchisor has sole discretion to apply any of Franchisee's payments to any of its past due indebtedness to Franchisor in any sequence. Franchisee acknowledges and agrees that Franchisee has no right to set off any amounts that Franchisee claims Franchisor owes Franchisee against Royalties, Brand Fund contributions, payments for purchases, or any other amounts Franchisee owes Franchisor under this Agreement or otherwise.

14. TRAINING AND GUIDANCE

- 14.1 Before the STORE begins operating, Franchisor will furnish training on the operation of a Krispy Kreme Store as follows. Franchisor will furnish a training program for up to two (2) STORE managers furnished at Franchisor's designated training facility and/or at an operating Krispy Kreme Store, at Franchisor's discretion. The STORE managers are required to complete training to Franchisor's satisfaction. Although Franchisor will furnish training to these managers of the STORE at no additional fee or other charge, Franchisee will be responsible for the managers' wages, salaries, travel, room and board, and living expenses during training. Franchisee agrees to replace a manager immediately if Franchisor determines that he or she is not qualified to serve in this capacity at the STORE. Franchisor will furnish the same training program to one (1) additional manager of the STORE per year that Franchisee hires after the STORE is open, without fee or other charge, subject to the schedules for the training program in effect from time to time. Franchisee will be responsible for the managers' wages, salaries, travel, room and board, and living expenses during training.
- 14.2 Franchisor may require managers of the STORE to attend and successfully complete periodic or additional training programs, and Franchisor may also offer optional training programs. Except as provided in Section 14.1, Franchisor has the right to charge reasonable fees for providing any such initial, periodic or additional training programs. Franchisee will be responsible for the managers' wages, salaries, travel, room and board, and living expenses incurred by Franchisee and Franchisee's personnel in attending any training programs. Franchisee shall immediately replace any managers who fail to successfully complete any training program.
- 14.3 Franchisor will furnish Franchisee periodic guidance with respect to the System, including improvements and changes to the System. Such guidance, at Franchisor's discretion, will be furnished in the form of the System Standards Manuals, bulletins and other written materials, consultations by telephone or in person at Franchisor's offices or at the STORE, or by any other means of communications. At Franchisee's request, Franchisor may provide special assistance for which Franchisee will be required to pay the fees and charges Franchisor may establish from time to time. If Franchisee requests or Franchisor requires additional or special training for Franchisee's employees, all of the expenses that Franchisor incurs in connection with such training, including per diem charges and travel and living expenses for Franchisor's personnel, will be Franchisee's responsibility.

15. SYSTEM STANDARDS

- 15.1 Franchisor will loan Franchisee one (1) copy of its System Standards Manuals solely for use in operating the STORE during the Term. The System Standards Manuals at all times will remain Franchisor's property, and they are protected by copyright. Franchisee will keep its copy of the System Standards Manuals current and in a secure location at the STORE and shall return them to Franchisor immediately upon request, upon termination, or expiration of this Agreement or upon any Transfer. If any copies of the System Standards Manuals in Franchisee's possession are lost, destroyed or significantly damaged, Franchisee will obtain a replacement copy at Franchisor's then applicable charge. Franchisee may not at any time copy, duplicate, record, or otherwise reproduce any part of the System Standards Manuals or allow any unauthorized persons access to any System Standards Manuals, including those that are made available electronically, nor may Franchisee post all or any part of the System Standards Manuals on any limited access intranet sites without Franchisor's approval. Franchisee may not distribute any part of the System Standards Manuals and may not disclose any part of the System Standards Manuals to any person, other than its employees who have a need to know the contents of the System Standards Manuals in order to perform their jobs.
- 15.2 During the Term, Franchisee will comply with all of the System Standards and other requirements contained in System Standards Manuals, in addition to all applicable laws, regulations, rules, by-laws, orders and ordinances in connection with its operation of the STORE. In the event of a dispute relating to the contents of the System Standards Manuals, the master copy of the System Standards Manuals maintained by Franchisor at its principal office is controlling. Franchisor may at any time and from time to time change the System Standards Manuals to reflect changes in System Standards.

- 15.3 To determine whether Franchisee is in compliance with this Agreement and all System Standards, Franchisor and/or Franchisor's agents have the right at any time during regular business hours, and without prior notice to Franchisee, to: (a) inspect the STORE; (b) observe, photograph and videotape the operations of the STORE; (c) remove samples of any Products, materials or supplies for testing and analysis; (d) interview personnel of the STORE; (e) interview customers of the STORE and to require Franchisee to present to Franchisee customers any evaluation forms periodically prescribed by Franchisor and to participate in and/or request its customers to participate in any surveys performed by or on behalf of Franchisor; and (f) inspect and copy any books, records and documents relating to the operation of the STORE.
16. **MARKS**
- 16.1 Franchisee acknowledges that HDN Development Corporation is the Owner of the Marks and that Franchisor has the right to sublicense the use of the Marks. Franchisee further acknowledges that Franchisee's right to use the Marks is derived solely from this Agreement and is limited to the performance of Franchisee's responsibilities and obligations hereunder in accordance with the terms hereof. Franchisee acknowledges that its unauthorized use of any of the Marks will constitute a material breach of this Agreement, warranting immediate termination of this Agreement by Franchisor at Franchisor's election. Franchisee acknowledges and agrees that its usage of the Marks and any goodwill established thereby shall inure solely to the benefit of the Owner of the Marks and that this Agreement does not confer any goodwill or other interests in any of the Marks upon Franchisee or Franchisee's Owners (other than the rights specifically granted by this Agreement). All provisions of this Agreement applicable to the Marks apply to any additional trademarks, service marks, logos, trade dress and commercial symbols Franchisor authorizes Franchisee to use. Franchisee may not at any time during or after the Term contest, or assist any other person in contesting, the validity or ownership of any of the Marks.
- 16.2 Franchisee shall use the Marks as the sole brand and other source identifier of the STORE, provided Franchisee shall identify itself as the independent owner and operator of the STORE in the manner Franchisor prescribes. Franchisee shall use the Marks only as Franchisor prescribes or allows in writing, whether in connection with the sale of Products and the operation of the STORE, or otherwise.
- 16.3 Franchisee and Franchisee's Owners, affiliates and agents may not: (a) challenge the validity of any of the Marks or any registration or application for registration therefore, or attempt to claim ownership of or to register anywhere any of the Marks or any derivation or colorable imitation thereof; (b) attempt to claim ownership of or to register anywhere any trademark, service mark, trade name, or trade dress confusingly similar to any of the Marks; (c) use any of the Marks or any other trademark or trade dress confusingly similar thereto in any manner that would jeopardize Franchisor's rights in the Marks; or (d) do any act that would invalidate registration for any of the Marks. Franchisee may not use any of the Marks as part of any corporate or legal business name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to Franchisee hereunder), or in any modified form, nor may Franchisee use any of the Marks in connection with the performance or sale of any unauthorized products or services or in any other manner Franchisor has not expressly authorized in writing. Franchisee agrees to display the Marks prominently in the manner Franchisor prescribes, including at the STORE, on packaging and serving materials that Franchisor designates and in connection with forms and advertising and marketing materials. Franchisee agrees to give such notices of trademark and service mark registrations and such other trademark and service mark notices as Franchisor specifies and to obtain any fictitious or assumed name registrations required under applicable law.
- 16.4 Franchisee agrees to notify Franchisor immediately of any apparent infringement of, or challenge to, any of the Marks, or of any claim by any Person of any rights in any of the Marks, and Franchisee agrees not to communicate with any Person other than Franchisor, Franchisor's attorneys and Franchisee's attorneys in connection with any such apparent infringement, challenge or claim. Franchisor has sole discretion to take such action as Franchisor deems appropriate and the right to control exclusively any litigation, U.S. Patent and Trademark Office proceeding or any other proceeding arising out of any such apparent infringement,

challenge or claim or otherwise relating to any of the Marks, including the exclusive right to utilize counsel of Franchisor's choice to prosecute or defend any such litigation or proceeding. Any award recovered in any such action or proceeding shall belong exclusively to Franchisor, or, as appropriate, Franchisor's Affiliates. Franchisee agrees to sign any and all instruments and documents, render such assistance and do such acts and things as, in the opinion of Franchisor and/or Franchisor's attorneys, may be necessary or advisable to protect and maintain Franchisor's interests in any litigation or U.S. Patent and Trademark Office proceeding or other proceeding or otherwise to protect and maintain Franchisor's interests in the Marks.

- 16.5 Franchisee may not register, or attempt to register, any of the Marks as part of any Internet domain name or URL, and may neither display nor use any of the Marks or other of Franchisor's or its Affiliates' intellectual property in connection with, or associate the System with (through a link or otherwise) any website advertising, address or listing on the World Wide Web or any other portion of the Internet without Franchisor's prior written consent.
- 16.6 Franchisee may not use any of the Marks to incur any obligation or indebtedness on behalf of Franchisor or its Affiliates.
- 16.7 Franchisee hereby assigns to Franchisor all tangible media of expression derived from any of the Marks, and agrees to execute such further assignments as Franchisor may request. Franchisee shall take all actions and sign all documents necessary to give effect to the purpose and intent of this Section 16. Franchisee irrevocably appoints Franchisor as the true and lawful attorney-in-fact for Franchisee and authorizes Franchisor to take such actions and to execute, acknowledge and deliver all such documents as may from time to time be necessary to convey to Franchisor all rights granted by this Agreement.
- 16.8 Franchisor may, in its sole discretion, modify or discontinue the use of any of the Marks and/or to use one or more additional or substitute trademarks or service marks. Franchisee agrees to comply with Franchisor's directions with regard to such modification, discontinuance, addition, or substitution of use of any Mark. Franchisor will not be obligated to reimburse Franchisee for any expense or loss of revenue related thereto.
- 16.9 Franchisee acknowledges that the Marks have established prestige and goodwill and are well recognized in the mind of the public and the trade, and that it is of great importance to Franchisor that the high standards and reputation symbolized by the Marks be maintained in the manufacture, marketing, and sale of the various Products and other authorized goods bearing and services utilizing the Marks. Accordingly, all items of Products manufactured, marketed, or sold, and services rendered, by Franchisee pursuant to this Agreement shall be of high quality as determined by Franchisor in its sole discretion. They shall be suitable for the exploitation of the Marks to the best advantage and the protection and enhancement of the Marks and the goodwill associated therewith. Franchisor shall have the right to, and shall, exercise quality control over Franchisee's use of the Marks to the degree reasonably necessary to maintain the validity thereof and to protect the goodwill associated therewith, including but not limited to the right to inspect and monitor Franchisee's use of the Marks in any manner and time prescribed by Franchisor.

17. **CONFIDENTIAL INFORMATION**

- 17.1 Franchisor will disclose to Franchisee such parts of the Confidential Information as Franchisor deems necessary or advisable from time to time for the performance of Franchisee's obligations under this Agreement. Franchisee acknowledges and agrees that Franchisee and its Owners and Affiliates will not acquire any interest in or right to use the Confidential Information, other than the right to use it in the performance of Franchisee's obligations under this Agreement, and that the use or duplication of the Confidential Information in any other business would constitute an unfair method of competition with Franchisor and with other developers and Franchisees of Krispy Kreme Stores. Franchisee agrees to disclose the Confidential Information to Franchisee's Owners and to Franchisee's employees only to the extent reasonably necessary for the performance of Franchisee obligations under this Agreement. Franchisee's Owners must execute the form of Investor Personal Covenants Regarding Confidentiality, Non-Competition and Non-Solicitation attached hereto as Exhibit C.

- 17.2 Franchisee acknowledges and agrees that the Confidential Information is confidential, is Franchisor's proprietary and valuable asset, includes trade secrets owned by Franchisor and Franchisor Affiliates and is disclosed to Franchisee solely on the condition that Franchisee, Franchisee's Owners and employees who have access to the Confidential Information agree, and Franchisee agrees that, during and after the Term, Franchisee, Franchisee's Owners, Franchisee's Affiliates and Franchisee's employees:
- (a) will not use Confidential Information in any other business or capacity;
 - (b) will maintain the absolute confidentiality of Confidential Information during and after the Term;
 - (c) will not make unauthorized copies of any portion of Confidential Information whether through electronic media, writings, or other tangible or intangible means of expression; and
 - (d) will adopt and implement all reasonable procedures that Franchisor prescribes from time to time to prevent unauthorized use or disclosure of Confidential Information, including restrictions on disclosure thereof to STORE personnel and others.

Without limiting the foregoing, Franchisee, and each of its Owners, as applicable, each (i) acknowledge the possibility that they may gain access to Franchisor's material non-public information and/or that of Franchisor's parent company, Krispy Kreme Doughnuts, Inc. ("KKDI"), and that the securities laws prohibit trading in KKDI securities while in possession of such information, and (ii) agree to refrain from trading in KKDI securities in violation of such laws.

- 17.3 Notwithstanding anything to the contrary contained in this Agreement and provided Franchisee has obtained Franchisor's prior written consent, the restrictions on Franchisee disclosure and use of the Confidential Information will not apply to the following:
- (a) information, methods, procedures, techniques and knowledge which are or become generally known in the food service business, other than through disclosure (whether deliberate or inadvertent) by Franchisee, Franchisee's Owners, agents, or employees; and
 - (b) the disclosure of the Confidential Information in judicial, arbitration or administrative proceedings to the extent that Franchisee is legally compelled to disclose such information, provided Franchisee has notified Franchisor prior to such disclosure and has used Franchisee's best efforts to obtain, and has afforded Franchisor sufficient opportunity to seek an appropriate protective order and obtain, assurances satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

18. PATENTS AND INVENTIONS

- 18.1 Franchisor and/or its Affiliates have obtained certain patent protection and may seek additional patent protections for other aspects of the System, the Products, and/or other technology related to the development and operation of Krispy Kreme Stores and Commissary Facilities and the production, marketing, and sale of the Products, or otherwise, including all improvements thereto. Nothing in this Agreement shall be construed as transferring ownership of any patents or patent applications from Franchisor or its Affiliates to Franchisee. Nothing in this Agreement shall be construed as transferring the right to sublicense any patents or patent applications from Franchisor or its Affiliates to Franchisee.
- 18.2 Franchisee agrees to promptly disclose to Franchisor and/or its Affiliates, and Franchisee agrees not to disclose to any other Person or permit any other Person to use (absent Franchisor's prior written consent), any and all inventions (which term "inventions" includes any invention, idea, concept, method, technique, material, design, discovery, know-how, development, improvement, product, process, or innovation), including all improvements thereto, which are developed by Franchisee, Franchisee's Owners, or Franchisee's Affiliates, whether or not constituting protectable intellectual property, which are in any way related to the System, the Products, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products.

- 18.3 Franchisee hereby agrees to assign, and does assign, to Franchisor and/or the Affiliates Franchisor designates all right, title, and interest in any invention, patent application, or patent conceived of or reduced to practice which is in any way related to the System, the Products, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products. Franchisor will have no obligation to make payments to Franchisee or any other Person with respect to any such assignments. Franchisee agrees that all such inventions, patent applications, and patents referenced above shall belong to Franchisor and/or Franchisor's Affiliates, and that all right, title, and interest therein shall be the sole and exclusive property of Franchisor and/or Franchisor's Affiliates, except that Franchisee shall be entitled to use all such inventions without charge by Franchisor in connection with this Agreement for the Term.
- 18.4 Franchisee agrees to assist Franchisor and/or Franchisor's Affiliates in the evaluation and documentation of any such inventions, patent applications, and patents referred to above. Franchisee also agrees to assist Franchisor and/or Franchisor's Affiliates in the documentation of such assignment in any way necessary to transfer such interest to Franchisor and/or Franchisor's Affiliates. Franchisee also agrees to assist Franchisor and/or Franchisor's Affiliates in obtaining and maintaining such interest, including signing any declaration, patent application, assignment of rights, power of attorney, or other documents in such form and substance as Franchisor may require related to such invention or interest. Franchisee further agrees to assist Franchisor and/or Franchisor's Affiliates in the protection and enforcement of any such interest, including testifying in any court action brought to enforce, protect, or defend such interest or invention.
19. **WORKS OF AUTHORSHIP AND COPYRIGHTS**
- 19.1 Franchisee agrees that all works (defined herein as including works of authorship, works in any tangible medium, writings, documents, and computer programs) authored, made, or produced by Franchisee, Franchisee's Owners, or Franchisee's Affiliates that are in any way related to the System, the Products, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products, whether or not such works are copyrightable, are "works-made-for-hire" and that Franchisee will not have, under this Agreement or otherwise, any right, title, or interest of any kind or nature in and to such works, and that all rights therein are the sole and exclusive property of Franchisor and/or its Affiliates.
- 19.2 If any portion of any work described above is not considered a work-made-for-hire for Franchisor or its Affiliates, Franchisee hereby agrees to assign, and does assign, to Franchisor and/or the Affiliates Franchisor designates, all right, title, and interest in any work authored, made, or produced by Franchisee or its Owners or Affiliates (whether alone or in conjunction with one or more other persons) in the course of involvement with Franchisor under this Agreement or otherwise relating to the System, the Products, the Marks, the development or operation of Krispy Kreme Stores or Commissary Facilities, or the production, marketing, or sale of the Products. Franchisor will have no obligation to make payments to Franchisee or any other Person with respect to any such assignment. Franchisee agrees that all such works referenced above shall belong to Franchisor and/or its Affiliates, and that all right, title, and interest therein, including any copyrights, shall be the sole and exclusive property of Franchisor and/or its Affiliates, except that Franchisee shall be entitled to use all such works at the STORE (if authorized by Franchisor) without charge by Franchisor.
- 19.3 Franchisee agrees to assist Franchisor in the evaluation, documentation, and registration of any such work described above. Franchisee also agrees to assist Franchisor in the documentation of such assignment in any way necessary to transfer such interest to Franchisor or its Affiliates. Franchisee also agrees to assist Franchisor in obtaining and maintaining such interest, including signing any assignment of rights, copyright application, power of attorney, or other document in such form and substance as Franchisor may require related to such work or interest. Franchisee further agrees to assist Franchisor in the protection and enforcement of any such interest, including testifying in any court action brought to enforce, protect, or defend such work.

20. **EXCLUSIVE RELATIONSHIP**

20.1 Franchisee acknowledges and agrees that Franchisor would be unable to (a) protect the Confidential Information against unauthorized use or disclosure; (b) preserve the prestige, integrity, and goodwill of the Products, Marks, and System; or (c) encourage the free exchange of ideas and information among Krispy Kreme Stores and Commissary Facilities if franchisees and owners of Krispy Kreme Stores and Commissary Facilities or their owners were permitted to engage in or benefit from certain competitive activities. Franchisee also acknowledges that Franchisor has granted the franchise rights to Franchisee in consideration of and reliance on Franchisee's agreement that Franchisee and its Owners will deal exclusively with Franchisor. Therefore, except as expressly authorized by this Agreement or another written agreement with Franchisor, Franchisee agrees that during the term of this Agreement, without Franchisor's prior written consent, neither Franchisee, nor any other Restricted Person will:

- (i) have any Ownership Interest in a Competitive Business;
- (ii) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business;
- (iii) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business, where such services (A) are substantially similar to those provided to Franchisor or Franchisor Affiliates by Franchisee or the respective Restricted Person; or (B) create a relationship between Franchisee or the Restricted Person and such Competitive Business in which Franchisee or the Restricted Person could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any material Confidential Information to such Competitive Business;
- (iv) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility, or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Franchisee to hire any such Person, then Franchisee agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (v) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

20.2 At all times during the Term, Franchisee will designate a Managing Director of its business pursuant to this Agreement who shall complete Franchisor's mandatory training program to Franchisor's satisfaction. The initial Managing Director is identified in the Basic Terms. The Managing Director will use his or her full-time efforts to fulfill Franchisee's obligations under this Agreement and under other Franchise Agreements and any Commissary Facility Agreements, and will not directly or indirectly engage in any other business or activity that requires any significant management responsibility or time commitments, or that otherwise conflicts with Franchisee's obligations under this Agreement. If the Managing Director is terminated in that role, or if the Managing Director does not carry out his or her responsibilities or otherwise perform in accordance with this Agreement, Franchisee will promptly designate a replacement, and each such replacement shall complete Franchisor's mandatory training program to Franchisor's satisfaction.

21. **COMPLIANCE WITH LAW**

21.1 In operating the STORE, Franchisee agrees to comply with all laws, including, but not limited to, all federal, state, and local laws, rules, regulations, ordinances, court orders, and decrees. Franchisee agrees that its failure to comply with these laws is a material breach and grounds for termination of this Agreement.

21.2 Franchisee and Franchisee's Principal Owners represent and warrant to Franchisor that neither Franchisee nor any Principal Owner is identified, either by name or an alias, pseudonym or nickname, on the lists of "Specially Designated Nationals" or "Blocked Persons" maintained by the U.S. Treasury Department's Office of Foreign Assets Control. Further, Franchisee and Franchisee's Principal Owners represent and warrant that neither has violated and agree that neither will violate any law (in effect now or which may become effective in the future) prohibiting corrupt business practices, money laundering or the aid or support of persons or entities who conspire to commit acts of terror against any person or government, including acts prohibited by the U.S. Patriot Act, U.S. Executive Order 13244, or similar law.

22. **MARKETING AND ADVERTISING**

- 22.1 Franchisor has established a fund (the "Brand Fund") for the creation, production and/or implementation of advertising, promotional, marketing, and public relations programs and materials Franchisor deems appropriate. Franchisee agrees to contribute to the Brand Fund amounts (as determined by Franchisor from time to time) not more than one percent (1%) of the Net Sales of the STORE, payable by electronic funds transfer in the same manner as the Royalties. Krispy Kreme Stores and Commissary Facilities located in the U.S. and owned or operated by Franchisor shall contribute to the Brand Fund at least on the same basis.
- 22.2 Franchisor will direct all programs funded by the Brand Fund. Periodically, Franchisor may give Franchisee, at no cost, samples of advertising, marketing, and promotional formats and materials produced and funded by the Brand Fund. Franchisee may purchase additional copies of these materials at cost.
- 22.3 The Brand Fund will be accounted for separately from Franchisor's other funds and will not be used to defray any of its general operating expenses, except for reasonable salaries, administrative costs and overhead Franchisor may incur in activities related to the administration of the Brand Fund and its programs, including conducting market research, preparing advertising and marketing materials and collecting and accounting for contributions to the Brand Fund. Franchisor may spend in any fiscal year an amount greater or less than the aggregate contributions of all Krispy Kreme Stores and Commissary Facilities to the Brand Fund in that year, and the Brand Fund may borrow from Franchisor or other lenders to cover deficits in the Brand Fund or cause the Brand Fund to invest any surplus for future use by the Brand Fund.
- 22.4 Franchisor will prepare annually a statement of monies collected and costs incurred by the Brand Fund and furnish Franchisee a copy upon Franchisee's written request. Except as otherwise expressly provided in this Section 22, Franchisor assumes no direct or indirect liability or obligation with respect to the maintenance, direction or administration of the Brand Fund. Franchisor does not act as trustee or in any other fiduciary capacity with respect to the Brand Fund.
- 22.5 Franchisor may operate the Brand Fund through a separate entity whenever it deems appropriate. The successor entity will have all of the rights and duties specified in Sections 22.1 through 22.8.
- 22.6 Franchisor cannot ensure that Brand Fund expenditures in or affecting any geographic area are proportionate or equivalent to Brand Fund contributions by contributors operating in that geographic area or that any contributor benefits directly or in proportion to its Brand Fund contribution.
- 22.7 Franchisor has the right, but no obligation, to use collection agents and institute legal proceedings to collect Brand Fund contributions at the Brand Fund's expense. Franchisor may also forgive, waive, settle and compromise any and all claims for contributions to the Brand Fund. Except as expressly provided in Sections 22.1 through 22.8, Franchisor assumes no direct or indirect liability or obligation to Franchisee for collecting amounts due to, maintaining, directing or administering the Brand Fund.
- 22.8 Franchisor may at any time defer or reduce the Brand Fund contributions of one or more franchisees and, upon thirty (30) days' prior written notice to Franchisee, reduce or suspend Brand Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand Fund. If Franchisor terminates the Brand Fund, it will distribute all unspent monies to its franchisees, and to Franchisor and its Affiliates, in proportion to their, and Franchisor's, respective Brand Fund contributions during the preceding twelve (12) month period.

- 22.9 Franchisee will not execute or conduct any advertising or promotional activity in relation to the STORE or the System without Franchisor's prior written approval. Franchisee must submit annual marketing plans to Franchisor in a form Franchisor specifies. Such annual marketing plans require Franchisor approval.
- 22.10 Franchisee will be responsible for conducting, with Franchisor's guidance, a grand opening marketing program (the "Grand Opening Marketing Program") during the period commencing thirty (30) days before and ending ninety (90) days after the opening of the STORE. The Grand Opening Marketing Program will utilize public relations and advertising, media, and promotional materials that Franchisor has developed or approved. Amounts so spent on the Grand Opening Marketing Program, up to one percent (1%) of the STORE's Net Sales, will be credited against Franchisee's requirement to spend three percent (3%) of the STORE's Net Sales, as set forth in Section 22.11, for the first year.
- 22.11 During each twelve (12) month period of the Term, Franchisee agrees to spend for advertising and promotion of the STORE not less than three percent (3%) of the STORE's Net Sales and to submit plans for such programs for Franchisor's approval or disapproval in accordance with schedules prescribed by Franchisor. For these purposes, advertising expenditures include amounts spent for advertising media, such as television, radio, newspaper, billboards, posters, direct mail, yellow pages, collateral promotional and novelty items, advertising on public vehicles, such as cabs and buses, and, if not provided by Franchisor, the cost of producing approved materials necessary to participate in these media. Advertising expenditures do not include Brand Fund contributions or amounts spent for items which Franchisor, in its reasonable judgment, deems inappropriate for meeting the minimum advertising requirement, including permanent on-premises signs and menu boards, lighting, menus, premiums, discounts, free offers, charitable contributions, fundraising activities, and employee incentive programs. Franchisor will have the right to review Franchisee's books and records from time to time to determine Franchisee's expenditures for local advertising and promotion.
- 22.12 Before Franchisee uses any advertising, promotional or marketing materials that Franchisor has not prepared or previously approved, Franchisee must send samples of all such materials to Franchisor for approval. If Franchisee does not receive Franchisor's written disapproval within thirty (30) days after Franchisor receives the materials, they are deemed approved. Franchisee may not use any advertising, promotional, or marketing materials that Franchisor has disapproved.
- 22.13 Franchisee agrees that any advertising, promotion and marketing it conducts will be completely clear and factual and not misleading and conform to the highest standards of ethical marketing and the promotion policies and System Standards that Franchisor prescribes from time to time.
- 22.14 At Franchisor's option, Franchisor may establish one or more websites to advertise, market, and promote Krispy Kreme Stores, the Products, and/or the Krispy Kreme franchise system (each a "System Website"). If Franchisor establishes a System Website, Franchisor may require Franchisee to participate in such System Website by including information relating to the STORE. Franchisor will control website traffic and registration of additional domain names.
- 22.15 Franchisee may not develop, maintain, or authorize any other website that mentions or describes Franchisee or the STORE or that displays any of the Marks without obtaining written approval from Franchisor.
- 22.16 Franchisor has the right to establish local and/or regional advertising cooperatives for Krispy Kreme Stores in Franchisee's local or regional area, covering such geographical areas as Franchisor may designate from time to time. Franchisee must participate in such advertising cooperatives and their programs and abide by their by-laws. Franchisee must contribute such amounts to the advertising cooperatives as they determine from time to time in accordance with their by-laws. Any Krispy Kreme Stores owned by Franchisor or any of its Affiliates located in such designated local or regional areas will contribute to the cooperatives on at least the same basis. Contributions to such local and regional advertising cooperatives are credited toward the annual three percent (3%) advertising expenditures required by Section 22.11.

23. ACCOUNTING, REPORTS AND FINANCIAL STATEMENTS

- 23.1 Franchisee will, at Franchisee's expense, retain all records relating to the development and operation of the STORE. All such records shall be kept at the premises of the STORE, unless Franchisor otherwise approves. Franchisee will furnish to Franchisor via the medium Franchisor prescribes from time to time, in a form consistent with its then-current accounting practices and procedures: (a) by each Reporting Day, reports of the STORE's sales, cost of goods sold, labor expense and number of transactions for the preceding Week; (b) within thirty (30) days after the end of each month, an operating income statement of Franchisee, the STORE, or both for such month and fiscal year to date, prepared in accordance with generally accepted accounting principles consistently applied; (c) within forty-five (45) days after the end of each fiscal quarter, a balance sheet and income statement of Franchisee, the STORE, or both for such quarter and fiscal year to date, prepared in accordance with generally accepted accounting principles consistently applied; (d) within one hundred twenty days (120) days after the end of Franchisee's fiscal year, a balance sheet and an income statement for the STORE and/or Franchisee for such fiscal year (reflecting all year-end adjustments), and a statement of cash flow of the STORE, prepared in accordance with generally accepted accounting principles consistently applied; and (e) upon request by Franchisor, such other data, reports, information and supporting records as Franchisor may from time to time prescribe.
- 23.2 Franchisee agrees to maintain and to furnish to Franchisor, upon request, complete copies of all withholding, income, sales, value added, use and service tax returns filed by Franchisee reflecting activities of the STORE.
- 23.3 Franchisor has the right to (a) disclose data derived from all reports; (b) require Franchisee to have audited financial statements prepared on an annual basis; and (c) to access all cash registers/computer terminals and Franchisee's Computer System and retrieve all information relating to the STORE, as often as it deems appropriate. Franchisee will take such action as may be necessary to provide such access to Franchisor. Furthermore, Franchisee will immediately report to Franchisor any events or developments which may have a significant or material adverse impact on the operation of the STORE, Franchisee's performance under this Agreement, or the goodwill associated with the Marks and Krispy Kreme Stores. Franchisee will sign and verify as correct and complete each report and financial statement submitted by Franchisee in the manner prescribed by Franchisor.
- 23.4 Each year, Franchisor requires that Franchisee submit an annual business plan for Franchisor's review. Further, Franchisor has the right to audit at any time during regular business hours, and without prior notice to Franchisee, to inspect and audit, or cause to be inspected and audited, the business, financial and tax records of the STORE and Franchisee. Franchisee will fully cooperate and cause its employees and agents to fully cooperate with Franchisor's representatives and independent accountants hired by Franchisor to conduct any such inspection or audit. Franchisor's right to audit includes the right to access the Computer System. In the event any such inspection or audit reveals an understatement of the Net Sales of the STORE, Franchisee will pay to Franchisor, within fifteen (15) days after receipt of the inspection or audit report, the Royalty payments and Brand Fund contributions (and any required advertising cooperative contributions) due on the amount of such understatement, plus interest (at the rate and on the terms provided in this Agreement) from the date originally due until the date of payment. Further, in the event such inspection or audit is made necessary by Franchisee's failure to furnish timely any reports or supporting records required to be submitted under this Agreement or if an understatement of Net Sales for the period of any audit is determined by any such audit or inspection to be greater than two percent (2%), Franchisee will reimburse Franchisor for the cost of such inspection or audit, including legal fees, accountants' fees and the travel expenses, room and board, per diem charges, and other associated expenses for Franchisor's employees. The foregoing remedies are in addition to all other remedies and rights contained in this Agreement or under applicable law.

24. TRANSFER

- 24.1 This Agreement is fully transferable by Franchisor (without any obligation to provide notice to Franchisee or obtain Franchisee's consent) and will inure to the benefit of any assignee or other legal successor to Franchisor's interests. Franchisee agrees that Franchisor will have the right, from time to time, to delegate

the performance of any portion of or all of its obligations and duties under this Agreement or otherwise in connection with the System to designees, whether the same are Franchisor's agents or independent contractors with which Franchisor has contracted to provide such services or perform such duties.

- 24.2 Franchisee's rights and duties under this Agreement are personal to Franchisee, or if Franchisee is a business corporation, partnership, limited liability company or any other legal entity, its Owners. Accordingly, neither Franchisee nor any of its Owners may Transfer the Franchise without Franchisor's prior approval and without complying with the terms and conditions of Section 24. Any Transfer without such approval or compliance constitutes a breach of this Agreement, and is void and of no force or effect. Notwithstanding the foregoing, Franchisee may not under any circumstances directly or indirectly subfranchise or sublicense any of its rights hereunder.
- 24.3 If Franchisor has not exercised its right of first refusal under Section 24.5, Franchisor will not unreasonably withhold its approval of a Transfer of the Franchise that meets all of the reasonable restrictions, requirements and conditions Franchisor imposes on the Transfer, the transferor(s) and/or the transferee(s) from time to time, which shall in any event include, the following:
- (a) Franchisee must be in Good Standing;
 - (b) the proposed transferee and its owners (if the proposed transferee is a corporation, partnership, limited liability company or other legal entity) must provide Franchisor on a timely basis all information Franchisor requests, and must be individuals acting in their individual capacities who are of good character and reputation, who must have sufficient business experience, aptitude and financial resources to operate the STORE pursuant to this Agreement and to develop Krispy Kreme Stores and Commissary Facilities pursuant to the Development Agreement, if applicable, and who must otherwise meet Franchisor's then-current standards for approval;
 - (c) the proposed transferee may not be an entity, or be affiliated with an entity, that is required to comply with the reporting and information requirements of the Securities Exchange Act of 1934, as amended;
 - (d) the transferee (and its owners) must agree to be bound by all of the provisions of this Agreement for the remainder of the Term or, at Franchisor's option, execute Franchisor's then current Franchise Agreement and related documents used in the state where the STORE is located (which may provide for different royalties, advertising contributions and expenditures, duration and other rights and obligations than those provided in this Agreement);
 - (e) the transferee must acquire, in a concurrent transaction, all of the rights and obligations of Franchisee and its Affiliates under all agreements between Franchisee or its Affiliates and Franchisor or its Affiliates, including any Development Agreement and all Franchise Agreements and Commissary Facility Agreements executed by Franchisee or its Affiliates pursuant to the Development Agreement or pursuant to any other development or similar agreement with Franchisor;
 - (f) Franchisee or the transferee must pay Franchisor a transfer fee in an amount equal to Five Thousand Dollars (\$5,000.00);
 - (g) Franchisee and its Owners and Affiliates must, except to the extent limited or prohibited by applicable law, execute a general release, in form and substance satisfactory to Franchisor, of any and all claims against Franchisor, its Affiliates and shareholders, members, managers, officers, directors, employees, agents, successors and assigns;
 - (h) Franchisee must provide Franchisor with all information requested by Franchisor in connection with the Transfer, and Franchisor must not have disapproved the material terms and conditions of such Transfer (including the price and terms of payment and the amount to be financed by the transferee in connection with such Transfer) on the basis that they are so burdensome as to be likely, in Franchisor's reasonable judgment, to adversely affect the transferee's operation of the STORE or its compliance with this Agreement, all Franchise Agreements, Commissary Facility Agreements, and Development Agreements being transferred, and any other agreements to be executed by the transferee;

- (i) If Franchisee (or any of its Owners or Affiliates) finances any part of the sales price of the transferred interest, Franchisee and/or its Owners or Affiliates must agree that all obligations of the transferee, and security interests reserved by any of them in the assets transferred, will be subordinate to the transferee's obligations to pay all amounts due Franchisor and its Affiliates and to otherwise comply with this Agreement, all Franchise Agreements, Commissary Facility Agreements, and Development Agreements being transferred and any other agreements to be executed by the transferee;
- (j) Franchisee and its Owners must execute non-competition and non-solicitation covenants, in form and substance satisfactory to Franchisor, substantially similar to those contained in Section 27.3; and
- (k) Franchisee and its Owners and Affiliates must execute such other documents and do such other things as Franchisor reasonably requires to protect its rights under this Agreement and all Development Agreements, Franchise Agreements, Commissary Facility Agreements and other agreements being transferred.

- 24.4 Franchisor's approval of a Transfer of the Franchise does not constitute: (a) a representation as to the fairness of the terms of any agreement or arrangement between Franchisee or its Owners and the transferee or as to the prospects for success by the transferee; or (b) a release of Franchisee and its Owners, a waiver of any claims against Franchisee or its Owners or a waiver of Franchisor's right to demand the transferee's compliance with this Agreement or any other agreements being transferred. Any approval shall apply only to the specific Transfer of the Franchise being proposed and shall not constitute Franchisor's approval of, or have any bearing on, any other proposed Transfer of the Franchise.
- 24.5 If Franchisee or any of its Owners desires to Transfer the Franchise (other than by gift or bequest), Franchisee or such Owners must obtain a *bona fide*, executed written offer from a responsible and fully disclosed purchaser (which must contain a confidentiality covenant by Franchisee and the prospective buyer to which Franchisor shall be an intended third party beneficiary) and must deliver immediately to Franchisor a complete and accurate copy of such offer. If the offeror proposes to buy any other property or rights from Franchisee or any of its Owners or Affiliates (other than rights under any Development Agreements, Franchise Agreements or Commissary Facility Agreements) as part of the *bona fide* offer, the proposal for such property or rights must be set forth in a separate, contemporaneous offer that is fully disclosed to Franchisor, and the price and terms of purchase offered to Franchisee or its Owners for the Transfer of the Franchise must reflect the *bona fide* price offered therefor and not reflect any value for any other property or rights.
- 24.6 Franchisor has the option, exercisable by notice delivered to Franchisee or its Owners within thirty (30) days from the date of delivery of a complete and accurate copy of such offer to Franchisor, to purchase such interest for the price and on the terms and conditions contained in such offer, provided that: (a) Franchisor may substitute cash for any form of payment proposed in such offer; (b) Franchisor's credit shall be deemed equal to the credit of any proposed purchaser; (c) Franchisor shall have not less than ninety (90) days from the option exercise date to consummate the transaction; and (d) Franchisor shall not be required to pay deposits (such as earnest money) or to escrow funds prior to closing. Franchisor has the right to investigate and analyze the business, assets and liabilities and all other matters Franchisor deems necessary or desirable in order to make an informed investment decision with respect to the fairness of the terms of the right of first refusal. Franchisor may conduct such investigation and analysis in any manner Franchisor deems reasonably appropriate, and Franchisee and its Owners must cooperate fully with Franchisor in connection therewith.
- 24.7 If Franchisor exercises its option to purchase, Franchisor is entitled to purchase such interest subject to all representations and warranties, closing documents, releases, non-competition covenants and indemnities as Franchisor reasonably may require, provided if Franchisor exercises its option as a result of a written offer reflected in a fully negotiated definitive agreement with the proposed purchaser, Franchisor will not be entitled to any additional representations, warranties, closing documents or indemnities that will have a materially adverse effect on Franchisee's rights and obligations under the definitive agreement.

If Franchisor does not exercise its option to purchase, Franchisee or its Owners may complete the sale to such offeror pursuant to and on the exact terms of such offer, subject to Franchisor's approval of the Transfer as provided in Sections 24.2 and 24.3, provided that if the sale to such offeror is not completed within ninety (90) days after delivery of such offer to Franchisor, or if there is a change in the terms of the offer, Franchisee must promptly notify Franchisor and Franchisor shall have an additional option to purchase (on the terms of the revised offer, if any, and otherwise as set forth herein) during the thirty (30)-day period following Franchisee's notification of the expiration of the ninety (90)-day period or the change to the terms of the offer.

- 24.8 Neither Franchisee nor any of its Owners or Affiliates may issue or sell, or offer to issue or sell, any of Franchisee's securities or any securities of any of its Affiliates, regardless of whether such sale or offer would be required to be registered pursuant to the provisions of the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction and regardless of the means by which such sale is conducted, directly or indirectly, or by operation of law (including by merger, consolidation, reorganization or otherwise) without obtaining Franchisor's prior consent and complying with all of its requirements and restrictions concerning use of information about Franchisor and its Affiliates. Neither Franchisee nor any of its Owners or Affiliates may issue or sell Franchisee's securities or the securities of any of its Affiliates if: (1) such securities would be required to be registered pursuant to the Securities Act of 1933, as amended, or such securities would be owned by more than 35 persons; or (2) after such issuance or sale, Franchisee or such Affiliate would be required to comply with the reporting and information requirements of the Securities Exchange Act of 1934, as amended. Any memorandum or other communications circulated in connection with any solicitation of offers to purchase that would require Franchisor's consent to Transfer the Franchise (through whatever form of transaction, whether through direct or indirect sale of assets or securities, by operation of law or otherwise) shall be subject to approval by Franchisor.

25. SUCCESSOR FRANCHISE

- 25.1 Upon expiration of the Term, Franchisor will grant Franchisee a successor franchise on Franchisor's then-current terms if Franchisee and each of its Owners and Affiliates are in full compliance with the provisions of this Agreement and any other agreements with Franchisor or any of its Affiliates, and provided that the following conditions are met:

- (a) Franchisee maintains possession of the Site and agrees to upgrade the STORE to Franchisor's then-current standards for Krispy Kreme Stores;
- (b) If Franchisee is unable to maintain possession of the Site, or if in Franchisor's judgment the STORE should be relocated, and Franchisee secures a substitute site approved by Franchisor, Franchisee develops such site in compliance with Franchisor's then-current standards for Krispy Kreme Stores, and continues to operate the STORE at the Site until operations are transferred to the substitute site;
- (c) Franchisee gives Franchisor written notice of its election to acquire a successor franchise at least six (6) months but not more than twelve (12) months prior to the expiration of the term of the Franchise;
- (d) Franchisee and its Owners and Affiliates are then in compliance with all of the terms and conditions of this Agreement and all other agreements between such parties and Franchisor and its Affiliates, and have been in substantial compliance with all such agreements throughout their respective terms;
- (e) Franchisee and its Owners will execute the terms and conditions of the agreements Franchisor then customarily uses in connection with the grant of successor franchises for Krispy Kreme Stores in the state where the STORE is located; and
- (f) Franchisee and its Owners and Affiliates will execute and deliver general releases, in form satisfactory to Franchisor, of any and all claims against Franchisor and its Affiliates, shareholders, officers, directors, employees, agents, successors, and assigns.

- 25.2 Once Franchisor receives notice from Franchisee in accordance with Section 25.1(c) above, Franchisor will give Franchisee notice, within ninety (90) days after Franchisor's receipt of Franchisee's notice and any supporting information requested by Franchisor, of Franchisor's decision: (a) to grant Franchisee

a successor franchise; (b) to grant Franchisee a successor franchise on the condition that deficiencies of the STORE, and/or in its operation of the STORE, or such other matters as Franchisor may indicate are deficient in its sole discretion are corrected; or (c) not to grant Franchisee a successor franchise. If Franchisor's notice states that Franchisee must cure certain deficiencies of the STORE, its operation or otherwise as a condition to the grant of a successor franchise, Franchisee will have thirty (30) days from the receipt of such notice to cure such deficiencies. If Franchisee does not cure such deficiencies, Franchisor will give Franchisee written notice of a decision not to grant a successor franchise, based upon Franchisee failure to cure such deficiencies, within thirty (30) days after the expiration of the cure period, provided, however, that Franchisor will not be required to give Franchisee such notice if Franchisor decides not to grant Franchisee a successor franchise due to Franchisee's breach of this Agreement during the cure period or the thirty (30) day period thereafter.

26. TERMINATION OF FRANCHISE

- 26.1 Franchisee is in material breach of this Agreement, and this Agreement will automatically terminate without notice, at Franchisor's discretion, if: (a) Franchisee becomes insolvent by reason of its inability to pay its debts as they mature; (b) Franchisee is adjudicated bankrupt or insolvent; (c) Franchisee files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or has such a petition filed against Franchisee, which is not discharged within thirty (30) days; (d) a receiver or other custodian, permanent or temporary, is appointed for Franchisee's business, assets or property; (e) Franchisee requests the appointment of a receiver or makes a general assignment for the benefit of creditors; (f) a final judgment against Franchisee in the amount of Fifty Thousand Dollars (\$50,000.00) or more remains unsatisfied of record for sixty (60) days or longer; (g) Franchisee's bank accounts, property or accounts receivable are attached; (h) execution is levied against Franchisee's business or property; (i) suit is filed to foreclose any lien or mortgage against any of Franchisee's assets and such suit is not dismissed within thirty (30) days; (j) Franchisee voluntarily dissolves or liquidates or has a petition filed for corporate or partnership dissolution and such petition is not dismissed within thirty (30) days; or (k) Franchisee's assets, property or interest are "blocked" under any law, ordinance or regulation relating to terrorist activities or if Franchisee is otherwise in violation of any such law, ordinance or regulation.
- 26.2 In addition to Franchisor's right to terminate pursuant to other provisions of this Agreement and under applicable law, Franchisor has the right to terminate this Agreement, effective upon delivery of notice of termination to Franchisee, if Franchisee or any of its Principal Owners or Affiliates:
- (a) opens the STORE in violation of Section 11.1;
 - (b) abandons or fails actively to operate the STORE for five (5) consecutive days, unless a closing of the STORE has been approved by Franchisor;
 - (c) makes any material misstatement or omission in the Franchise Application or in any other information, report, or summary provided to Franchisor at any time;
 - (d) suffers cancellation or termination of the lease or sublease for the STORE;
 - (e) is convicted of, or pleads no contest to, a felony or other crime or offense that Franchisor believes, in its sole judgment, may adversely affect the System or the goodwill associated with the Marks;
 - (f) makes an unauthorized Transfer of the Franchise;
 - (g) makes any unauthorized use or disclosure of any Confidential Information or uses, duplicates or discloses any portion of the System Standards Manuals in violation of this Agreement;
 - (h) fails or refuses to comply with any mandatory specification, standard, or operating procedure prescribed by Franchisor relating to the cleanliness or sanitation of the STORE or violates any applicable health, safety or sanitation law, ordinance or regulation that Franchisor in its sole judgment believes may pose harm to the public or to its reputation, and does not correct such failure, refusal or violation within 24 hours after written notice thereof is delivered to Franchisee;

- (i) fails to report accurately Net Sales, to establish, maintain and/or have sufficient funds available in the Account as required by Section 13.3 or fails to make payment of any amounts due Franchisor or any of its Affiliates, and does not correct such failure within ten (10) days after written notice of such failure is delivered to Franchisee;
- (j) fails to make a timely payment of any amount due to a supplier unaffiliated with Franchisor (other than payments which are subject to bona fide dispute), and does not correct such failure within thirty (30) days after Franchisor delivers to Franchisee notice of such failure to comply;
- (k) fails to comply with any other provision of this Agreement or any other mandatory specification, standard or operating procedure or other obligation prescribed in the System Standards Manuals and does not correct such failure within thirty (30) days after notice of such failure to comply is delivered to Franchisee; or
- (l) fails on three (3) or more separate occasions within any period of twelve (12) consecutive months to submit when due reports or other data, information or supporting records or to pay when due Royalties, Brand Fund contributions or other payments due Franchisor, any of its Affiliates or any unaffiliated suppliers or otherwise fails to comply with this Agreement or any mandatory specification, standard or operating procedure or other obligation prescribed in the System Standards Manuals, whether or not such failure is corrected after notice is delivered to Franchisee.

Franchisor has no obligation whatsoever to refund any portion of the Initial Franchise Fee upon any termination.

- 26.3 Franchisor has the option, but not the obligation, to cure any of Franchisee's default under Section 26.2. If Franchisor chooses to exercise such option, then within five (5) days of the date Franchisor sends Franchisee notice of Franchisor's expenses incurred in curing Franchisee's default, Franchisee shall reimburse Franchisor for all such expenses.

27. EFFECT OF TERMINATION OR EXPIRATION

- 27.1 Within ten (10) days after the effective date of termination or expiration (without renewal) of this Agreement, Franchisee must pay Franchisor and its Affiliates all Royalties, Brand Fund contributions, amounts owed for purchases from Franchisor or its Affiliates, interest due on any of the foregoing and all other amounts owed to Franchisor or its Affiliates which are then unpaid.
- 27.2 Upon the termination or expiration (without renewal) of this Agreement, Franchisee will:
- (a) not directly or indirectly at any time or in any manner use any Mark, any colorable imitation of any Mark or any other indicia of a Krispy Kreme Store or Commissary Facility;
 - (b) take such action as may be required to cancel all fictitious or assumed name registrations relating to Franchisee's use of any Mark;
 - (c) notify the telephone company and all telephone directory publishers of the termination or expiration of Franchisee's right to use any telephone number and any regular, classified or other telephone directory listings associated with any Mark and to authorize transfer of the number to Franchisor or at its direction;
 - (d) if Franchisor does not exercise its option to purchase the STORE pursuant to Section 27.5, promptly remove from the Site, and discontinue using for any purpose, all signs, fixtures, furniture, decor items, advertising materials, forms and other materials and supplies which display any of the Marks or any distinctive features, images, or designs associated with Krispy Kreme Stores or Commissary Facilities and, at Franchisee's expense, make such alterations as may be necessary to distinguish the Site so clearly from its former appearance as a Krispy Kreme Store as to prevent any possibility of confusion by the public;

- (e) immediately cease to use all Confidential Information and return to Franchisor all copies of the System Standards Manuals and any other confidential materials which have been loaned to Franchisee;
- (f) immediately discontinue any mode of communications on the Internet directly or indirectly relating to the STORE, including any websites or web pages, and immediately take all steps required by Franchisor to transfer to Franchisor any domain name associated with the STORE (such as executing a registrant name change agreement with the applicable registrar). Franchisee irrevocably appoints an authorized officer of Franchisor as Franchisee's duly authorized agent and attorney-in-fact to execute all instruments and take all steps to transfer such domain names;
- (g) immediately discontinue the use of any proprietary software; and
- (h) within thirty (30) days after the effective date of termination or expiration, furnish evidence satisfactory to Franchisor of Franchisee's compliance with the foregoing obligations.

27.3 Upon termination or expiration (without renewal) of this Agreement, neither Franchisee nor any Restricted Person will, for a period of two (2) years commencing on the effective date of such termination or expiration or the date on which Franchisee ceases to conduct its activities under this Agreement, whichever is later:

- (a) have any Ownership Interest in a Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility open or under construction on the effective date of termination or expiration;
- (b) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility then open or under construction;
- (c) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility then open or under construction, where such services (i) are substantially similar to those provided to Franchisee; or (ii) create a relationship between Franchisee or the Restricted Person and such Competitive Business in which Franchisee or the Restricted Person could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;
- (d) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility, or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Franchisee to hire any such Person, then Franchisee agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (e) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

Franchisee and each of its Owners expressly acknowledges the possession of skills and abilities of a general nature and other opportunities for exploiting such skills in other ways, so that enforcement of the covenants contained in Section 27.3 will not deprive any of them their personal goodwill or ability to earn a living. If Franchisee or any of its Owners fails or refuses to abide by any of the foregoing covenants and Franchisor obtains enforcement in a judicial or arbitration proceeding, the obligations under the breached covenant will be tolled during the period(s) of time that the covenant is breached and/or Franchisor seeks to enforce it and will continue in effect for a period of time ending two (2) years after the date of the order enforcing the covenant.

- 27.4 Upon termination or expiration (without renewal) of this Agreement, Franchisor shall have the right, exercisable by giving notice thereof within thirty (30) days after the date of such termination or expiration, to purchase (and, if necessary, take possession of and remove from the Site) any and all equipment used or useable at the STORE (including all equipment that contains or embodies patents owned by Franchisor or any of its Affiliates) at its net book value, determined in accordance with generally accepted accounting principles, consistently applied. This right is separate and apart from Franchisor's rights under Section 27.5.
- 27.5 Upon termination or expiration (without renewal) of this Agreement, Franchisor shall have the right, exercisable by giving notice thereof ("Appraisal Notice") within thirty (30) days after the date of such termination or expiration, to require that a determination be made of the "Fair Market Value" (as defined below) of any or all of the assets of the STORE which Franchisee owns, including inventory of non-perishable products, materials, supplies, furniture, equipment, signs, and any and all leasehold improvements, fixtures, building and land, but excluding any cash and short-term investments and any items not meeting Franchisor's specifications for Krispy Kreme Stores (the "Purchased Assets"). Notwithstanding the foregoing, if Franchisee notifies Franchisor not less than one hundred eighty (180) days nor more than two hundred seventy (270) days prior to the expiration of this Agreement that Franchisee does not desire to enter into a successor franchise agreement on expiration, then Franchisor agrees, if Franchisor desires to exercise its right to purchase, to give Franchisee the Appraisal Notice at least one hundred twenty (120) days prior to the date of expiration of this Agreement.
- 27.6 Upon delivery of the Appraisal Notice, Franchisee may not sell or remove any of the assets of the STORE from the Premises (other than in the ordinary course of business) and must give Franchisor, its designated agents and the "Appraisers" (as defined below) full access to the STORE and all of Franchisee's books and records at any times during customary business hours in order to conduct inventories and determine the purchase price for the Purchased Assets.
- 27.7 The Fair Market Value shall be defined as the amount at which an arm's length purchaser would be willing to pay for the Purchased Assets, assuming that the Purchased Assets would be used for the operation of a Krispy Kreme Store under a valid franchise agreement reflecting the then-current (or if Franchisor is not offering franchises at that time, then the most recent) standard terms upon which Franchisor offers franchises for Krispy Kreme Stores. Under no circumstances will any value be attributed to any goodwill associated with the Marks or any value attributed to the System (all of which Franchisee acknowledges to be owned by Franchisor and its Affiliates). In the first instance, Fair Market Value shall be determined by consultation between Franchisor and Franchisee. If Franchisee and Franchisor are unable to agree on the Fair Market Value of the Purchased Assets within fifteen (15) days after the Appraisal Notice, then Fair Market Value will be determined by calculating the mean average of three (3) separate appraisals done by three (3) independent appraisers ("Appraisers"). Franchisor and Franchisee shall each designate one (1) Appraiser within thirty (30) days of the Appraisal Notice and the two (2) Appraisers so designated will select a third (3rd) Appraiser within ten (10) days thereafter. If the two designated Appraisers are unable to select a third (3rd) Appraiser within such ten (10) days, then the third (3rd) Appraiser shall be selected, on demand of either party, by the director of the Regional Office of the American Arbitration Association located nearest to Winston-Salem, North Carolina.
- 27.8 Each Appraiser will make his or her determination and submit a written report ("Appraisal Report") to Franchisee and Franchisor as soon as practicable, but in no event more than thirty (30) days after his or her appointment. Each party may submit in writing to the Appraisers its judgment of Fair Market Value (together with its reasons therefor and with copies to each other); however, the Appraisers shall not be limited to these submissions and may make such independent investigations as they reasonably determine to be necessary. The Appraisers' fees and costs shall be borne equally by the parties.
- 27.9 Franchisor has the option, exercisable by delivering notice thereof within thirty (30) days after submission of the last Appraisal Report (or the date that an agreement is reached, if the parties agree to the Fair Market Value), to agree to purchase the Purchased Assets at the Fair Market Value, as so determined. Franchisor shall have the unrestricted right to assign this option to purchase separate and apart from the remainder of this Agreement.

- 27.10 If Franchisor exercises its option to purchase, the purchase price for the Purchased Assets will be paid in cash at the closing, which will occur at the place, time and date Franchisor designates, but not later than sixty (60) days after the exercise of Franchisor's option to purchase the Purchased Assets. At the closing, Franchisor will be entitled to all representations, warranties, covenants, title insurance policies and other closing documents and post-closing indemnifications and hold-backs as Franchisor reasonably requires, including: (a) instruments transferring good and marketable title to the Purchased Assets, free and clear of all liens, encumbrances, and liabilities, to Franchisor or its designee, with all sales and other transfer taxes paid by Franchisee; (b) an assignment of all leases of assets used in the operation of the STORE, including land, building and/or equipment (or if an assignment is prohibited, a sublease to Franchisor or its designee for the full remaining term and on the same terms and conditions as Franchisee's lease, including renewal and/or purchase options), provided, however, that if any of Franchisee's Owners or Affiliates directly or indirectly owns the land, building and/or equipment of the STORE, Franchisee will, at Franchisor's option, cause such Owner or Affiliate to grant to Franchisor a lease at reasonable and customary rental rates and other terms prevailing in the community where the STORE is located; and (c) a general release by Franchisee and its Owners and Affiliates in form and substance satisfactory to Franchisor.
- 27.11 If Franchisee cannot deliver clear title to all of the Purchased Assets, or if there are other unresolved issues, the closing of the sale may, at Franchisor's option, be accomplished through an escrow on such terms and conditions as Franchisor deems appropriate, including the making of payments, to be deducted from the purchase price, directly to third parties in order to obtain clear title to all of the Purchased Assets. Further, Franchisee and Franchisor shall comply with any applicable Bulk Sales provisions of the Uniform Commercial Code as enacted in the state where the STORE is located and all applicable state and local sales and income tax notification and/or escrow procedures. Franchisor has the right to set off against and reduce the purchase price by any and all amounts owed by Franchisee or any of its Owners or Affiliates to Franchisor or any of its Affiliates.
- 27.12 Upon delivery of the Appraisal Notice and pending (a) determination of Fair Market Value, (b) Franchisor's option period, and (c) the closing of the purchase, Franchisor may authorize continued temporary operations of the STORE pursuant to the terms of this Agreement, subject to the supervision and control of one or more of Franchisor's appointed managers.
- 27.13 Franchisor's exercise of any of its rights under Section 27 will be in addition to and not in limitation of any other rights and remedies it may have in the event of any breach or default by Franchisee.
- 27.14 All the obligations of Franchisee and its Owners and Affiliates under this Agreement, which expressly or by their nature survive or are intended to survive the termination or expiration of this Agreement, will continue in full force and effect subsequent to and notwithstanding the termination or expiration until they are satisfied in full or by their nature expire.

28. **RELATIONSHIP OF PARTIES/INDEMNIFICATION**

- 28.1 Neither this Agreement nor the dealings of the parties pursuant to this Agreement shall create any fiduciary relationship or any other relationship of trust or confidence between the parties hereto. Franchisor and Franchisee, as between themselves, are and shall be independent contractors.
- 28.2 Franchisee understands and agrees that Franchisor may operate and change the System and its business in any manner that is not expressly and specifically prohibited by this Agreement. Whenever Franchisor has expressly reserved in this Agreement or is deemed to have a right and/or discretion to take or withhold an action, or to grant or decline to grant Franchisee a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, Franchisor may make its decision or exercise its right and/or discretion on the basis of its judgment of what is in its best interests, including its judgment of what is in the best interests of its franchise network, at the time its decision is made or its right or discretion is exercised, without regard to whether: (a) other reasonable alternative decisions or actions could have been made by Franchisor; (b) Franchisor's decision or action promotes its financial or other individual interest; (c) Franchisor's decision or action applies differently to Franchisee and one or

more other franchisees or its company-owned operations; or (d) Franchisor's decision or the exercise of its right or discretion is adverse to Franchisee's interests. In the absence of an applicable statute, Franchisor will have no liability to Franchisee for any such decision or action. The parties intend that the exercise of Franchisor's right or discretion will not be subject to limitation or review. If applicable law implies a covenant of good faith and fair dealing in this Agreement, the parties agree that such covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants Franchisor the right to make decisions, take actions and/or refrain from taking actions not inconsistent with Franchisee's rights and obligations hereunder.

Nothing contained in this Agreement, nor arising from the conduct of the parties hereunder, is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever. Franchisee must conspicuously identify itself in all dealings with customers, lessors, contractors, suppliers, public officials, employees and others as the owner of the rights granted hereunder and must place such other notices of independent ownership on such forms, business cards, stationery, advertising and other materials as we may require from time to time. Franchisee is solely responsible for all employment decisions with respect to its personnel, including hiring, firing, compensation, training, supervision and discipline, and regardless whether Franchisee receives advice from Franchisor on any of these subjects.

- 28.3 Franchisee may not make any express or implied agreements, warranties, guarantees or representations or incur any debt in Franchisor's name or on its behalf or represent that the relationship of the parties hereto is anything other than that of independent contractors. Franchisor will not be obligated by or have any liability under any agreements made by Franchisee with any third party or for any representations made by Franchisee to any third party. Franchisor will not be obligated for any damages to any person or property arising directly or indirectly out of the operation of Franchisee's business hereunder.
- 28.4 Franchisor will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon Franchisee or the STORE, in connection with the business Franchisee conducts (except for taxes Franchisor is required by law to collect from Franchisee with respect to purchases from Franchisor). Payment of all such taxes is Franchisee's responsibility.
- 28.5 Franchisor agrees to indemnify Franchisee against, and to reimburse Franchisee for, all damages for which Franchisee is held liable as a result of a claim that Franchisee's authorized use of any Mark or of any of Franchisor's other intellectual property rights pursuant to and in full compliance with this Agreement infringes on the rights of another person and, except as provided herein, for all costs Franchisee reasonably incurs in defending any such claim brought against Franchisee, provided that Franchisee has timely notified Franchisor of such claim and provided further that Franchisee and Franchisee's Principal Owners and Affiliates are in full compliance with this Agreement and with all other agreements entered into with Franchisor or any of its Affiliates. HDN Development Corporation or its agent or assignee, at its sole discretion, is entitled to prosecute, defend and/or settle any such proceeding arising out of Franchisee's use of any Mark or other intellectual property right pursuant to this Agreement and, if HDN Development Corporation or its agent or assignee undertakes to prosecute, defend and/or settle any such matter, Franchisor, HDN Development Corporation or its agent or assignee, has no obligation to indemnify or reimburse Franchisee for any fees or disbursements of any legal counsel retained by Franchisee.
- 28.6 Franchisee agrees to indemnify Franchisor, its Affiliates and their respective directors, officers, employees, shareholders, members, managers, agents, successors and assigns (collectively "Indemnified Parties"), and to hold the Indemnified Parties harmless to the fullest extent permitted by law, from any and all losses and expenses (as defined below) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, or formal or informal inquiry (regardless of whether it is reduced to judgment) or any settlement thereof which arises directly or indirectly from, or as a result of, a claim of a third party against any one or more of the Indemnified Parties, including those in connection with (a) Franchisee's failure to perform or breach of any covenant, agreement, term or provision of this Agreement, (b) Franchisee's breach of any representation or warranty contained in this Agreement, (c) Franchisee's marketing, promotion, advertisement or sale of any of the products and services offered by the STORE,

including unfair or fraudulent advertising claims (whether in print advertising, electronic media or otherwise), and product liability claims, (d) Franchisee's development, ownership, operation and/or closing of the STORE, (e) Franchisee's failure to pay any amounts owed to a supplier, (f) claims by Franchisee's employees (including workers' or unemployment compensation), (g) personal injury claims, (h) Franchisee's failure to comply with any law, and (i) any allegedly unauthorized service or act, rendered or performed in connection with this Agreement, (collectively "Event") and regardless of whether it resulted from any strict or vicarious liability imposed by law on the Indemnified Parties. The foregoing indemnity shall apply even if it is determined that the Indemnified Parties' negligence caused such loss, liability or expense, in whole or in part, provided, however, that this indemnity will not apply to any liability arising from a breach of this Agreement by Franchisor or with respect to any Indemnified Party whose gross negligence or willful acts caused such liability (except to the extent that joint liability is involved, in which event the indemnification provided herein will extend to any finding of comparative or contributory negligence attributable to Franchisee). The term "losses and expenses" includes compensatory, exemplary, and punitive damages; fines and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensation for damages to our reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. Franchisor agrees to give Franchisee reasonable notice of any event of which Franchisor becomes aware for which indemnification may be required, and Franchisor may elect (but is not obligated) to direct the defense thereof, provided that the selection of counsel shall be subject to Franchisee's consent, which consent shall not be unreasonably withheld or delayed. Franchisor may, in its reasonable discretion, take such actions as Franchisor deems necessary and appropriate to investigate, defend, or settle any event or take other remedial or corrective actions with respect thereto as may be necessary for the protection of the Indemnified Parties or Krispy Kreme Stores generally, provided however, that any settlement (to the extent payment is made by Franchisee) shall be subject to Franchisee's consent, which consent shall not be unreasonably withheld or delayed. Further, notwithstanding the foregoing, if the insurer on a policy or policies obtained in compliance with this Agreement agrees to undertake the defense of an Event (an "Insured Event"), Franchisor agrees not to exercise its right to select counsel to defend the Event if such would cause Franchisee's insurer to deny coverage. Franchisor reserves the right to retain counsel to represent Franchisor with respect to an Insured Event at Franchisor's sole cost and expense.

28.7 In furtherance of the indemnity contained in Section 28.6, during the Term, Franchisee agrees to maintain commercial general liability insurance, product liability coverage, automobile liability insurance, worker's compensation insurance, employer's liability insurance and any other insurance policies as Franchisor may require from time to time, insuring Franchisee and the Indemnified Parties against the matters described in Section 28.6, including claims for bodily and personal injury, death and property damage, among other things, caused by or occurring in conjunction with the conduct of business by Franchisee pursuant to this Agreement, under one or more policies of insurance acceptable to Franchisor and containing minimum liability coverage Franchisor prescribes from time to time. Each such insurance policy will name Franchisor as an additional insured and will provide for thirty (30) days' prior written notice to Franchisor of any material modification, cancellation, or expiration of such policy. Each such insurance policy will give Franchisor notice of default under the policy and the opportunity to cure such default on Franchisee's behalf. Simultaneous with the execution of this Agreement, Franchisee will provide Franchisor with evidence of such insurance; thereafter, Franchisee will furnish to Franchisor annually and upon the replacement or material modification of any insurance policy providing the coverage required under this Agreement, a copy of the certificate of insurance or other evidence requested by Franchisor that such insurance coverage is continuously in force without interruption. The maintenance of sufficient insurance coverage (both as to the type and limits of coverage) for the STORE is Franchisee's sole responsibility.

28.8 The terms of Section 28 will survive the termination or expiration of this Agreement.

29. MISCELLANEOUS

29.1 This Agreement and all issues arising from or relating to this Agreement shall be governed by and construed under the laws of the State of North Carolina, provided the foregoing shall not constitute a waiver of Franchisee's rights under any applicable franchise law of another state. Otherwise, in the event

of any conflict of law, North Carolina law will prevail, without regard to the application of North Carolina conflict of law principles, except that any North Carolina law regulating the sale of franchises or business opportunities or governing the relationship of a franchisor and its franchisees will not apply unless its jurisdictional requirements are met independently without reference to this section.

- 29.2 Franchisee and each of its Owners agree that the U.S. District Court for the Middle District of North Carolina, or if such court lacks jurisdiction, the Superior Court (or its successor) for Forsyth County North Carolina, shall be the venue and exclusive forum in which to adjudicate any case or controversy arising from or relating to this Agreement, or any Development Agreement, Commissary Facility Agreement or any other Franchise Agreement, including any guarantees or covenants by Franchisee's Owners. In the event a case or controversy is to be heard by the Superior Court (or its successor) for Forsyth County North Carolina, any party may request that the matter be assigned to the North Carolina Business Court. Franchisee and each of its Owners irrevocably submit to the jurisdiction of such courts and waive any objections to either the jurisdiction of or venue in such courts. Franchisee and each of its Owners irrevocably waive, to the fullest extent they may lawfully do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding and agree that service of process for purposes of any such suit, action or proceeding need not be personally served or served within the State of North Carolina but may be served with the same effect as if they were served within the State of North Carolina, by certified mail or any other means permitted by law, addressed to Franchisee and its Owners (as applicable) at the address set forth herein. Nothing contained herein shall affect Franchisor's rights to bring a suit, action or proceeding in any other appropriate jurisdiction, including any suit, action or proceeding brought by Franchisor to enforce any judgment against Franchisee or any of its Owners entered by a State or Federal Court.
- 29.3 Franchisor may obtain at any time in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause Franchisor irreparable harm. Franchisor may have such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or in law, and Franchisee's sole remedy in the event of the entry of such injunction, shall be the dissolution of such injunction, if warranted, upon hearing duly had (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). Franchisee and each of its Owners acknowledges that any violation of Sections 16, 17.3, 18, 19, 20, 24.3(j) or 27.3 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available. Accordingly, Franchisee and each of its Owners consent to the issuance of an injunction at Franchisor's request (without posting a bond or other security) prohibiting any conduct in violation of any of those sections and agree that the existence of any claims Franchisee or any of its Owners may have against Franchisor, whether or not arising herefrom, shall not constitute a defense to the enforcement of any of those Sections.
- 29.4 If Franchisor claims in any judicial proceeding that Franchisee owes Franchisor or any of its Affiliates money or that Franchisee has otherwise breached this Agreement and Franchisor prevails on such claims, then Franchisor shall be awarded its costs and expenses incurred in connection with such proceedings, including reasonable attorneys' fees.
- 29.5 Except with respect to any of Franchisee's obligations herein regarding the Confidential Information, the Marks, and any other intellectual property rights of Franchisor, Franchisor and Franchisee (and its Owners) each waives, to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other. Franchisee and each of its Owners waives, to the fullest extent permitted by applicable law, the right to recover consequential damages for any claim directly or indirectly arising from or relating to this Agreement. **FURTHERMORE, THE PARTIES AGREE THAT ANY LEGAL ACTION IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, AND ALL PARTIES WAIVE ANY RIGHT TO HAVE ANY ACTION TRIED BY JURY.**

- 29.6 Every part of this Agreement shall be considered severable. If for any reason any part of this Agreement is held to be invalid, that determination shall not impair the other parts of this Agreement. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of geographical area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, Franchisee and Franchisor agree that it will be so modified as to remain enforceable to the fullest extent permissible under applicable law. If any applicable law requires a greater prior notice of the termination of or refusal to enter into a successor franchise than is required hereunder, a different standard of "good cause", or the taking of some other action not required hereunder, the prior notice, "good cause" standard and/or other action required by such law shall be substituted for the comparable provisions hereof. If any provision of this Agreement or any specification, standard or operating procedure prescribed by Franchisor is invalid or unenforceable under applicable law, Franchisor has the right, in its sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to make it valid and enforceable.
- 29.7 Franchisor and Franchisee may by written instrument signed by the waiving party unilaterally waive or reduce any obligation of the other under this Agreement. Any waiver granted by Franchisor shall be without prejudice to any other rights Franchisor may have, will be subject to continuing review by Franchisor and may be revoked, in its sole discretion, at any time and for any reason, effective upon delivery to Franchisee of 10 days' prior notice. Franchisee and Franchisor shall not be deemed to have waived any right reserved by this Agreement by virtue of any custom or practice of the parties at variance with it; any failure, refusal or neglect by Franchisee or Franchisor to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder; any waiver, forbearance, delay, failure or omission by Franchisor to exercise any right, whether of the same, similar or different nature, with respect to other Krispy Kreme Stores; or the acceptance by Franchisor of any payments due from Franchisee after any breach of this Agreement.
- 29.8 The rights of Franchisor and Franchisee hereunder are cumulative and no exercise or enforcement by Franchisor or Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by Franchisor or Franchisee of any other right or remedy hereunder which Franchisor or Franchisee is entitled to enforce by law.
- 29.9 The language of this Agreement shall be construed according to its fair meaning and not more strictly against any one party than the other. The Basic Terms, introduction, personal guarantees and covenants, exhibits, schedules and riders (if any) to this Agreement are a part of this Agreement, which constitutes the entire agreement of the parties with respect to the subject matter hereof. Except as otherwise expressly provided herein, there are no other oral or written agreements, understandings, representations or statements relating to the subject matter of this Agreement, other than the Franchise Disclosure Document, that either party may or does rely on or that will have any force or effect. Nothing in this Agreement shall be deemed to confer any rights or remedies on any person or legal entity not a party hereto. This Agreement shall not be modified except by written agreement signed by both parties.
- 29.10 The headings of sections are for convenience only and do not limit or construe their contents. The word "including" shall be construed to include the words "without limitation." The term "Franchisee" is applicable to one or more persons, a corporation, limited liability company or a partnership and its owners, as the case may be. If two or more persons are at any time Franchisee hereunder, whether as partners, joint venturers or otherwise, their obligations and liabilities to Franchisor shall be joint and several.
- 29.11 References to a controlling interest in an entity shall mean more than fifty percent (50%) of the equity and voting control of such entity.
- 29.12 This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest. This Agreement may be executed in multiple copies, each of which shall be deemed an original. Time is of the essence in this Agreement.

- 29.13 Whenever this Agreement requires the approval or consent of either party, the other party shall make written request therefor, and such approval or consent shall be obtained in writing; provided however, unless specified otherwise in this Agreement, such party may withhold approval or consent for any reason or for no reason at all. Furthermore, unless specified otherwise in this Agreement, no such approval or consent shall be deemed to constitute a warranty or representation of any kind, express or implied, and the approving or consenting party shall have no responsibility, liability or obligation arising therefrom.
- 29.14 All notices, requests and reports permitted or required to be delivered by this Agreement shall be deemed delivered: (a) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (b) one (1) business day after being placed in the hands of a commercial courier service for guaranteed overnight delivery; or (c) five (5) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing. All payments and reports required by this Agreement shall be sent to Franchisor at the address identified in this Agreement unless and until a different address has been designated by written notice. No restrictive endorsement on any check or in any letter or other communication accompanying any payment shall bind Franchisor, and its acceptance of any such payment shall not constitute an accord and satisfaction.

30. **ACKNOWLEDGMENTS**

30.1 By initialing below, Franchisee hereby specifically acknowledges the following:

- (a) **Domicile.** Franchisee acknowledges that Franchisee is not a domiciliary or a resident of any state, other than the state where the STORE is located or, if different, the state listed in the Basic Terms as Franchisee's address.
- Initials _____/_____
- (b) **Receipt of Franchise Disclosure Document.** Franchisee acknowledges having received Franchisor's Franchise Disclosure Document at least fourteen (14) calendar days before signing a binding agreement or before making any payment to Franchisor or any of its Affiliates relating to this Agreement. Franchisee has read and understands Franchisor's Franchise Disclosure Document.
- Initials _____/_____
- (c) **No Inconsistent Representations.** Franchisee acknowledges that no representations have been made to Franchisee which are inconsistent with information presented in Franchisor's Franchise Disclosure Document, and Franchisee has not relied on any representations inconsistent with or not contained in Franchisor's Franchise Disclosure Document.
- Initials _____/_____
- (d) **Business Risks; Independent Investigation.** Franchisee recognizes that the nature of Krispy Kreme Stores and Commissary Facilities may change over time, that an investment in a Krispy Kreme Store or Commissary Facility involves business risks and that the success of the investment is largely dependent on Franchisee's own business abilities, efforts and financial resources. Franchisee has conducted an independent investigation of the business contemplated by this Agreement and recognizes that the food service industry is highly competitive.
- Initials _____/_____
- (e) **Independent Counsel.** Franchisee acknowledges having had the opportunity to seek independent counsel concerning the execution of this Agreement and the operation of the Franchise.
- Initials _____/_____

- (f) **No Guarantee or Assurance.** Franchisee has not received from Franchisor or its representatives or relied on any statement, representation, guaranty or assurance, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement, nor has Franchisee received from Franchisor or its representatives any information from which Franchisee may easily ascertain a specific level or range of actual or potential sales, income, gross or net profits from franchised or non-franchised Krispy Kreme Stores or Commissary Facilities.

Initials _____/_____

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.

KRISPY KREME DOUGHNUT CORPORATION

[FRANCHISEE]

By: _____
Title: _____
Dated: _____

By: _____
Title: _____
Dated: _____

EXHIBIT A

**TO THE FRANCHISE AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

FRANCHISEE INFORMATION

1. Form of Entity of Franchisee.

(a) Corporation or Limited Liability Company. Franchisee was organized on _____, _____ under the laws of the State of _____. Its Federal Identification Number is _____. It has not conducted business under any name other than its corporate or company name. The following is a list of all of Franchisee's directors and officers or managing members as of _____, _____.

Name of Each Director/Officer/Managing Member

Position(s) Held

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(b) Partnership. Franchisee is a [general] [limited] partnership formed on _____, _____ under the laws of the State of _____. Its Federal Identification Number is _____. It has not conducted business under any name other than its partnership name. The following is a list of all of Franchisee 's general partners as of, _____, _____.

Name of Each General Partner

2. Owners. Franchisee and each of its Owners represents and warrants that the following is a complete and accurate list of all Owners of Franchisee, including the full name and mailing address of each Owner, and fully describes the nature and extent of each Owner's interest in Franchisee. Franchisee and each Owner as to his/her ownership interest, represents and warrants that each Owner is the sole and exclusive legal and beneficial owner of his/her ownership interest in Franchisee, free and clear of all liens, restrictions, agreements and encumbrances of any kind or nature, other than those required or permitted by this Agreement.

Owner's Name and Mailing Address

Percentage and Nature of Ownership Interest

Submitted by Franchisee and
Accepted by Franchisor and
made a part of the Franchise
Agreement as of____, ____.

KRISPY KREME DOUGHNUT CORPORATION,
a North Carolina corporation

(Name of corporation, limited liability
company or partnership)

By: _____
Print
Name: _____
Title: _____

By: _____
Print
Name: _____
Title: _____

By: _____
Print
Name: _____
Title: _____

Owners:

(Signature)

(Print
Name)

(Signature)

(Print
Name)

EXHIBIT B

**TO THE FRANCHISE AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

**PRINCIPAL OWNERS' PERSONAL GUARANTY OF
FRANCHISEE'S OBLIGATIONS ("Guaranty")**

In consideration of, and as an inducement to, the execution of the Krispy Kreme Doughnut Corporation Franchise Agreement dated as of _____, _____ (the "Agreement") by and between KRISPY KREME DOUGHNUT CORPORATION ("Franchisor"), and _____ ("Franchisee"), each of the undersigned Principal Owners of a ten percent (10%) or greater interest in Franchisee hereby personally and unconditionally: (a) guarantees to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement (and any amendments) and that each and every representation of Franchisee made in connection with the Agreement (and any amendments) are true, correct and complete in all respects at and as of the time given; and (b) agrees personally to be bound by each and every provision in the Agreement (and any amendments).

Each of the undersigned waives: (a) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (b) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (d) any right that the undersigned may have to require that an action be brought against Franchisee or any other person as a condition of liability; (e) notice of any amendment to the Agreement; (f) any and all other notices and legal or equitable defenses to which that the undersigned may be entitled; and (g) the provisions of N.C. General Statutes § 26.7 *et seq.*

Each of the undersigned consents and agrees that: (a) the undersigned's direct and immediate liability under this guaranty shall be joint and several; (b) the undersigned shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses to do so punctually; (c) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (d) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person including the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable until satisfied in full.

Each of the undersigned agrees that the U.S. District Court for the Middle District of North Carolina, or if such court lacks jurisdiction, the Superior Court (or its successor) for Forsyth County North Carolina, shall be the venue and exclusive forum in which to adjudicate any case or controversy arising from or relating to this Guaranty. In the event a case or controversy is to be heard by the Superior Court (or its successor) for Forsyth County North Carolina, any party may request that the matter be assigned to the North Carolina Business Court. Each of the undersigned irrevocably submits to the jurisdiction of such courts and waives any objections to either the jurisdiction of or venue in such courts. Each of the undersigned irrevocably waives, to the fullest extent he/she may lawfully do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding and agrees that service of process for purposes of any such suit, action or proceeding need not be personally served or served within the State of North Carolina but may be served with the same effect as if the undersigned were served within the State of North Carolina, by certified mail or any other means permitted by law addressed to the undersigned at the address set forth herein. Nothing contained herein shall affect Franchisor's rights to bring a suit, action or proceeding in any other appropriate jurisdiction, including any suit, action or proceeding brought by Franchisor to enforce any judgment against the undersigned entered by a State or Federal Court.

Each of the undersigned waives all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the undersigned's execution of and performance under this Guaranty.

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed his/her signature as of the ____ day of _____, ____.

**PERCENTAGE OF OWNERSHIP
INTERESTS IN FRANCHISEE**

GUARANTOR(S)

(Signature)

(Print Name)

(Address)

(Signature)

(Print Name)

(Address)

(Signature)

(Print Name)

(Address)

(Signature)

(Print Name)

(Address)

Subscribed and sworn to before me
this ____ day of _____, ____.

Notary Public
My Commission expires: _____

EXHIBIT C

**TO THE FRANCHISE AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

**INVESTOR PERSONAL COVENANTS REGARDING
CONFIDENTIALITY, NON-COMPETITION AND NON-SOLICITATION**

In conjunction with your investment in _____ ("Franchisee") a _____, the undersigned _____ ("Owner"), acknowledges and agrees as follows:

1. Franchisee owns and operates a Krispy Kreme Store pursuant to a franchise agreement dated _____, _____ ("Franchise Agreement") with Krispy Kreme Doughnut Corporation ("Franchisor"), which Franchise Agreement requires persons with legal or beneficial ownership interests in Franchisee to be personally bound by the confidentiality and noncompetition covenants contained in the Franchise Agreement. All capitalized terms contained herein shall have the same meaning set forth in the Franchise Agreement.
2. Owner owns or intends to own a _____ percent (___ %) legal or beneficial ownership interest in Franchisee and acknowledges and agrees that the execution of this Agreement is a condition to Franchisee's ability to enter into the Franchise Agreement and/or Owner's ability to invest in Franchisee. Owner has received good and valuable consideration for executing this Agreement. Franchisor may enforce this Agreement directly against Owner.
3. Owner may gain access to information comprising Franchisor's Confidential Information as a result of investing in Franchisee. The Confidential Information is proprietary and includes Franchisor's trade secrets. Owner hereby agrees that while Owner has a legal or beneficial ownership interest in Franchisee and thereafter, Owner: (a) will not use the Confidential Information in any other business or capacity; (b) will maintain the confidentiality of the Confidential Information; and (c) will not make unauthorized copies of any portion of the Confidential Information, whether through electronic media, writings, or other tangible or intangible means of expression. Without limiting the foregoing, Owner (i) acknowledges that he/she may have access to Franchisor's material non-public information and that of its parent, Krispy Kreme Doughnut Inc. ("KKDI"), and that the securities laws prohibit trading in KKDI securities while in possession of such information, and (ii) agrees to refrain from trading in KKDI securities in violation of such laws. If Owner ceases to have an interest in Franchisee, Owner must deliver to Franchisor any such Confidential Information in his/her possession or control.
4. Notwithstanding anything to the contrary contained herein and provided Owner has obtained Franchisor's prior written consent, the restrictions on Owner's disclosure and use of the Confidential Information will not apply to the following:
 - (a) information, methods, procedures, techniques and knowledge which are or become generally known in the food service business, other than through disclosure (whether deliberate or inadvertent) by Franchisee, Franchisee's Owners, agents, or employees; and
 - (b) the disclosure of the Confidential Information in judicial, arbitration or administrative proceedings to the extent that Owner is legally compelled to disclose such information, provided Owner has notified Franchisor prior to such disclosure and has used its best efforts to obtain, and has afforded Franchisor sufficient opportunity to seek an appropriate protective order and obtain, assurances satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

5. Owner acknowledges and agrees that Franchisor would be unable to (a) protect the Confidential Information against unauthorized use or disclosure; (b) preserve the prestige, integrity, and goodwill of the Products, Marks, and System; or (c) encourage the free exchange of ideas and information among Krispy Kreme Stores and Commissary Facilities if franchisees and owners of Krispy Kreme Stores and Commissary Facilities or their owners were permitted to engage in or benefit from certain competitive activities. Therefore, except as expressly authorized by another written agreement with Franchisor, Owner agrees that during the term of the Franchise Agreement or during such time as Owner has an Ownership Interest in Franchisee (whichever is shorter), without Franchisor's prior written consent, Owner shall not directly or indirectly (including through a Restricted Person):

- (i) have any Ownership Interest in a Competitive Business;
- (ii) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business;
- (iii) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business, where such services could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;
- (iv) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility, or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Owner to hire any such Person, then Owner agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (v) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

6. Upon termination of the Franchise Agreement or Owner's Ownership Interest in Franchisee (whichever first occurs), Owner shall not directly or indirectly (including through a Restricted Person), for a period of two (2) years commencing on the effective date of such termination:

- (a) have any Ownership Interest in a Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility then open or under construction;
- (b) perform services as a director, officer, manager, partner, or supervisory or management-level employee, of any Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility then open or under construction;
- (c) perform services as an employee, consultant, representative, agent or otherwise for a Competitive Business located within a radius of ten (10) miles of the Site or of any other Krispy Kreme Store or Commissary Facility then open or under construction, where such services could be reasonably expected to benefit, either directly or indirectly, whether financially or otherwise, from the disclosure of any Confidential Information to such Competitive Business;
- (d) recruit or hire any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility or who has been Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility within the past six (6) months without obtaining prior written permission from Franchisor and that Person's employer. If Franchisor permits Owner to hire any such Person, then Owner agrees to pay Franchisor a non-refundable Management Development Fee in the amount of Twenty-Five Thousand Dollars (\$25,000) per hired employee as of the date of hire; or
- (e) induce or attempt to induce any Person who is Franchisor's employee or the employee of any Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such Krispy Kreme Store or Commissary Facility as the case may be.

7. Owner expressly acknowledges the possession of skills and abilities of a general nature and the opportunity to exploit such skills in other ways, so that enforcement of the covenants contained in Sections 5 and 6 of these covenants will not deprive him/her of his/her personal goodwill or ability to earn a living. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope or in terms of geographic area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, Owner agrees that it will be enforced to the fullest extent permissible under applicable law and public policy. Franchisor may obtain in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause it irreparable harm. Owner acknowledges that any violation of Sections 4, 5, or 6 of these covenants would result in irreparable injury for which no adequate remedy at law may be available. If Franchisor files a claim to enforce this Agreement and prevails in such proceeding, Owner agrees to reimburse Franchisor for all its costs and expenses, including reasonable attorneys' fees.

8. Owner agrees that the U.S. District Court for the Middle District of North Carolina, or if such court lacks jurisdiction, the Superior Court (or its successor) for Forsyth County North Carolina, shall be the venue and exclusive forum in which to adjudicate any case or controversy arising from or relating to these covenants. In the event a case or controversy is to be heard by the Superior Court (or its successor) for Forsyth County North Carolina, any party may request that the matter be assigned to the North Carolina Business Court. Owner irrevocably submits to the jurisdiction of such courts and waives any objections to either the jurisdiction of or venue in such courts. Owner irrevocably waives, to the fullest extent he or she may lawfully do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding and agrees that service of process for purposes of any such suit, action or proceeding need not be personally served or served within the State of North Carolina but may be served with the same effect as if he or she were served within the State of North Carolina, by certified mail or any other means permitted by law, addressed to Owner at the address set forth herein. Nothing contained herein shall affect Franchisor's rights to bring a suit, action or proceeding in any other appropriate jurisdiction, including any suit, action or proceeding brought by Franchisor to enforce any judgment against Owner entered by a State or Federal Court.

9. If Franchisor claims in any judicial proceeding that Owner has breached any of the covenants contained herein, and Franchisor prevails on such claims, then Franchisor shall be awarded its costs and expenses incurred in connection with such proceedings, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement on the ____ day of _____, _____.

OWNER

(Signature)

(Print Name)

(Address)

EXHIBIT D

**TO THE FRANCHISE AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

**Automatic Debit Notification (ADN) Program
Authorization for ACH Debits or Credits**

The undersigned Franchisee hereby authorizes Krispy Kreme Doughnut Corporation ("KKDC") to initiate debit and/or credit entries via the Automated Clearing House (ACH) to the bank account established with the bank shown below. This authority is to remain in full and force and effect until the bank has received written notification from Franchisee of the termination of such authority and such termination has been confirmed in writing by KKDC.

BANK NAME

City, State

Bank Transit/ABA Number

Bank Account Number

Franchisee (Print Name)

By:

Title:

Date:

D-1

EXHIBIT E

**TO THE FRANCHISE AGREEMENT BETWEEN
KRISPY KREME DOUGHNUT CORPORATION
AND**

DATED _____, _____

AUTHORIZED OFF-PREMISES SALES

By signing below, Franchisor authorizes Franchisee to make sales of the specified Products to the following locations on a non-exclusive basis from Store Number _____ located at _____. Capitalized terms used herein shall have the meanings ascribed to them in the Franchise Agreement for Store Number _____. Franchisor may impose other terms and conditions from time to time by written directives. This authorization runs concurrently with the term of the Franchise Agreement for the store and terminates automatically and without notification on any termination or expiration of that agreement. In addition, either party may terminate this authorization, with or without cause, upon 180-days written notice to the other party.

Products:

Locations:

KRISPY KREME DOUGHNUT CORPORATION

FRANCHISEE

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (“**Agreement**”) dated as of November 7, 2007 among Krispy Kreme Doughnut Corporation, a North Carolina corporation (“**KKDC**”), Krispy Kreme Doughnuts, Inc., a North Carolina corporation (the “**Company**” and, together with KKDC, the “**Companies**”), and Kenneth J. Hudson (the “**Executive**”).

The parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.01. *Definitions.* For purposes of this Agreement, the following terms have the meanings set forth below:

“**Base Salary**” has the meaning set forth in Section 4.01.

“**Board**” means the Board of Directors of the Company.

“**Cause**” shall mean (i) the Executive’s failure or refusal to perform the Executive’s lawful and proper duties hereunder (other than as a result of total or partial incapacity due to physical or mental illness or a court or governmental order), (ii) the Executive’s conviction of or plea of *nolo contendere* to any felony (other than a traffic infraction), (iii) an act or acts on the Executive’s part constituting fraud, theft or embezzlement or that otherwise constitutes a felony under the laws of the United States or any state thereof which results or was intended to result directly or indirectly in gain or personal enrichment by the Executive at the expense of the Companies, or (iv) the Executive’s insubordination to the Companies’ most senior executive officer or willful violation of any material provision of the code of ethics of the Companies applicable to the Executive. In the case of any item described in the previous sentence, the Executive shall be given written notice of the alleged act or omission constituting Cause, which notice shall set forth in reasonable detail the reason or reasons that the Board believes the Executive is to be terminated for Cause, including any act or omission that is the basis for the decision to terminate the Executive. In the case of an act or omission described in clause (i) or (iv) of the definition of Cause, (A) if reasonably capable of being cured, the Executive shall be given 30 days from the date of such notice to effect a cure of such alleged act or omission constituting “Cause” which, upon such cure to the reasonable satisfaction of the Board, shall no longer constitute a basis for Cause, and (B) the Executive shall be given an opportunity to make a presentation to the Board (accompanied by counsel or other representative, if the Executive so desires) at a meeting of the Board held promptly following such 30-day cure period if the Board intends to determine that no cure has occurred. At or following such meeting, the Board shall determine whether or not to terminate the Executive for “Cause” and shall notify the Executive in writing of its determination and the effective date of such termination (which date may be no earlier than the date of the aforementioned Board meeting).

“**Change in Control**” means any of the following events:

(a) the acquisition by any Person of “beneficial ownership” (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of fifty percent (50%) or more of the combined voting power of the Company’s then outstanding voting securities; provided, however, that a Change in Control shall not be deemed to occur solely because fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities is acquired by (i) a trustee or other fiduciary holding securities under one or more employee benefit plans maintained by the Company or any of its Subsidiaries, or (ii) any Person, which, immediately prior to such acquisition, is owned directly or indirectly by the shareholders of the Company in the same proportion as their ownership of stock in the Company immediately prior to such acquisition;

(b) consummation of (i) a merger or consolidation involving the Company if the shareholders of the Company, immediately before such merger or consolidation do not, as a result of such merger or consolidation, own, directly or indirectly, more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation resulting from such merger or consolidation in substantially the same proportion as their ownership of the combined voting power of the voting securities of the Company outstanding immediately before such merger or consolidation, or (ii) a sale or other disposition of all or substantially all of the assets of the Company other than to a Person which is owned directly or indirectly by the shareholders of the Company in the same proportion as their ownership of stock in the Company;

(c) a change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (such Board shall be hereinafter referred to as the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, for purposes of this definition, that any individual who becomes a member of the Board subsequent to the Effective Date whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; provided further, however, that any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act, including any successor to such Rule), or other actual or threatened solicitation or proxies or consents by or on behalf of a Person other than the Board, shall not be so considered as a member of the Incumbent Board; or

(d) approval by shareholders of the Company of a complete liquidation or dissolution of the Company.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means information that is not generally known to the public and that was or is used, developed or obtained by the Company or its Subsidiaries in connection with the business of the Company and its Subsidiaries and which constitutes trade secrets or information which they have attempted to protect, which may include, but is not limited to, trade "know-how", customer information, supplier information, cost and pricing information, marketing and sales techniques, strategies and programs, computer programs and software and financial information. It shall not include information (a) required to be disclosed by court or administrative order; (b) lawfully obtainable from other sources or which is in the public domain through no fault of the Executive; or (c) the disclosure of which is consented to in writing by the Company.

"Date of Termination" has the meaning set forth in Section 5.07.

"Effective Date" has the meaning set forth in Section 2.01.

"Employment Period" has the meaning set forth in Section 2.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Good Reason" shall mean (i) the failure of the Companies to pay any material amount of compensation to the Executive when due hereunder, (ii) the Executive is no longer the most senior human resources officer of (A) the Company or (B) in the event of a merger, consolidation or other business combination involving the Company, the successor to the Company's business or assets or (C) if all or substantially all of the voting stock of the Company is held by another public company, such public company, (iii) the assignment to the Executive of any duties or responsibilities materially inconsistent with the Executive's status under clause (ii) of this sentence or his failure at any time to report directly to the most senior executive officer of the applicable company described in such clause (ii), (iv) any failure by the Companies to maintain the Executive's principal place of employment and the executive offices of the Companies within 25 miles of the Winston-Salem, North Carolina area, (v) any material breach by the Companies of this Agreement, or (vi) the term of the Employment Period ending as a result

of the Companies giving the Executive notice of nonextension of the term of this Agreement in accordance with Section 5.01 solely at either the end of the initial term or the end of the first, second or third one year extensions of the term under Section 5.01 (but, for the avoidance of doubt, not at the end of any further extension of the term); provided, however, that for any of the foregoing to constitute Good Reason, the Executive must provide written notification of his intention to resign within 60 days after the Executive knows or has reason to know of the occurrence of any such event, and the Companies shall have 30 days (10 days in the case of a material breach related to payment of any amounts due hereunder) from the date of receipt of such notice to effect a cure of the condition constituting Good Reason, and, upon cure thereof by the Companies, such event shall no longer constitute Good Reason.

“**Notice of Termination**” has the meaning set forth in Section 5.06.

“**Permanent Disability**” means the Executive becomes permanently disabled within the meaning of the long-term disability plan of the Companies applicable to the Executive, and the Executive commences to receive benefits under such plan.

“**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, an estate, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

“**Reimbursable Expenses**” has the meaning set forth in Section 4.04.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Subsidiary**” or “**Subsidiaries**” means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (a) if a corporation, 50 percent or more of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or combination thereof; or (b) if a partnership, limited liability company, association or other business entity, 50 percent or more of the partnership or other similar ownership interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes of this definition, a Person or Persons will be deemed to have a 50 percent or more ownership interest in a partnership, limited liability company, association or other business entity if such Person or Persons are allocated 50 percent or more of partnership, limited liability company, association or other business entity gains or losses or control the managing director or member or general partner of such partnership, limited liability company, association or other business entity.

ARTICLE 2

EMPLOYMENT

SECTION 2.01. *Employment.* The Executive is a current employee of KKDC and a current officer of the Company. However, under this Agreement, and beginning the Effective Date, both Companies shall employ the Executive, and the Executive shall accept employment with the Companies, upon the terms and conditions set forth in this Agreement for the new period beginning November 7, 2007 (the “**Effective Date**”) and ending as provided in Section 5.01 (the “**Employment Period**”).

ARTICLE 3

POSITION AND DUTIES

SECTION 3.01. *Position and Duties.* During the Employment Period, the Executive shall serve as Senior Vice President of Human Resources and Organizational Development of the Company reporting directly to the most senior executive officer and shall be the Company's most senior human resources officer. During the Employment Period, the Executive also shall serve as Senior Vice President of Human Resources and Organizational Development of KKDC and shall be KKDC's most senior human resources officer. The Executive shall have such responsibilities, powers and duties as may from time to time be prescribed by the Board or the most senior executive officer of the Companies; *provided* that such responsibilities, powers and duties are substantially consistent with those customarily assigned to individuals serving in such position at comparable companies or as may be reasonably required for the proper conduct of the business of the Companies. During the Employment Period, the Executive shall devote substantially all of his working time and efforts to the business and affairs of the Company and its Subsidiaries. The Executive shall not directly or indirectly render any services of a business, commercial or professional nature to any other person or organization not related to the business of the Company or its Subsidiaries, whether for compensation or otherwise, without the prior approval of the Board; provided, however, the Executive may serve on the board of directors of one for-profit corporation with the prior approval of the Board, which will not be unreasonably withheld, and the Executive may serve as a director of not-for-profit organizations or engage in other charitable, civic or educational activities, so long as the activities described in this proviso do not interfere with the Executive's performance of his duties hereunder or result in any conflict of interest with the Companies.

ARTICLE 4

BASE SALARY AND BENEFITS

SECTION 4.01. *Base Salary.* During the Employment Period, the Executive will receive base salary from the Companies equal to \$250,000 per annum (the "**Base Salary**"). The Base Salary will be payable in accordance with the normal payroll practices of the Companies. Annually during the Employment Period the Company shall review with the Executive his job performance and compensation, and if deemed appropriate by the Board or its Compensation Committee, in their discretion, the Executive's Base Salary may be increased but not decreased. After any such increase, the term "Base Salary" as used in this Agreement will thereafter refer to the increased amount.

SECTION 4.02. *Bonuses.* In addition to Base Salary, the Executive shall be eligible to be considered for an annual bonus, and the Executive's annual target bonus shall be equal to 40% of Base Salary. The Compensation Committee of the Board and the Board shall set targets with respect to and otherwise determine Executive's bonus in accordance with the Company's then current incentive plans.

SECTION 4.03. *Benefits.* During the Employment Period, the Executive shall be entitled to participate in all employee benefit, perquisite and fringe benefit plans and arrangements made available by the Companies to their executives and key management employees upon the terms and subject to the conditions set forth in the applicable plan or arrangement. Such benefits shall include medical, life and disability insurance provided in accordance with the policies of the Companies. Executive shall be entitled to four weeks of paid vacation annually during the Employment Period.

SECTION 4.04. *Expenses.* The Companies shall reimburse the Executive for all reasonable expenses incurred by him in the course of performing his duties under this Agreement which are consistent with the Companies' policies in effect from time to time with respect to travel, entertainment and other business expenses ("**Reimbursable Expenses**"), subject to the Companies' requirements with respect to reporting and documentation of expenses.

TERM AND TERMINATION

SECTION 5.01. *Term.* The Employment Period will terminate on November 7, 2010, unless sooner terminated as hereinafter provided; provided, however, that the Employment Period will be automatically extended for successive one-year periods following the original term ending November 7, 2010 until either the Companies, on the one hand, or the Executive, on the other hand, at least 180 days prior to the expiration of the original term or any extended term, shall give written notice to the other of their intention not to so extend the Employment Period.

SECTION 5.02. *Termination Due to Death or Permanent Disability.* If the Employment Period shall be terminated due to death or Permanent Disability of the Executive, the Executive (or his estate or legal representative) shall be entitled solely to the following: (i) Base Salary through the Date of Termination; and (ii) medical benefits as provided in Section 5.05 below. The Executive's entitlements under any other benefit plan or program shall be as determined thereunder. In addition, promptly following any such termination, the Executive (or his estate or legal representative) shall be reimbursed for all Reimbursable Expenses incurred by the Executive prior to such termination.

SECTION 5.03. *Termination for Good Reason or Without Cause.* Except as otherwise set forth in Section 5.09 below, if the Employment Period shall be terminated (a) by the Executive for Good Reason, or (b) by the Companies not for Cause, provided the Executive has executed an irrevocable (except to the extent required by law, and to the extent required by law to be revocable, has not revoked) general release of claims, in the form attached hereto as Exhibit A, the Executive shall be entitled solely to the following: (i) Base Salary through the Date of Termination; (ii) an amount equal to one times the Base Salary, provided that, the Executive shall be entitled to any unpaid amounts only if the Executive has not breached and does not breach the provisions of Sections 6.01, 7.01, 8.01 or 9 below; (iii) a bonus for the year of termination of employment equal to the Executive's target annual bonus for such year pro rated for the number of full months during the bonus year prior to such termination of employment, payable as soon as practicable following such termination of employment; and (iv) medical benefits as provided in Section 5.05 below. The Executive's entitlements under any other benefit plan or program shall be as determined thereunder, except that duplicative severance benefits shall not be payable under any other plan or program. Amounts described in clause (ii) above will be payable in equal monthly installments for a period of 12 months commencing on the first month anniversary of the Date of Termination, except, to the extent required by Section 409A of the Code, amounts otherwise payable under clause (ii) within six months after the Executive's termination of employment shall be deferred to and paid on the day following the six month anniversary of such termination of employment. In addition, promptly following any such termination, the Executive shall be reimbursed for all Reimbursable Expenses incurred by the Executive prior to such termination.

SECTION 5.04. *Termination for Cause or Other Than Good Reason.* If the Employment Period shall be terminated (a) by the Companies for Cause, or (b) as a result of the Executive's resignation or leaving of his employment other than for Good Reason, the Executive shall be entitled to receive solely Base Salary through the Date of Termination and reimbursement of all Reimbursable Expenses incurred by the Executive prior to such termination. The Executive's rights under the benefit plans and programs shall be as determined thereunder. A voluntary resignation by the Executive shall not be deemed to be a breach of this Agreement.

SECTION 5.05. *Benefits.* If the Employment Period is terminated as a result of a termination of employment as specified in Section 5.02, 5.03 or 5.09, the Executive and his covered dependents shall continue to receive medical insurance coverage benefits from the Companies, with the same contribution toward such coverage from the Executive or his estate, for a period equal to the lesser of (x) eighteen months following the Date of Termination, or (y) until the Executive is provided by another employer with benefits substantially comparable to the benefits provided by the Companies' medical plan. Furthermore, in the event of Executive's Permanent Disability, insurance benefits will continue under the Companies' long term disability plan in accordance with its terms.

SECTION 5.06. *Notice of Termination.* Any termination by the Companies for Permanent Disability or Cause or without Cause or by the Executive with or without Good Reason shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a “**Notice of Termination**” shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of employment under the provision indicated.

SECTION 5.07. *Date of Termination.* “**Date of Termination**” shall mean (a) if the Employment Period is terminated as a result of a Permanent Disability, five days after a Notice of Termination is given, (b) if the Employment Period is terminated as a result of his death, on the date of his death, and (c) if the Employment Period is terminated for any other reason, the later of the date of the Notice of Termination and the end of any applicable correction period.

SECTION 5.08. *No Duty to Mitigate.* The Executive shall have no duty to seek new employment or other duty to mitigate following a termination of employment as described in this Article 5, and no compensation or benefits described in this Article 5 shall be subject to reduction or offset on account of any subsequent compensation, other than as provided in Section 5.05.

SECTION 5.09. *Termination for Good Reason or Without Cause Following a Change in Control.* If the Employment Period shall be terminated within two years after a Change in Control (a) by the Executive for Good Reason, or (b) by the Companies not for Cause, then Executive’s compensation and benefits upon termination shall be governed by this Section 5.09 instead of the provisions of Section 5.03 above, and, provided the Executive has executed an irrevocable (except to the extent required by law, and to the extent required by law to be revocable, has not revoked) general release of claims, in the form attached hereto as Exhibit A, the Executive shall be entitled solely to the following: (i) Base Salary through the Date of Termination; (ii) an amount equal to 1.25 times the sum of his Base Salary and his target annual bonus for the year of termination, provided that, the Executive shall be entitled to any unpaid amounts only if the Executive has not breached and does not breach the provisions of Sections 6.01, 7.01, 8.01 or 9 below; (iii) a bonus for the year of termination of employment equal to the Executive’s target annual bonus for such year pro rated for the number of full months during the bonus year prior to such termination of employment; and (iv) medical benefits as provided in Section 5.05. The Executive’s entitlements under any other benefit plan or program shall be as determined thereunder, except that duplicative severance benefits shall not be payable under any other plan or program. In addition, promptly following any such termination, the Executive shall be reimbursed for all Reimbursable Expenses incurred by the Executive prior to such termination. The amounts due under clauses (i), (ii) and (iii) of this Section 5.09 shall be paid in a lump sum upon termination of employment.

ARTICLE 6

CONFIDENTIAL INFORMATION

SECTION 6.01. *Nondisclosure and Nonuse of Confidential Information.* The Executive will not disclose or use at any time during or after the Employment Period any Confidential Information of which the Executive is or becomes aware, whether or not such information is developed by him, except to the extent he reasonably believes that such disclosure or use is directly related to and appropriate in connection with the Executive’s performance of duties assigned to the Executive pursuant to this Agreement. Under all circumstances and at all times, the Executive will take all appropriate steps to safeguard Confidential Information in his possession and to protect it against disclosure, misuse, espionage, loss and theft. Executive also agrees to execute and comply with such other confidentiality agreements or provisions as required of executive officers of the Company.

ARTICLE 7

INTELLECTUAL PROPERTY

SECTION 7.01. *Ownership of Intellectual Property.* In the event that the Executive as part of his activities on behalf of the Companies generates, authors or contributes to any invention, design, new development, device, product, method of process (whether or not patentable or reduced to practice or comprising Confidential Information), any copyrightable work (whether or not comprising Confidential Information) or any other form of Confidential Information relating directly or indirectly to the business of the Company or its Subsidiaries as now or hereafter conducted (collectively, “**Intellectual Property**”), the Executive acknowledges that such Intellectual Property is the sole and exclusive property of the Company and its Subsidiaries and hereby assigns all right, title and interest in and to such Intellectual Property to the Company or its designated Subsidiary. Any copyrightable work prepared in whole or in part by the Executive during the Employment Period will be deemed “a work made for hire” under Section 201(b) of the Copyright Act of 1976, as amended, and the Company or its designated Subsidiary will own all of the rights comprised in the copyright therein. The Executive will promptly and fully disclose all Intellectual Property and will cooperate with the Companies to protect their interests in and rights to such Intellectual Property (including providing reasonable assistance in securing patent protection and copyright registrations and executing all documents as reasonably requested by the Companies, whether such requests occur prior to or after termination of Executive’s employment hereunder).

ARTICLE 8

DELIVERY OF MATERIALS UPON TERMINATION OF EMPLOYMENT

SECTION 8.01. *Delivery of Materials upon Termination of Employment.* As requested by the Companies from time to time, and upon the termination of the Executive’s employment with the Companies for any reason, the Executive will promptly deliver to the Companies all property of the Company or its Subsidiaries, including, without limitation, all copies and embodiments, in whatever form or medium, of all Confidential Information in the Executive’s possession or within his control (including written records, notes, photographs, manuals, notebooks, documentation, program listings, flow charts, magnetic media, disks, diskettes, tapes and all other materials containing any Confidential Information) irrespective of the location or form of such material and, if requested by the Companies, will provide the Companies with written confirmation that to the best of his knowledge all such materials have been delivered to the Companies or destroyed.

ARTICLE 9

NON-COMPETITION AND NONSOLICITATION

SECTION 9.01. *Noncompetition.* The Executive acknowledges that, during his employment with the Companies, he will become familiar with trade secrets and other Confidential Information concerning the Company and its Subsidiaries and his services will be of special, unique and extraordinary value to the Companies. In addition, the Executive hereby agrees that at any time during the Noncompetition Period (as defined below), he will not directly or indirectly own, manage, control, participate in, consult with, become employed by or otherwise render services to any business listed on Exhibit B hereto in the Territory. During the Noncompetition Period, the Company shall have the right to, in good faith, add other entities which are in substantial competition with the Companies to the list of businesses on Exhibit B, subject to the consent of the Executive which shall not be unreasonably withheld. Notwithstanding the foregoing, if the Executive’s termination of employment occurs at the end of the Employment Period due to the Companies giving written notice after the fifth anniversary of the Effective Date pursuant to Section 5.01 of its intention not to extend the Employment Period, this Section 9.01 will only apply if the Companies elect and agree in writing to pay the Executive his Base Salary and his annual target bonus in effect for the year during which his employment is terminated for an additional one-year period following the termination of employment, such amount to be payable in monthly installments over the additional

one-year period, except that, to the extent required by Section 409A of the Code, amounts otherwise payable under this sentence within six months after the Executive's termination of employment shall be deferred to and paid on the day following the six month anniversary of such termination of employment. It shall not be considered a violation of this Section 9.01 for the Executive to be a passive owner of not more than 2% of the outstanding stock of any class of any corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

SECTION 9.02. *Nonsolicitation*. The Executive hereby agrees that (a) during the Nonsolicitation Period (as defined below), the Executive will not, directly or indirectly through another Person, induce or attempt to induce any employee of the Company or its Subsidiaries to leave the employ of the Company or its Subsidiaries, or in any way interfere with the relationship between the Company or its Subsidiaries and any person employed by them at any time during such Nonsolicitation Period, and (b) during the Nonsolicitation Period, the Executive will not induce or attempt to induce any customer, supplier, client or other business relation of the Company or its Subsidiaries to cease doing business with the Company or its Subsidiaries.

SECTION 9.03. *Definitions*. It is agreed that the "**Territory**," for purposes of this Article 9, shall mean:

(i) The entire United States and any other country where the Company or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Company's products have been sold at any time in the one-year period ending on the last day of the Executive's employment with the Companies;

(ii) In the event that the preceding clause shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the entire United States;

(iii) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the states in the United States where the Company or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Company's products have been sold at any time in the one-year period ending on the last day of Executive's employment with the Companies;

(iv) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the area that includes all of the areas that are within a 50-mile radius of any retail store location in the United States at which the Company's products have been sold at any time in the one-year period ending on the last day of the Executive's employment with the Companies; and

(v) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the entire state of North Carolina.

It is also agreed that "**Noncompetition Period**," for purposes hereof, shall mean:

(i) the Employment Period and a period ending one year after the Date of Termination; and

(ii) In the event that the preceding clause shall be determined by judicial action to define too long a period to be enforceable, "Noncompetition Period" shall mean the Employment Period and a period ending six months after the Date of Termination.

It is also agreed that "**Nonsolicitation Period**," for purposes hereof, shall mean:

(i) the Employment Period and a period ending two years after the Date of Termination;

(ii) In the event that the preceding clause shall be determined by judicial action to define too long a period to be enforceable, "Nonsolicitation Period" shall mean the Employment Period and a period ending eighteen months after the Date of Termination;

(iii) In the event that the preceding clauses shall be determined by judicial action to define too long a period to be enforceable, “Nonsolicitation Period” shall mean the Employment Period and a period ending one year after the Date of Termination; and

(iv) In the event that the preceding clauses shall be determined by judicial action to define too long a period to be enforceable, “Nonsolicitation Period” shall mean the Employment Period and a period ending six months after the Date of Termination.

ARTICLE 10

EQUITABLE RELIEF

SECTION 10.01. *Equitable Relief.* The Executive acknowledges that (a) the covenants contained herein are reasonable, (b) the Executive’s services are unique, and (c) a breach or threatened breach by him of any of his covenants and agreements with the Companies contained in Sections 6.01, 7.01, 8.01 or Article 9 could cause irreparable harm to the Companies for which they would have no adequate remedy at law. Accordingly, and in addition to any remedies which the Companies may have at law, in the event of an actual or threatened breach by the Executive of his covenants and agreements contained in Sections 6.01, 7.01, 8.01 or Article 9, the Companies shall have the absolute right to apply to any court of competent jurisdiction for such injunctive or other equitable relief, without the necessity to post bond, as such court may deem necessary or appropriate in the circumstances.

ARTICLE 11

EXECUTIVE REPRESENTATION AND INDEMNIFICATION

SECTION 11.01. *Executive Representation.* The Executive hereby represents and warrants to the Companies that (a) the execution, delivery and performance of this Agreement by the Executive does not and will not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which the Executive is a party or by which he is bound, (b) the Executive is not a party to or bound by any employment agreement, noncompetition agreement or confidentiality agreement with any other Person, and (c) upon the execution and delivery of this Agreement by the Companies, this Agreement will be the valid and binding obligation of the Executive, enforceable in accordance with its terms. Notwithstanding Section 11.02 below, in the event that any action is brought against Executive involving any breach of any employment agreement, noncompetition agreement or confidentiality agreement with any other Person, the Executive shall bear his own costs incurred in defending such action, including but not limited to court fees, arbitration costs, mediation costs, attorneys’ fees and disbursements.

SECTION 11.02. *General Indemnification.* The Companies, jointly and severally, agree that if the Executive is made a party, or is threatened to be made a party, to any action, suit or proceeding, whether civil, criminal, administrative or investigative (each, a “**Proceeding**”), by reason of the fact that he is or was a director, officer or employee of the Company or any of its Subsidiaries or is or was serving at the request of the Company or any of its Subsidiaries as a director, officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether or not the basis of such Proceeding is the Executive’s alleged action in an official capacity while serving as a director, officer, member, employee or agent, the Executive shall be indemnified and held harmless by the Companies to the fullest extent permitted or authorized by applicable law and their bylaws, against all cost, expense, liability and loss (including, without limitation, advancement of attorneys’ and other fees and expenses) reasonably incurred or suffered by the Executive in connection therewith. The Companies agree to use their best efforts to maintain a directors’ and officers’ liability insurance policy covering the Executive during the Employment Period and for at least four years thereafter to the extent available on commercially reasonable terms.

CERTAIN ADDITIONAL PAYMENTS

SECTION 12.01. Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment, award, benefit or distribution (including, without limitation, the acceleration of any payment, award, distribution or benefit) by the Company or its Subsidiaries to or for the benefit of the Executive (whether pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Article 12) (a “**Payment**”) would be subject to the excise tax imposed by Section 4999 of the Code or any corresponding provisions of state or local tax law, or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the “**Excise Tax**”), then the Executive shall be entitled to receive an additional payment (a “**Gross-Up Payment**”) in an amount such that after payment by the Executive of all taxes (including any Excise Tax, income tax or employment tax) imposed upon the Gross-Up Payment and any interest or penalties imposed with respect to such taxes, the Executive retains from the Gross-Up Payment an amount equal to the Excise Tax imposed upon the Payments. The payment of a Gross-Up Payment under this Section 12.01 shall not be conditioned upon the Executive’s termination of employment. Notwithstanding the foregoing provisions of this Section 12.01, if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the portion of the Payments that would be treated as “parachute payments” under Section 280G of the Code does not exceed the lesser of 110% of the Safe Harbor Amount (as defined in the following sentence) or \$200,000, then no Gross-Up Payment shall be made to the Executive and the amounts payable under this Agreement shall be reduced so that the Payments, in the aggregate, are reduced to the Safe Harbor Amount. The “Safe Harbor Amount” is the greatest amount of payments in the nature of compensation that are contingent on a Change in Control for purposes of Section 280G of the Code that could be paid to the Executive without giving rise to any Excise Tax. The reduction of the amounts payable hereunder, if applicable, shall be made by first reducing the cash payments under Article 5 hereof. For purposes of reducing the payments to the Safe Harbor Amount, only amounts payable under this Agreement (and no other Payments) shall be reduced. If the reduction of the amounts payable under this Agreement would not result in a reduction of the Payments to the Safe Harbor Amount, no amounts payable under this Agreement shall be reduced pursuant to this Section 12.01.

SECTION 12.02. Subject to the provisions of Section 12.03, all determinations required to be made under this Article 12, including the determination of whether a Gross-Up Payment is required and of the amount of any such Gross-up Payment, shall be made by the Company’s independent auditors or such other accounting firm agreed by the parties hereto (the “**Accounting Firm**”), which shall provide detailed supporting calculations to the Companies within 15 business days after the receipt of notice from the Companies that the Executive has received a Payment, or such earlier time as is requested by the Companies, provided that any determination that an Excise Tax is payable by the Executive shall be made on the basis of substantial authority. The Companies will promptly provide copies of such supporting calculations to the Executive on which the Executive may rely. The initial Gross-Up Payment, if any, as determined pursuant to this Section 12.02, shall be paid to the Executive (or for the benefit of the Executive to the extent of the Companies’ withholding obligation with respect to applicable taxes) no later than one day prior to the due date for the payment of any Excise Tax. If the Accounting Firm determines that no Excise Tax is payable by the Executive, it shall furnish the Companies with a written opinion that substantial authority exists for the Executive not to report any Excise Tax on his Federal income tax return and, as a result, the Companies are not required to withhold Excise Tax from payments to the Executive. The Companies will promptly provide a copy of any such opinion to the Executive on which the Executive may rely. Any determination by the Accounting Firm meeting the requirements of this Section 12.02 shall be binding upon the Companies and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Companies should have been made (“**Underpayment**”), consistent with the calculations required to be made hereunder. In the event that the Companies exhaust their remedies pursuant to Section 12.03 and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred, and any such Underpayment shall be promptly paid by the Companies to or for the benefit of the Executive. The fees and disbursements of the Accounting Firm shall be paid by the Companies.

SECTION 12.03. The Executive shall notify the Companies in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Companies of a Gross-Up Payment. Such notification shall be given as soon as practicable but not later than ten business days after the Executive receives written notice of such claim and shall apprise the Companies of the nature of such claim and the date on which such Claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Companies (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Companies notify the Executive in writing prior to the expiration of such period that they desire to contest such claim, the Executive shall:

- (i) give the Companies any information reasonably requested by the Companies relating to such claim,
- (ii) take such action in connection with contesting such claim as the Companies shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Companies,
- (iii) cooperate with the Companies in good faith in order effectively to contest such claim, and
- (iv) permit the Companies to participate in any proceedings relating to such claim;

provided, however, that the Companies shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax, income tax or employment tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 12.03, the Companies shall control all proceedings taken in connection with such contest and, at their sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at their sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Companies shall determine; provided, however, that if the Companies direct the Executive to pay such claim and sue for a refund, the Companies shall advance the amount of such payment to the Executive on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax, income tax or employment tax, including interest or penalties with respect thereto, imposed with respect to such advance (except that if such a loan would not be permitted under applicable law, the Companies may not direct the Executive to pay the claim and sue for a refund); and further provided that any extension of the statute of limitations relating to the payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Companies' control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

SECTION 12.04. If, after the receipt by the Executive of an amount advanced by the Companies pursuant to Section 12.03, the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the compliance by the Companies with the requirements of Section 12.03) promptly pay to the Companies the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Companies pursuant to Section 12.03, a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Companies do not notify the Executive in writing of their intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of the Gross-Up Payment required to be paid.

MISCELLANEOUS

SECTION 13.01. *Binding Arbitration.* The parties agree that, except as provided in Articles 9 and 10 above, any disputes under this Agreement shall be settled exclusively by arbitration conducted in Winston-Salem, North Carolina. Except to the extent inconsistent with this Agreement, such arbitration shall be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association then in effect at the time of the arbitration and otherwise in accordance with principles which would be applied by a court of law or equity. The arbitrator shall be acceptable to both the Companies and the Executive. If the parties cannot agree on an acceptable arbitrator, the dispute shall be decided by a panel of three arbitrators, one appointed by each of the parties and the third appointed by the other two arbitrators or if the two arbitrators do not agree, appointed by the American Arbitration Association. The costs of arbitration incurred by the Executive (or his beneficiaries) will be borne by the Companies (including, without limitation, reasonable attorneys' fees and other reasonable charges of counsel) (i) if the arbitration occurs prior to a Change in Control, if the Executive prevails on a majority of the material issues in the dispute, and (ii) if the arbitration occurs after a Change in Control, if the Executive prevails on at least one material issue in the dispute. Judgment upon the final award rendered by such arbitrator(s) may be entered in any court having jurisdiction thereof.

SECTION 13.02. *Consent to Amendments; No Waivers.* The provisions of this Agreement may be amended or waived only by a written agreement executed and delivered by the Companies and the Executive. No other course of dealing between the parties to this Agreement or any delay in exercising any rights hereunder will operate as a waiver of any rights of any such parties.

SECTION 13.03. *Successors and Assigns.* All covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective successors, assigns, heirs, executors and estates of the parties hereto whether so expressed or not, provided that the Executive may not assign his rights or delegate his obligations under this Agreement without the written consent of the Companies (other than to his estate or heirs) and the Company may assign this Agreement only to a successor to all or substantially all of the assets of the Company.

SECTION 13.04. *Severability.* Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

SECTION 13.05. *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all of which counterparts taken together will constitute one and the same agreement.

SECTION 13.06. *Descriptive Headings.* The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

SECTION 13.07. *Notices.* All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when delivered personally to the recipient, two business days after the date when sent to the recipient by reputable express courier service (charges prepaid) or four business days after the date when mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications will be sent to the Executive and to the Companies at the addresses set forth below.

If to the Executive: To the last address delivered to the Companies by the Executive in the manner set forth herein.

If to the Companies: Krispy Kreme Doughnuts, Inc.
Krispy Kreme Doughnut Corporation
Suite 500
370 Knollwood Street
Winston-Salem, NC 27103

Attn: General Counsel

or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

SECTION 13.08. *Withholding.* The Companies may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

SECTION 13.09. *No Third-Party Beneficiary.* This Agreement will not confer any rights or remedies upon any person other than the Companies, the Executive and their respective heirs, executors, successors and assigns.

SECTION 13.10. *Entire Agreement.* This Agreement (including any other documents referred to herein) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof.

SECTION 13.11. *Construction.* The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any reference to any federal, state, local or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

SECTION 13.12. *Survival.* Sections 6.01, 7.01, 8.01 and Articles 5, 9, 11, 12 and 13 will survive and continue in full force in accordance with their terms notwithstanding any termination of the Employment Period, and the Agreement shall otherwise remain in full force to the extent necessary to enforce any rights and obligations arising hereunder during the Employment Period.

SECTION 13.13. *GOVERNING LAW.* ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY AND INTERPRETATION OF THIS AGREEMENT WILL BE GOVERNED BY THE INTERNAL LAW OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

SECTION 13.14. *Section 409A.* It is intended that this Agreement will comply with Section 409A of the Code (and any regulations and guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible.

SECTION 13.15. *Representations of the Companies.* The Companies represent and warrant that (i) the execution, delivery and performance of this Agreement by the Companies has been fully and validly authorized by all necessary corporate action, (ii) the officer(s) signing this Agreement on behalf of the Companies is duly authorized to do so, (iii) the execution, delivery and performance of this Agreement does not violate any applicable law, regulation, order, judgment or decree or any agreement, plan or corporate governance document to which the Companies are a party or by which they are bound, and (iv) upon execution and delivery of this Agreement by the parties hereto, it will be a valid and binding obligation of the Companies enforceable against the Companies and their successors and assigns in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

KRISPY KREME DOUGHNUTS, INC.

By: /s/ Daryl G. Brewster
Daryl G. Brewster
Chief Executive Officer

KRISPY KREME DOUGHNUT CORPORATION

By: /s/ Douglas R. Muir
Douglas R. Muir
Chief Financial Officer

EXECUTIVE

/s/ Kenneth J. Hudson
Kenneth J. Hudson

S-1

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (“**Agreement**”) dated as of November 7, 2007 among Krispy Kreme Doughnut Corporation, a North Carolina corporation (“**KKDC**”), Krispy Kreme Doughnuts, Inc., a North Carolina corporation (the “**Company**” and, together with KKDC, the “**Companies**”), and Jeffrey B. Welch (the “**Executive**”).

The parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.01. *Definitions.* For purposes of this Agreement, the following terms have the meanings set forth below:

“**Base Salary**” has the meaning set forth in Section 4.01.

“**Board**” means the Board of Directors of the Company.

“**Cause**” shall mean (i) the Executive’s failure or refusal to perform the Executive’s lawful and proper duties hereunder (other than as a result of total or partial incapacity due to physical or mental illness or a court or governmental order), (ii) the Executive’s conviction of or plea of *nolo contendere* to any felony (other than a traffic infraction), (iii) an act or acts on the Executive’s part constituting fraud, theft or embezzlement or that otherwise constitutes a felony under the laws of the United States or any state thereof which results or was intended to result directly or indirectly in gain or personal enrichment by the Executive at the expense of the Companies, or (iv) the Executive’s insubordination to the Companies’ most senior executive officer or willful violation of any material provision of the code of ethics of the Companies applicable to the Executive. In the case of any item described in the previous sentence, the Executive shall be given written notice of the alleged act or omission constituting Cause, which notice shall set forth in reasonable detail the reason or reasons that the Board believes the Executive is to be terminated for Cause, including any act or omission that is the basis for the decision to terminate the Executive. In the case of an act or omission described in clause (i) or (iv) of the definition of Cause, (A) if reasonably capable of being cured, the Executive shall be given 30 days from the date of such notice to effect a cure of such alleged act or omission constituting “Cause” which, upon such cure to the reasonable satisfaction of the Board, shall no longer constitute a basis for Cause, and (B) the Executive shall be given an opportunity to make a presentation to the Board (accompanied by counsel or other representative, if the Executive so desires) at a meeting of the Board held promptly following such 30-day cure period if the Board intends to determine that no cure has occurred. At or following such meeting, the Board shall determine whether or not to terminate the Executive for “Cause” and shall notify the Executive in writing of its determination and the effective date of such termination (which date may be no earlier than the date of the aforementioned Board meeting).

“**Change in Control**” means any of the following events:

(a) the acquisition by any Person of “beneficial ownership” (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of fifty percent (50%) or more of the combined voting power of the Company’s then outstanding voting securities; provided, however, that a Change in Control shall not be deemed to occur solely because fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities is acquired by (i) a trustee or other fiduciary holding securities under one or more employee benefit plans maintained by the Company or any of its Subsidiaries, or (ii) any Person, which, immediately prior to such acquisition, is owned directly or indirectly by the shareholders of the Company in the same proportion as their ownership of stock in the Company immediately prior to such acquisition;

(b) consummation of (i) a merger or consolidation involving the Company if the shareholders of the Company, immediately before such merger or consolidation do not, as a result of such merger or consolidation, own, directly or indirectly, more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation resulting from such merger or consolidation in substantially the same

proportion as their ownership of the combined voting power of the voting securities of the Company outstanding immediately before such merger or consolidation, or (ii) a sale or other disposition of all or substantially all of the assets of the Company other than to a Person which is owned directly or indirectly by the shareholders of the Company in the same proportion as their ownership of stock in the Company;

(c) a change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (such Board shall be hereinafter referred to as the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, for purposes of this definition, that any individual who becomes a member of the Board subsequent to the Effective Date whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; provided further, however, that any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act, including any successor to such Rule), or other actual or threatened solicitation or proxies or consents by or on behalf of a Person other than the Board, shall not be so considered as a member of the Incumbent Board; or

(d) approval by shareholders of the Company of a complete liquidation or dissolution of the Company.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” means information that is not generally known to the public and that was or is used, developed or obtained by the Company or its Subsidiaries in connection with the business of the Company and its Subsidiaries and which constitutes trade secrets or information which they have attempted to protect, which may include, but is not limited to, trade “know-how”, customer information, supplier information, cost and pricing information, marketing and sales techniques, strategies and programs, computer programs and software and financial information. It shall not include information (a) required to be disclosed by court or administrative order; (b) lawfully obtainable from other sources or which is in the public domain through no fault of the Executive; or (c) the disclosure of which is consented to in writing by the Company.

“Date of Termination” has the meaning set forth in Section 5.07.

“Effective Date” has the meaning set forth in Section 2.01.

“Employment Period” has the meaning set forth in Section 2.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Good Reason” shall mean (i) the failure of the Companies to pay any material amount of compensation to the Executive when due hereunder, (ii) the Executive is no longer the most senior international operations and franchise officer of (A) the Company or (B) in the event of a merger, consolidation or other business combination involving the Company, the successor to the Company’s business or assets or (C) if all or substantially all of the voting stock of the Company is held by another public company, such public company, (iii) the assignment to the Executive of any duties or responsibilities materially inconsistent with the Executive’s status under clause (ii) of this sentence or his failure at any time to report directly to the most senior executive officer of the applicable company described in such clause (ii), (iv) any failure by the Companies to maintain the Executive’s principal place of employment and the executive offices of the Companies within 25 miles of the Winston-Salem, North Carolina area, (v) any material breach by the Companies of this Agreement, or (vi) the term of the Employment Period ending as a result of the Companies giving the Executive notice of nonextension of the term of this Agreement in accordance with Section 5.01 solely at either the end of the initial term or the end of the first, second or third one year extensions of the term under Section 5.01 (but, for the avoidance of doubt, not at the end of any further extension of the term); provided, however, that for any of the foregoing to constitute Good Reason, the Executive must provide written notification of his intention to resign within 60 days after the Executive knows or has reason to know of the occurrence of any such event, and the Companies shall have 30 days (10 days in the case of a material breach related to payment of any amounts due hereunder) from the date of receipt of such notice to effect a cure of the condition constituting Good Reason, and, upon cure thereof by the Companies, such event shall no longer constitute Good Reason.

“**Notice of Termination**” has the meaning set forth in Section 5.06.

“**Permanent Disability**” means the Executive becomes permanently disabled within the meaning of the long-term disability plan of the Companies applicable to the Executive, and the Executive commences to receive benefits under such plan.

“**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, an estate, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

“**Reimbursable Expenses**” has the meaning set forth in Section 4.04.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Subsidiary**” or “**Subsidiaries**” means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (a) if a corporation, 50 percent or more of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or combination thereof; or (b) if a partnership, limited liability company, association or other business entity, 50 percent or more of the partnership or other similar ownership interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes of this definition, a Person or Persons will be deemed to have a 50 percent or more ownership interest in a partnership, limited liability company, association or other business entity if such Person or Persons are allocated 50 percent or more of partnership, limited liability company, association or other business entity gains or losses or control the managing director or member or general partner of such partnership, limited liability company, association or other business entity.

ARTICLE 2

EMPLOYMENT

SECTION 2.01. *Employment.* The Executive is a current employee of KKDC and a current officer of the Company. However, under this Agreement, and beginning the Effective Date, both Companies shall employ the Executive, and the Executive shall accept employment with the Companies, upon the terms and conditions set forth in this Agreement for the new period beginning November 7, 2007 (the “**Effective Date**”) and ending as provided in Section 5.01 (the “**Employment Period**”).

ARTICLE 3

POSITION AND DUTIES

SECTION 3.01. *Position and Duties.* During the Employment Period, the Executive shall serve as Senior Vice President and General Manager of Global Franchise Operations and Development of the Company reporting directly to the most senior executive officer and shall be the Company’s most senior international operations and franchise officer. During the Employment Period, the Executive also shall serve as Senior Vice President and General Manager of Global Franchise Operations and Development of KKDC and shall be KKDC’s most senior international operations and franchise officer. The Executive shall have such responsibilities, powers and duties as may from time to time be prescribed by the Board or the most senior executive officer of the Companies; *provided* that such responsibilities, powers and duties are substantially consistent with those customarily assigned to individuals serving in such position at comparable companies or as may be reasonably required for the proper conduct of the business of the Companies. During the Employment Period, the Executive shall devote substantially all of his working time and efforts to the business and affairs of the Company and its Subsidiaries. The Executive shall not directly or indirectly render any services of a business, commercial or professional nature to any other person or organization not related to the business of the Company or its Subsidiaries, whether for compensation or otherwise, without the prior approval of the Board; provided, however, the Executive may serve on the board

of directors of one for-profit corporation with the prior approval of the Board, which will not be unreasonably withheld, and the Executive may serve as a director of not-for-profit organizations or engage in other charitable, civic or educational activities, so long as the activities described in this proviso do not interfere with the Executive's performance of his duties hereunder or result in any conflict of interest with the Companies.

ARTICLE 4

BASE SALARY AND BENEFITS

SECTION 4.01. *Base Salary*. During the Employment Period, the Executive will receive base salary from the Companies equal to \$315,000 per annum (the "**Base Salary**"). The Base Salary will be payable in accordance with the normal payroll practices of the Companies. Annually during the Employment Period the Company shall review with the Executive his job performance and compensation, and if deemed appropriate by the Board or its Compensation Committee, in their discretion, the Executive's Base Salary may be increased but not decreased. After any such increase, the term "Base Salary" as used in this Agreement will thereafter refer to the increased amount.

SECTION 4.02. *Bonuses*. In addition to Base Salary, the Executive shall be eligible to be considered for an annual bonus, and the Executive's annual target bonus shall be equal to 40% of Base Salary. The Compensation Committee of the Board and the Board shall set targets with respect to and otherwise determine Executive's bonus in accordance with the Company's then current incentive plans.

SECTION 4.03. *Benefits*. During the Employment Period, the Executive shall be entitled to participate in all employee benefit, perquisite and fringe benefit plans and arrangements made available by the Companies to their executives and key management employees upon the terms and subject to the conditions set forth in the applicable plan or arrangement. Such benefits shall include medical, life and disability insurance provided in accordance with the policies of the Companies. Executive shall be entitled to four weeks of paid vacation annually during the Employment Period.

SECTION 4.04. *Expenses*. The Companies shall reimburse the Executive for all reasonable expenses incurred by him in the course of performing his duties under this Agreement which are consistent with the Companies' policies in effect from time to time with respect to travel, entertainment and other business expenses ("**Reimbursable Expenses**"), subject to the Companies' requirements with respect to reporting and documentation of expenses.

ARTICLE 5

TERM AND TERMINATION

SECTION 5.01. *Term*. The Employment Period will terminate on November 7, 2010, unless sooner terminated as hereinafter provided; provided, however, that the Employment Period will be automatically extended for successive one-year periods following the original term ending November 7, 2010 until either the Companies, on the one hand, or the Executive, on the other hand, at least 180 days prior to the expiration of the original term or any extended term, shall give written notice to the other of their intention not to so extend the Employment Period.

SECTION 5.02. *Termination Due to Death or Permanent Disability*. If the Employment Period shall be terminated due to death or Permanent Disability of the Executive, the Executive (or his estate or legal representative) shall be entitled solely to the following: (i) Base Salary through the Date of Termination; and (ii) medical benefits as provided in Section 5.05 below. The Executive's entitlements under any other benefit plan or program shall be as determined thereunder. In addition, promptly following any such termination, the Executive (or his estate or legal representative) shall be reimbursed for all Reimbursable Expenses incurred by the Executive prior to such termination.

SECTION 5.03. *Termination for Good Reason or Without Cause.* Except as otherwise set forth in Section 5.09 below, if the Employment Period shall be terminated (a) by the Executive for Good Reason, or (b) by the Companies not for Cause, provided the Executive has executed an irrevocable (except to the extent required by law, and to the extent required by law to be revocable, has not revoked) general release of claims, in the form attached hereto as Exhibit A, the Executive shall be entitled solely to the following: (i) Base Salary through the Date of Termination; (ii) an amount equal to one times the Base Salary, provided that, the Executive shall be entitled to any unpaid amounts only if the Executive has not breached and does not breach the provisions of Sections 6.01, 7.01, 8.01 or 9 below; (iii) a bonus for the year of termination of employment equal to the Executive's target annual bonus for such year pro rated for the number of full months during the bonus year prior to such termination of employment, payable as soon as practicable following such termination of employment; and (iv) medical benefits as provided in Section 5.05 below. The Executive's entitlements under any other benefit plan or program shall be as determined thereunder, except that duplicative severance benefits shall not be payable under any other plan or program. Amounts described in clause (ii) above will be payable in equal monthly installments for a period of 12 months commencing on the first month anniversary of the Date of Termination, except, to the extent required by Section 409A of the Code, amounts otherwise payable under clause (ii) within six months after the Executive's termination of employment shall be deferred to and paid on the day following the six month anniversary of such termination of employment. In addition, promptly following any such termination, the Executive shall be reimbursed for all Reimbursable Expenses incurred by the Executive prior to such termination.

SECTION 5.04. *Termination for Cause or Other Than Good Reason.* If the Employment Period shall be terminated (a) by the Companies for Cause, or (b) as a result of the Executive's resignation or leaving of his employment other than for Good Reason, the Executive shall be entitled to receive solely Base Salary through the Date of Termination and reimbursement of all Reimbursable Expenses incurred by the Executive prior to such termination. The Executive's rights under the benefit plans and programs shall be as determined thereunder. A voluntary resignation by the Executive shall not be deemed to be a breach of this Agreement.

SECTION 5.05. *Benefits.* If the Employment Period is terminated as a result of a termination of employment as specified in Section 5.02, 5.03 or 5.09, the Executive and his covered dependents shall continue to receive medical insurance coverage benefits from the Companies, with the same contribution toward such coverage from the Executive or his estate, for a period equal to the lesser of (x) eighteen months following the Date of Termination, or (y) until the Executive is provided by another employer with benefits substantially comparable to the benefits provided by the Companies' medical plan. Furthermore, in the event of Executive's Permanent Disability, insurance benefits will continue under the Companies' long term disability plan in accordance with its terms.

SECTION 5.06. *Notice of Termination.* Any termination by the Companies for Permanent Disability or Cause or without Cause or by the Executive with or without Good Reason shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a **"Notice of Termination"** shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of employment under the provision indicated.

SECTION 5.07. *Date of Termination.* **"Date of Termination"** shall mean (a) if the Employment Period is terminated as a result of a Permanent Disability, five days after a Notice of Termination is given, (b) if the Employment Period is terminated as a result of his death, on the date of his death, and (c) if the Employment Period is terminated for any other reason, the later of the date of the Notice of Termination and the end of any applicable correction period.

SECTION 5.08. *No Duty to Mitigate.* The Executive shall have no duty to seek new employment or other duty to mitigate following a termination of employment as described in this Article 5, and no compensation or benefits described in this Article 5 shall be subject to reduction or offset on account of any subsequent compensation, other than as provided in Section 5.05.

SECTION 5.09. *Termination for Good Reason or Without Cause Following a Change in Control.* If the Employment Period shall be terminated within two years after a Change in Control (a) by the Executive for Good Reason, or (b) by the Companies not for Cause, then Executive's compensation and benefits upon termination shall be governed by this Section 5.09 instead of the provisions of Section 5.03 above, and, provided the Executive has executed an irrevocable (except to the extent required by law, and to the extent required by law to be revocable, has not revoked) general release of claims, in the form attached hereto as Exhibit A, the Executive shall be entitled solely to the following: (i) Base Salary through the Date of Termination; (ii) an amount equal to 1.25 times the sum of his Base Salary and his target annual bonus for the year of termination, provided that, the Executive shall be entitled to any unpaid amounts only if the Executive has not breached and does not breach the provisions of Sections 6.01, 7.01, 8.01 or 9 below; (iii) a bonus for the year of termination of employment equal to the Executive's target annual bonus for such year pro rated for the number of full months during the bonus year prior to such termination of employment; and (iv) medical benefits as provided in Section 5.05. The Executive's entitlements under any other benefit plan or program shall be as determined thereunder, except that duplicative severance benefits shall not be payable under any other plan or program. In addition, promptly following any such termination, the Executive shall be reimbursed for all Reimbursable Expenses incurred by the Executive prior to such termination. The amounts due under clauses (i), (ii) and (iii) of this Section 5.09 shall be paid in a lump sum upon termination of employment.

ARTICLE 6

CONFIDENTIAL INFORMATION

SECTION 6.01. *Nondisclosure and Nonuse of Confidential Information.* The Executive will not disclose or use at any time during or after the Employment Period any Confidential Information of which the Executive is or becomes aware, whether or not such information is developed by him, except to the extent he reasonably believes that such disclosure or use is directly related to and appropriate in connection with the Executive's performance of duties assigned to the Executive pursuant to this Agreement. Under all circumstances and at all times, the Executive will take all appropriate steps to safeguard Confidential Information in his possession and to protect it against disclosure, misuse, espionage, loss and theft. Executive also agrees to execute and comply with such other confidentiality agreements or provisions as required of executive officers of the Company.

ARTICLE 7

INTELLECTUAL PROPERTY

SECTION 7.01. *Ownership of Intellectual Property.* In the event that the Executive as part of his activities on behalf of the Companies generates, authors or contributes to any invention, design, new development, device, product, method of process (whether or not patentable or reduced to practice or comprising Confidential Information), any copyrightable work (whether or not comprising Confidential Information) or any other form of Confidential Information relating directly or indirectly to the business of the Company or its Subsidiaries as now or hereafter conducted (collectively, "**Intellectual Property**"), the Executive acknowledges that such Intellectual Property is the sole and exclusive property of the Company and its Subsidiaries and hereby assigns all right, title and interest in and to such Intellectual Property to the Company or its designated Subsidiary. Any copyrightable work prepared in whole or in part by the Executive during the Employment Period will be deemed "a work made for hire" under Section 201(b) of the Copyright Act of 1976, as amended, and the Company or its designated Subsidiary will own all of the rights comprised in the copyright therein. The Executive will promptly and fully disclose all Intellectual Property and will cooperate with the Companies to protect their interests in and rights to such Intellectual Property (including providing reasonable assistance in securing patent protection and copyright registrations and executing all documents as reasonably requested by the Companies, whether such requests occur prior to or after termination of Executive's employment hereunder).

ARTICLE 8

DELIVERY OF MATERIALS UPON TERMINATION OF EMPLOYMENT

SECTION 8.01. *Delivery of Materials upon Termination of Employment.* As requested by the Companies from time to time, and upon the termination of the Executive's employment with the Companies for any reason, the Executive will promptly deliver to the Companies all property of the Company or its Subsidiaries, including, without limitation, all copies and embodiments, in whatever form or medium, of all Confidential Information in the Executive's possession or within his control (including written records, notes, photographs, manuals, notebooks, documentation, program listings, flow charts, magnetic media, disks, diskettes, tapes and all other materials containing any Confidential Information) irrespective of the location or form of such material and, if requested by the Companies, will provide the Companies with written confirmation that to the best of his knowledge all such materials have been delivered to the Companies or destroyed.

ARTICLE 9

NON-COMPETITION AND NONSOLICITATION

SECTION 9.01. *Noncompetition.* The Executive acknowledges that, during his employment with the Companies, he will become familiar with trade secrets and other Confidential Information concerning the Company and its Subsidiaries and his services will be of special, unique and extraordinary value to the Companies. In addition, the Executive hereby agrees that at any time during the Noncompetition Period (as defined below), he will not directly or indirectly own, manage, control, participate in, consult with, become employed by or otherwise render services to any business listed on Exhibit B hereto in the Territory. During the Noncompetition Period, the Company shall have the right to, in good faith, add other entities which are in substantial competition with the Companies to the list of businesses on Exhibit B, subject to the consent of the Executive which shall not be unreasonably withheld. Notwithstanding the foregoing, if the Executive's termination of employment occurs at the end of the Employment Period due to the Companies giving written notice after the fifth anniversary of the Effective Date pursuant to Section 5.01 of its intention not to extend the Employment Period, this Section 9.01 will only apply if the Companies elect and agree in writing to pay the Executive his Base Salary and his annual target bonus in effect for the year during which his employment is terminated for an additional one-year period following the termination of employment, such amount to be payable in monthly installments over the additional one-year period, except that, to the extent required by Section 409A of the Code, amounts otherwise payable under this sentence within six months after the Executive's termination of employment shall be deferred to and paid on the day following the six month anniversary of such termination of employment. It shall not be considered a violation of this Section 9.01 for the Executive to be a passive owner of not more than 2% of the outstanding stock of any class of any corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

SECTION 9.02. *Nonsolicitation.* The Executive hereby agrees that (a) during the Nonsolicitation Period (as defined below), the Executive will not, directly or indirectly through another Person, induce or attempt to induce any employee of the Company or its Subsidiaries to leave the employ of the Company or its Subsidiaries, or in any way interfere with the relationship between the Company or its Subsidiaries and any person employed by them at any time during such Nonsolicitation Period, and (b) during the Nonsolicitation Period, the Executive will not induce or attempt to induce any customer, supplier, client or other business relation of the Company or its Subsidiaries to cease doing business with the Company or its Subsidiaries.

SECTION 9.03. *Definitions.* It is agreed that the "**Territory**," for purposes of this Article 9, shall mean:

(i) The entire United States and any other country where the Company or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Company's products have been sold at any time in the one-year period ending on the last day of the Executive's employment with the Companies;

(ii) In the event that the preceding clause shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the entire United States;

(iii) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the states in the United States where the Company or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Company's products have been sold at any time in the one-year period ending on the last day of Executive's employment with the Companies;

(iv) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the area that includes all of the areas that are within a 50-mile radius of any retail store location in the United States at which the Company's products have been sold at any time in the one-year period ending on the last day of the Executive's employment with the Companies; and

(v) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the entire state of North Carolina.

It is also agreed that "**Noncompetition Period**," for purposes hereof, shall mean:

(i) the Employment Period and a period ending one year after the Date of Termination; and

(ii) In the event that the preceding clause shall be determined by judicial action to define too long a period to be enforceable, "Noncompetition Period" shall mean the Employment Period and a period ending six months after the Date of Termination.

It is also agreed that "**Nonsolicitation Period**," for purposes hereof, shall mean:

(i) the Employment Period and a period ending two years after the Date of Termination;

(ii) In the event that the preceding clause shall be determined by judicial action to define too long a period to be enforceable, "Nonsolicitation Period" shall mean the Employment Period and a period ending eighteen months after the Date of Termination;

(iii) In the event that the preceding clauses shall be determined by judicial action to define too long a period to be enforceable, "Nonsolicitation Period" shall mean the Employment Period and a period ending one year after the Date of Termination; and

(iv) In the event that the preceding clauses shall be determined by judicial action to define too long a period to be enforceable, "Nonsolicitation Period" shall mean the Employment Period and a period ending six months after the Date of Termination.

ARTICLE 10

EQUITABLE RELIEF

SECTION 10.01. *Equitable Relief*. The Executive acknowledges that (a) the covenants contained herein are reasonable, (b) the Executive's services are unique, and (c) a breach or threatened breach by him of any of his covenants and agreements with the Companies contained in Sections 6.01, 7.01, 8.01 or Article 9 could cause irreparable harm to the Companies for which they would have no adequate remedy at law. Accordingly, and in addition to any remedies which the Companies may have at law, in the event of an actual or threatened breach by the Executive of his covenants and agreements contained in Sections 6.01, 7.01, 8.01 or Article 9, the Companies shall have the absolute right to apply to any court of competent jurisdiction for such injunctive or other equitable relief, without the necessity to post bond, as such court may deem necessary or appropriate in the circumstances.

ARTICLE 11

EXECUTIVE REPRESENTATION AND INDEMNIFICATION

SECTION 11.01. *Executive Representation.* The Executive hereby represents and warrants to the Companies that (a) the execution, delivery and performance of this Agreement by the Executive does not and will not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which the Executive is a party or by which he is bound, (b) the Executive is not a party to or bound by any employment agreement, noncompetition agreement or confidentiality agreement with any other Person, and (c) upon the execution and delivery of this Agreement by the Companies, this Agreement will be the valid and binding obligation of the Executive, enforceable in accordance with its terms. Notwithstanding Section 11.02 below, in the event that any action is brought against Executive involving any breach of any employment agreement, noncompetition agreement or confidentiality agreement with any other Person, the Executive shall bear his own costs incurred in defending such action, including but not limited to court fees, arbitration costs, mediation costs, attorneys' fees and disbursements.

SECTION 11.02. *General Indemnification.* The Companies, jointly and severally, agree that if the Executive is made a party, or is threatened to be made a party, to any action, suit or proceeding, whether civil, criminal, administrative or investigative (each, a **"Proceeding"**), by reason of the fact that he is or was a director, officer or employee of the Company or any of its Subsidiaries or is or was serving at the request of the Company or any of its Subsidiaries as a director, officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether or not the basis of such Proceeding is the Executive's alleged action in an official capacity while serving as a director, officer, member, employee or agent, the Executive shall be indemnified and held harmless by the Companies to the fullest extent permitted or authorized by applicable law and their bylaws, against all cost, expense, liability and loss (including, without limitation, advancement of attorneys' and other fees and expenses) reasonably incurred or suffered by the Executive in connection therewith. The Companies agree to use their best efforts to maintain a directors' and officers' liability insurance policy covering the Executive during the Employment Period and for at least four years thereafter to the extent available on commercially reasonable terms.

ARTICLE 12

CERTAIN ADDITIONAL PAYMENTS

SECTION 12.01. Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment, award, benefit or distribution (including, without limitation, the acceleration of any payment, award, distribution or benefit) by the Company or its Subsidiaries to or for the benefit of the Executive (whether pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Article 12) (a **"Payment"**) would be subject to the excise tax imposed by Section 4999 of the Code or any corresponding provisions of state or local tax law, or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the **"Excise Tax"**), then the Executive shall be entitled to receive an additional payment (a **"Gross-Up Payment"**) in an amount such that after payment by the Executive of all taxes (including any Excise Tax, income tax or employment tax) imposed upon the Gross-Up Payment and any interest or penalties imposed with respect to such taxes, the Executive retains from the Gross-Up Payment an amount equal to the Excise Tax imposed upon the Payments. The payment of a Gross-Up Payment under this Section 12.01 shall not be conditioned upon the Executive's termination of employment. Notwithstanding the foregoing provisions of this Section 12.01, if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the portion of the Payments that would be treated as "parachute payments" under Section 280G of the Code does not exceed the lesser of 110% of the Safe Harbor Amount (as defined in the following sentence) or \$200,000, then no Gross-Up Payment shall be made to the Executive and the amounts payable under this Agreement shall be reduced so that the Payments, in the aggregate, are reduced to the Safe Harbor Amount. The "Safe Harbor Amount" is the greatest amount of payments in the nature of compensation that are contingent on a Change in Control for

purposes of Section 280G of the Code that could be paid to the Executive without giving rise to any Excise Tax. The reduction of the amounts payable hereunder, if applicable, shall be made by first reducing the cash payments under Article 5 hereof. For purposes of reducing the payments to the Safe Harbor Amount, only amounts payable under this Agreement (and no other Payments) shall be reduced. If the reduction of the amounts payable under this Agreement would not result in a reduction of the Payments to the Safe Harbor Amount, no amounts payable under this Agreement shall be reduced pursuant to this Section 12.01.

SECTION 12.02. Subject to the provisions of Section 12.03, all determinations required to be made under this Article 12, including the determination of whether a Gross-Up Payment is required and of the amount of any such Gross-up Payment, shall be made by the Company's independent auditors or such other accounting firm agreed by the parties hereto (the "**Accounting Firm**"), which shall provide detailed supporting calculations to the Companies within 15 business days after the receipt of notice from the Companies that the Executive has received a Payment, or such earlier time as is requested by the Companies, provided that any determination that an Excise Tax is payable by the Executive shall be made on the basis of substantial authority. The Companies will promptly provide copies of such supporting calculations to the Executive on which the Executive may rely. The initial Gross-Up Payment, if any, as determined pursuant to this Section 12.02, shall be paid to the Executive (or for the benefit of the Executive to the extent of the Companies' withholding obligation with respect to applicable taxes) no later than one day prior to the due date for the payment of any Excise Tax. If the Accounting Firm determines that no Excise Tax is payable by the Executive, it shall furnish the Companies with a written opinion that substantial authority exists for the Executive not to report any Excise Tax on his Federal income tax return and, as a result, the Companies are not required to withhold Excise Tax from payments to the Executive. The Companies will promptly provide a copy of any such opinion to the Executive on which the Executive may rely. Any determination by the Accounting Firm meeting the requirements of this Section 12.02 shall be binding upon the Companies and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Companies should have been made ("**Underpayment**"), consistent with the calculations required to be made hereunder. In the event that the Companies exhaust their remedies pursuant to Section 12.03 and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred, and any such Underpayment shall be promptly paid by the Companies to or for the benefit of the Executive. The fees and disbursements of the Accounting Firm shall be paid by the Companies.

SECTION 12.03. The Executive shall notify the Companies in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Companies of a Gross-Up Payment. Such notification shall be given as soon as practicable but not later than ten business days after the Executive receives written notice of such claim and shall apprise the Companies of the nature of such claim and the date on which such Claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Companies (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Companies notify the Executive in writing prior to the expiration of such period that they desire to contest such claim, the Executive shall:

- (i) give the Companies any information reasonably requested by the Companies relating to such claim,
- (ii) take such action in connection with contesting such claim as the Companies shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Companies,
- (iii) cooperate with the Companies in good faith in order effectively to contest such claim, and
- (iv) permit the Companies to participate in any proceedings relating to such claim;

provided, however, that the Companies shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax, income tax or employment tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses.

Without limitation on the foregoing provisions of this Section 12.03, the Companies shall control all proceedings taken in connection with such contest and, at their sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at their sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Companies shall determine; provided, however, that if the Companies direct the Executive to pay such claim and sue for a refund, the Companies shall advance the amount of such payment to the Executive on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax, income tax or employment tax, including interest or penalties with respect thereto, imposed with respect to such advance (except that if such a loan would not be permitted under applicable law, the Companies may not direct the Executive to pay the claim and sue for a refund); and further provided that any extension of the statute of limitations relating to the payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Companies' control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

SECTION 12.04. If, after the receipt by the Executive of an amount advanced by the Companies pursuant to Section 12.03, the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the compliance by the Companies with the requirements of Section 12.03) promptly pay to the Companies the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Companies pursuant to Section 12.03, a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Companies do not notify the Executive in writing of their intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of the Gross-Up Payment required to be paid.

ARTICLE 13

MISCELLANEOUS

SECTION 13.01. *Binding Arbitration.* The parties agree that, except as provided in Articles 9 and 10 above, any disputes under this Agreement shall be settled exclusively by arbitration conducted in Winston-Salem, North Carolina. Except to the extent inconsistent with this Agreement, such arbitration shall be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association then in effect at the time of the arbitration and otherwise in accordance with principles which would be applied by a court of law or equity. The arbitrator shall be acceptable to both the Companies and the Executive. If the parties cannot agree on an acceptable arbitrator, the dispute shall be decided by a panel of three arbitrators, one appointed by each of the parties and the third appointed by the other two arbitrators or if the two arbitrators do not agree, appointed by the American Arbitration Association. The costs of arbitration incurred by the Executive (or his beneficiaries) will be borne by the Companies (including, without limitation, reasonable attorneys' fees and other reasonable charges of counsel) (i) if the arbitration occurs prior to a Change in Control, if the Executive prevails on a majority of the material issues in the dispute, and (ii) if the arbitration occurs after a Change in Control, if the Executive prevails on at least one material issue in the dispute. Judgment upon the final award rendered by such arbitrator(s) may be entered in any court having jurisdiction thereof.

SECTION 13.02. *Consent to Amendments; No Waivers.* The provisions of this Agreement may be amended or waived only by a written agreement executed and delivered by the Companies and the Executive. No other course of dealing between the parties to this Agreement or any delay in exercising any rights hereunder will operate as a waiver of any rights of any such parties.

SECTION 13.03. *Successors and Assigns.* All covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective successors, assigns, heirs, executors and estates of the parties hereto whether so expressed or not, provided that the Executive may not assign his rights or delegate his obligations under this Agreement without the written consent of the Companies (other than to his estate or heirs) and the Company may assign this Agreement only to a successor to all or substantially all of the assets of the Company.

SECTION 13.04. *Severability.* Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

SECTION 13.05. *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all of which counterparts taken together will constitute one and the same agreement.

SECTION 13.06. *Descriptive Headings.* The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

SECTION 13.07. *Notices.* All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when delivered personally to the recipient, two business days after the date when sent to the recipient by reputable express courier service (charges prepaid) or four business days after the date when mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications will be sent to the Executive and to the Companies at the addresses set forth below.

If to the Executive: To the last address delivered to the Companies by the Executive in the manner set forth herein.

If to the Companies: Krispy Kreme Doughnuts, Inc.
Krispy Kreme Doughnut Corporation
Suite 500
370 Knollwood Street
Winston-Salem, NC 27103

Attn: Senior Vice President-Human Resources

or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

SECTION 13.08. *Withholding.* The Companies may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

SECTION 13.09. *No Third-Party Beneficiary.* This Agreement will not confer any rights or remedies upon any person other than the Companies, the Executive and their respective heirs, executors, successors and assigns.

SECTION 13.10. *Entire Agreement.* This Agreement (including any other documents referred to herein) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof.

SECTION 13.11. *Construction.* The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any reference to any federal, state, local or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

SECTION 13.12. *Survival.* Sections 6.01, 7.01, 8.01 and Articles 5, 9, 11, 12 and 13 will survive and continue in full force in accordance with their terms notwithstanding any termination of the Employment Period, and the Agreement shall otherwise remain in full force to the extent necessary to enforce any rights and obligations arising hereunder during the Employment Period.

SECTION 13.13. *GOVERNING LAW.* ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY AND INTERPRETATION OF THIS AGREEMENT WILL BE GOVERNED BY THE INTERNAL LAW OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

SECTION 13.14. *Section 409A.* It is intended that this Agreement will comply with Section 409A of the Code (and any regulations and guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible.

SECTION 13.15. *Representations of the Companies.* The Companies represent and warrant that (i) the execution, delivery and performance of this Agreement by the Companies has been fully and validly authorized by all necessary corporate action, (ii) the officer(s) signing this Agreement on behalf of the Companies is duly authorized to do so, (iii) the execution, delivery and performance of this Agreement does not violate any applicable law, regulation, order, judgment or decree or any agreement, plan or corporate governance document to which the Companies are a party or by which they are bound, and (iv) upon execution and delivery of this Agreement by the parties hereto, it will be a valid and binding obligation of the Companies enforceable against the Companies and their successors and assigns in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

[remainder of page left intentionally blank]

KRISPY KREME DOUGHNUTS, INC.
NONQUALIFIED STOCK OPTION AGREEMENT

THIS NONQUALIFIED STOCK OPTION AGREEMENT (this "Agreement") is made as of _____ (the "Grant Date"), by and between Krispy Kreme Doughnuts, Inc., a North Carolina corporation having its principal office at 370 Knollwood Street, Winston-Salem, North Carolina 27103 (the "Corporation"), and _____ (the "Optionee").

W I T N E S S E T H:

WHEREAS, the Board of Directors and shareholders of the Corporation have approved the Krispy Kreme Doughnuts, Inc. 2000 Stock Incentive Plan (the "Plan"), for the purposes and subject to the provisions set forth in the Plan;

WHEREAS, pursuant to authority granted to it in the Plan, the Compensation Committee of the Board of Directors of the Corporation (the "Committee") has, on behalf of the Corporation, granted to Optionee an option to purchase shares of the Corporation's Common Stock, no par value per share (the "Common Stock" or the "Stock"), as set forth below; and

WHEREAS, this Agreement evidences the grant of such option pursuant to the Plan.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Summary of Grant

Number of Shares:
Option Exercise Price:
Date of Grant:

2. Grant of Option

This Agreement sets forth the terms of a nonqualified option granted to the Optionee to purchase from the Corporation, during the period specified in Sections 3 and 4 of this Agreement, a total of _____ shares of Common Stock, at the purchase price of _____ per share (the "Exercise Price"), in accordance with the terms and conditions stated in this Agreement. The shares of Common Stock subject to the option granted hereby are referred to below as the "Shares," and the option to purchase such Shares is referred to below as the "Option."

3. Vesting and Exercise of Option

The Option shall vest and become exercisable in increments in accordance with the schedule set forth below, provided that the Option shall vest and become exercisable with respect to an increment as specified only if the Optionee has not incurred a Termination of Employment prior to the vesting date with respect to such increment:

- (a) no portion of the Option shall vest or become exercisable prior to the first anniversary of the Grant Date;
 - (b) on the first anniversary of the Grant Date one fourth of the number of shares in the Option (as indicated in Section 1) shall vest and become exercisable;
 - (c) on the second anniversary of the Grant Date an additional one fourth of the number of shares in the Option (as indicated in Section 1) shall vest and become exercisable;
 - (d) on the third anniversary of the Grant Date an additional one fourth of the number of shares in the Option (as indicated in Section 1) shall vest and become exercisable; and
-

(e) on the fourth anniversary of the Grant Date the remaining one fourth of the number of shares in the Option (as indicated in Section 1) shall vest and become exercisable.

Notwithstanding the vesting provisions described above, the Option shall vest and become exercisable with respect to 100% of the Shares upon the Optionee's Termination of Employment if the Optionee's Termination of Employment is due to his or her Retirement, death or Disability.

The schedule set forth above is cumulative, so that Shares as to which the Option has become vested and exercisable pursuant to the provisions above may be purchased pursuant to exercise of the Option at any date subsequent to vesting but prior to termination of the Option. The Option may be exercised at any time and from time to time to purchase up to the number of Shares as to which it is then vested and exercisable.

The Option will become vested and exercisable in full upon a Change in Control, provided that Optionee has not incurred a Termination of Employment prior to the date of such Change in Control. In the event of a Change in Control, the Board, in its sole discretion, may send Optionee prior written notice of the effectiveness of such event and the last day on which Optionee may exercise the Option. In such event, Optionee may, upon compliance with all of the terms of this Agreement and the Plan, purchase any or all of the Shares with respect to which the Option is vested and exercisable on or prior to the last day specified in such notice, and, to the extent the Option is not exercised, it shall terminate at 5:00 P.M., Eastern Standard Time, on the last day specified in such notice. For purposes hereof, Change in Control shall have the meaning set forth in the Plan, except in the case of a transaction described in clauses (1) or (3) of paragraph (b) of such definition, the consummation of such a transaction, rather than the approval by shareholders of the Corporation of such transaction or agreement to effect such a transaction, shall constitute a Change in Control.

4. Termination of Option

Unless adjusted by the Committee in its sole discretion, the Option shall remain exercisable as specified in Section 3 above until 5:00 p.m., Eastern Standard Time, on the earliest to occur of the dates specified below, upon which date the Option shall terminate:

- (a) the date all of the Shares are purchased pursuant to the terms of this Agreement;
- (b) upon the expiration of 90 days following the Optionee's Termination of Employment for any reason other than his or her Retirement, death, Disability, or for Cause;
- (c) upon the expiration of 180 days following Optionee's Termination of Employment on account of his or her Disability;
- (d) upon the expiration of 360 days following Optionee's Termination of Employment on account of his or her death;
- (e) immediately upon Optionee's Termination of Employment for Cause, as defined below in Section 21(a);
- (f) on the last date specified in the notice described in Section 3 above in the event of a Change in Control; or
- (g) on the ten year anniversary of the Grant Date (the "Expiration Date").

Upon its termination, the Option shall have no further force or effect and Optionee shall have no further rights under the Option or to any Shares which have not been purchased pursuant to prior exercise of the Option.

5. Manner of Exercise of Option

(a) **Exercise.** The Option may be exercised only by (i) Optionee's completion, execution and delivery to the Corporation of a notice of exercise and (ii) the payment to the Corporation, pursuant to the terms of this Agreement, of an amount equal to the Exercise Price multiplied by the number of Shares being purchased as specified in Optionee's notice of exercise (the "Purchase Price"). Optionee's notice of exercise shall be given in the manner specified in Section 10 but any exercise of the Option shall be effective only when the items required by the preceding sentence are actually received by the Corporation. The notice of exercise shall be in

the form attached to this Agreement. Notwithstanding anything to the contrary in this Agreement, the Option may be exercised only if compliance with all applicable federal and state securities laws can be effected, with the Committee being the final arbitrator thereof, in its sole and absolute discretion, in the event of any dispute between the Corporation and the Optionee with regard to the interpretation of such laws.

(b) **Form of Payment.** Payment of the Purchase Price may be made (i) by check payable to the order of the Corporation for an amount in U.S. dollars equal to the Purchase Price of such Shares; (ii) by authorizing a third party to sell a portion of the Shares acquired upon exercise of the Option and remit to the Corporation a sufficient portion of the sales proceeds to pay the full Purchase Price; or (iii) by combining the above methods.

(c) **Issuance and Delivery of Shares.** As soon as practicable following receipt of such notice and payment, the Corporation shall notify the Optionee of any payment required under subsection (d) below. The Corporation shall deliver a certificate or certificates for the Shares to the Optionee as soon as practicable after the Optionee has made any payment required under subsection (d) below. Shares issued pursuant to the exercise of this option will be issued only in the name of Optionee and may not be transferred into the name of any agent of or nominee for Optionee until such time as Optionee has complied with the terms of this Agreement.

(d) **Withholding Obligation.** Issuance of Shares upon exercise of the Option shall be subject to the condition that the Optionee shall pay to the Corporation, in addition to the Purchase Price, the minimum amount the Corporation is required by law or regulation of any governmental authority, whether federal, state or local, domestic or foreign, to withhold in connection with such exercise of the Option, if any. In lieu of the payment specified in this paragraph, Optionee may satisfy the obligation, in whole or in part, by the methods specified in subsection (b) above.

(e) **Deferral of Issuance of Shares.** Anything in this Agreement to the contrary notwithstanding, if, at any time specified herein for the issuance of Shares to Optionee, any law, or any regulation or requirement of the Securities and Exchange Commission or other governmental authority having jurisdiction over such matter shall require either the Corporation or Optionee to take any action in connection with the Shares then to be issued, the issuance of such Shares shall be deferred until such action shall have been taken; the Corporation shall be under no obligation to take such action; and the Corporation shall have no liability whatsoever as a result of the non-issuance of such shares, except to refund to Optionee any consideration tendered in respect of the Purchase Price.

(f) **Stop Transfer Instructions.** The Corporation may impose stop-transfer instructions with respect to any Shares (or other securities) subject to any restriction set forth in this Agreement until the restriction has been satisfied or terminates.

6. Restrictions on Transfer of Option

(a) Except as otherwise provided in subsections (b), (c) and (d) below, the Option may not be sold, exchanged, delivered, assigned, bequeathed or gifted, pledged, mortgaged, hypothecated or otherwise encumbered, transferred or permitted to be transferred, or otherwise disposed of, whether voluntarily, involuntarily or by operation of law (including, without limitation, the laws of bankruptcy, intestacy, descent and distribution or succession) or on an absolute or contingent basis. For purposes of this Section, any reference to Optionee shall (when applicable) be deemed to be and include references to Optionee's estate, executors or administrators, personal or legal representatives and transferees (direct or indirect).

(b) If permitted by the Committee, Optionee may transfer this Option to members of his or her Immediate Family (as defined below), to one or more trusts for the benefit of such Immediate Family members, to one or more partnerships where such Immediate Family members are the only partners, or to one or more limited liability companies (or similar entities) where such Immediate Family members are the only members or beneficial owners of the entity, if (i) the Optionee does not receive any consideration in any form whatsoever for such transfer, (ii) such transfer is permitted under applicable tax laws, and (iii) if the Optionee is an "Insider," such transfer is permitted under Rule 16b-3 of the Exchange Act as in effect from time to time. For purposes hereof, "Immediate Family" means the Optionee and the Optionee's spouse, children and grandchildren.

(c) In the event of Optionee's death, the Option may be transferred to any executor, administrator, personal or legal representative, legatee, heir or distributee of the estate of Optionee.

(d) In the event of Optionee's divorce, Optionee may transfer some or all of the Option to his or her former spouse incident to Optionee's divorce from the former spouse.

(e) As a condition precedent to the transfer of the Option, each and every prospective transferee shall (i) provide or cause to be provided to the Corporation, at its request, sufficient evidence of the legal right and authority of such prospective transferee to have the Option so transferred and (ii) comply with the provisions of this Agreement. Any Option so transferred pursuant to this Section shall continue to be subject to the same terms and conditions in the hands of the transferee as were applicable to said Option immediately prior to the transfer thereof, and any reference in this Agreement to the performance of services for the Corporation by the Optionee shall continue to refer to the performance by the transferring Optionee.

7. Rights Prior to Exercise

Optionee shall not be deemed for any purpose to be a shareholder of the Corporation with respect to any Shares as to which this Option shall not have been exercised and payment made as hereby provided and a stock certificate for such Shares actually issued to Optionee. No adjustment will be made for dividends or other rights for which the record date is prior to the date of such issuance.

8. Employment of Optionee

Nothing in this Agreement shall be construed as constituting a commitment, guarantee, agreement or understanding of any kind or nature that the Corporation, any Subsidiary or affiliate shall continue to employ Optionee, nor shall this Agreement affect in any way the right of the Corporation, any Subsidiary or affiliate to terminate the employment or other service of Optionee at any time and for any reason. By Optionee's execution of this Agreement, Optionee acknowledges and agrees that Optionee's employment or other service to the Corporation, any Subsidiary or affiliate is "at will." No change of Optionee's duties with respect to the Corporation, any Subsidiary or affiliate shall result in, or be deemed to be, a modification of any of the terms of this Agreement. Optionee acknowledges and agrees that the award and acceptance of the Options pursuant to this Agreement does not entitle Optionee to future grants under the Plan or any other plan.

9. Burden and Benefit

(a) This Agreement shall be binding upon and inure to the benefit of any assignee or successor in interest to the Corporation, whether by merger, consolidation or the sale of all or substantially all of the Corporation's assets.

(b) This Agreement shall be binding upon and inure to the benefit of Optionee and his or her legal representative and any person to whom the Options may be transferred by will, the applicable laws of descent and distribution, or otherwise in accordance with the terms of the Plan.

10. Notices

Any and all notices under this Agreement shall be in writing, and sent by hand delivery or by certified or registered mail (return receipt requested and first-class postage prepaid), in the case of the Corporation, to its principal executive offices to the attention of the Chief Financial Officer, and, in the case of Optionee, to Optionee's address as shown on the Corporation's records.

11. Specific Performance

Strict compliance by Optionee shall be required with each and every provision of this Agreement. The parties hereto agree that the Shares are unique, that Optionee's failure to perform the obligations provided by this Agreement will result in irreparable damage to the Corporation and that specific performance of Optionee's obligations may be obtained by suit in equity.

12. Entire Agreement

The parties hereto agree that this Agreement sets forth all of the promises, agreements, conditions, understandings, warranties, and representations between the parties with respect to the Option and Shares and that there are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied between the parties with respect to the Option and Shares other than as set forth in this Agreement and in the Plan. Any modifications or any waiver of any provision contained in this Agreement shall not be valid unless made in writing and signed by the person or persons sought to be bound by such waiver or modifications.

13. Severability

The provisions of the Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provision to the extent enforceable in any jurisdiction, shall nevertheless be binding and enforceable.

14. Waiver

The waiver by the Corporation of a breach of any provision of this Agreement by the Optionee shall not operate or be construed as a waiver of any subsequent breach by the Optionee.

15. Terms and Conditions of Plan

The Option and the terms and conditions set forth herein are subject in all respects to the terms and conditions of the Plan (which are incorporated herein by reference). Except as otherwise expressly set forth herein, the capitalized terms used in this Agreement shall have the same definitions as set forth in the Plan. To the extent that any conflict may exist between any term or provision of this Agreement and any term or provision of the Plan, such term or provision of the Plan shall control.

16. Authority of Committee

All determinations made by the Committee with respect to the interpretation, construction and application of any provision of this Agreement shall be final, conclusive and binding on the parties.

17. Covenants and Representations of Optionee

Optionee represents, warrants, covenants and agrees with the Corporation as follows:

(a) Optionee has not relied upon the Corporation with respect to any tax consequences related to the grant or exercise of this Option, or the disposition of Shares purchased pursuant to its exercise. Optionee acknowledges that, as a result of the grant and/or exercise of the Option, Optionee may incur a substantial tax liability. Optionee assumes full responsibility for all such consequences and the filing of all tax returns and elections Optionee may be required or find desirable to file in connection therewith.

(b) Optionee will not distribute or resell any Shares (or other securities) issuable upon exercise of the Option granted hereby in violation of law. Optionee shall comply with all provisions of the Corporation's Securities Trading Policy and the Corporation's Stock Ownership Guidelines, each as in effect from time to time.

(c) The agreements, representations, warranties and covenants made by Optionee herein with respect to the Option shall also extend to and apply to all of the Shares issued to Optionee from time to time pursuant to exercise of the Option. Acceptance by Optionee of any certificate representing Shares shall constitute a confirmation by Optionee that all such agreements, representations, warranties and covenants made herein continue to be true and correct at that time.

18. Limitation of Liability

The liability of the Corporation under this Agreement and in the award of the Shares hereunder is limited to the obligations set forth herein with respect to such award, and nothing herein contained shall be interpreted as imposing any liability in favor of the Optionee or any others with respect to any loss, cost or expense which Optionee or any others may incur in connection with or arising out of any transaction involving the Shares.

19. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina, without giving effect to the conflict of laws provisions thereof.

20. Definitions

(a) ***"Retirement"*** shall mean the Optionee's Termination of Employment at a time when for an Optionee, the sum of the Optionee's age and years of employment with the Corporation, its Subsidiaries and affiliates equals or exceeds 65.

(b) ***"Termination of Employment"*** means the discontinuance of the Optionee's service relationship with the Corporation, its Subsidiaries and affiliates, including but not limited to service as an Optionee of the Corporation, its Subsidiaries and affiliates, as a non-Optionee member of the board of directors of the Corporation, or as a consultant or advisor to the Corporation, its Subsidiaries and affiliates. Except to the extent provided otherwise in an Agreement or determined otherwise by the Committee, a Termination of Employment shall not be deemed to have occurred if the capacity in which the Optionee provides service to the Corporation changes (for example, a change from consultant status to Optionee status or vice versa) or if the Optionee transfers among the various entities constituting the Corporation and its Subsidiaries and affiliates, so long as there is no interruption in the provision of service by the Optionee to the Corporation and its Subsidiaries and affiliates. The determination of whether an Optionee has incurred a Termination of Employment shall be made by the Committee in its discretion. An Optionee shall not be deemed to have incurred a Termination of Employment if the Optionee is on military leave, sick leave, or other bona fide leave of absence approved by the Corporation of 180 days or fewer (or any longer period during which the Optionee is guaranteed reemployment by statute or contract.) In the event an Optionee's leave of absence exceeds this period, he or she will be deemed to have incurred a Termination of Employment on the day following the expiration date of such period.

21. Forfeiture in the Event of Competition and/or Solicitation or other Detrimental Acts

In return for granting the Option to Optionee, Optionee agrees to the following restrictions:

(a) Optionee expressly agrees and covenants that during the Restricted Period (as defined below), Optionee shall not, without the prior written consent of the Corporation, directly or indirectly:

(i) own, manage, control, participate in, consult with, become employed by or otherwise render services to any Competitive Business (as defined below) in the Territory (as defined below), except that it shall not be considered a violation of this clause for the Optionee to be a passive owner of not more than two percent of the outstanding stock of any class of any corporation which is publicly traded, so long as Optionee has no active participation in the business of such corporation;

(ii) induce or attempt to induce any customer, supplier, client or other business relation of the Corporation or its affiliates to cease doing business with the Corporation or its affiliates if such cessation could reasonably be expected to result in material harm to the Corporation;

(iii) induce or attempt to induce any Optionee of the Corporation or its affiliates to leave the employ of the Corporation or its affiliates, or in any way interfere with the relationship between the Corporation or its affiliates and any person employed by them; or

(iv) violate the Corporation's Securities Trading Policy.

(b) Optionee expressly agrees and covenants that Optionee will not, without the prior written consent of the Corporation, directly or indirectly, disclose or use at any time before or after Optionee's Termination of Employment any Confidential Information (as defined below) of which Optionee is or becomes aware, whether

or not such information is developed by Optionee, except to the extent such disclosure or use is directly related to and appropriate in connection with Optionee's performance of duties assigned to Optionee by the Corporation or its affiliates. Under all circumstances and at all times, Optionee will take all appropriate steps to safeguard Confidential Information in his or her possession and to protect it against disclosure, misuse, espionage, loss and theft.

(c) If the Committee determines that Optionee has violated any provisions of this Section 21 or that Optionee's employment has been terminated for Cause, then Optionee agrees and covenants that:

(i) Optionee shall automatically forfeit any rights Optionee may have with respect to the Option as of the date of such determination; and

(ii) if Optionee has exercised all or any part of the Option within the twelve-month period immediately preceding a violation of this Section 21 or termination of Optionee's employment for Cause, upon the Corporation's demand, Optionee shall immediately deliver to the Corporation an amount equal to the gain realized by Optionee upon such exercise (the excess of the aggregate Fair Market Value, on the date of exercise, of the Common Stock received upon exercise over the aggregate exercise price of the Option with respect to such Common Stock, then less any taxes paid which are not refundable or for which the Optionee does not otherwise receive a tax credit or other form of reimbursement).

(d) Definitions. For purposes of this Section 21, the following definitions shall apply:

(i) "**Competitive Business**" means any business listed on Exhibit A hereto.

(ii) "**Confidential Information**" means information that is not generally known to the public and that was or is used, developed or obtained by the Corporation or its affiliates in connection with the business of the Corporation or its affiliates and which constitutes trade secrets or information which they have attempted to protect, which may include, but is not limited to, trade "know-how", customer information, supplier information, cost and pricing information, marketing and sales techniques, strategies and programs, computer programs and software and financial information. It shall not include information (a) required to be disclosed by court or administrative order; (b) lawfully obtainable from other sources or which is in the public domain through no fault of Optionee; or (c) the disclosure of which is consented to in writing by the Corporation.

(iii) "**Restricted Period**" means the period during which Optionee is employed by the Corporation or an affiliate and twelve months following the date that Optionee ceases to be employed by the Corporation or an affiliate for any reason whatsoever.

(iv) "**Territory**" means:

(A) The entire United States and any other country where the Corporation or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Corporation's products have been sold at any time in the one-year period ending on the last day of Optionee's employment with the Corporation or its affiliates;

(B) In the event that the preceding clause shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the entire United States;

(C) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the states in the United States where the Corporation or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Corporation's products have been sold at any time in the one-year period ending on the last day of Optionee's employment with Corporation or its affiliates;

(D) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the area that includes all of the areas that are within a 50-mile radius of any retail store location in the United States at which the Corporation's products have been sold at any time in the one-year period ending on the last day of Optionee's employment with the Corporation or its affiliates; and

(E) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then “Territory” shall mean the entire state of North Carolina.

(e) The Corporation may require Optionee, in connection with the exercise of the Option, to certify in a manner acceptable to the Corporation that Optionee has not violated the terms of this Section 21 and may decline to give effect to such exercise if Optionee fails so to certify. If Optionee is required to repay any Option gain to the Corporation pursuant to this Section 21, Optionee shall pay such amount in such manner and on such terms and conditions as the Corporation may require, and the Corporation shall be entitled to withhold or set-off against any other amount owed to Optionee by the Corporation or any of its affiliates (other than any amount owed to Optionee under any retirement plan intended to be qualified under Section 401(a) of the Code) up to any amount sufficient to satisfy any unpaid obligation of Optionee under this Section 21.

(f) Optionee acknowledges and agrees that the period, scope and geographic areas of restriction imposed upon Optionee by the provisions of Section 21 are fair and reasonable and are reasonably required for the protection of the Corporation. In the event that any part of this Agreement, including, without limitation, Section 21, is held to be unenforceable or invalid, the remaining parts of Section 21 and this Agreement shall nevertheless continue to be valid and enforceable as though the invalid portions were not a part of this Agreement. If any one of the provisions in this Section 21 is held to be excessively broad as to period, scope and geographic areas, any such provision shall be construed by limiting it to the extent necessary to be enforceable under applicable law.

(g) Optionee acknowledges that breach by Optionee of this Agreement would cause irreparable harm to the Corporation and that, in the event of such breach, the Corporation shall have, in addition to monetary damages and other remedies at law, the right to an injunction, specific performance and other equitable relief to prevent violations of your obligations hereunder.

(h) If the Corporation is required to prepare an accounting restatement due to the material noncompliance of the Corporation as a result of misconduct pertaining to any financial reporting requirement under the securities laws (“Misconduct”), and such Misconduct is the result of actions taken by either the Chief Executive Officer and/or the Chief Financial Officer, then such of the Chief Executive Officer and/or the Chief Financial Officer as have committed such Misconduct as determined by the Committee shall reimburse the Corporation for (1) any bonus or other incentive-based or equity-based compensation received by either or both of them, as applicable, from the Corporation during the 12-month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying the financial reporting requirement that gives rise to the restatement; and (2) any profits realized by either or both of them, as applicable, from the sale of securities of the Corporation during that 12-month period.

22. Holding Period After Resignation or Termination

In return for granting the Option to Optionee, Optionee agrees that in the event of Optionee’s Termination of Employment in a manner that would otherwise permit Optionee to exercise Optionee’s Options after leaving employment by the Corporation, Optionee will nevertheless delay making any transactions in the Corporation’s stock until such time as the Corporation has filed its next succeeding quarterly (10-Q) or annual (10-K) financial filing, as applicable, with the U. S. Securities and Exchange Commission.

IN WITNESS WHEREOF, the Corporation and Optionee have executed this Agreement hereto as of the day and year first above written.

KRISPY KREME DOUGHNUTS, INC.

By:

Title:

OPTIONEE

Signature:

Printed Name:

STOCK OPTION EXERCISE FORM

This form must be completed and returned to Krispy Kreme's Chief Financial Officer on or before 1:00 p.m. Eastern Standard Time on date of exercise.

NAME (please print):

SOCIAL SECURITY NO.:

SECTION I

HOME ADDRESS:

WORK ADDRESS:

HOME TELEPHONE:

WORK TELEPHONE:

SECTION II: I wish to exercise the following options:

A	B	C	D
GRANT DATE	NUMBER OF OPTIONS	EXERCISE PRICE	TOTAL PURCHASE PRICE: (COLUMN B x COLUMN C)
TOTAL			

SECTION III

I elect to pay for my shares (check one):

☐

Broker assisted Cashless Exercise for
Cash

☐

Cash Purchase by Check (payable to
Krispy Kreme Doughnuts, Inc.)

SECTION IV

I elect to pay my taxes on this transaction
(check one):

☒

Sell shares to cover taxes (Cashless Exercise for
Cash/Stock)

☐

Check (payable to Krispy Kreme Doughnuts, Inc.)
(required for Cash Purchases)

Signature

Date of Exercise

Return
form to: KRISPY KREME DOUGHNUT
CORPORATION
ATTN: Chief Financial Officer
P.O. Box 83
Winston-Salem, NC 27102
Phone: 336-725-2981

Summary of Annual Incentive Plan

Krispy Kreme has an informal annual incentive plan which represents, in most cases, the short-term component of our incentive compensation package. This plan was originally adopted by the Compensation Committee in July 2006 and was expanded to cover executive officers in December 2006. This plan ties the incentive compensation payable to the employee principally to the attainment of specific, objective performance targets. These targets are based on actual overall company performance compared to our business plan objectives. It is expected that key plan measurements will include revenues, EBITDA, cash flow from operations, other company performance metrics and, to reflect the importance of building sustainable growth, other measurements based on progress in achieving our mission and strategic objectives. The targets will not be based, implicitly or explicitly, on meeting or exceeding any earnings guidance, consensus earnings estimates or similar measures.

The amount of cash incentives potentially payable to employees is determined based on (1) a target cash incentive amount which is set as a percentage of an individual employee's salary and (2) how actual results compare to the targeted performance measures.

Key plan measurements for executive officers and other employees normally will be determined on an annual basis and cash incentives will be payable (in compliance with applicable tax rules regarding deferred compensation) in the first quarter of the fiscal year following the year in which performance is tested.

The Compensation Committee has the authority under the annual incentive plan to adjust any goal with respect to the executive officers and the other employees. These decisions are subjective and based generally on a review of the circumstances affecting results to determine if any events were unusual or unforeseen.

**KRISPY KREME DOUGHNUTS, INC.
2000 STOCK INCENTIVE PLAN**

RESTRICTED STOCK AGREEMENT

THIS AGREEMENT is made as of _____, by and between Krispy Kreme Doughnuts, Inc., a North Carolina corporation having its principal office at 370 Knollwood Street, Winston-Salem, North Carolina 27103 (the "Corporation"), and _____ ("Employee").

W I T N E S S E T H:

WHEREAS, the Board of Directors and shareholders of the Corporation have approved the Krispy Kreme Doughnuts, Inc. 2000 Stock Incentive Plan (the "Plan"), for the purposes and subject to the provisions set forth in the Plan;

WHEREAS, pursuant to authority granted to it in the Plan, the Compensation Committee of the Board of Directors of the Corporation (the "Committee") has, on behalf of the Corporation, granted to Employee restricted shares of Common Stock of Krispy Kreme Doughnuts, Inc., as set forth below; and

WHEREAS, this Agreement evidences the grant of restricted stock under the Plan.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Award of Restricted Stock

This Agreement sets forth the terms of an award to the Employee of _____ restricted shares of the Corporation's Common Stock (the "Restricted Stock"), subject to, and in accordance with, the restrictions, terms and conditions set forth in this Agreement. The grant date of this award of Restricted Stock is _____ ("Grant Date").

2. Restrictions

If Employee remains employed by the Corporation, Employee shall become vested in the Restricted Stock in _____ equal installments beginning on _____, and continuing on the next _____ anniversaries of the Grant Date (each such date shall be a "Vesting Date"), all as set forth below:

Date

*Cumulative Number
of
Shares Vested*

On each Vesting Date, Employee shall own the vested shares of Restricted Stock free and clear of all restrictions imposed by this Agreement. The Corporation shall deliver a certificate(s) (or other evidence of ownership, such as book entry) for the vested shares of Restricted Stock to Employee as soon as practical after each Vesting Date. For purposes of this Agreement, employment with a Subsidiary of the Corporation shall be considered employment with the Corporation.

3. Certificates

The Restricted Stock granted hereunder may be evidenced in such manner as the Committee shall determine, including, but not limited to tracking through book entry. If certificates representing Restricted Stock are registered in the name of the Employee, the Committee may require that such certificates bear an appropriate legend (the "Restrictive Legend") referring to the terms, conditions and restrictions applicable to such Restricted Stock, that the Corporation retain physical possession of the certificates, and that the Employee deliver a stock power to the Corporation, endorsed in blank, relating to the Restricted Stock. Upon the vesting of the Restricted Stock pursuant to the terms hereof and the satisfaction of any withholding tax liability pursuant to Section 8 hereof, the certificates evidencing such vested shares of Common Stock, not bearing the Restrictive Legend, shall be delivered to the Employee or other evidence of vesting of shares of Common Stock shall be provided to the Employee, such as tracking through book entry.

4. Rights as a Shareholder

Except as otherwise provided in this Agreement and the Plan, Employee shall have all of the rights of a shareholder of the Corporation with respect to the shares of Restricted Stock, including the right to vote such shares. All dividends declared and paid by the Corporation on shares of Restricted Stock shall be paid in the form of Restricted Stock having a Fair Market Value on the dividend payment date equal to the amount of the cash dividend. Such shares of Restricted Stock will vest at the same time as the shares of Restricted Stock in respect of which they are issued and shall otherwise have terms identical to the terms of such Restricted Stock.

5. Effect of Termination of Employment on Restricted Stock

Any unvested Restricted Stock shall be automatically forfeited upon the Employee's Termination of Employment for any reason other than due to Employee's death, Retirement or Disability. In the event of a Termination of Employment of the Employee due to his or her death, Retirement or Disability, the Restricted Stock will become immediately vested in full.

6. Nontransferability

The Restricted Stock shall not be transferable or assignable, other than by will or the laws of descent and distribution, and any such purported transfer or assignment shall be null and void without the express consent of the Committee. Employee agrees to appropriate legends on the Restricted Stock in order to reflect the vesting provisions set forth herein and to reflect any restrictions required by applicable securities laws.

7. Change in Control

In the event of a "Change in Control," the restrictions on the Restricted Stock shall lapse and the Restricted Stock shall become vested in full, provided that Employee has not incurred a Termination of Employment prior to the date thereof. For purposes hereof, "Change in Control" shall have the meaning set forth in the Plan, except in the case of a transaction described in clauses (1) or (3) of paragraph (b) of such definition, the consummation of such a transaction, rather than the approval by shareholders of the Corporation of such transaction or an agreement to effect such a transaction, shall constitute a Change in Control.

8. Taxes and Withholding

(a) Employee shall be responsible for all federal, state and local income taxes payable with respect to this award of Restricted Stock. Employee shall have the right to make such elections under the Internal Revenue Code of 1986, as amended, as are available in connection with this award of Restricted Stock. The Corporation and

Employee agree to report the value of the Restricted Stock in a consistent manner for federal income tax purposes. Employee acknowledges that he or she may incur substantial tax liability as a result of the grant of Restricted Stock to him or her upon the lapse of the restrictions hereunder.

(b) The Corporation shall have the right to retain and withhold from any vesting of Restricted Stock the minimum amount of taxes required by any government to be withheld or otherwise deducted and paid with respect to such vesting. At its discretion, the Corporation may require Employee to immediately reimburse the Corporation for any such taxes required to be withheld and may withhold any distribution in whole or in part until the Corporation is so reimbursed. In lieu thereof, the Corporation shall have the right to withhold from any other cash amounts due to Employee an amount equal to such taxes required to be withheld or withhold and cancel (in whole or in part) a number of shares of Restricted Stock having a market value not less than the amount of such taxes. In addition, Employee may elect to satisfy the withholding requirement, in whole or in part, by having the Corporation withhold Shares with a Fair Market Value equal to the minimum statutory tax required to be withheld.

9. Modification of Agreement

This Agreement may be modified, amended, suspended or terminated, and any terms or conditions may be waived, but only by a written instrument executed by the parties hereto.

10. Severability

The provisions of the Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provision to the extent enforceable in any jurisdiction, shall nevertheless be binding and enforceable.

11. Notices

Any and all notices under this Agreement shall be in writing, and sent by hand delivery or by certified or registered mail (return receipt requested and first-class postage prepaid), in the case of the Corporation, to its principal executive offices to the attention of the Chief Financial Officer, and, in the case of Employee, to Employee's address as shown on the Corporation's records.

12. Binding Effect

(a) This Agreement shall be binding upon and inure to the benefit of any assignee or successor in interest to the Corporation, whether by merger, consolidation or the sale of all or substantially all of the Corporation's assets.

(b) This Agreement shall be binding upon and inure to the benefit of Employee and his or her legal representative and any person to whom the Restricted Stock may be transferred by will, the applicable laws of descent and distribution, or otherwise in accordance with the terms of the Plan.

13. Agreement to be Bound by Plan

Employee hereby acknowledges that Employee fully understands his or her rights under the Plan, and that Employee agrees to be bound by all the terms and provisions of the Plan.

14. Plan Controls

The Restricted Stock and the terms and conditions set forth herein are subject in all respects to the terms and conditions of the Plan (which are incorporated herein by reference). Except as otherwise expressly set forth herein, the capitalized terms used in this Agreement shall have the same definitions as set forth in the Plan. To the extent that any conflict may exist between any term or provision of this Agreement and any term or provision of the Plan, such term or provision of the Plan shall control.

15. Rights to Future Grants: Compliance with Law

Nothing in this Agreement shall be construed as constituting a commitment, guarantee, agreement or understanding of any kind or nature that the Corporation, any Subsidiary or affiliate shall continue to employ Employee, nor shall this Agreement affect in any way the right of the Corporation, any Subsidiary or affiliate to terminate the employment or other service of Employee at any time and for any reason. By Employee's execution

of this Agreement, Employee reaffirms and acknowledges and agrees that Employee's employment or other service to the Corporation, any Subsidiary or affiliate is "at will." No change of Employee's duties with respect to the Corporation, any Subsidiary or affiliate shall result in, or be deemed to be, a modification of any of the terms of this Agreement. Employee acknowledges and agrees that the award and acceptance of Restricted Stock pursuant to this Agreement does not entitle Employee to future grants under the Plan or any other plan.

16. Covenants and Representations of Employee

Employee represents, warrants, covenants and agrees with the Corporation as follows:

(a) Employee has not relied upon the Corporation with respect to any tax consequences related to the grant or sale of the Restricted Stock. Employee acknowledges that, as a result of the grant and vesting of Restricted Stock and/or sale of Shares, Employee may incur a substantial tax liability. Employee assumes full responsibility for all such consequences and the filing of all tax returns and elections Employee may be required or find desirable to file in connection therewith.

(b) Employee will not distribute or resell any Restricted Stock (or other securities) issuable upon lapse of the restrictions hereunder in violation of law. Employee shall comply with all provisions of the Corporation's Securities Trading Policy and the Corporation's Stock Ownership Guidelines, each as in effect from time to time.

(c) The agreements, representations, warranties and covenants made by Employee herein with respect to the Restricted Stock shall also extend to and apply to all of the Shares issued to Employee from time to time upon the lapse of the restrictions. Acceptance by Employee of any certificate representing Shares shall constitute a confirmation by Employee that all such agreements, representations, warranties and covenants made herein continue to be true and correct at that time.

17. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina, without giving effect to the conflicts of laws provisions thereof.

18. Waiver

The waiver by the Corporation of a breach of any provision of this Agreement by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee.

19. Limitation of Liability

The liability of the Corporation under this Agreement and in the award of the Restricted Stock hereunder is limited to the obligations set forth herein with respect to such award, and nothing herein contained shall be interpreted as imposing any liability in favor of Employee or any others with respect to any loss, cost or expense which Employee or others may incur in connection with or arising out of any transaction involving the Restricted Stock.

20. Entire Agreement

The parties hereto agree that this Agreement sets forth all of the promises, agreements, conditions, understandings, warranties, and representations between the parties with respect to the award of Restricted Stock and that there are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied between the parties with respect to the award of Restricted Stock other than as set forth in this Agreement and in the Plan. Any modifications or any waiver of any provision contained in this Agreement shall not be valid unless made in writing and signed by the person or persons sought to be bound by such waiver or modifications.

21. Authority of Committee

All determinations made by the Committee with respect to the interpretation, construction and application of any provision of this Agreement shall be final, conclusive and binding on the parties.

22. Definitions

(a) ***“Retirement”*** shall mean Employee’s Termination of Employment at a time when, the sum of Employee’s age and years of employment with the Corporation, its Subsidiaries and affiliates equals or exceeds 65.

(b) ***“Termination of Employment”*** means the discontinuance of Employee’s service relationship with the Corporation, its Subsidiaries and affiliates, including but not limited to service as an employee of the Corporation, its Subsidiaries and affiliates, as a non-employee member of the board of directors of the Corporation, or as a consultant or advisor to the Corporation, its Subsidiaries and affiliates. Except to the extent provided otherwise in an agreement or determined otherwise by the Committee, a Termination of Employment shall not be deemed to have occurred if the capacity in which Employee provides service to the Corporation changes (for example, a change from consultant status to Employee status, or vice versa) or if Employee transfers among the various entities constituting the Corporation and its Subsidiaries and affiliates, so long as there is no interruption in the provision of service by Employee to the Corporation and its Subsidiaries and affiliates. The determination of whether an Employee has incurred a Termination of Employment shall be made by the Committee in its discretion. An Employee shall not be deemed to have incurred a Termination of Employment if Employee is on military leave, sick leave, or other bona fide leave of absence approved by the Corporation of 180 days or fewer (or any longer period during which Employee is guaranteed reemployment by statute or contract.) In the event an Employee’s leave of absence exceeds this period, he or she will be deemed to have incurred a Termination of Employment on the day following the expiration date of such period.

23. Forfeiture in the Event of Competition and/or Solicitation or other Detrimental Acts

In return for granting the Restricted Stock to Employee, Employee agrees to the following restrictions.

(a) Employee expressly agrees and covenants that during the Restricted Period (as defined below), Employee shall not, without the prior written consent of the Corporation, directly or indirectly:

(i) own, manage, control, participate in, consult with, become employed by or otherwise render services to any Competitive Business (as defined below) in the Territory (as defined below), except that it shall not be considered a violation of this clause for the Employee to be a passive owner of not more than two percent of the outstanding stock of any class of any corporation which is publicly traded, so long as Employee has no active participation in the business of such corporation;

(ii) induce or attempt to induce any customer, supplier, client or other business relation of the Corporation or its affiliates to cease doing business with the Corporation or its affiliates if such cessation could reasonably be expected to result in material harm to the Corporation;

(iii) induce or attempt to induce any employee of the Corporation or its affiliates to leave the employ of the Corporation or its affiliates, or in any way interfere with the relationship between the Corporation or its affiliates and any person employed by them; or

(iv) violate the Corporation’s Securities Trading Policy.

(b) Employee expressly agrees and covenants that Employee will not, without the prior written consent of the Corporation, directly or indirectly, disclose or use at any time before or after Employee’s Termination of Employment any Confidential Information (as defined below) of which Employee is or becomes aware, whether or not such information is developed by Employee, except to the extent such disclosure or use is directly related to and appropriate in connection with Employee’s performance of duties assigned to Employee by the Corporation or its affiliates. Under all circumstances and at all times, Employee will take all appropriate steps to safeguard Confidential Information in his or her possession and to protect it against disclosure, misuse, espionage, loss and theft.

(c) If the Committee determines that Employee has violated any provisions of this Section 23 or that Employee’s employment has been terminated for Cause, then Employee agrees and covenants that:

(i) Employee shall automatically forfeit any rights Employee may have with respect to the Restricted Stock as of the date of such determination; and

(ii) if Employee has exercised all or any part of the Restricted Stock within the twelve-month period immediately preceding a violation of this Section 23 or termination of Employee's employment for Cause, upon the Corporation's demand, Employee shall immediately deliver to the Corporation an amount equal to the gain realized by Employee upon such exercise (the excess of the aggregate Fair Market Value, on the date of exercise, of the Common Stock received upon exercise over the aggregate exercise price of the Restricted Stock with respect to such Common Stock, then less any taxes paid which are not refundable or for which the Employee does not otherwise receive a tax credit or other form of reimbursement).

(d) Definitions. For purposes of this Section 23, the following definitions shall apply:

(i) "**Competitive Business**" means any business listed on Exhibit A hereto.

(ii) "**Confidential Information**" means information that is not generally known to the public and that was or is used, developed or obtained by the Corporation or its affiliates in connection with the business of the Corporation or its affiliates and which constitutes trade secrets or information which they have attempted to protect, which may include, but is not limited to, trade "know-how", customer information, supplier information, cost and pricing information, marketing and sales techniques, strategies and programs, computer programs and software and financial information. It shall not include information (a) required to be disclosed by court or administrative order; (b) lawfully obtainable from other sources or which is in the public domain through no fault of Employee; or (c) the disclosure of which is consented to in writing by the Corporation.

(iii) "**Restricted Period**" means the period during which Employee is employed by the Corporation or an affiliate and twelve months following the date that Employee ceases to be employed by the Corporation or an affiliate for any reason whatsoever.

(iv) "**Territory**" means:

(A) The entire United States and any other country where the Corporation or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Corporation's products have been sold at any time in the one-year period ending on the last day of Employee's employment with the Corporation or its affiliates;

(B) In the event that the preceding clause shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the entire United States;

(C) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the states in the United States where the Corporation or any of its Subsidiaries, joint venturers, franchisees or affiliates has operated a retail facility at which the Corporation's products have been sold at any time in the one-year period ending on the last day of Employee's employment with Corporation or its affiliates;

(D) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the area that includes all of the areas that are within a 50-mile radius of any retail store location in the United States at which the Corporation's products have been sold at any time in the one-year period ending on the last day of Employee's employment with the Corporation or its affiliates; and

(E) In the event that the preceding clauses shall be determined by judicial action to define too broad a territory to be enforceable, then "Territory" shall mean the entire state of North Carolina.

(e) The Corporation may require Employee, in connection with the exercise of the Restricted Stock, to certify in a manner acceptable to the Corporation that Employee has not violated the terms of this Section 23 and may decline to give effect to such exercise if Employee fails so to certify. If Employee is required to repay any Restricted Stock gain to the Corporation pursuant to this Section 23, Employee shall pay such amount in such manner and on such terms and conditions as the Corporation may require, and the Corporation shall be entitled to withhold or set-off against any other amount owed to Employee by the Corporation or any of its affiliates (other than any amount owed to Employee under any retirement plan intended to be qualified under Section 401(a) of the Code) up to any amount sufficient to satisfy any unpaid obligation of Employee under this Section 23.

(f) Employee acknowledges and agrees that the period, scope and geographic areas of restriction imposed upon Employee by the provisions of Section 23 are fair and reasonable and are reasonably required for the protection of the Corporation. In the event that any part of this Agreement, including, without limitation, Section 23, is held to be unenforceable or invalid, the remaining parts of Section 23 and this Agreement shall nevertheless continue to be valid and enforceable as though the invalid portions were not a part of this Agreement. If any one of the provisions in this Section 23 is held to be excessively broad as to period, scope and geographic areas, any such provision shall be construed by limiting it to the extent necessary to be enforceable under applicable law.

(g) Employee acknowledges that breach by Employee of this Agreement would cause irreparable harm to the Corporation and that, in the event of such breach, the Corporation shall have, in addition to monetary damages and other remedies at law, the right to an injunction, specific performance and other equitable relief to prevent violations of your obligations hereunder.

(h) If the Corporation is required to prepare an accounting restatement due to the material noncompliance of the Corporation as a result of misconduct pertaining to any financial reporting requirement under the securities laws ("Misconduct"), and such Misconduct is the result of actions taken by either the Chief Executive Officer and/or the Chief Financial Officer, then such of the Chief Executive Officer and/or the Chief Financial Officer as have committed such Misconduct as determined by the Committee shall reimburse the Corporation for (1) any bonus or other incentive-based or equity-based compensation received by either or both of them, as applicable, from the Corporation during the 12-month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying the financial reporting requirement that gives rise to the restatement; and (2) any profits realized by either or both of them, as applicable, from the sale of securities of the Corporation during that 12-month period.

24. Holding Period After Resignation or Termination

In return for granting the Restricted Stock to Employee, Employee agrees that in the event of Employee's Termination of Employment in a manner that would otherwise permit Employee to exercise Employee's Restricted Stocks after leaving employment by the Corporation, Employee will nevertheless delay making any transactions in the Corporation's stock until such time as the Corporation has filed its next succeeding quarterly (10-Q) or annual (10-K) financial filing, as applicable, with the U. S. Securities and Exchange Commission.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

KRISPY KREME DOUGHNUTS, INC.

By: _____
Title: _____

EMPLOYEE

Signature: _____
Printed Name: _____

REAL PROPERTY PURCHASE AGREEMENT

THIS REAL PROPERTY PURCHASE AGREEMENT ("Agreement") is made and entered into this 21st day of December, 2007 (the "Effective Date"), by and between KRISPY KREME DOUGHNUT CORPORATION, a North Carolina corporation (herein referred to as "Seller"), and HARLAN BAKERIES, INC., an Indiana corporation (hereinafter referred to as "Purchaser").

WITNESSETH:

WHEREAS, Seller now owns and desires to sell to Purchaser and Purchaser desires to acquire from Seller certain real property more particularly described hereinafter upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, Seller and Purchaser do hereby covenant and agree as follows:

1. Agreement to Buy and Sell. Upon the terms and conditions set forth in this Agreement, Purchaser agrees to buy from Seller, and Seller agrees to sell to Purchaser, all of that certain real property lying and being in the City of Effingham, County of Effingham, State of Illinois, commonly known as 1200 Stevens Avenue, as more particularly described in Exhibit "A" attached hereto and by reference made a part hereof (hereinafter referred to as the "Land"), together with Seller's right, title and interest in the approximately 190,000 square foot building thereon (the "Building"), and any and all other buildings, improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining to the Land, and any right, title and interest of Seller in and to any land lying in the bed of any street, road or highway in front of or adjoining the Land, together with any strips or gores relating to the Land (the Land, improvements, and the foregoing easements and interests being hereinafter referred to collectively as the "Property"), and further together with all equipment, machinery, parts, supplies, furniture, fixtures, and owned software located in or affixed to the Property (collectively, the "Personal Property") as of the date an inventory of the Personal Property is completed, subject to, and as specified in, Section 4(e) below. It is hereby acknowledged by the parties that, notwithstanding the foregoing, the Personal Property does not include any proprietary equipment or materials, leased equipment or machinery (unless the applicable lease is assumed by Purchaser in accordance with Section 7(d)), raw materials, or finished product of Seller located or stored in the Commissary portion of the Building nor any materials, inventories, signs or proprietary fixtures located in the Distribution Warehouse portion of the Building. Specific items also excluded from Personal Property are described on Schedule A-1 hereto. Seller shall not convey to Purchaser any claims relating to any real property tax refunds or rebates for periods occurring prior to Closing (as hereinafter defined), existing insurance claims, and any other existing claims or causes of actions accruing prior to the Closing Date, which claims shall be reserved by Seller and are not included as part of the Property.

2. Binder Deposit. Within two (2) business days after the full execution of this Agreement, Purchaser shall deliver the sum of **Three Hundred Thousand and 00/100 Dollars (\$300,000.00)** to Chicago Title Insurance Corporation (the "Escrow Agent") as a good faith deposit for the purposes of this Agreement (the "Binder Deposit"), to be applied as part payment of the Purchase Price at Closing, or to be otherwise disbursed in accordance with the provisions of this Agreement. The Escrow Agent will also act as the Closing Agent.

3. Purchase Price. Purchaser shall pay to Seller, in consideration of the conveyance of the Property to Purchaser, the purchase price of **Eleven Million Eight Hundred Thousand and 00/100 Dollars (\$11,800,000.00)** (the "Purchase Price"), which Purchase Price shall be paid by Purchaser to Seller at the Closing (as hereinafter defined) by wire transfer of immediately available funds. Purchaser may elect, in Purchaser's sole discretion, to purchase raw materials inventory of Seller which are located on the Property as of the date of Closing. In addition to the Purchase Price set forth above, Purchaser shall pay at Closing an amount equal to Seller's cost of the raw materials inventories if Purchaser elects to purchase the same.

4. Due Diligence. (a) At all times during the Review Period (as defined below) and for such period as is necessary to permit Purchaser to satisfy the conditions described in Section 4(d) and otherwise subject to the provisions of this Section 4, until such time as this Agreement is either settled or terminated, Purchaser,

Purchaser's authorized agents, employees, consultants, architects, engineers and contractors, as well as others authorized by Purchaser, shall have reasonable access to the Property and shall be entitled to enter upon the Property and make such surveying, architectural, engineering, topographical, geological, soil, subsurface, environmental, water drainage, and other studies respecting the condition of the Property, availability of water, sewer, natural gas, and other utility services in sufficient quantities to meet Purchaser's requirements, and such other investigations, inspections, evaluations, studies, tests and measurements (collectively, the "Investigations") as Purchaser deems necessary or advisable. Purchaser's rights hereunder to conduct Investigations shall be subject to the following requirements and limitations: (i) any entry upon the Property by Purchaser, Purchaser's authorized agents and employees, as well as others authorized by Purchaser shall require at least twenty-four (24) hours advance notice to Seller of the date and time of the entry and the specific Investigations to be conducted in connection with the entry, and (ii) the Investigations shall not result in any material adverse change to the physical characteristics of the Property (and Purchaser shall be obligated to reasonably repair and restore any damage to the Property resulting from the Investigations). Seller shall be entitled to have one or more representatives present to observe or monitor the Investigations on the Property. Purchaser agrees to indemnify and hold Seller harmless from and against any and all claims, costs, losses, expenses, and liabilities, including reasonable attorneys' fees, arising out of claims for injury, including death, to persons or physical injury to property resulting from Purchaser's conduct of the Investigations (collectively, the "Purchaser's Indemnification Obligations"). Notwithstanding the foregoing, Purchaser shall not be entitled to conduct any environmental Investigations on the Property beyond a Phase I environmental site assessment (i.e. no sampling, drilling, etc.) without first obtaining Seller's prior written consent.

Purchaser acknowledges that underground and/or aboveground utility lines cross or may cross the Land, possibly including, without limitation, electrical transmission lines and natural gas lines, some or all of which may cause serious injury to persons (including death) or property if disturbed without the proper safety precautions being observed. Purchaser acknowledges and agrees that Seller makes no representations or warranties with respect to the presence or location of any utility lines. Purchaser further acknowledges and agrees that, prior to any drilling, digging, grading, excavating or other activity on the Property by Purchaser or its agents, contractors, employees, licensees or other authorized representatives, Purchaser, as part of its due diligence, shall make appropriate inquiries directly with all applicable utility companies to confirm the presence, absence and/or actual location of any underground and/or aboveground utility lines on the Property, and Purchaser shall indemnify and hold harmless Seller from and against any and all claims for injury to persons (including death) or property arising out of or incident to any drilling, digging, grading, excavation or other activities by or on behalf of Purchaser on the Property (the foregoing indemnification by Purchaser shall be included as part of Purchaser's Indemnification Obligations).

Notwithstanding any term or provision herein to the contrary, the provisions in this Agreement (including in this Section 4) relating to the Investigations shall apply to all Investigations conducted by Purchaser and Purchaser's authorized agents, employees, consultants, architects, engineers and contractors both prior to the Effective Date and from and after the Effective Date until Closing or the termination of this Agreement. Purchaser will remain liable to Seller for the full amount of damages suffered by Seller under this Section 4, notwithstanding the completion of the Closing hereunder, the termination of this Agreement by Purchaser or Seller, or a default by Purchaser under this Agreement and the collection by Seller of liquidated damages (if any).

(b) In the event Purchaser elects to terminate Purchaser's obligations in accordance with the provisions of this Agreement, Purchaser shall deliver to Seller, without warranty or representation as to accuracy, completeness or validity, a copy of all surveys, engineering studies, development plans, and any other documents and reports, that Purchaser may have obtained or developed from any source as a result of the Investigations relating to the Property, and shall assign to Seller, if assignable, all licenses and permits procured by the Purchaser relating to the Property.

(c) Purchaser shall have from the Effective Date until **December 24, 2007** (the "Review Period") to examine the Property as provided in Section 4(a) above and thereafter shall have such other rights to examine the Property to satisfy the conditions described in Section 4(d) and to perform the Survey work under Section 5 hereof. Purchaser may terminate this Agreement by written notice given to Seller at any time prior to 5:00 p.m. Eastern

Time on the last day of the Review Period. In the event of such termination, all but \$10 of the Binder Deposit shall be refunded to Purchaser (with the retained \$10 being paid to Seller in consideration of the Review Period), this Agreement shall be deemed of no further force and effect, and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder, save and except Purchaser's Indemnification Obligations which shall survive any such termination. In the event Purchaser does not terminate this Agreement on or before the expiration of the Review Period, then the Binder Deposit shall be deemed fully earned by Seller and non-refundable except as otherwise set forth in Sections 5(b) or 11(a) below.

(d) Notwithstanding the provisions of Section 4(c) above and the Investigations conducted by Purchaser prior to the expiration of the Review Period, Purchaser's obligation to consummate the transactions contemplated by this Agreement shall be subject to the following conditions, which must be satisfied to Purchaser's satisfaction or waived in writing by Purchaser on or prior to Closing:

(i) Purchaser will have the right to perform Investigations as to the structural integrity of the Building and if performed, such studies shall fail to identify any material structural defects;

(ii) Purchaser will have the right to perform Investigations as to the environmental condition of the Property and if performed, such studies shall fail to identify any material recognized environmental defects, failure to comply with applicable laws or contamination requiring any remediation activity or which impacts the current operations at the Property;

(iii) Purchaser will have applied for incentives and/or credits under the Illinois Economic Development for a Growing Economy program and Purchaser will have received approval as to such incentives and/or credits.

In the event that any such conditions are not satisfied by the latest date upon which the Closing can occur pursuant to Section 6, Purchaser may terminate this Agreement by written notice given to Seller. In the event of such termination, all but \$10 of the Binder Deposit shall be refunded to Purchaser, this Agreement shall be deemed of no further force and effect, and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder, save and except Purchaser's Indemnification Obligations, which shall survive any such termination.

(e) Seller shall promptly (and in any event within two (2) days after the Effective Date) deliver to Purchaser a copy of Seller's current policy of or commitment for title insurance and any other reports or studies relating to the Property or its condition that are in Seller's actual possession or to which Seller has reasonable access, including, without limitation (to the extent that Seller has the same), surveys, geotechnical reports, and related documents, as-built construction plans and engineering studies (collectively, "Seller's Documentation"). In the event the Closing fails to occur for any reason, Purchaser agrees to return promptly to Seller all copies in Purchaser's possession of Seller's Documentation, including any and all copies that are in the possession of Purchaser's consultants and agents. Purchaser agrees and acknowledges that Seller's Documentation shall be delivered as a courtesy only and without any warranty or representation as to the accuracy, completeness, or validity of the same

(f) At least two business days before the Closing, Purchaser and Seller shall conduct a physical inventory (the "Inventory") of the equipment, machinery, parts, supplies, fixtures, and owned software, which shall comprise the Personal Property and be conveyed by Seller to Purchaser with the Property. When completed, the Inventory shall be attached to this Agreement as Exhibit C. Seller further represents and warrants that the Personal Property included in the Property when the same was inspected by Purchaser on December 7, 2007 will be included in the sale as of the Closing, except for such items as will have been used in the ordinary course of business by Seller. Purchaser acknowledges and agrees that Seller may work the raw materials inventory down to negligible amounts by the time of the Closing. Purchaser understands and acknowledges that some of the forklifts used by Seller at the Property are leased by the Seller, and that Seller intends to return all of the leased forklifts to the owner on or before the Closing, unless Purchaser assumes the leases for the same pursuant to Section 7(d). Owned forklifts will be transferred to Purchaser together with the Property. Should Purchaser elect to purchase any of Seller's raw materials, Purchaser and Seller shall conduct a separate physical inventory of the raw materials on the Property the day before Closing, and confirm Seller's cost for the same to be paid by Purchaser to Seller at Closing in a separate writing to be executed by both parties at Closing.

5. Title and Survey. (a) Seller shall cause Chicago Title Insurance Company (the "Title Company", which shall also be the Escrow Agent and/or the Closing Agent) to issue to Purchaser a current commitment for a standard ALTA 2006 form owner's policy of title insurance (the "Title Commitment") setting forth the status of title to the Property and committing the Title Company to issue at then-current standard premium rates a standard ALTA 2006 form Owner's Policy of Title Insurance insuring Purchaser's fee simple interest in the Property with gap coverage. Seller shall also provide to Purchaser a current ALTA "as-built" staked survey of the Property (the "Survey"). Any title encumbrances or exceptions which are described on Exhibit B, attached hereto and incorporated herein by reference, or which are disclosed by the Title Commitment and/or Survey, to which Purchaser does not object within the Title Review Period (as set forth in (b) below), shall be deemed to be permitted exceptions to the status of Seller's title ("Permitted Exceptions").

(b) Not later than the fifth (5th) business day following Purchaser's receipt of both the Title Commitment and the Survey (the "Title Review Period"), Purchaser shall give Seller written notice of any objections to the marketability of Seller's title, including objections that are disclosed by Purchaser's examination of the Title Commitment or the Survey. The failure of Purchaser to provide such notice to Seller on or before the expiration of the Title Review Period shall constitute a waiver of all of Purchaser's rights under this Section 5 as such rights relate to title matters of record and survey matters that would be revealed by a current, accurate physical survey of the Property as of the expiration of the Title Review Period. If Purchaser gives proper notice of objections as provided above, Seller shall have ten (10) business days from receipt of written notice thereof to have such objections satisfied (which may, for purposes of this Agreement, include causing the Title Company to insure the Property without exception to such objection), or to give Purchaser written notice of assurance that such objections shall be satisfied at Closing, or to give Purchaser written notice of Seller's inability or refusal to satisfy the objections. If such objections are not properly satisfied within such ten (10) business day period, Purchaser, as its sole and exclusive remedy, may elect either (i) to terminate this Agreement, or (ii) to accept and approve all such unsatisfied objections and to complete the purchase of the Property. Purchaser shall notify Seller of its election within five (5) business days after receipt by Purchaser of Seller's written notice of Seller's inability or refusal to satisfy the objections. If Purchaser elects to terminate this Agreement as hereinabove provided, the Binder Deposit shall be returned to Purchaser (minus \$10) and the parties hereto shall have no further rights, obligations or liabilities with respect to each other hereunder, except for Purchaser's Indemnification Obligations which shall survive such termination. Intervening title exceptions and encumbrances which first arise on or after the effective date of the Title Commitment shall be governed by the terms of Section 5(c) below.

(c) At Closing, the closing attorney or agent conducting the Closing (the "Closing Agent") may hold the moneys representing the Purchase Price until Purchaser or the Title Company updates the title examination and records the Deed (as hereinafter defined). In the event there are any intervening title exceptions or encumbrances revealed by such title update which first arise on or after the effective date of the Title Commitment and which are not Permitted Exceptions hereunder, the Purchaser shall advise Seller of same and the Closing shall be delayed in order to permit Seller a reasonable opportunity to remedy the same; provided Seller shall have no obligation to do so. If Seller determines that it will not remedy the intervening matters (which remedy, for the purpose of this Agreement, may be causing the Title Company to insure the Property without exception for such intervening matter(s)) within a reasonable period of time, Purchaser, as Purchaser's sole remedy, shall elect within five (5) days following notice of such determination by Seller either (i) to waive its objection(s) to such intervening matter(s) and to close its purchase of the Property, with no reduction in the Purchase Price, in which event such intervening matter(s) shall be deemed Permitted Exceptions for purpose of this Agreement, or (ii) to terminate this Agreement and receive a refund of the Binder Deposit and the Purchase Price (if it has been paid), in which event neither Purchaser or Seller shall have any further obligations to the other hereunder, except for Purchaser's Indemnification Obligations which shall survive any such termination. If Purchaser fails to notify Seller of its election within such five (5) day period, Purchaser shall be deemed conclusively to have elected the option set forth in (i) above and the parties will proceed immediately thereafter to Closing.

6. Closing and Closing Date. The consummation of the sale by Seller and the purchase by Purchaser of the Property (the "Closing") shall occur no later than January 31, 2008 (unless extended as a result of the provisions contained in Section 5 above), at a mutually convenient time and location in Effingham, Illinois (or such other location as to which the parties may mutually agree), and may be accomplished by electronic,

overnight, or facsimile delivery of documents to and from the parties and the Closing Agent. At Closing, Seller shall execute and deliver to Purchaser (i) a special warranty deed (the "Deed") conveying fee simple title to the Property to Purchaser, excepting only the Permitted Exceptions and all easements, rights of way, restrictions and other matters of record (other than any outstanding mortgages or deeds of trust or other monetary liens (which shall not include the payment of real estate taxes, which are addressed separately herein), which shall be paid and satisfied at Closing), (ii) an Affidavit of Seller which has as its subject matter averments that, with respect to the Property, there are no liens, or rights to a lien, for services, labor or materials furnished and/or imposed by law and not shown by the public records and such other matters as may be required by the Title Company to delete the preprinted exceptions from the title policy, (iii) an Affidavit of Seller stating that Seller is not a "foreign person," as that term is defined in §1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and otherwise in form and content sufficient to eliminate Purchaser's withholding obligations under §1445 with respect to the sale and purchase of the Property, (iv) a Bill of Sale for the Personal Property (with the Inventory attached as an exhibit thereto) substantially in the form attached hereto as Exhibit E, and (v) any other documents deemed reasonably necessary by Purchaser or the Closing Agent to consummate the transaction contemplated herein in accordance with the terms of this Agreement, subject at all times to Seller's prior review and approval, which shall not be unreasonably withheld, delayed or conditioned. At Closing, Purchaser shall pay the Purchase Price plus the amount fixed by the parties as the value of the raw materials Purchaser may elect to purchase pursuant to Section 3 hereof; provided, however, the parties expressly agree and acknowledge that Seller may leave a certain amount of raw materials in the silo storage containers on the Property and Purchaser shall not be required to pay any amount for such raw materials.

7. Expenses and Prorations; Utilities. (a) All real property ad valorem taxes applicable to the Property shall be prorated on a tax year basis as of the date of Closing between Seller and Purchaser, such proration to be based upon the most recently available tax rate and valuation with respect to the Property; provided, however, that upon the issuance of the tax bills for such taxes for the year of Closing, if the actual taxes for the year of Closing vary from the amount estimated for such taxes at Closing by \$200.00 or more, Purchaser and Seller shall promptly make such adjustments as may be necessary to insure that the actual amount of such taxes for the year of Closing shall be prorated between Purchaser and Seller as of the date of Closing. All income and rents due (if any) or expenses paid (if any) or due (if any) for the month in which Closing occurs shall be prorated as of the date of Closing between Seller and Purchaser.

(b) Seller shall, at the Closing, pay Seller's attorneys' fees, the cost of preparing the Deed, fifty percent (50%) of the fees and costs charged by the Closing Agent (the "Closing Agent's Fees"), the costs of the Survey, the premium for Purchaser's Owner's policy of title insurance, including gap coverage (but not including charges for any endorsements to such policy which Purchaser may desire), all confirmed governmental or private assessments which are due and payable on or before the date of Closing, and, except as specifically provided for otherwise hereunder, any other costs customarily paid by sellers of real property in the State of Illinois in similar commercial transactions.

(c) Purchaser shall pay, at or prior to Closing, all costs incurred in performing the Investigations, fifty percent (50%) of the Closing Agent's Fees, the cost of any endorsements to Purchaser's Owner's title insurance policy and the premium for Purchaser's lender's (if any) policy of title insurance, Purchaser's attorneys' fees, all other expenses incurred by Purchaser in acquiring the Property, and, except as specifically provided for otherwise hereunder, all other costs customarily paid by buyers of real property in the State of Illinois in similar commercial transactions. Purchaser shall take title to the Property subject to all pending governmental or private assessments, if any. The costs of all recording fees with respect to the Deed from Seller to Purchaser and all documentary stamp, revenue, or transfer taxes and fees imposed or levied by any governmental authority with respect to the sale and transfer of the Property to Purchaser, will be paid by either Seller or Purchaser in accordance with custom and practice in the State of Illinois in similar commercial transactions.

(d) Seller's existing leases are described on Exhibit D hereto. Purchaser will assume those leases so indicated on Exhibit D and may at its election assume those leases so indicated on Exhibit D by notice to Seller within the timeframe specified on Exhibit D. Certain leases may not be assumed by Purchaser and are so indicated on Exhibit D. Seller will cooperate with Purchaser in having all utilities serving the Property (including, without

limitation, electricity, gas, water, sewer, and telephone service) transferred into Purchaser's name as of the date of Closing, provided, however, Seller shall be entitled to receive any and all deposits associated with the utilities, and Seller shall be solely responsible to pay the balances due to the utility providers through the date of Closing. Seller shall transfer and Purchaser shall assume the wastewater discharge permit for the Property.

8. Representations and Warranties of Seller. Seller hereby makes the following express representations and warranties with respect to the Seller, which are true, as of the Effective Date and which shall be true as of the date of Closing:

(a) Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of North Carolina, has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein, and upon execution hereof will be legally obligated to Purchaser in accordance with the terms and conditions of this Agreement. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorship or voluntary or involuntary proceedings in bankruptcy or pursuant to any debtor relief laws pending against Seller which would affect the Property or the Personal Property or the ability of Seller to proceed with the transactions contemplated hereby.

(b) This Agreement and all documents that are to be executed by Seller and delivered to Purchaser at Closing are, or at the time of Closing, as applicable, will be, duly authorized, executed and delivered by Seller, and all consents required under Seller's organizational documents, by law or under any agreements to which Seller may be subject have been obtained, except for any such consent requirements which will be rendered inapplicable if Seller consummates this transaction and the proceeds are used to satisfy Seller's obligations to any such party from whom consent would otherwise be required. The individual executing this Agreement on behalf of Seller is duly authorized and empowered to enter into this Agreement. This Agreement and all such documents will not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller, the Property, or the Personal Property is subject.

(c) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms. The execution, delivery, and performance by Seller of this Agreement and any other instruments and documents to be executed and delivered in connection with this Agreement by Seller do not, and will not, result in any violation of, or conflict with, or constitute a default under, the provisions of any mortgage, deed of trust, indenture, lease, security agreement, or other instrument or agreement (except for any as to which consent requirements will be rendered inapplicable pursuant to Section 8(b) above), or any law, regulation, rule, requirement, agreement, restriction, order, writ, decree, or judgment to which Seller or by which Seller is bound or to which Seller is subject.

(d) Seller currently receives real estate tax abatements at the Property. Purchaser has been advised by governmental authorities that such abatements are transferable to Purchaser at Closing and Seller will use its reasonable best efforts to cooperate in any such transfer to Purchaser at Closing by executing any and all necessary or appropriate documents and otherwise assisting Purchaser in such transfer, although Seller shall not be required to incur out of pocket expenses or other obligations in this regard.

9. Covenants of Seller. Seller hereby covenants and agrees that, from and after the Effective Date until the date of Closing, Seller shall not, without the prior written consent of Purchaser, materially change or alter the physical condition of the Property, or grant or otherwise create or consent to the creation of any easement, restriction, lien, assessment or encumbrance affecting the Property or any portion or portions thereof, or pursue or consent to the pursuit of any rezoning of the Property or any portion or portions thereof.

10. Representations, Warranties, and Covenants of Purchaser. (a) Purchaser hereby represents and warrants that Purchaser is a duly formed and validly existing corporation under the laws of the State of Indiana. All action required by Purchaser's organizational documents to effectuate this transaction (including the consent of all shareholders, directors, owners, or members, if necessary) has been taken, and Purchaser has full power and right to enter into and perform Purchaser's obligations under this Agreement and to purchase the Property as herein provided. This Agreement has been duly executed and delivered on behalf of Purchaser. The individual executing this Agreement on behalf of Purchaser is duly authorized and empowered to enter into this Agreement. This Agreement constitutes the legal, valid and binding obligations of the Purchaser, enforceable against Purchaser

in accordance with its terms. The execution, delivery, and performance by Purchaser of this Agreement and any other instruments and documents to be executed and delivered in connection with this Agreement by Purchaser do not, and will not, result in any violation of, or conflict with, or constitute a default under, the provisions of any mortgage, deed of trust, indenture, lease, security agreement, or other instrument or agreement, or any law, regulation, rule, requirement, agreement, restriction, order, writ, decree, or judgment to which Purchaser or by which Purchaser is bound or to which Purchaser is subject.

(b) *OFAC Certification.* Purchaser hereby certifies, for itself and on behalf of its individual partners, shareholders, members, beneficiaries, or owners, that:

(i) Neither Purchaser, nor any individual partner, shareholder, member, beneficiary, or owner, is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and,

(ii) Neither Purchaser, nor any individual partner, shareholder, member, beneficiary, or owner, is engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

Purchaser hereby agrees to defend, indemnify, and hold harmless Seller from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorney's fees at all tribunal levels) arising from or related to any breach of the certifications set forth in this subsection 10(b) and shall be deemed a part of Purchaser's Indemnification Obligations.

(c) Seller shall terminate, effective as of Closing, all employment agreements or employment relationships it has with its employees at the Property. A list of the current employees is attached hereto as Exhibit F. Purchaser agrees to use its reasonable best efforts to hire and employ all such terminated employees (except those terminated employees who do not fulfill Purchaser's ordinary pre-employment requisites, such as background checks and drug tests) effective on the day following the Closing. Purchaser shall pay any such hired employee in accordance with its wage scale which is to be comparable to Seller's wage scale and Purchaser expects to maintain comparable types and levels of benefits as Seller provided the employees on the date of Closing (including recognizing the years of service each employee had with Seller as being the same years of service each employee has with Purchaser as of the date of Closing). Notwithstanding Purchaser's hiring of Seller's terminated employees, Purchaser specifically shall not assume, and Seller shall remain liable for, any obligation or liability to employees of Seller or any governmental agencies or authorities, regardless of whether such employee is subsequently employed by Purchaser, which arise out of, or relate to, or involve, such employee's relationship with Seller. Within five (5) business days after the execution hereof, Seller will provide to Purchaser all information concerning wages and benefits for Seller's employees. Furthermore, Seller will permit Purchaser to review employment files of current employees at the Property, provided that this information is held by Purchaser in confidence, and from and after December 26, 2007 Seller will permit Purchaser to interview such employees.

(d) PURCHASER EXPRESSLY AGREES, UNDERSTANDS, AND ACCEPTS THAT THE PROPERTY AND THE PERSONAL PROPERTY ARE BEING OFFERED BY THE SELLER IN "AS IS, WHERE IS, AND WITH ALL FAULTS" CONDITION, AND, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR IN THE DEED OR THE BILL OF SALE, WITH ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED (EXCEPT WARRANTY OF TITLE), INCLUDING, WITHOUT LIMITATION, WARRANTY AS TO: THE CONDITION OF THE LAND; THE HABITABILITY OR CONDITION OF ANY BUILDINGS OR IMPROVEMENTS; THE STATUS, OPERABILITY OR CONDITION OF ANY FIXTURES, EQUIPMENT, MACHINERY, PLUMBING, ELECTRICAL, HVAC, HYDRAULICS, OR ANY OTHER SYSTEMS OR APPARATUS INSTALLED ON OR SERVING THE PROPERTY OR COMPRISING ANY PART OF THE PERSONAL PROPERTY; THE SUITABILITY OR FITNESS OF THE PROPERTY OR THE PERSONAL PROPERTY FOR ANY PARTICULAR USE; INCOME POTENTIAL; OPERATING EXPENSES; MARKETABILITY; COMPLIANCE WITH ANY ZONING ORDINANCES

OR ANY OTHER LAWS, RULES, AND REGULATIONS; OR ANY ENVIRONMENTAL MATTERS, INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OF HAZARDOUS MATERIALS OR HAZARDOUS WASTE. PURCHASER, MOREOVER, ACKNOWLEDGES (I) THAT PURCHASER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY AND (II) EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THAT IT HAS NOT RELIED IN ANY MANNER UPON ANY STATEMENTS BY SELLER OR ANY AGENT OF SELLER, OR UPON ANY OF SELLER'S DOCUMENTATION, AND (III) THAT IT HAS NOT RECEIVED FROM SELLER ANY ACCOUNTING, TAX, LEGAL, ARCHITECTURAL, ENGINEERING, PROPERTY MANAGEMENT, ENVIRONMENTAL, OR OTHER ADVICE WITH RESPECT TO THIS TRANSACTION AND IS RELYING SOLELY UPON THE ADVICE OF ITS OWN ACCOUNTING, TAX, LEGAL, ARCHITECTURAL, ENGINEERING, PROPERTY MANAGEMENT, ENVIRONMENTAL, AND OTHER ADVISORS.

11. Defaults. (a) In the event Seller fails to comply with or perform any of the covenants, agreements and obligations to be performed by Seller under the terms and provisions of this Agreement, Purchaser shall give Seller written notice of such failure. If Seller shall fail to cure such default within five (5) days after receipt of Purchaser's written notice thereof (the "Seller's Cure Period"), Purchaser shall have the right and option, as Purchaser's sole and exclusive remedy, to either (i) terminate this Agreement upon written notice to Seller at any time after the expiration of the Seller's Cure Period, whereupon the Binder Deposit shall be refunded to Purchaser and the parties hereto shall have no further rights, obligations or liabilities with respect to each other hereunder, (except for Purchaser's Indemnification Obligations which shall survive such termination), or (ii) demand and compel by an action for specific performance or similar legal proceedings, if necessary, the immediate conveyance of the Property by Seller in compliance with the terms and conditions of this Agreement.

(b) If the sale and purchase of the Property is not consummated on account of Purchaser's default hereunder, Seller shall give Purchaser written notice of such default. If Purchaser shall fail to cure such default within five (5) days after receipt of Seller's written notice thereof (the "Purchaser's Cure Period"), Seller shall be entitled to terminate this Agreement upon written notice to Purchaser at any time after the expiration of the Purchaser's Cure Period (and Purchaser's Indemnification Obligations shall survive such termination), to retain the Binder Deposit and to recover Seller's out of pocket expenses plus any damages incurred by Seller in excess of the amount of the Binder Deposit as a result of Purchaser's breach, which excess amount shall be capped at \$1,000,000. Notwithstanding the foregoing, in the event Purchaser fails to pay the Binder Deposit within the time specified by the applicable provisions of this Agreement, Seller shall not be required to deliver any notice of such default prior to immediately exercising its rights or remedies hereunder.

12. Possession of Property. Seller shall deliver to Purchaser full and exclusive possession of the Property on the date of Closing; provided, however, Purchaser agrees that Seller shall retain the right to store certain materials, inventories, equipment, supplies, and other personal property not sold to Purchaser hereunder on one (1) full row of the storage racking system located in the distribution warehouse portion of the Building for up to fifteen (15) days following Closing (the "Holding Period"). Purchaser shall exercise ordinary care and prudence with respect to Seller's personal property remaining in the Building during the Holding Period. On or before the expiration of the Holding Period, Purchaser shall forklift all such personal property of Seller at Seller's direction out of the Building on to Seller's transportation vehicle(s), and Seller hereby releases and holds Purchaser harmless from and against any damage or loss to Seller's personal property which is handled by Purchaser as contemplated hereby, except for any damages caused as a result of Purchaser's gross negligence.

13. Damage or Destruction / Condemnation. (a) Until the Closing, the risk of loss or damage to the Property shall be borne by the Seller. In the event the Property is damaged so that the Property cannot be conveyed in substantially the same condition as it was at the time of this Agreement, Purchaser shall have the option of either (i) terminating this Agreement by giving written notice thereof to Seller, whereupon the Binder Deposit shall be refunded to the Purchaser and the parties shall have no further rights, obligations or liabilities to each other hereunder (except for Purchaser's Indemnification Obligations which shall survive such termination), or (ii) requiring Seller to convey the Property to Purchaser pursuant to the terms and provisions hereof and to transfer

and assign to Purchaser at Closing all of Seller's right, title and interest in and to any insurance proceeds which may be available by reason of such damage or casualty. Seller represents and warrants to Purchaser that Seller's deductible under its property casualty insurance policy is \$75,000.

(b) In the event the Property, or any material portion or portions thereof which are necessary for the Property's use as of the Effective Date, shall be taken or condemned by any governmental authority or other entity prior to the date of Closing, or in the event Purchaser receives notice of a proposed taking prior to the date of Closing, Purchaser shall have the option of either (i) terminating this Agreement by giving written notice thereof to Seller, whereupon the Binder Deposit shall be refunded to the Purchaser and the parties shall have no further rights, obligations or liabilities to each other hereunder (except for Purchaser's Indemnification Obligations which shall survive such termination), or (ii) requiring Seller to convey the remaining portion of the Property to Purchaser pursuant to the terms and provisions hereof and to transfer and assign to Purchaser at Closing all of Seller's right, title and interest in and to any award made or to be made by reason of such condemnation. Seller and Purchaser hereby further agree that Purchaser shall have the right to participate in all negotiations with any such governmental authority relating to the Property or to the compensation to be paid for any portion or portions thereof condemned by such governmental authority or other entity.

14. Broker's Commission. Seller represents and warrants to Purchaser that Hart Corporation (the "Broker") has acted as its sole broker in connection with the sale of the Property. Seller shall pay the Broker a real estate sales commission pursuant to Seller's separate agreement with the Broker. Purchaser shall and does hereby indemnify and hold harmless Seller from and against any claim for any real estate sales commission, finder's fees or like compensation in connection with the sale contemplated hereby and arising out of any act or agreement of Purchaser which may be claimed or asserted by any other broker.

15. Notices. Any notices which may be permitted or required hereunder shall be in writing and sent to the address set forth below, and shall be deemed to have been duly given as of the date and time (a) the same are personally delivered (signature release required), or (b) if delivered by overnight courier guaranteeing next business day delivery (signature release required), one (1) business day after the deposit thereof with a reputable overnight courier with all delivery charges prepaid, or (c) if sent by facsimile, on the day such facsimile is transmitted (or on the first business day following such transmittal if such transmittal is sent on a non-business day), provided the original notice must also be sent by one of the other permitted means as provided herein in this Section 15 or (d) the date delivery of the same is refused.

SELLER: Krispy Kreme Doughnut Corporation
370 Knollwood Street, Suite 500
Winston-Salem, North Carolina 27103
Attention: General Counsel
Telephone: 336-733-3725
Telecopier: 336-726-8253

With a copy to: Scott T. Horn, Esquire
Allman Spry Leggett & Crumpler, P.A.
380 Knollwood Street, Suite 700
Winston-Salem, North Carolina 27103
Telephone: 336-722-2300
Telecopier: 336-721-0414

PURCHASER: Harlan Bakeries, Inc.
7597 E. U.S. Highway 36
Avon, Indiana 46123
Attention: Hal P. Harlan
Telephone: 317-894-8270
Telecopier: 317-894-8290

With a copy to: Roberts E. Inveiss
 Bose McKinney & Evans LLP
 135 N. Pennsylvania Street
 2700 First Indiana Plaza
 Indianapolis, Indiana 46204
 Telephone: 317-684-5373
 Telecopier: 317-223-0373

16. General Provisions. No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by both Seller and Purchaser. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, and successors. This Agreement shall not be assignable by Purchaser, however, at the election of Purchaser, this Agreement may be assigned, and this transaction may be closed in the name of, and the Deed delivered to, Harlan Development Company, LLC, or a subsidiary or affiliate of Purchaser or Harlan Development Company, LLC. Subject to Section 17 below, time is of the essence with respect to all provisions of this Agreement. This Agreement and all amendments hereto shall be governed by and construed under the laws of the state in which the Property is located. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders, the singular shall include the plural and vice versa. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph or section. Seller and Purchaser do hereby covenant and agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at the Closing, and that the parties will cooperate with one another after the Closing to execute such additional documents as may be necessary to carry out such terms.

17. Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

18. Survival of Provisions. All covenants, warranties and agreements set forth in this Agreement shall survive the Closing of the transaction contemplated hereby and shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to or by reason of this Agreement.

19. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

20. Attorneys' Fees. In the event suit is brought to enforce or interpret all or any portion of this Agreement or in the event suit is brought for any default or alleged default hereunder, the prevailing party in such suit shall be entitled to recover from the other party reasonable attorneys' fees incurred by the prevailing party in connection with such suit. Without limiting the generality of the foregoing, "reasonable attorneys' fees" under this Agreement shall never exceed the attorneys' fees amount determined at the normal hourly rate charged by the person doing the work, regardless of whether such fees bear a reasonable relationship to the relief obtained.

21. Public Statements; Confidentiality. Seller and Purchaser agree that, unless otherwise required by law, they will not make any public statement, including without limitation, any press release, with respect to this Agreement and the transactions contemplated hereby without first allowing the other party an opportunity to review such statement and render an approval thereof. It is the intention of this subparagraph that Seller and Purchaser must agree as to the timing and content of any information contained in any public statement or press release regarding the transaction contemplated hereby. The parties agree to exercise reasonableness when asked to consent to the content of any such press release or other public statement regarding this transaction. Notwithstanding the above, either party may make any public disclosure required by law (such as disclosures required by Form 8-K) without the consent of the other party. Any information supplied by Seller to Purchaser pursuant hereto will be treated as confidential and will not be communicated to any third parties (other than Purchaser's counsel, accountants and other experts advising Purchaser in connection with this transaction). Such information will be made available by Purchaser only on a need to know basis. The obligation of confidentiality does not apply to any information which: (i) was in the public domain at the time of its communication to Purchaser or its representative, (ii) enters the public domain through no fault of Purchaser subsequent to the time of its communication to Purchaser, and (iii) was in the possession of Purchaser free of any obligation of confidence at the time of its communication to Purchaser or its representatives.

[SIGNATURE PAGES FOLLOW]

SIGNATURE PAGE TO REAL PROPERTY PURCHASE AGREEMENT
BY AND BETWEEN
KRISPY KREME DOUGHNUT CORPORATION, SELLER, and
HARLAN BAKERIES, INC., PURCHASER

IN WITNESS WHEREOF, Purchaser has caused this Agreement to be executed (in multiple originals, one of which is retained by each party hereto) this 21st day of December, 2007, as an offer to Seller upon the terms and conditions herein contained.

PURCHASER:

HARLAN BAKERIES, INC.

By: /s/Hugh P. Harlan
Name: Hugh P. Harlan
Title: President

SIGNATURE PAGE TO REAL PROPERTY PURCHASE AGREEMENT
BY AND BETWEEN
KRISPY KREME DOUGHNUT CORPORATION, SELLER, and
HARLAN BAKERIES, INC., PURCHASER

IN ACCEPTANCE HEREOF, Seller has caused this Agreement to be executed (in multiple originals, one of which is retained by each party hereto) by its duly authorized officer this 21st day of December, 2007, (which date shall be inserted as the Effective Date on the first page of this Agreement) as an acceptance of the foregoing offer of Purchaser.

SELLER:

KRISPY KREME DOUGHNUT CORPORATION,
a North Carolina corporation

By: /s/ M. Bradley Wall
Name: M. Bradley Wall
Title: SVP – Supply Chain

LIST OF SUBSIDIARIES*

<u>Subsidiary</u>	<u>Jurisdiction of Incorporation or Organization</u>
Golden Gate Doughnuts, LLC	North Carolina
HD Capital Corporation	Delaware
HDN Development Corporation	Kentucky
Hot Doughnuts Now International Ltd.	Switzerland
KK Asia Pacific Ltd.	Hong Kong
KK Canada Holdings, Inc.	North Carolina
Krispy K Canada Company	Nova Scotia, Canada
Krispy Kreme Canada, Inc.	North Carolina
Krispy Kreme Doughnut Corporation	North Carolina
Krispy Kreme International Ltd.	Switzerland
Krispy Kreme Management I, LLC	North Carolina
Krispy Kreme Management II, LLC	North Carolina
Krispy Kreme Management III, LLC	North Carolina
Krispy Kreme Mobile Store Company	North Carolina
North Texas Doughnuts, L.P.	Texas
Northeast Doughnuts, LLC	North Carolina
Panhandle Doughnuts, LLC	North Carolina
Southern Doughnuts, LLC	North Carolina
Southwest Doughnuts, LLC	North Carolina

* This list excludes non-material subsidiaries that are in the process of being dissolved.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-38236, 333-38250, 333-47326, 333-87092 and 333-97787) and Form S-8 filed as post-effective amendment No. 2 to Registration Statement on Form S-4 (No. 333-103434) of Krispy Kreme Doughnuts, Inc. of our report dated April 17, 2008 relating to the financial statements, financial statement schedules, and the effectiveness of internal control over financial reporting, which appears in this Form 10-K for the fiscal year ended February 3, 2008.

/s/ PricewaterhouseCoopers LLP
Greensboro, North Carolina

April 17, 2008

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, James H. Morgan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Krispy Kreme Doughnuts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ James H. Morgan

James H. Morgan
Chief Executive Officer

April 17, 2008

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Douglas R. Muir, certify that:

1. I have reviewed this Annual Report on Form 10-K of Krispy Kreme Doughnuts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Douglas R. Muir

Douglas R. Muir
Chief Financial Officer

Date: April 17, 2008

**CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

I, James H. Morgan, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the accompanying Annual Report on Form 10-K of Krispy Kreme Doughnuts, Inc. (the "Company") for the fiscal year ended February 3, 2008 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ James H. Morgan

James H. Morgan
Chief Executive Officer

Date: April 17, 2008

This certification shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934, as amended, and will not be incorporated by reference into any registration statement filed under the Securities Act of 1933, as amended, unless specifically identified therein as being incorporated therein by reference.

A signed original of this written statement required by Section 906 has been provided to Krispy Kreme Doughnuts, Inc. and will be retained by Krispy Kreme Doughnuts, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Douglas R. Muir, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the accompanying Annual Report on Form 10-K of Krispy Kreme Doughnuts, Inc. (the "Company") for the fiscal year ended February 3, 2008, fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Douglas R. Muir

Douglas R. Muir
Chief Financial Officer

Date: April 17, 2008

This certification shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934, as amended, and will not be incorporated by reference into any registration statement filed under the Securities Act of 1933, as amended, unless specifically identified therein as being incorporated therein by reference.

A signed original of this written statement required by Section 906 has been provided to Krispy Kreme Doughnuts, Inc. and will be retained by Krispy Kreme Doughnuts, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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