

**EXHIBIT C**  
**AREA DEVELOPMENT AGREEMENT**

**AREA DEVELOPMENT AGREEMENT**

between

**BARNIE'S FRANCHISE SERVICE, LLC**

and

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- Exhibit 1 - The Area
- Exhibit 2 - Current Form of Franchise Agreement
- Exhibit 3 - Development Schedule
- Exhibit 4 - Owners and Designated Principal Owners
- Exhibit 5 – Fee Incentive Amendment to Franchise Agreement

## AREA DEVELOPMENT AGREEMENT

THIS AREA DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between BARNIE'S FRANCHISE SERVICE, LLC, a Florida limited liability company, with its principal office at 2126 W. Landstreet Road, Suite 300, Orlando, Florida 32809 ("Franchisor"), and \_\_\_\_\_ ("Developer"), a(n) \_\_\_\_\_, whose principal address is \_\_\_\_\_.

### **1. PREAMBLES**

A. Franchisor has accumulated extensive knowledge of, and experience in the business of selling coffee, coffee beans, tea, beverages, food and related accessories and items, including prepared coffee for on or off site consumption (collectively hereinafter referred to as the "Product" or "Products") and has developed and owns a unique system (the "Barnie's System") relating to the establishment, development and operation of specialty stores (the "Barnie's Store") identified by certain Marks (as hereinafter defined) and devoted exclusively to the sale, at retail, of the Products (which may be changed, improved and further developed by Franchisor from time to time). Franchisor grants franchises to third parties to own and operate Barnie's Stores pursuant to franchise agreements (a "Franchise").

B. Franchisor is the owner of trade names, trademarks, service marks and brands, including BARNIE'S COFFEE & TEA COMPANY and BARNIE'S and other variations thereon, and such other trade names, trademarks, service marks and brands, as may be designated now or hereafter by Franchisor (collectively, together with all trade names, trademarks, service marks and brands and all rights of Franchisor as to any of the foregoing derived or to be derived from common law use, from registration or from statutory protection against unfair competition, called the "Marks"). Franchisor continues to develop, use and control such Marks for its benefit and exclusive use in order to identify for the public the source of services and Products marketed thereunder and its high standards of quality and service.

C. Developer has applied to Franchisor to acquire the rights to develop Barnie's Stores within the Area (defined below).

### **2. DEFINITIONS**

For purposes of this Agreement, the terms listed below have the meanings that follow them. Other terms used in this Agreement are defined and construed in the context in which they occur.

"Affiliate" - Any person, entity or company that directly or indirectly owns or controls a person or entity, that is directly or indirectly owned or controlled by such person or entity, or that is under common control with such person or entity.

"Competitive Business" - Any business that either (a) sells at wholesale or retail gourmet coffee in bulk and/or in packages or (b) generates 20% or more of its revenue from the sale of

gourmet coffee products by the cup, including, without limitation, businesses such as coffee and tea stores, espresso/coffee cafes and coffeehouses.

“Development Period” - Each period set forth on the Performance Schedule attached hereto as Exhibit 3.

“Area” - The Area shall mean the geographical area(s) described in Exhibit 1 attached to this Agreement.

“Franchise Agreement.” Franchise Agreement shall mean the form of agreement (including exhibits, riders, collateral assignment of leases or subleases, shareholder guarantees and preliminary agreements) that Franchisor uses in granting franchises for the ownership and operation of a Store in the state in which the Area is located. A copy of the current form of Franchise Agreement is attached to this Agreement as Exhibit 2. Developer acknowledges and understands that Franchisor may modify the Franchise Agreement from time to time; provided, however, that the franchise fee and royalty and service fees payable by Developer or its Affiliate under the terms of each Franchise Agreement entered into during the term of this Agreement shall be identical to those contained in the Franchise Agreement attached to this Agreement as Exhibit 2.

“Owners” - All persons or entities now or hereafter holding ownership interests in Developer, any person who has direct or indirect community property rights in Developer or this Agreement and any person or entity which has any other legal or equitable right in the revenues, profits, rights or assets thereof. The current Owners are identified on Exhibit 4.

“Performance Schedule” – The schedule of required Store openings, by Development Period, reflected on Exhibit 3.

“Principal Owners” - Each Owner having an equity ownership interest in Developer of five percent (5%) or more (regardless of whether such Owner is entitled to vote thereon), each Owner who owns less than a five percent (5%) ownership interest in Developer but whose percentage of ownership interest in Developer, Stores, in other franchisees, developers and Stores in the aggregate equals or exceeds twenty percent (20%) and any other person designated as a Principal Owner in Exhibit 4 of this Agreement.

“Site” - Means each site selected by the Developer for the development of a franchised Store and approved by the Franchisor.

“Site Approval Request Form” - Means the prescribed form that must be filled out and submitted by the Developer to the Franchisor in order to obtain site approval from the Franchisor.

“Store” - A Franchised Store owned and operated by Developer or another entity authorized pursuant to this Agreement and a Franchise Agreement.

### **3. GRANT, RENEWAL, EXCLUSIVITY AND TERM OF AREA DEVELOPMENT FRANCHISE**

3.1 Grant of Area Development Rights. Franchisor hereby grants to Developer the right to acquire Franchises, and Developer hereby agrees to acquire Franchises within the Area for the number of Stores shown on Exhibit 3 in accordance with this Agreement. Franchisor agrees that Developer may exercise its rights to acquire Franchises by having an Affiliate, in each case subject to Franchisor's prior written approval (an "Approved Affiliate"), sign the Franchise Agreements. In such cases, Developer will be required to guaranty the obligations of the Approved Affiliate under the Franchise Agreement.

3.2 Exclusivity; Reservation of Rights. Developer acknowledges and agrees that the rights granted in this Agreement are limited to the rights to acquire Franchises for Stores to be developed on Sites in the Area pursuant to and during the term of this Agreement. Provided Developer fully complies with its obligations hereunder and except as provided in paragraph 3.4 below, these rights are exclusive during the term of this Agreement. Notwithstanding the foregoing, your rights in the Area shall be non-exclusive and concurrent with respect to any locations which are non-traditional locations, including, without limitation, site within airports, travel plazas, university campuses, sports arenas and medical facilities. The rights granted herein do not include, and Franchisor reserves for itself and its Affiliates, all other rights and activities, including without limitation: (a) the right to operate or license others to operate Stores at any Sites outside the Area, (b) the right to distribute and authorize others to distribute Products under the Marks or other trademarks at wholesale to other retailers anywhere in the world, and (c) the right to market and distribute the Products, and to authorize others to market and distribute the Products, at retail, through facilities other than Stores (for example, areas within other retail stores), mail order, the internet or other such channels, to customers located anywhere in the world, in each case, even if the exercise of such rights competes with Developer's Stores for customers.

3.3 Term of Agreement. The initial term of this Agreement shall commence on the date of the execution of this Agreement and shall expire on the last day of the last Development Period, subject to the terms and conditions provided herein. The term cannot be renewed unless Franchisor and Developer agree to a new Performance Schedule (defined below) for the Area and all other terms of such renewal prior to expiration of the term.

3.4 Franchisor's Offer to Developer of Opportunity to Establish Store. If, during the term of this Agreement, Franchisor or its Affiliates are presented with an opportunity to establish a Store within a shopping mall in the Area in which Developer has not developed a Store, Franchisor shall first offer Developer the opportunity to establish a Store at such site. Such offer (the "Offer") shall be in writing, shall specify the terms on which such site has been offered to Franchisor and shall provide such additional information as may be appropriate respecting the site. Developer may accept the Offer by notifying Franchisor within 15 days of its receipt of the Offer and executing a lease or sublease (either directly or through an Approved Affiliate) for such site within an additional 15 days.



If Developer does not accept the Offer within said 15 days or lease or sublease such Site within an additional 15 days, if applicable, Franchisor or its affiliate may thereafter: (1) itself establish a Store within the Area at such Site and substantially in accordance with the terms of the Offer, or (2) grant (on substantially the same terms as contained in the Offer) a franchise to a third party for a Store at such Site. The Performance Schedule shall not be adjusted or otherwise affected as a result thereof.

If the Site has not been leased by Franchisor or by another franchisee within 180 days after the expiration of the period during which Developer may accept the Offer, then Developer shall again have the right of first refusal provided herein with respect to such Site.

3.5 Development Efforts of Developer. Developer further agrees that it will at all times faithfully, honestly and diligently perform its obligations hereunder and that it will continuously exert its best efforts to promote and enhance the development of Stores within the Area pursuant to this Agreement.

#### **4. STORE DEVELOPMENT REQUIREMENTS.**

4.1 Schedule of Secured Sites. Developer agrees to have secured the number of sites for Stores within the Area (“Secured Sites”), either by fully-executed leases (by the landlord and by Developer, either directly or through an Approved Affiliate) or by closing on real estate for each Development Period as shown on Exhibit 3. Franchisor and Developer acknowledge that the Secured Site benchmark set forth in this section is established solely for purposes of determining the application of the fee incentives discussed in section 5 below. Failure to meet the Secured Site benchmark in any Development Period shall not be, by itself, a default of this Agreement.

4.2 Schedule of Stores Open or Under Construction. Subject to the terms and conditions of this Agreement, Developer agrees to have open or under construction (as defined hereafter) at least the cumulative number of Stores for which Franchise Agreements have been executed in accordance with the Performance Schedule set forth in Exhibit 3.

A Store shall be deemed to be “under construction” and counted as an open Store for purposes of the Performance Schedule only once the following have occurred:

- A. Franchisor has approved the Site;
- B. a Franchise Agreement has been executed by the Developer and Franchisor;
- C. a building permit for construction of the Store has been issued and delivered by the appropriate governmental agencies; and
- D. at least \$10,000.00 has been expended for labor and materials in connection with the build-out of the Store.

A Store not completed and operating within 12 weeks from the date such Store is deemed to be under construction will not thereafter be deemed under construction and will not count toward the requirements set forth in the Performance Schedule.

Notwithstanding (and in addition to) the opening requirements set forth in the Performance Schedule, Developer must open a minimum of one new Store during each calendar year, even if Developer has satisfied the opening requirements for a particular Development Period set forth in the Performance Schedule. If such additional Store(s) exceed the total number of Stores shown on the Performance Schedule as the “Total Development Quota” under this Agreement, Developer shall not be required to pay Franchisor an additional Development Fee for each such additional Store.

4.3 Developer’s Failure to Meet Store Development Quotas. Developer acknowledges that its timely development of Stores in the Area in accordance with the Performance Schedule is of material importance to the Franchisor and agrees, as a condition of the continuation of its development rights hereunder, to develop, open and operate Stores within the Area in accordance with the Performance Schedule and to insure that such Stores operate in accordance with the terms of the Franchise Agreements. If, during any Development Period, Developer fails to meet any applicable Development Quota as provided in the Performance Schedule as set forth in Exhibit 3 attached hereto, Franchisor shall have the right to terminate this Agreement or, at its option, reduce the scope of the Area and/or reduce Developer’s Store Development Quota for any Development Period; provided, however, that unless specifically acknowledged and agreed, any such reduction in the development obligations for a particular Development Period shall not constitute a waiver of Developer’s Store development obligations for any subsequent Development Period(s).

4.4 Franchisor Approval of Sites. Developer agrees to submit for evaluation by Franchisor pursuant to Franchisor’s site selection criteria, a completed Site Acceptance Request Form and the required attachments for each proposed site for a Store. Franchisor will review the Site Acceptance Request Form, conduct such other investigation of the proposed site as it determines is necessary to properly evaluate the site, and either accept or reject the site by written notice to the Franchisor on the Site Acceptance Form. Once the Site has been approved, Franchisor will prepare and deliver to Developer a form of Franchise Agreement covering the Site. Developer or an Approved Affiliate must execute and return the signed Franchise Agreement, along with any fees due thereunder, within 15 days of its receipt of the agreement, or Franchisor will be entitled to revoke its approval of the Site. Developer acknowledges and agrees that a determination by Franchisor to approve or disapprove a proposed site may, without limitation, be based on such factors as location of the proposed Store within a shopping mall, customer traffic patterns, demographics, geographics, store size, surrounding area, and requirements of any lease agreement including, without limitation, whether Franchisor has a right, but not an obligation, under such lease to assume the lease. Approval or disapproval of a proposed site by Franchisor is at the sole discretion of Franchisor and is solely for Franchisor’s own internal benefit; approval of a proposed location is not a guarantee that the Store will achieve any certain level of success, and Developer agrees not to rely on Franchisor’s approval for any such purpose. Developer acknowledges and agrees that Franchisor’s approval of the Site and

any information imparted to Developer regarding the Site do not constitute a representation or warranty of any kind, express or implied, as to the suitability of the premises for a Store or for any other purpose.

## **5. DEVELOPMENT FEES**

Upon execution of this Agreement, Developer shall pay Franchisor a development fee equal to \$5,000.00 multiplied by the Total Development Quota shown on Exhibit 3, or a total of \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_) (the "Development Fee"). The Development Fee shall be fully earned by Franchisor when paid and shall be non-refundable.

Developer will be entitled to certain fee incentives under qualifying Franchise Agreements. A Fee Incentive Amendment, in the form attached as Exhibit 5, shall be attached to each Franchise Agreement (a) which pertains to a Store for which the fully executed lease exceeds the number shown for such Development Period in the "Executed Lease" column of Exhibit 3 or (b) which pertains to a Store which opens and which opening exceeds the number shown in the "Open Stores" column of Exhibit 3.

## **6. CONFIDENTIAL INFORMATION**

6.1. Disclosure. Franchisor possesses confidential information consisting of methods of operation, product specifications, purchase and sales statistics, and other methods, techniques, formats, specifications, procedures, information, system, knowledge of and experience in operating and franchising Barnie's Stores (the "Confidential Information"). Franchisor will disclose some or all of the Confidential Information in the operating, marketing and other manuals and materials (collectively, "Manuals"), the initial training program, and in providing guidance and assistance pursuant to this Agreement. During the term of this Agreement and following the expiration or termination of this Agreement, Developer agrees not to communicate, directly or indirectly, or to divulge to any third party or use for its benefit or the benefit of any other person or legal entity, any Confidential Information, except as permitted by Franchisor in this Agreement or otherwise in writing. In the event of any expiration or termination of this Agreement, Developer agrees that it will never use the Confidential Information in any manner whatsoever, including, without limitation, in the design, development or operation of any retail establishment substantially similar to the Store or substantially similar to any cart or kiosk operated pursuant to a Franchise Agreement. Notwithstanding the foregoing, the obligations in this section shall not apply to information: (a) which at the time of disclosure is readily available to the trade or public; (b) which after disclosure becomes readily available to the trade or public, other than through breach of this Agreement; (c) which is subsequently lawfully and in good faith obtained by Developer from an independent third party without breach of this Agreement; (d) which was in possession of such party prior to the date of disclosure; or (e) which is disclosed to others in accordance with the terms of a prior written authorization between the parties to this Agreement. The protections granted hereunder shall be in addition to and not in lieu of all other protections for such Confidential Information as may otherwise be afforded in law or in equity.

6.2. Interest and Use. Developer shall acquire no interest in the Confidential Information other than the right to use it in developing Stores pursuant to this Agreement. Developer acknowledges that it would be an unfair method of competition to use or duplicate any Confidential Information other than in connection with development Stores. No part of the Barbie's System nor any document or exhibit forming any part thereof may be distributed, utilized or reproduced in any form or by any means, electronic or mechanical, including photocopying or recording, or by any information storage and retrieval system, without prior permission in writing from the Company. Unauthorized distribution, utilization or production, in any form, may be subject to criminal and/or civil penalties of law.

6.3. Non-Use. Developer expressly agrees that it will:

(1) not use the Confidential Information for any purpose other than the development of Stores pursuant to this Agreement;

(2) maintain absolute confidentiality of the Confidential Information during and after the term of this Agreement;

(3) not make unauthorized copies of any portion of the Confidential Information disclosed in written form; and

(4) adopt and implement all reasonable procedures prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information, including, without limitation, restrictions on disclosure to employees of Developer and the use of nondisclosure and non-competition clauses in employment agreements with employees who have access to the Confidential Information.

## 7. **LIMITED LICENSE TO USE MARKS**

7.1. Grant of License. Franchisor grants Developer a limited license to use the Marks solely in connection with the conduct of Developer's business pursuant to this Agreement.

7.2. Ownership of the Marks. Developer expressly acknowledges that Franchisor is the owner of all right, title and interest in and to the Marks and the goodwill associated with and symbolized by them. Developer's use of the Marks pursuant to this Agreement does not give Developer any ownership interest in the Marks, and all such use shall inure to the benefit of Franchisor.

7.3. Protection of the Marks. Franchisor shall have the sole right to take actions that it deems appropriate, in its sole judgment and discretion, to preserve and protect the ownership and validity of the Marks, to seek registration of the Marks, and to enforce the Marks against third parties, but nothing in this Agreement shall be construed to require Franchisor, under any circumstances, to take any action to protect or maintain its rights in the Marks, or to prevent any

encroachments, infringement, misuse or unauthorized use of the Marks except as Franchisor may, in its sole discretion and judgment, deem desirable.

7.4. Developer's Use of the Marks. With respect to Developer's use of the Marks pursuant to this Agreement, Developer agrees that:

A. Authorized Use. Except as otherwise provided herein, Developer shall use only the Marks designated by Franchisor, shall not use any confusingly similar marks, slogans, logos or the like, and shall not use any Marks, symbols, logos, trade names or any other indicia of origin not designed by Franchisor, and shall cease using any Marks that Franchisor may hereafter disapprove. Developer shall use the Marks only in the manner authorized and permitted by Franchisor;

B. Infringement. Developer does not own and shall not establish title to the Marks or to similar or related logos, names, marks, and slogans. Developer's right to use the Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of Franchisor's rights;

C. No Authority to Contract. Developer shall not use the Marks to incur any obligation or indebtedness on behalf of either Developer or Franchisor;

D. Use in Name. Developer shall not use the Marks, or any word, name or other symbol tending to be confusingly similar to the Marks, as part of its corporate or other legal name or in the name of any bank account of Developer;

E. Cooperation with Franchisor. Developer shall comply with Franchisor's instructions in filing and maintaining the requisite trade name or fictitious name registrations, and shall execute any documents deemed necessary by Franchisor or its counsel to obtain protection for the Marks or to maintain their continued validity and enforceability;

F. Non-Assignability. Developer shall not in any manner authorize or purport to authorize another to use any of the Marks. The right and license granted herein are not assignable and shall not be subject to a sublicense, in whole or in part;

G. Use by Others. Developer shall promptly report to Franchisor any unauthorized use of any of the Marks by any person(s) or entity(ies) that comes to Developer's attention in any manner whatsoever, and the Franchisor shall have the sole right to determine whether any action will be taken in response to any possible infringement or illegal use of a Proprietary Mark and to control any action taken. Developer agrees to fully cooperate with the Franchisor in any such litigation or other action;

H. Litigation. In the event that litigation involving the Marks is instituted or threatened or any claim relating to the Marks is asserted against Developer, Developer shall promptly notify Franchisor. In the event Franchisor, in its sole judgment and discretion, undertakes the negotiation, settlement, defense or prosecution of any claim or litigation relating to the Marks, Developer agrees to execute any and all documents, and to render such assistance (exclusive of

monetary assistance) as may, in the opinion of Franchisor's counsel, be reasonably requested to carry out such defense or prosecution; and

I. No Right to Goodwill. The Marks serve to identify the Barnie's System and those who are licensed to operate within the Barnie's System. Any and all goodwill arising from Developer's use of the Marks in its operation under the Barnie's System shall inure solely and exclusively to Franchisor's benefit, and upon expiration or termination of this Agreement and the license herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with Developer's use of the Barnie's System or the Marks.

## **8. TRANSFER, ASSIGNMENT AND ENCUMBRANCE**

8.1. Voluntary Transfers and Encumbrances, Generally. The rights granted to Developer hereunder are personal to Developer and have been granted by Franchisor based on Developer's and, if applicable, its Owners', unique skills and capabilities (including, without limitation, financial condition, development and operational experience, existing infrastructure, ability to create an appropriate infrastructure and the involvement of its Owners). Franchisor would not have entered into this Agreement if not for those unique skills and capabilities; consequently, neither this Agreement, any interest in this Agreement, the day-to-day management responsibilities of Developer pursuant to a management agreement or otherwise, nor any part or all of the ownership of the Developer may be voluntarily, involuntarily, directly or indirectly assigned, encumbered, subdivided, sub franchised or otherwise transferred (collectively, a "Transfer") by the Developer or its Owners (including, without limitation, in the event of the death of the Developer or an Owner, by will, declaration of, or transfer in trust or the laws of intestate succession) without the prior written approval of Franchisor, which may be granted or withheld in Franchisor's sole discretion. Any such Transfer without such approval shall constitute a breach of this Agreement and shall convey no rights to or interest in this Agreement or any part or all of the ownership interests in Developer.

8.2. Approval of Transfer. Franchisor may, but shall not be required to, consider requests for approval of a Transfer of the Agreement or any interest in the Agreement. Franchisor will consider requests for approval of a Transfer of the ownership interests in Developer under the following conditions: (a) the Transfer does not, alone or in the aggregate with other prior Transfers, result in a change of control of Developer, (b) Developer and all Approved Affiliates are in full compliance with and not in default of this Agreement and all Franchise Agreements, (c) all monies owed to Franchisor by Developer and all Approved Affiliates under this Agreement and under each Franchise Agreement are paid current, (d) the transferring Owner executes a general release, in form satisfactory to Franchisor, of any and all claims against Franchisor and its officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances, (f) the purchasing Owner executes Franchisor's then-current form of personal guaranty, (g) the purchasing Owner satisfies the prohibitions regarding Competitive Businesses set forth in this Agreement, (h) the financial condition of the purchasing Owner is at least equal to that of the transferring Owner, (i) if the transferring Owner was the person responsible for the day-to-day operations of Developer, the purchasing Owner attends and successfully completes all training required of new Developers, and (j)

the transferring Owner pays Franchisor a transfer fee in the amount of \$5,000. One or more of the foregoing conditions may also apply to Franchisor's consideration of a request for approval of any other type of Transfer if Franchisor, in its sole discretion, elects to consider such requests.

8.3. Transfer upon Death or Permanent Disability. Upon the death or permanent disability of the Developer or if the Developer is a corporation or partnership, upon the death or permanent disability of the Owner of the controlling interest in the Developer, the executor, administrator, conservator or other personal representative of such person shall Transfer his interest to the heirs or beneficiaries of such person or to a third party approved by Franchisor within a period of 12 months. Such Transfers, including, without limitation, Transfers by device or inheritance or trust provisions, shall be subject to the same conditions for Transfers contained in this Agreement, except that Franchisor shall not require the payment of any transfer fee in connection with a Transfer pursuant to this Section. Failure to so dispose of such interest within said period of time shall constitute a breach of this Agreement. The Developer or Owner shall be deemed to have a "permanent disability" if the usual, active participation in the business of Developer as contemplated pursuant to this Agreement is for any reason curtailed for a continuous period of six (6) months.

8.4. Company's Right of First Refusal. In the event an Owner wishes to engage in a Transfer (other than pursuant to paragraph C above), Developer or such Owner shall obtain a bona fide, executed written offer to purchase from a responsible fully disclosed purchaser and shall submit an exact copy of such offer to Franchisor. The offer shall apply only to the Owner's interest in Developer and not include any other property of such Owner. Franchisor shall have a 30-day right of first refusal to purchase such rights, interest or assets on the same terms and conditions as are contained in the written offer; provided, however, the following additional terms and conditions shall apply: (a) the right of first refusal will be effective for each proposed Transfer and any material change in the terms or conditions of the proposed Transfer shall be deemed a separate offer on which Franchisor shall have a new 30-day right of first refusal; (b) if the consideration or manner of payment offered by a proposed transferee is such that Franchisor may not reasonably be required or able to furnish the same, then Franchisor may purchase the interest which is proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the cash consideration, an independent appraiser shall be designated by Franchisor, whose determination will be binding upon the parties; all expenses of the appraiser shall be paid for equally by Franchisor and the transferring Owner. In any event, the price shall exclude any broker's commissions, or other commissions, fees or charges paid, or to be paid, as a result of said sale. If Franchisor chooses not to exercise its right of first refusal, the transferring Owner shall be free to complete the Transfer subject to compliance with the provisions of paragraph 8.2 above.

8.5. Transfer by Franchisor. This Agreement is fully transferable by Franchisor and will inure to the benefit of any transferee or other legal successor to the interest of Franchisor.

## **9. FRANCHISOR-DEVELOPER RELATIONSHIP**

9.1. Independent Contractor Status. It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them, that Developer is and shall be

an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. During the term of this Agreement and any extension hereof, Developer shall hold itself out to the public as an independent contractor operating the business pursuant to a license and franchise from Franchisor. Developer agrees to take such affirmative action as may be necessary to comply with the foregoing, including, without limitation, exhibiting a notice of that fact in a conspicuous place on all business cards, stationary, written materials, conversations and otherwise, the content of which Franchisor reserves the right to specify.

9.2. No Liability for Developer's Debts and Obligations. Franchisor shall not be liable for any debt or obligation of Developer, except to the extent that Franchisor by an agreement separate from this Agreement agrees to be liable for any such debt or obligation.

9.3. Indemnification of Franchisor. Developer shall indemnify and hold Franchisor harmless from and against any and all claims, actions, proceedings, damages and liabilities arising out of the conduct of Developer's business, any act or omission of Developer, or any action taken or liability incurred pursuant to any claim against Franchisor as an alleged partner, joint venturer, principal or employer of Developer. This indemnification shall include payment of costs and reasonable attorney's fees incurred by Franchisor in the defense of any such action or claim.

9.4. Indemnification of Developer. Franchisor agrees to indemnify Developer against and to reimburse Developer for all damages for which it is held liable in any proceeding arising out of its use of any Proprietary Mark pursuant to and in compliance with this Agreement and based on a claim of trademark infringement or unfair competition and for all costs reasonably incurred by Developer in the defense of any such claim brought against it or in any such proceeding in which it is named as a party, provided that Developer has notified Franchisor of any such claim or proceeding and cooperates in the defense of the same as required by Section 7.4.H. of this Agreement.

## **10. TERMINATION**

10.1. By Developer. If the Developer is in substantial compliance with its obligations under this Agreement and the Franchisor materially breaches this Agreement, the Developer will have the right to terminate the Agreement if the Franchisor does not cure such breach within 30 days after the Franchisor receives a written notice of default from the Developer, unless the breach cannot reasonably be cured within 30 days, in which case the Developer may terminate the Agreement if the Franchisor does not within 30 days after receipt of the notice of default undertake and continue efforts to cure such breach until completion. To terminate the Agreement, the Developer must give the Franchisor a separate written notice of termination, which will be effective ten (10) days after delivery of such notice to the Franchisor.

10.2. By Franchisor. Franchisor may terminate this Agreement effective upon delivery of notice of termination to Developer if any one of the following events occur:



A. Developer or a Principal Owner becomes insolvent by reason of its inability to pay its obligations as they become due or makes an assignment for the benefit of creditors;

B. Developer or a Principal Owner files a voluntary petition in bankruptcy or any pleading seeking any reorganization, liquidation, dissolution or composition or other settlement with creditors under any law which is not dismissed within 30 days of filing, or admitting or failing to contest the material allegations of any such pleading filed against it or is adjudicated a bankrupt or insolvent or a receiver or other custodian is appointed for a substantial part of the assets of Developer or a final judgment remains unsatisfied or of record for 90 days or longer (unless a supersede as bond is filed), or if execution is levied against any substantial part of the assets of or ownership interest in Developer, or the claims of creditors of Developer are abated or subject to a moratorium under any law;

C. Developer or an Owner makes an unauthorized Transfer;

D. Developer is declared by Franchisor to be in default of any Franchise Agreement between Franchisor and Developer or any other agreement between the parties;

E. Developer fails to meet its store opening obligations under the Performance Schedule;

F. If Developer or an Owner makes, or has made, any material misrepresentation to Franchisor in an application or otherwise upon which Franchisor has relied in granting the rights contained in this Agreement, any site approval hereunder or the approval of any Franchise Agreement or fails to obtain prior approval or consent as expressly required under this Agreement;

G. Developer, an Owner or any agent of either makes an unauthorized use of the Marks or an unauthorized use or disclosure of Confidential Information;

H. Franchisor has issued three (3) notices of default of this Agreement in any 12-month period whether or not the breach is cured or capable of being cured;

I. Franchisor has terminated a Franchise Agreement due to a breach thereof by Developer or an Approved Affiliate;

J. Developer fails or refuses to comply with any other provision of this Agreement and does not correct such failure or refusal within 30 days after written notice thereof (which shall describe the corrective action the Developer must take), provided that if a failure to comply cannot reasonably be corrected within 30 days, to initiate within such 30 day period, and thereafter continue, such action as will correct such failure within a reasonable time (not to exceed 60 days); or

K. Developer or a Principal Owner is convicted of a felony or a criminal act that in the reasonable opinion of the Franchisor is likely to adversely affect the reputation and goodwill of the Barbie's System.

## 11. EFFECT OF TERMINATION AND EXPIRATION

11.1. Continuing Obligations. All obligations of Franchisor and Developer which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement and until they are satisfied in full or by their nature expire.

11.2. Return of Manuals. Developer agrees that upon termination or expiration of this Agreement, it will immediately return to Franchisor all copies of Manuals and other Confidential Information which have been loaned to it or provided by Franchisor under this Agreement, although this provision is not intended to require to the return of any Manuals provided under a Franchise Agreement.

11.3. Discontinuance of Use of Marks/Cancellation of Fictitious Name Registration. Developer agrees that upon termination or expiration of this Agreement, except as otherwise permitted in applicable Franchise Agreements, it will:

- A. strictly observe the provisions of Article 6 of this Agreement;
- B. take such action as may be required to cancel all fictitious or assumed name or equivalent registrations relating to its use of any Mark; and
- C. cease immediately any attempts to select or develop Sites on which to construct Stores or do anything which would indicate any relationship between itself and Franchisor except as permitted in an applicable Franchise Agreement.

11.4. Compliance with Post-Term Non-Competes. Developer agrees that upon termination or expiration of this Agreement, it, its Owners and the Bound Parties will strictly observe the provisions of Article 13 of this Agreement regarding non-competition.

11.5. Franchise Rights for Area. Developer acknowledges and agrees that upon expiration or termination of this Agreement, the exclusivity granted in Section 3.2 of this Agreement shall immediately and without notice terminate.

11.6. State and Federal Law. THE PARTIES ACKNOWLEDGE THAT, IN THE EVENT THAT THE TERMS OF THIS AGREEMENT REGARDING TERMINATION OR EXPIRATION ARE INCONSISTENT WITH APPLICABLE STATE OR FEDERAL LAW, SUCH LAW SHALL GOVERN DEVELOPER'S RIGHTS REGARDING TERMINATION OR EXPIRATION OF THIS AGREEMENT.

## **12. APPROVALS AND WAIVERS**

Whenever this Agreement requires the prior approval or consent of Franchisor, Developer shall make a timely written request to Franchisor therefor, and such approval or consent shall be obtained in writing. Unless Franchisor is permitted under this Agreement to use its sole discretion in granting or denying any such approvals, Franchisor shall act reasonably in granting or denying such approvals.

Franchisor makes no warranties or guarantees upon which Developer may rely, and assumes no liability or obligation to Developer, by providing any waiver, approval, consent, or suggestion to Developer in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

No failure of Franchisor to exercise any power reserved to it by this Agreement or to insist upon strict compliance by Developer with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms herein. Waiver by Franchisor of any particular default by Developer shall not affect or impair Franchisor's rights with respect to any subsequent default of the same, similar, or different nature; nor shall any delay, forbearance, or omission of Franchisor to exercise any power or right arising out of any breach or default by Developer of any of the terms, provisions, or covenants hereof, affect or impair Franchisor's right to exercise the same; nor shall such constitute a waiver by Franchisor of any right hereunder; or the right to declare any subsequent breach or default and to terminate this franchise prior to the expiration of its term. Subsequent acceptance by Franchisor of any payments due it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Developer of any terms, covenants, or conditions of this Agreement.

Franchisor shall not, by virtue of any approvals, advice, assistance or services provided to Developer, assume responsibility or liability to Developer or to any third parties to which Franchisor would not otherwise be subject.

## **13. RESTRICTIVE COVENANTS**

13.1. Bound Party Defined. The term "Bound Party" as used in this Article 13 shall include, collectively and individually, and shall apply to, jointly and severally: (a) any individual(s) with primary responsibility for the operations and activities of Developer pursuant to this Agreement; (b) if Developer is a corporation, the corporation and all officers, directors, and the holders of a controlling interest in such corporation or in any corporation directly or indirectly controlling Developer; and (c) if Developer is a partnership, the partnership and all general and limited partners (including any corporation that controls, directly or indirectly, any general or limited partner, and the officers, directors, and holders of a controlling interest in such corporation), as well as the spouse of each of the persons identified in clauses (a), (b) and (c) above. A "controlling interest," for purposes of this

Article 13, shall mean a 20% or greater interest, or such lesser percentage interest sufficient to give the owner thereof the power to control the management and direction of a corporation, partnership or other legal entity.

13.2. Acknowledgement of Reasonableness and Legitimate Business Interest. Developer acknowledges that over the term of this Agreement, Developer and the Bound Parties will receive Confidential Information which Franchisor and its other developers and franchisees (on behalf of Franchisor) have developed over time at great expense, including but not limited to, methods of site selection; marketing methods; product analysis and selection; and service methods and skills relating to the development and operation of the Bernie's System. Developer further acknowledges that this information, which includes but is not necessarily limited to that contained in the Manuals, is not generally known in the industry and is beyond Developer's and the Bound Parties' own present skills and experience, and that it would be expensive, time consuming and difficult for Developer or the Bound Parties to develop it. Developer further acknowledges that the Confidential Information provides a competitive advantage and would be valuable to Developer in the operation of its business, and that gaining access to it is, therefore, a primary reason why Developer is entering into this Agreement. Developer further acknowledges and agrees that substantial goodwill will be developed and associated with its operations, including the use of the Marks, the selection and negotiation of sites and development of Stores. Developer agrees that the covenants set forth in this Article 13 are reasonable and necessary to protect the legitimate business interests of the Franchisor's other developers and franchisees and of the Franchisor in the Marks and Bernie's System including, without limitation, the legitimate business interests described in this Section 13.2.

13.3. Competing Business During Term of Agreement. During the term of this Agreement and any renewal thereof, except as otherwise approved in writing by Franchisor, Developers and the Bound Parties shall not, either directly or indirectly, for himself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation:

A. divert or attempt to divert any business or customer of any store in the Bernie's System to any competitor, by direct or indirect inducement or otherwise, or to do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Franchisor's Marks or the Bernie's System; or

B. own, maintain, or engage in, whether as owner, operator, employee, partner, shareholder, consultant, broker, agent, or otherwise, either directly or indirectly, individually, or through, on behalf of, as a member of, or in conjunction with any person, persons, partnership, corporation or other legal entity, operate, advise on the development or operation of, be employed in a managerial or sales capacity by, or have any interest as an owner of any Competitive Business, other than as a developer or franchisee of Franchisor, anywhere in the world; or

C. employ or solicit for employment any employee of Franchisor or any other of Franchisor's developers or franchisees, or induce any such employee to leave his or her employ, without the prior written consent of such person's employer

(activities referred to in clauses (a), (b) and (c) above are referred to herein as being "Engaged in a Competitive Business").

13.4. Competing Business After Expiration or Termination of Agreement. Developer covenants that, except as otherwise approved in writing by Franchisor, for a period of two (2) years after the expiration or termination of this Agreement, regardless of the cause of termination, neither Developer nor any Bound Party will, either directly or indirectly, individually, or through, on behalf of, as a member of, or in conjunction with any person, persons, partnership, corporation, or other legal entity, be Engaged in a Competitive Business (other than as a franchisee pursuant to a Franchise Agreement or other development agreement with Franchisor), (1) located or operating within the Area, or (2) located or operating outside the Area but within the same Area of Dominant Influence ("ADI") or ADIs included within the Area, or (3) located within a 5-mile radius of any Store or any other store operating within the Barbie's System.

13.5. Franchisor's Modifications of Certain Covenants. Developer understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Article 13, or any portion thereof, without Developer's consent, effective immediately upon written notice thereof, and Developer agrees that it shall comply forthwith with any covenant as so modified.

13.6. Judicial Modification of Certain Covenants. In the event any court of competent jurisdiction determines that the geographical limits, time period or line of business defined by this Article 13 regarding competition are unreasonable, Developer and Franchisor agree that such a court of competent jurisdiction may determine, in its discretion, an appropriate limitation to accomplish the intent and purpose of this Article, and the parties, and each of them, agree to be bound by such a determination by such a court.

13.7. Covenants and Agreements to be Signed by Other Employees. Franchisor shall have the right to require Developer's Owners, officers and persons with operating, managerial or supervisory responsibilities, all personnel receiving special training from Franchisor, and the spouses of each, to execute covenants similar to those set forth in this Article 13, in a form as set forth in the Manual.

13.8. Limited Exclusion. The restrictions contained in this Article 13 shall not apply to ownership of less than five percent (5%) of the shares of a company whose shares are listed and traded on a national securities exchange if such shares are owned for investment only, and are not owned by an officer, director, employee or consultant of such publicly-traded company.

## 14. NOTICES

All notices, requests, demands, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when sent by registered or certified United States mail, postage prepaid, or other form of delivery which provides for a receipt, addressed as follows (or such other address as provided in a notice given by a party):

Notices to Franchisor:           BARNIE’S FRANCHISE SERVICE, LLC  
  Attention: Vice President - Development  
  2126 W. Landstreet Road, Suite 300  
  Orlando, Florida 32809

Notices to DEVELOPER: \_\_\_\_\_  
  \_\_\_\_\_  
  \_\_\_\_\_

Mailed notices shall be deemed delivered at the earlier of actual delivery or seven (7) business days from the time of mailing, if mailed as provided in this Article 14, regardless if delivery shall be refused by addressee.

**15. WAIVER**

No waiver of any default shall be implied from any omission by a party to take any action with respect to any such default as the default persists or is repeated. No express waiver shall affect any action other than the action specified in the expressed waiver, and then only for the time and to the extent stated in the expressed waiver. Any such waiver of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same provision or any other provision.

**16. GOVERNING LAW/CONSENT TO JURISDICTION/DISPUTE RESOLUTION**

16.1. Governing Law; Consent to Venue and Jurisdiction. Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 USC §§ 1051 et seq.) or other federal law, this Agreement shall be interpreted under the laws of the State of Florida, and any dispute arising between the parties, whether arising under this Agreement or from any other aspect of the parties’ relationship, shall be governed by and determined in accordance with the substantive laws of the State of Florida, which laws shall prevail in the event of any conflict of law. Franchisor and Developer have negotiated regarding a forum in which to resolve any disputes arising between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving Developer or any Bound Party and Franchisor, the parties agree that the exclusive venue for such disputes shall be in the federal or state courts located in the location of the principal office of Franchisor in the State of Florida. Each party hereby irrevocably submits to the jurisdiction of such courts and waives any objection it might have to the personal jurisdiction of or venue in such courts.

16.2. Waiver of Jury Trial. FRANCHISOR, DEVELOPER AND THE BOUND PARTIES EACH WAIVE THEIR RIGHT TO A TRIAL BY JURY. Franchisor, Developer and the Bound Parties acknowledge that the parties' waiver of jury trial rights provides the parties with the mutual benefit of uniform interpretation of this Agreement and resolution of any disputes arising out of this Agreement or any aspect of the parties' relationship. Developer, the Bound Parties and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit.

16.3. Remedies. Except as set forth in paragraph 16.4 below, the court will have the right to award any relief which it deems proper in the circumstances, including, without limitation, -money damages (with interest on unpaid amounts from the date due), lost profits, specific performance, injunctive relief and attorneys' fees and costs.

16.4. Limitation of Claims. Developer and the Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Any claims between the parties must be commenced within one year from the occurrence of the facts giving rise to such claim, or such claim shall be barred. The parties understand that such time limit may be shorter than otherwise allowed by law. Developer agrees that its sole recourse for claims arising between the parties shall be against Franchisor or its successors and assigns. Developer agrees that Franchisor, the shareholders, directors, officers, and employees and agents of Franchisor and their Affiliates shall not be personally liable nor named as a party in any action between Franchisor and Developer. Franchisor and Developer agree that any proceeding will be conducted on an individual, not a class-wide, basis, and that a proceeding between Franchisor and Developer or the Bound Parties may not be consolidated with any other proceeding between Franchisor and any other person or entity. No party will be entitled to an award of punitive or exemplary damages. No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement. FRANCHISOR AND DEVELOPER (AND ITS OWNERS AND GUARANTORS, IF APPLICABLE), HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER.

## **17. SEVERABILITY**

If any provision of this Agreement is invalid or unenforceable because of any law or rule of law, all other provisions of this Agreement shall remain in full force and effect and no provision shall be deemed dependant upon any other provision.

## **18. ATTORNEY'S FEES AND COSTS**

Should it become necessary for either party to file an action to enforce any provision or covenant of this Agreement, or for the breach of any provision or covenant herein, the prevailing party shall be entitled to an award of reasonable attorney's fees for the services of such party's attorney and the costs of any such action.

## **19. INJUNCTION**

Developer recognizes the unique value and secondary meaning attached to the Barbie's System, the Marks and Developer agrees that any non-compliance with the terms of this Agreement or any unauthorized or improper use of the Barbie's System or the Marks will cause irreparable damage to Franchisor and its other developers and franchisees. Developer therefore agrees, that if it should engage in any such unauthorized or improper conduct or acts during or after the period of this franchise, Franchisor shall be entitled to both permanent and temporary injunctive relief from any court of competent jurisdiction, in addition to any other remedies prescribed by law.

## **20. MISCELLANEOUS**

20.1. Heirs, Successors, and Assigns. This Agreement shall be binding and inure to the benefit of the parties, their heirs, successors, and assigns.

20.2. Entire Agreement. DEVELOPER ACKNOWLEDGES HAVING READ THIS AGREEMENT IN FULL; HAVING BEEN SUPPLIED WITH AN OFFERING CIRCULAR IN ACCORDANCE WITH FEDERAL AND STATE LAW; BEING COGNIZANT OF EACH AND EVERY ONE OF THE TERMS AND PROVISIONS AND BEING AGREEABLE TO THEM; THAT NO REPRESENTATIONS OR AGREEMENTS, WHETHER ORAL OR WRITTEN, EXCEPT AS SET FORTH IN THIS AGREEMENT, HAVE BEEN MADE OR RELIED UPON; THAT ANY AND ALL PRIOR AGREEMENTS OR UNDERSTANDINGS BETWEEN THE PARTIES, WHETHER ORAL OR WRITTEN, ARE AUTOMATICALLY CANCELED BY THE EXECUTION OF THIS AGREEMENT; AND DEVELOPER HEREBY RELEASES FRANCHISOR, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS, DEMANDS, AGREEMENTS AND LIABILITIES OF EVERY DESCRIPTION WHATSOEVER, WHICH DEVELOPER EVER HAD, NOW HAS OR HEREAFTER MAY HAVE, AGAINST ANY OF THE FOREGOING BY REASON OF ANY MATTER, CAUSE OR THING OCCURRING PRIOR TO THE DATE OF THIS AGREEMENT; THAT THE SIGNATURES AFFIXED HERETO WERE AFFIXED AS THE WHOLLY VOLUNTARY ACT OF THE PERSONS WHO SIGNED THIS AGREEMENT; AND THAT THE TERMS AND PROVISIONS OF THIS FRANCHISE AGREEMENT CANNOT BE CHANGED OR MODIFIED UNLESS IN WRITING SIGNED BY AN AUTHORIZED CORPORATE OFFICER OF FRANCHISOR; THAT DEVELOPER REALIZES THAT THERE CAN BE NO GUARANTY OF SUCCESS, SINCE DEVELOPER'S BUSINESS ABILITY, APTITUDE, AND INDUSTRIOUS DISPOSITION ARE PRIMARY IN DEVELOPER'S SUCCESS.

20.3. Validity of Parts. Any invalidity of any portion of this Agreement shall not affect the validity of the remaining portion, and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in effect.

20.4. Headings. The headings used herein are for purposes of convenience only and shall not be used in interpreting the provisions hereof. As used herein, the male gender shall include the



female and neuter genders; the neuter gender shall include the male and female genders; the singular shall include the plural; the plural shall include the singular; and termination shall include expiration.

20.5. Execution by Franchisor. This Agreement shall not be binding on Franchisor unless and until it shall have been accepted and signed by an authorized officer of Franchisor.

20.6. Third Parties. The parties intend to confer no benefit or right on any person or entity not a party to this Agreement, and no third party shall have the right to claim the benefit of any provision hereof as a third-party beneficiary of any such provision.

20.7. No Projections or Representations. Developer acknowledges and represents that no projections or representations regarding the amount of income, sales, or profits Developer can expect to earn or receive from the licenses granted hereby has been received from Franchisor. Developer acknowledges that no representations or warranties inconsistent with the Franchise Offering Circular or this Agreement were made to induce Developer to execute this Agreement. Developer acknowledges that neither Franchisor nor any other person can guarantee the success of the business of Developer.

Developer, by signing this Agreement, acknowledges having read same and that it has been requested to state in writing hereafter any terms, claims, covenants, promises, or representations, including representations as to any income, sales, or profit projections, that were made to Developer by Franchisor or its representatives, including the persons making same, the location, and date thereof. If no such representations, were made, the undersigned is to write the word: "None" \_\_\_\_\_. Initials \_\_\_\_\_. (A blank shall be the same as if "None" is written.)

## 21. ACKNOWLEDGMENTS

Developer hereby acknowledges, represents and warrants the following:

- A. DEVELOPER HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE BUSINESS CONTEMPLATED BY THIS AGREEMENT AND UNDERSTANDS AND ACKNOWLEDGES THAT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS MAKING THE SUCCESS OF THE VENTURE LARGELY DEPENDENT UPON THE BUSINESS ABILITIES AND PARTICIPATION OF DEVELOPER AND ITS EFFORTS AS AN INDEPENDENT BUSINESS OPERATOR.**
  
- B. DEVELOPER HAS NO KNOWLEDGE OF ANY REPRESENTATIONS BY FRANCHISOR OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS OR SERVANTS, ABOUT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT THAT ARE CONTRARY TO THE TERMS OF THIS AGREEMENT OR THE DOCUMENTS INCORPORATED HEREIN. DEVELOPER REPRESENTS, AS AN**

**INDUCEMENT TO FRANCHISOR'S ENTRY INTO THIS AGREEMENT, THAT DEVELOPER HAS MADE NO MISREPRESENTATIONS IN OBTAINING THIS AGREEMENT.**

- C. DEVELOPER ACKNOWLEDGES THAT FRANCHISOR OR ITS AGENT HAS PROVIDED DEVELOPER WITH A FRANCHISE OFFERING CIRCULAR NOT LATER THAN THE EARLIER OF THE FIRST PERSONAL MEETING HELD TO DISCUSS THE SALE OF THE FRANCHISE, TEN (10) BUSINESS DAYS BEFORE THE EXECUTION OF THIS AGREEMENT, AND TEN (10) BUSINESS DAYS BEFORE ANY PAYMENT OF ANY CONSIDERATION. DEVELOPER FURTHER ACKNOWLEDGES THAT DEVELOPER HAS READ SUCH FRANCHISE OFFERING CIRCULAR AND UNDERSTANDS ITS CONTENTS.**
- D. DEVELOPER ACKNOWLEDGES THAT FRANCHISOR HAS PROVIDED DEVELOPER WITH A COPY OF THIS AGREEMENT AND ALL RELATED DOCUMENTS, FULLY COMPLETED, AT LEAST FIVE (5) BUSINESS DAYS PRIOR TO DEVELOPER'S EXECUTION.**
- E. DEVELOPER ACKNOWLEDGES HAVING HAD AMPLE OPPORTUNITY TO CONSULT WITH ITS OWN ATTORNEYS, ACCOUNTANTS AND OTHER ADVISORS AND THAT THE ATTORNEYS FOR FRANCHISOR HAVE NOT ADVISED NOR REPRESENTED DEVELOPER WITH RESPECT TO THIS AGREEMENT OR THE RELATIONSHIP THEREBY CREATED.**
- F. DEVELOPER, TOGETHER WITH ITS ADVISORS, HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO MAKE AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE FRANCHISE.**
- G. DEVELOPER IS AWARE OF THE FACT THAT OTHER PRESENT OR FUTURE DEVELOPERS OF FRANCHISOR MAY OPERATE UNDER DIFFERENT FORMS OF AGREEMENT(S), AND CONSEQUENTLY THAT FRANCHISOR'S OBLIGATIONS AND RIGHTS WITH RESPECT TO ITS VARIOUS DEVELOPERS MAY DIFFER MATERIALLY IN CERTAIN CIRCUMSTANCES.**
- H. DEVELOPER ACKNOWLEDGES THAT THE PRESIDENT OF THE UNITED STATES OF AMERICA HAS ISSUED EXECUTIVE ORDER 13224 (THE "EXECUTIVE ORDER") PROHIBITING TRANSACTIONS WITH TERRORISTS AND TERRORIST ORGANIZATIONS AND THAT THE UNITED STATES GOVERNMENT HAS ADOPTED, AND IN THE FUTURE MAY ADOPT, OTHER ANTI-TERRORISM MEASURES (THE "ANTI-TERRORISM MEASURES"). THE FRANCHISOR THEREFORE REQUIRES CERTAIN CERTIFICATIONS THAT THE PARTIES WITH WHOM IT DEALS ARE NOT DIRECTLY OR INDIRECTLY INVOLVED IN TERRORISM. DEVELOPER HEREBY CERTIFIES THAT NEITHER IT NOR ANY OF**

**ITS OWNERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES, NOR ANY OTHER PERSON OR ENTITY ASSOCIATED WITH DEVELOPER, IS:**

- (1) A PERSON OR ENTITY LISTED IN THE ANNEX TO THE EXECUTIVE ORDER;**
- (2) A PERSON OR ENTITY OTHERWISE DETERMINED BY THE EXECUTIVE ORDER TO HAVE COMMITTED ACTS OF TERRORISM OR TO POSE A SIGNIFICANT RISK OF COMMITTING ACTS OF TERRORISM;**
- (3) A PERSON OR ENTITY WHO ASSISTS, SPONSORS, OR SUPPORTS TERRORISTS OR ACTS OF TERRORISM; OR**
- (4) OWNED OR CONTROLLED BY TERRORISTS OR SPONSORS OF TERRORISM.**

**DEVELOPER FURTHER COVENANTS THAT NEITHER IT NOR ANY OF ITS OWNERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES, NOR ANY OTHER PERSON OR ENTITY ASSOCIATED WITH DEVELOPER, WILL DURING THE TERM OF THIS AGREEMENT BECOME A PERSON OR ENTITY DESCRIBED ABOVE OR OTHERWISE BECOME A TARGET OF ANY ANTI-TERRORISM MEASURE.**

**I. THE COMPANY DOES NOT GUARANTEE THE SUCCESS OF THE BUSINESS OR THE VIABILITY OF THE SITE AND DOES NOT MAKE, APPROVE OR CONDONE ANY STATEMENTS OR REPRESENTATIONS IN THAT REGARD. IF A REPRESENTATIVE OF THE COMPANY SAYS OR HAS SAID ANYTHING WHICH FRANCHISEE BELIEVES SUGGESTS THAT A PARTICULAR SITE WILL BE PROFITABLE, FRANCHISEE WILL CONSTRUE SUCH STATEMENT TO BE NOTHING MORE THAN AN OPINION OF THE SPEAKER AND NOT OF THE COMPANY. FRANCHISEE AGREES THAT IT MAY NOT, HAS NOT, WILL NOT RELY ON ANY SUCH OPINION.**

**IN WITNESS WHEREOF,** the parties hereto have executed, sealed and delivered this Agreement on the day and year first above written.

**BARNIE'S FRANCHISE SERVICE, LLC**

**DEVELOPER:**

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

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

## **INDIVIDUAL ACKNOWLEDGEMENT AND GUARANTY OF DEVELOPER'S UNDERTAKINGS**

In consideration of, and as an inducement to, the execution of the Area Development Agreement (the "Area Development Agreement") dated \_\_\_\_\_, 20\_\_\_\_, by Barnie's Franchise Service, LLC ("Company") and \_\_\_\_\_ ("Developer") each of the undersigned, by his/her signature below, guarantees unto Company payment of all sums due by Developer pursuant to the Area Development Agreement, and further guarantees performance by Developer of all obligations, duties, conditions, undertakings, restrictions, and agreements (collectively, the "Conditions") contained in the Area Development Agreement; and each of the undersigned, individually and personally, covenants and agrees that if default shall at any time be made by Developer in the payment of any such sums due by Developer pursuant to the Area Development Agreement, or in the performance and fulfillment of any of the Conditions contained in the Area Development Agreement, the undersigned will forthwith pay such sums as may be due, and will forthwith faithfully perform and fulfill all of such Conditions, and will forthwith pay to the Company all damages and all expenses that may arise in consequence of any default by Developer including all attorney's fees incurred by Company caused by such default and/or the enforcement of this guarantee.

The undersigned each agree to personally comply with and abide by (i) the restrictive covenants and nondisclosure provisions in the Area Development Agreement relating to Confidentiality and Competition and (ii) the restrictive covenants and all other provisions in the Area Development Agreement relating to Transfer, Assignment and Encumbrance to the same extent as, and for the same period of time as, Developer is required to comply with and abide by such covenants and provisions, except to the extent otherwise required by the Area Development Agreement. These obligations of the undersigned shall survive any expiration or termination of the Area Development Agreement or this Guaranty.

This is an absolute and unconditional guarantee of payment and performance, and shall be enforceable against the undersigned, jointly, severally and personally, without the necessity for any suit or proceedings on the part of the Company against the Developer. This guarantee shall be a continuing guarantee, and the liability and obligation of the undersigned shall be absolute and remain in full force and effect, and shall not be released, discharged or in any way affected by (a) any amendment, modification or supplement to the Area Development Agreement; (b) exercise or non-exercise of any right, power or remedy pursuant to the Area Development Agreement, or any waiver, consent, extension, renewal or modification to the terms of the Area Development Agreement; (c) any bankruptcy, insolvency, reorganization, liquidation or similar proceedings of the Developer; (d) limitations on the liability or obligations of the Developer under the Area Development Agreement resulting from the operation of any present or future provision of the Federal Bankruptcy Act, or other statute, or from the decision of any court; or (e) any transfer by Developer, or assignment of Developer's interests, without a written release of the Company releasing the undersigned from obligation hereunder.

IN WITNESS WHEREOF, each of the undersigned places his/her hand and seal hereunder this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Guarantor No. 1:**

Sign:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

**Spouse of Guarantor No. 1:**

Sign:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

**Guarantor No. 2:**

Sign:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

**Spouse of Guarantor No. 2:**

Sign:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

**Guarantor No. 3:**

Sign:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

**Spouse of Guarantor No. 3:**

Sign:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

**EXHIBIT 1**

**TO THE AREA DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
BARNIE'S FRANCHISE SERVICE, LLC  
AND**

---

**DATED:** \_\_\_\_\_

The Area referred to in Section 1 of the captioned agreement shall be:

Initials:

Franchisor \_\_\_\_\_

Developer \_\_\_\_\_

**EXHIBIT 2**

**TO THE AREA DEVELOPMENT AGREEMENT  
BY AND BETWEEN BARNIE'S FRANCHISE SERVICE, LLC  
AND**

\_\_\_\_\_  
**DATED:** \_\_\_\_\_

Attached hereto is the current form of Franchise Agreement used by Franchisor in offering and granting franchises for Stores pursuant to the Area Development Agreement.

Initials:

Franchisor \_\_\_\_\_

Developer \_\_\_\_\_

**EXHIBIT 3**

**TO THE AREA DEVELOPMENT AGREEMENT  
BY AND BETWEEN BARNIE'S FRANCHISE SERVICE, LLC  
AND**

\_\_\_\_\_  
**DATED:** \_\_\_\_\_

Developer agrees to have open and in operation at the end of each Development Period described below the cumulative total of Stores shown below as the Development Quota for that Development Period:

<i>Period</i>	<i>Date Period Begins</i>	<i>Date Period Ends</i>	<i>Cumulative No. Leases to be Fully Executed ("Secured Sites")</i>	<i>New Stores to be Open During Period ("Period Development Quota")</i>	<i>Total Stores Open at End of Period ("Total Development Quota")</i>
1					
2					
3					
4					
5					

Initials:

Franchisor \_\_\_\_\_

Developer \_\_\_\_\_



**EXHIBIT 4**  
**TO THE AREA DEVELOPMENT AGREEMENT**  
**BY AND BETWEEN BARNIE'S FRANCHISE SERVICE, LLC**  
**AND**

\_\_\_\_\_

**DATED:** \_\_\_\_\_

**Owners and Designated Principal Owners**

Following are all Owners of Developer:

Name: _____ Address: _____ _____ Type of Interest: _____ Number Units Owned: _____ Number Entitled to Vote: _____ % of Total Units of Developer: _____ Title (if officer or director): _____	Name: _____ Address: _____ _____ Type of Interest: _____ Number Units Owned: _____ Number Entitled to Vote: _____ % of Total Units of Developer: _____ Title (if officer or director): _____
Name: _____ Address: _____ _____ Type of Interest: _____ Number Units Owned: _____ Number Entitled to Vote: _____ % of Total Units of Developer: _____ Title (if officer or director): _____	Name: _____ Address: _____ _____ Type of Interest: _____ Number Units Owned: _____ Number Entitled to Vote: _____ % of Total Units of Developer: _____ Title (if officer or director): _____

The following additional individuals are designated as Principal Owners notwithstanding that they do not own the requisite percentage of Developer:

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

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

Initials:

Franchisor \_\_\_\_\_

Developer \_\_\_\_\_

**EXHIBIT 5**

**TO THE AREA DEVELOPMENT AGREEMENT  
BY AND BETWEEN BARNIE’S FRANCHISE SERVICE, LLC,  
AND**

\_\_\_\_\_  
**DATED:** \_\_\_\_\_

Following is the Fee Incentive Amendment to be attached to each qualifying Franchise Agreement, as set forth in Section 5 of the Area Development Agreement.

**AMENDMENT NO. 1 TO FRANCHISE AGREEMENT  
(Fee Incentive)**

**THIS AMENDMENT NO. 1 TO FRANCHISE AGREEMENT** (the “Amendment”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **Barnie’s Franchise Service, LLC** (“Company”) and \_\_\_\_\_ (“Franchisee”).

**RECITALS**

A. Company and Franchisee (or its Affiliate) are parties to an Area Development Agreement, dated \_\_\_\_\_, pursuant to which Franchisee was granted the right, and accepted the obligation, to develop **Barnie’s Coffee & Tea Company** stores in an exclusive territory pursuant to a specified schedule (the “Development Agreement”).

B. Pursuant to the Development Agreement, Company and Franchisee have executed that certain Franchise Agreement dated even date herewith (the “Franchise Agreement”), pursuant to which Franchisee has been granted the Franchise to own and operate a **Barnie’s Coffee & Tea Company** store located or to be located at \_\_\_\_\_ (the “Store”).

C. By virtue of having met certain of the requirements of the Development Agreement more quickly than required, Franchisee is entitled to, and Company has agreed to grant, certain Royalty terms with respect to the Franchise Agreement, as set forth in this Amendment.

**AGREEMENT**

**For and in consideration** of the foregoing Recitals, the mutual covenants expressed herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Company and Franchisee agree that the Franchise Agreement is hereby amended as follows:

Section 5.2(b) of the Franchise Agreement is hereby supplemented and amended by adding an additional provision as follows:

“Notwithstanding the foregoing, the royalty rate shall be reduced to 5% until such time as the difference between (a) what would have been paid at the standard 7% royalty rate and (b) what is paid under the reduced rate equals a maximum reduction amount of [\$2,000] [\$3,000]. Once this maximum reduction amount has been reached, the royalty rate shall immediately and without notice revert to the standard 7%.”

2. The Franchise Agreement shall be amended only as set forth above. All other provisions of the Franchise Agreement shall remain as provided in the original agreement. Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Franchise Agreement.

Executed as of the date shown on the first page hereof.

BARNIE’S FRANCHISE SERVICE, LLC

FRANCHISEE:

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

\_\_\_\_\_

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

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