



## ASHBY'S STERLING ICE CREAM LICENSING AGREEMENT

This Agreement is made between Ashby's Sterling Ice Cream, LTD., A Michigan corporation (licensor) and \_\_\_\_\_ a \_\_\_\_\_ corporation (Licensee).

Licensor currently produces and distributes ice cream products under the trademarks Ashby's Sterling®, Ashby's No Regrets® and Ashby's No Limit® and may acquire or develop and designate for the use other trademarks, trade symbols, emblems, signs, slogans, insignia and copyrights for its ice cream products.

Licensor has established an excellent reputation and goodwill with the public with respect to the quality of products bearing the Ashby® trademark which reputation and goodwill will be of major benefit to Licensee.

Licensee desires to offer for sale to the public, ice cream products bearing the trademarks.

In consideration of the foregoing and of the covenants contained elsewhere in this Agreement, the parties agree as follows:

1. Grant of Licensed Rights:

- a. Subject to the terms and conditions of this Agreement, Licensor grants to the Licensee the right to offer for sale to the public ice cream products produced and/or distributed by Licensor under the trademarks and such other trademarks, trade symbols, emblems, signs, slogans, insignia and copyrights which Licensor may acquire or develop for its ice cream products.
- b. The license shall apply specifically to those locations identified by the parties in Addendum "A" attached and made a part of this Agreement. Addendum "A" may be modified in writing by the parties from time to time as locations are added or deleted from this Agreement.
- c. The licensed rights granted by this Agreement are personal to Licensee and cannot be sold, assigned, transferred or encumbered, in whole or in part, without the express written consent of Licensor.

2. Terms and Renewal:

- a. The term of this Agreement shall commence on the date of execution and continue for a period of two (2) years unless sooner terminated under the provisions contained elsewhere in this Agreement.

- b. Licensee shall have the right to renew the license granted by this Agreement for successive one (1) year terms provided the Licensee is not in default of any material terms or condition of this Agreement.

3. Services by Licensor:

- a. Licensor agrees to use its best efforts to maintain the excellent reputation and quality of its Ashby's® ice cream products; to provide Licensee with suitable supplies of its Ashby's® ice cream as ordered; and to develop for sale to Licensee point of sale materials and signage promoting the sale of Ashby's® ice cream products.
- b. Licensor is not, either by this License Agreement or by any other agreement, obliged or offering to provide any marketing plans, requirements, trade dress, or other regulations regarding the operation of Licensee's sale of Licensor's ice cream products bearing the trademarks.

4. Operations:

- a. Licensee will maintain, during the term of this agreement the premises, equipment, fixtures, and signs in a clean, attractive and safe condition at it's expense.
- b. Licensee will store and serve the ice cream products provided by Licensor in the manner recommended by Licensor to ensure consistent texture and quality of the ice cream product.
- c. Licensee will offer for sale to the public at the locations identified in Addendum "A" only those ice cream products provided by Licensor under the trademarks or under such other trademarks, trade symbols, emblems, signs, slogans, insignia and/or copyrights which Licensor may acquire or develop for its ice cream products. Licensee agrees, specifically, to refrain from selling any ice cream products at the locations identified in Addendum "A" that are not provided by Licensor. Licensee acknowledges that the breach of the covenant contained in this section will give rise to irreparable injury to Licensor, which is inadequately compensable in damages. Accordingly, Licensor may seek and obtain injunctive relief against the breach or threatened breach of the foregoing, in addition to other legal remedies which may be available. Licensee further acknowledges the impossibility of accurately determining the tangible and intangible damages which Licensor will suffer from any breach of the provisions of this Section, and accordingly agrees to entry, without prior notice or bond to the extent that applicable notice and bond requirements may be waived. The parties agree that this right of Licensor contained in this section is fair and reasonable in light of all the facts and circumstances relating to the grant of this license. In the event a Court shall decline to enforce any of the provisions of this Section, then this covenant shall be deemed to be

modified to restrict Licensee's activities to the maximum extent, in both times and geography, which the Court shall find enforceable.

5. Default/Termination:

a. Licensee shall be in default under this Agreement upon the occurrence of any of the following conditions:

- (i) Non-payment of invoices as they become due and owing to Licensor or Licensor's authorized distributor for its ice cream products;
- (ii) Offering for sale to the public of hand dipped ice cream products at any of the locations identified in Addendum "A" which are not produced by or for Licensor or its authorized distributor without written permission of the Licensor;
- (iii) Failure to maintain the premises and/or the ice cream products in the manner required under Part 4 above;
- (iv) Misuse of the licensed trademark rights or any other names, marks, insignia, symbols or rights provided by Licensor to Licensee or otherwise materially impairing the goodwill associated therewith;
- (v) Using, in association with the hand dipped ice cream products provided by Licensor at the locations identified in Addendum "A", any signs, names, marks, insignia or symbols not authorized by Licensor.

b. Upon occurrence of any of the events set forth in Part 5.a. of this Agreement, Licensor may terminate this Agreement. Such termination shall be effective thirty (30) days after written notice is given to Licensee by Licensor. Upon termination or expiration of this Agreement:

- (i) Licensee's rights under this Agreement shall cease and Licensee shall immediately cease the use of the trademarks or any other names provided to Licensor under this Agreement and any confusingly similar names, marks, insignia, symbols or other rights provided under this Agreement;
- (ii) Licensee shall pay Licensor the full amount of all sums due for ice cream products provided to Licensee by Licensor or authorized distributor.
- (iii) Licensee shall immediately remove from public display all signs or advertisements containing the name

trademarks and their graphics or any other mark or designation associated with Licensor and ship said signs and advertisements, at Licensee's expense, to Licensor.

6. Governing Law/Disputes:

- a. This Agreement shall be deemed to have been entered into in the State of Michigan and all rights and obligations of the parties shall be governed and construed in accordance with the laws of the State of Michigan.

Licensee agrees that any disputes under this Agreement which are submitted to a judicial forum shall be exclusively subject to the jurisdiction and venue of the Courts of the State of Michigan, Oakland County. Licensee submits itself to the jurisdiction and venue of the courts of Oakland County, Michigan and waives the right to commence any action against the Licensor except in said Courts.

7. Cost of Enforcement:

Should the Licensor prevail in any action arising out of this Agreement, Licensor shall be entitled to recover its attorney's fees together with court costs and the expenses of litigation.

8. Entire Agreement:

This Agreement constitutes the entire agreement between Licensor and Licensee relating to the use of the Ashby's® name in connection with the sale and distribution of ice cream products and this agreement supersedes all previous agreements between the parties. No officer, employee or other servant or agent of Licensor or Licensee is authorized to make any representation, warranty or other promise not contained in this Agreement. No change of any of the provisions of this Agreement shall be binding upon Licensor or Licensee unless in writing and signed by both parties.

IN WITNESS WHEREOF the parties hereunder have signed this instrument and agree that it is effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

**LICENSOR:**

ASHBY'S STERLING ICE CREAM, LTD.

PO Box 182395, Shelby Twp., MI 48318-2395, (586) 254-1012

\_\_\_\_\_/\_\_\_\_\_  
By: Authorized Officer (Signature) (Print Name)

Dated: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_/\_\_\_\_\_  
By: President / Partner / Proprietor (Signature) (Print Name)

Dated: \_\_\_\_\_

**ADDENDUM A:**

\_\_\_\_\_  
Corporation Name

\_\_\_\_\_  
Store Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_/\_\_\_\_\_  
Store Phone Home Phone