

EXHIBIT B

FRANCHISE AGREEMENT

FRANCHISE AGREEMENT

between

BARNIE'S FRANCHISE SERVICE, LLC

and

Store Number: _____

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INDIVIDUAL ACKNOWLEDGMENT AND GUARANTY OF FRANCHISEE'S
UNDERTAKING

EXHIBIT A (Identification of the Store Premises)

EXHIBIT B (Authorization Agreement for Pre-Authorized Payments)

STORE FRANCHISE AGREEMENT

THIS UNIT FRANCHISE AGREEMENT (this “Agreement”) is made as of this ____ day of _____, 20__ by and between **BARNIE’S FRANCHISE SERVICE LLC**, a Florida limited liability company (hereinafter referred to as “we” or “us”), and _____, of _____, (hereinafter referred to as “you”).

RECITALS

A. Through the development and operation of our businesses, we have accumulated extensive knowledge of, and experience in the business of selling coffee, coffee beans, tea, beverages, food and related accessories and items and have developed a unique system relating to the establishment, development and operation of specialty stores (the “Barnie’s System”) identified by certain trademarks and service marks (the “Marks”).

B. We have developed a franchise program for the Barnie’s System and grant franchises (the “Franchise”) to certain qualified individuals to develop, own and operate Barnie’s Coffee & Tea shops (the “Store”) in accordance with the requirements of the Barnie’s System and at specific locations that we approve, which is or will be defined in Exhibit A to this Agreement (the “Location”).

C. You have requested that we grant you a Franchise to own and operate a Store at the Location identified or to be identified in this Agreement. We have agreed to grant you the Franchise in reliance on the information you have provided to us in your request and in reliance on your agreement to operate the Store in accordance with this Agreement.

AGREEMENT

FOR AND IN CONSIDERATION of the Recitals and the agreements and promises set forth below and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, you and we agree as follows:

1. FRANCHISE

1.1. Grant of Franchise. We grant you, and you accept, the Franchise to operate a Store at the Location in accordance with and as part of the Barnie’s System. If the Location has not been determined as of the execution of this Agreement, you and we will, once the Location has been approved, complete a new Exhibit A identifying the specific Location and replace the current Exhibit A with the new exhibit. You acknowledge and agree that the Franchise, and the rights associated with the Franchise, are limited to the operation of the Store at the Location and that you are not granted any territorial protection or exclusivity around the Store.

1.2. Reservation of Rights. Your Franchise includes only the specific rights granted in this Agreement. We reserve for ourselves and our affiliates, all other rights and activities, even if the exercise of those rights competes with your Store, including, without limitation: (a) the right to operate or license others to operate Stores at places other than the Location (subject

to any partial exclusivity granted to you under, and in accordance with, any effective area development agreement between you and us), provided you are in full compliance with such agreement, (b) the right to distribute and authorize others to distribute any products and other items under the Marks or other trademarks at wholesale to other retailers anywhere in the world, and (c) the right to market and distribute any products and other items, and to authorize others to market and distribute any products, at retail, through any channels of distribution (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 your Store.

1.3. Term. Your rights under this Agreement will extend for a period of time corresponding with the term of the original lease or sublease of the Location, not to exceed 10 years, unless you or we terminate earlier as provided in this Agreement.

1.4. Right to Renew. You will have the right renew the Franchise for one (1) additional term equal to the lesser of (a) the renewal term of the lease or sublease of the Location or (b) 10 years, if you:

(a) renew or extend, and continue to have the right to occupy the Location under, the lease or sublease for the Store Premises;

(b) are not, at the time for renewal, then in default under this Agreement or under the lease or sublease for the Location or under any other agreement with us, and have not been issued written notices of default more than four (4) times during the initial term of the Agreement;

(c) agree to upgrade and remodel the Store to conform to the image and operating standards for Stores in effect at the time of renewal;

(d) pay us, upon execution of the agreement described in clause (e) below, a renewal fee equal to one-half of the initial franchise fee which we are then charging to new franchisees entering the Bernie's System for the first time (if we are is not then offering franchises for Stores, the renewal fee shall be one-half of the initial franchise fee under the last franchise program under which we offered franchises for Stores);

(e) execute our then-current form of franchise agreement which you acknowledge may include terms, conditions, standards and restrictions materially different than those contained in this Agreement, including, without limitation, provisions with respect to different royalty rates and other fees); provided, however, that you will not be required to pay a new initial franchise fee; and

(f) execute (and if you are a legal entity, each of your owners executes) a general release, in a form prescribed by us, of all claims, to the fullest extent permitted by law, which you and your owners may have against us and each of our affiliates, officers, directors, shareholders, employees and agents.

You must exercise your right to renew by giving us written notice of your intent to renew not more than one (1) year nor less than 180 days prior to the expiration of the primary term. If we determine that you are not entitled to renew because of your failure to satisfy one or more of the above conditions, we will give you notice of that determination at least 90 days prior to the expiration of the term.

2. STORE PREMISES -- LEASE AND SUBLEASE

2.1. Store Premises Must be Approved. You may only open and operate the Store at the approved Location identified in Exhibit A. You acknowledge and agree that our approval of the Location is for our own internal purposes and that you are not relying on that approval or on any information we have given to you as part of that approval process as any form of representation or warranty of any kind, express or implied, as to the suitability of the premises for a Store or for any other purpose.

2.2. Lease with Third Party Landlord. If you have signed a lease agreement for the Location directly with a third party landlord, you agree to comply with all the terms and conditions of the lease. You further agree that any breach of the terms and conditions of the lease will be a breach of this Agreement. The lease must, via provisions which are acceptable to us, provide that (a) notice must be given by the landlord to us, at the same time given to you, of any defaults, (b) we, at our option, may cure any defaults within the available cure periods, (c) we, at our option, may assume the lease upon your default, and (d) the landlord will not accept an assignment of the lease or sublease to a third party without our consent.

2.3. Location of Store Premises. The address and Location of the Store must not be changed without our prior written consent, which we may grant or withhold in our sole judgment.

2.4. Lease Execution and Opening. Within 90 days after execution of this Agreement, you must, subject to our prior approval, sign a lease or sublease for the Store and expeditiously proceed thereafter to open the Store. Opening must occur as provided in this Agreement and no later than 180 days from the date of this Agreement. Time is of the essence.

3. CONSTRUCTION AND REMODELING

3.1. Construction and Remodeling by You. You must enter into an agreement with an architect and independent contractor of your choosing (but, in each case, subject to our approval) for the construction or remodeling of the Store at the Location.

You will be responsible for construction of the Store, including all remodeling and improvement of the Store, all in accordance with our requirements regarding construction, image and appearance. You are not authorized to begin any construction, including any remodeling and improvements to the interior or exterior of the Store, until you have submitted your building plans and we have issued our written approval for you to begin construction. All requests for approval to begin construction must be accompanied by all relevant proposed construction schedules, plans, blueprints, draft work orders, specifications, photographs and similar information relating to the proposed construction and may be approved in our sole judgment.

Our approval of any agreement, plan or contractor is for our own internal purposes and will not create any liability on our part for anything contained in such agreement or plan, nor will it create any liability on our part for any act, including default, of any such approved contractor.

3.2. Store Development. You agree, at your sole expense, to do or cause to be done the following items with respect to developing the Store at the Location:

- (a) secure all funding required to develop and operate the Store;
- (b) obtain all required building, utility, sign, health, sanitation, business, and other permits and licenses required for construction and operation of the Store;
- (c) cause all required improvements to be made to the Store and to decorate the Store in compliance with the plans and specifications we approve;
- (d) purchase and install all required fixtures, furniture, furnishings, equipment, and signs required for the Store; and
- (e) purchase an opening inventory of products, materials, and supplies as set forth in our Operation Manuals.

3.3. Adherence to Plans and Specifications. You agree to adhere in all respects to the plans and specifications for construction, remodeling and improvement of the Store that we have approved.

3.4. Inspection During Construction or Remodeling. We may inspect the Store during construction or remodeling, and you agree to cooperate fully with us during such inspections.

3.5. Equipment, Supplies, and Furnishings.

(a) You must purchase all equipment, supplies, and other products and materials used in the development and operation of the Store solely from suppliers that (i) demonstrate, to our continuing reasonable satisfaction, the ability to meet our reasonable standards and specifications for such items; (ii) possess adequate quality control and capacity to supply your needs promptly and reliably; and (iii) have been approved in writing by us and not thereafter disapproved. If you desire to purchase any items from an unapproved supplier, you must submit to us a written request for such approval, or shall request the supplier itself to do so. A part of the approval process, we will have the right to inspect the supplier's facilities and to require that samples from the supplier be delivered, at our option, either to us or to an independent laboratory designated by us for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by you or the supplier. Approval or disapproval of the new supplier will be in our sole judgment. We reserve the right, at our option, to re-inspect the facilities and products of any such approved supplier and to revoke our approval upon the supplier's failure to continue to meet any of the criteria we have set forth for suppliers of the particular item. To the extent that we or our affiliates act as your purchasing agent, then title to the machinery, equipment and materials so ordered shall vest in you upon payment in full of the stated purchase price. In addition, we and/or our affiliates may supply certain proprietary food

products and dry goods to you. We may make a profit in connection with the sale of such items and/or as a fee for shipping and handling such items. We and our affiliates may also be approved suppliers (and, in some cases, the only approved suppliers) of certain equipment, supplies and furnishings.

(b) You agree to develop the Store strictly to conform to the appearance, uniform standards, specifications and layout of Stores specified by us from time to time. We will provide you with a typical architectural layout plan for a Store. We will have the right to inspect all equipment, fixtures, furnishings, furniture, signs, and other personal property and their installation to assure your compliance with our standards, specifications and layout.

(c) In the event you install any equipment, fixtures, furniture, interior and exterior signs or any other personal property, which are not in conformity with our requirements, we will give you written notice of nonconformity. If you fail to cure the nonconformity within 30 days after the date of the notice, we may, in addition to any other remedies under this Agreement, require that you close the Store until the nonconformity ceases and/or we will have the right to operate the Store at your expense until the nonconformity is corrected. If you fail to do so, then we will have the right to seek an injunction from a court of competent jurisdiction against your continued operation of the Store.

(d) You further agree to place or display at the Store (interior and exterior) only such signs, emblems, lettering and logos and to display only such materials that are from time to time approved in writing by us.

4. SUPPLY OF PRODUCTS; POINT-OF-SALE SYSTEM; PRODUCT QUALITY STANDARDS

With respect to products to be sold from and used at the Store, you and we agree that:

4.1. Branded Products; Certain Non-Branded Items. All products, merchandise, and other items sold by you bearing or identified by the Marks, including without limitation all coffee and tea products, syrups, flavorings, and certain other components and ingredients (collectively, the “Branded Products”) must be ordered directly from us or an affiliate of ours unless we authorize a direct ship, direct bill relationship with an approved supplier or distributor. We or our affiliates may also offer certain non-branded items from time to time for your purchase, at your option. All other products sold at the Store and all ingredients for and components of such products may only be purchased from us or from another approved supplier. You may not, under any circumstances, order the manufacture or production of any products bearing the Marks or are otherwise branded with the Marks.

4.2. Approved Products. All Branded Products and other items offered for sale at the Store must be approved in writing in advance by us by listing them in either our Product Order Book, or in another approved product listing issued from time to time by us. With respect to unwrapped products or products otherwise not in a self-contained identified package, in addition to our prior written approval to sell such products at the Store, you must also obtain our prior written approval of the signage that you propose to use in connection with the sale or use of such

products. All requests for approval must include fresh samples, a copy of applicable vendor licenses, appropriate health certificates and proof of liability insurance by the vendor.

4.3. Product Order Book. All products approved for sale the Store will be included in our Product Order Book, which will be updated with additions, deletions and other modifications when and as we deem appropriate.

4.4. Point-of-Sale Systems. You must purchase or lease for use in the operation of the Store an electronic cash register or computer system ("POS System") that has been approved by us, or that otherwise meets our current POS System requirements. At a minimum, your POS System must accurately record every sale or other transaction, allow you to submit required reports in the format designated by us, and allow us to access sales, sales mix and revenue information via a full time dedicated modem line. You hereby grant us the right to access the POS System and authorize us to obtain sales, sales mix and revenue information directly by a full time dedicated modem line. You and your designated manager must be trained on your POS System at your expense, although we may provide training for certain pre-approved POS systems as part of the initial management training program described in Section 9.1 of this Agreement. You must obtain and maintain a separately dedicated voice line, modem line and fax line. We reserve the right to provide and maintain such or any of such dedicated lines in our name and to provide same for your use, and you will indemnify and hold us harmless from the cost of installing such lines and the cost to maintain same. In the case of a fax line, you must purchase or otherwise obtain for use on such line a full time fax machine or fax software to allow us to communicate with you by fax at all times. You acknowledge that we will use information from required reports primarily to make business and marketing decisions. You will be obligated to upgrade or update the POS System and the software, at your sole cost, to meet our then-current standards and specifications.

5. STORE OPERATIONS

5.1. Store Opening. You agree not to open the Store for business until we determine that all of your pre-opening obligations under this Agreement have been fulfilled, including, but not limited to: (a) pre-opening training of Store personnel has been completed; (b) all amounts then due to us under this Agreement or otherwise have been paid in full; (c) we have been furnished with copies of the lease or sublease for the Store; and (d) we have been provided with a certificate of insurance, showing us as an additional name insured, for all insurance policies required under this Agreement. You agree to comply with these conditions and to be prepared to open the Store for business not later than 180 days after the date of this Agreement (unless we approve otherwise in writing). You further agree to open the Store for business and commence operations within five (5) days after we give you notice stating that the Store is ready for opening.

5.2. Compliance with Policies, Regulations, Standards and Procedures. You must operate the Store in complete and strict accordance with the policies, regulations, standards and procedures set forth by us in our Operations Manuals (as they now exist and as they may be modified from time to time, referred to as the "Manuals"). You agree to at all times faithfully, honestly and diligently perform your obligations under this Agreement, to use best efforts to

promote the Store, and to refrain from engaging in any other business that conflicts with or impedes your operation of the Store.

5.3. Prohibition on Wholesale, Mail Order and Internet Transactions. You are not allowed, at any time, to engage in the distribution of Branded Products via wholesale, mail order or the internet, whether from the Store or from any other locations whatsoever. You are only allowed to sell products to retail customers from the Store. You agree not to develop, create, generate, own, license, lease or otherwise utilize any computer media and/or electronic media (including but not limited to the internet, world wide web, bulletin boards and news groups) which may be used, or in any manner uses, displays or utilizes our Marks or other commercial symbols or which offers to sell or sells any of the products and/or services which are or may at a later date be offered for sale in a Store. If you desire to utilize any computerized or electronic media in conjunction with the operation of the Store, you must obtain our prior written approval. We may withhold that approval in our sole judgment. If we grant our approval, either we or our designated affiliates will be the owners of and/or control the approved computerized or electronic media.

5.4. Use of Name and Marks. You agree not to cause any products of any nature to bear the name “Barnie’s” or “Barnie’s Coffee & Tea Company” or any other Marks unless such product is either supplied or approved in advance by us. This restriction applies to all products, whether in the Store or not, which are not supplied or approved in advance by us. We may withhold such approval in our sole judgment.

5.5. Maintenance of Books and Records; Right to Inspect. You must make available to us or our authorized agents, at all reasonable times, all of your books and records pertaining to the Store and its development and operation. These records must include full, complete and accurate books and records prepared in accordance with generally accepted accounting principles consistently applied, in which shall be recorded all transactions conducted by the Store. Books and records of accounts shall also include all Federal, state and local tax returns pertaining to the Store (or if possible without limiting the completeness thereof, all portions of such returns pertaining to the Store) and all schedules pertaining to the Store, signature pages to such returns, and all pertinent original sales records including daily dated cash register tapes, detail tapes of all transactions (not the final ring-out tapes only), and all such tapes from temporary registers. All such books and records shall be kept at the Store or at your principal office. Further, you must maintain all books, records, and other required information separate and apart from the books, records, or other information of any other entity, person, or business, and the records so maintained shall be for the business of the Store only. No Store funds, revenues or business expenses shall be co-mingled with that of any other person or entity. Failure to maintain such records shall be deemed a default under this Agreement. You agree to maintain these records for at least seven (7) years from the dates of preparation

5.6. Approved Equipment, Signage, Etc. You agree to use only such interior and exterior equipment, signs, decor, and other materials as are approved by, furnished by, or made available from us.

5.7. Condition of Store Premises. You agree to maintain at all times a clean Store and to abide by all local, county, state and federal health codes and all health, safety and other

licenses or permits as might apply to the Store. You agree to maintain the Store in good condition, including, but not limited to, upon our demand, replacement of flooring, repainting and remodeling of interior and/or exterior, repairing of fixtures and equipment, replacement or (where appropriate) professional cleaning of canopies and any preventative or corrective maintenance.

5.8. Attend Management Training Programs. Your full-time Store manager, as well as the sole proprietor (if you are a sole proprietorship), at least one general partner (if you are a partnership) or the chairman of the board or president (if you are a corporation or limited liability company) must attend and complete, to our satisfaction, our initial management training program, as well as any supplemental or recertification management training programs, as we, in our sole discretion, may require. All persons attending the initial management training program, must, prior to attending such program, sign and deliver to us all covenants and agreements required by us pursuant to Section 16.7 below. All such management training programs will be held at our headquarters in Orlando, Florida, unless we specify otherwise. You will be responsible for all of the expenses associated with your attendance at any such management training program.

5.9. Maintenance of Email Account and Telephone Number. You must provide for and maintain an email account sufficient for communications between you and us. In addition, you must provide for and maintain a telephone number used solely to transact the Store's business and must list the Store and the appropriate telephone number(s) in telephone and other directories, including the alphabetical (white pages) section and the yellow pages section, as we direct from time to time. You must, on our request, sign a transfer of telephone number agreement in our favor.

5.10. Uniform Operations. You acknowledge the importance of consistency of quality, product and operation among all Stores in the Bernie's System and, therefore, agree to operate the Store in conformity with all standards, techniques and procedures as we may from time to time prescribe in the Manuals or otherwise in writing, and to refrain from deviating therefrom without our prior written consent. Without limiting the foregoing, you agree:

(a) to maintain at all times minimum stock levels of inventory and supplies, as we may from time to time prescribe in the Manuals or otherwise in writing;

(b) to offer to customers all products which we may, from time to time, prescribe; to offer to customers, and to use in connection with the operation of the Store, only those products which meet our standards of quality and which we have expressly approved in writing to be offered in connection with the operation of the Store; and to discontinue offering or using any products which we may, in our discretion, disapprove in writing at any time; and

(c) to comply with all mandatory specifications, standards and operating procedures regarding the Store, including but not limited to: (1) type, quality, taste, weight, dimensions, ingredients, uniformity, manner of preparation and sale of all food products and beverages sold by the Store and all other products used in the packaging and sale thereof; (2) sales and marketing procedures and customer service; (3) advertising and promotional programs; (4) layout, decor and color scheme of the Store; (5) appearance and dress of employees; (6)

safety, maintenance, appearance, cleanliness, sanitation, standards of service and operation of the Store; (7) submission of requests for approval of brands of products, supplies and suppliers; (8) use and illumination of signs, posters, displays, standard formats and similar items; (9) your identification as the independent owner of the Store; and (10) specified types of computer hardware and software. Mandatory specifications, standards and operating procedures that we prescribe from time to time in the Manuals, or otherwise communicated to you in writing, constitute provisions of this Agreement as if fully set forth herein. All references in this Agreement to "this Agreement" are deemed to include all such mandatory specifications, standards and operating procedures.

5.11. Hours of Operation. You agree to exercise your best efforts to promote the Store, and to keep the premises and the business open and in normal operation for such minimum days per week and hours per day as we prescribe in the Manuals from time to time. You agree that you will not discontinue operations of the Store during the term of this Agreement except for Thanksgiving Day and Christmas Day, without our prior written consent, which consent must be obtained at least 10 days prior to the date of closing.

5.12. Temporary Operation By Company. In the event you or at least one of the persons described in Section 5.9 above is not trained or is unable to operate the Store in accordance with this Agreement, we have the right, but not the obligation, to enter the Store and to operate and manage the Store until you are qualified to resume control over the Store and operate it in accordance with this Agreement. If we operate the Store, we will account to you for all net income from the operation less (a) our reasonable expenses incurred in operating the Store on your behalf (including, without limitation, the compensation and living expenses of a Store manager appointed by us) and (b) a management fee equal to \$200 per day to be paid weekly during the management period.

5.13. Compliance with Laws. You agree to comply with all other requirements set forth in this Agreement as well as all governmental rules, regulations and laws.

5.14. Inspection Rights. You agree to permit us and our agents the right to enter the Store, at any reasonable time, for the purpose of conducting inspections and impromptu training. You agree to cooperate fully with our representatives in such inspections by providing access to the Store and employees and by rendering such assistance as they may reasonably request; and, upon notice from us or our agents, and without limiting our other rights under this Agreement, you must take such steps as may be necessary immediately to correct any deficiencies detected during such inspections. In the event you fail or refuse to correct immediately any deficiencies detected during such inspections, we shall have the right to make or cause to be made such changes at your expense, which expense you agree to pay upon demand. These rights and remedies are in addition to any other rights and remedies we may have.

5.15. Limitations of Activities. Franchisee shall not conduct any special sale at a fair, athletic contest or special event through mobile Stores or temporary locations or sell any of the Company's products at any location, temporary or permanent, other than the Store without the prior written consent of Company. All such sales undertaken with Company's approval shall be included in the gross sales of the Store for purposes of calculating royalties and other fees and spending requirements under this Agreement.

5.16. Refurbishing. You agree to refurbish the Store at least once every five (5) years in accordance with the standards established by us in the Manuals. You agree that in connection with the refurbishing and equipping of the Store:

(a) the refurbishing and/or equipping of the Store will be conducted pursuant to plans and specifications approved in writing by us prior to the commencement of refurbishing and/or equipping;

(b) you will provide us, prior to the commencement of refurbishing and/or equipping and thereafter from time to time if there is any change in such items, with your plans for financing or paying for such refurbishing and/or equipping, and copies of all permits, licenses and other items required for the lawful refurbishing, equipping and operation of the Store.

5.17. Accounting and Financial Reports. You agree to submit to us the following reports:

On a **weekly** basis, sales and operating reports in the form we require. Telephonic reports of the prior week's sales are due by 9:00am (eastern) each Monday morning. In addition, written forms are to be submitted along with your payment of royalties and other recurring payments as required under this Agreement;

(a) On a **monthly** basis, a balance sheet and profit/loss statement in the form we require. These forms are to be submitted to us by no later than the 15th day of each month, and they must accurately reflect all Net Sales and all expenses of the Store during the preceding calendar month and year-to-date and contain such other data and information regarding the operation of the Store as we may require.

(b) On an **annual** basis, a complete audited financial statement for each fiscal year, including but not limited to both an income statement and balance sheet, by an independent public accountant prepared on an accrual basis in accordance with generally accepted accounting principles, together with such other information in such form as we may require. These statements are to be provided by no later than the 60th day following the close of your fiscal year.

You must also submit to us, upon our request, a copy of any and all federal and/or state sales and income tax returns applicable to the Store and any other current financial statements and such other forms, reports, records, information, and data as we may designate, in the form and at the times and places we require.

6. OUR OBLIGATIONS

6.1. In connection with, and to assist you in, the development and operation of the Store, we will:

(a) provide general guidance and assistance to you with respect to (i) establishing and setting up operations of the Store, (ii) standards and specifications for the build out, layout, floor plan, and signage of the Store, (iii) construction of interior improvements at the Store, (iv) interior display design, and (v) standards and specifications for the equipment, supplies and

materials used in, and the items offered for sale by the Store and lists of approved suppliers for such items. The guidance and assistance we provide may be in the form and substance as we determine from time to time and may include in-person meetings, telephone conversations, video conferencing, email and written materials;

(b) lend you one copy of the Manuals, including all modifications and supplements thereto, containing the policies, regulations, standards and procedures for the operation of the Store. The Manuals are and at all times will remain our property. You may not copy or otherwise reproduce the Manuals or any modifications or supplements thereto. We may from time to time revise the contents of the Manuals, and you expressly agree to comply with each new or changed standard; and

(c) provide the initial training session as described in Section 9 below.

6.2. We may also provide the following service, guidance and assistance:

(a) make available, through us or our approved suppliers or distributors, for purchase by you from time to time certain equipment and fixtures for the Store, as well as supplies and initial inventory.

(b) make available from time to time advertising and promotional materials as we develop them. These materials, if made available, will be made available to you at reasonable rates.

7. FEES AND EXPENSES

7.1. Definition. “Net Sales” is defined as the gross amount of all sales of any kind for all services or products from or through the Store, including any sale of services or products made for cash or credit, or partly for cash or credit, regardless of collection of charges for which credit is given, and regardless of whether such sale is conducted in compliance with or in violation of the terms of this Agreement, but exclusive of discounts, sales taxes or other similar taxes or credits. Net Sales also includes any proceeds from insurance policies covering loss or interruption of business as a result of an act, event or damage to the Store or other event or casualty which prevents you from conducting business for any period of time and (b) proceeds from any approved off-site locations and events.

7.2. Initial Franchise Fee and Royalty Fee. In consideration of the Franchise and license granted herein, you must pay to us the following fees:

(a) Initial Franchise Fee. You must pay to us a nonrefundable initial franchise fee in the amount of \$25,000. Fifty (50%) percent of the initial franchise fee is due and payable immediately upon signing this Agreement. The remaining 50% amount is due and payable within 90 days of your execution of this Agreement.

(b) Royalty Fee. You must pay to us a continuing royalty fee of seven percent (7%) of the Net Sales of the Store. This payment must be paid to and received by us no later than the Thursday following the week ending the previous Saturday or such other specific day of

the week which we may designate from time to time. A copy of any and all accounting forms designated by us showing weekly sales and any other required information must also be completed and forwarded to us with the payment of the royalty fee.

7.3. Automatic Debit. We have the option, at any time while this Agreement is in effect, to require that you establish an automatic withdrawal/direct deposit banking arrangement with your bank for the payment of royalties and all other amounts due to us under this Agreement. You agree to maintain an account at a bank or other financial institution which has the capacity to perform electronic debits to its account and, on our request, complete the form entitled Authorization Agreement for Pre-Authorized Payments (attached as Exhibit B) or any other form provided by us for the purpose of authorizing an electronic debit, and to submit any information required by us or your bank for such authorization. By signing this Agreement, you give us authorization to electronically debit your bank account for amounts due under this Agreement. You agree to maintain an account balance sufficient to make all royalty, advertising, and other payments owed to us by electronic transfer, and any insufficiency shall be considered a default in payment. Any charges incurred by us due to a shortage of funds in your account must be promptly reimbursed by you to us. Once this procedure is established, you will be required, on the day of each week immediately prior to the day on which payment is due, to report to us by telephone, electronic means or in written form, as we direct, your Net Sales for the pertinent period.

7.4. Interest on Past Due Amounts. Any payment which is not actually received by us on or before the date due shall be deemed overdue, unless, in our sole judgment and opinion, the delay was beyond your reasonable control. If any payment is overdue, you will be required to pay, in addition to the overdue amount, interest on such amount from the date it became due until paid, at the maximum interest rate articulated by applicable law for open account business credit; in the event there is no maximum rate articulated by applicable law, the rate will be 18% per annum from the day the payment became due. Entitlement to interest on overdue payments will be in addition to any other remedies we may have.

7.5. Assessment Related to Understatement of Revenues. We have the right to cause a complete audit, either directly or by our accountants or representatives, of all of your books of accounts and records, including all records described in set forth in Section 5.5 hereof, and including supporting data and other records from which Net Sales may be tested or determined. You agree to make all such records available for examination at the Store or at your main office at our request. We will have the right to copy and duplicate such information as we deem appropriate. If an audit discloses that your actual Net Sales exceed those reported, then you must pay to us the additional royalties on the undisclosed amount, and if the excess so disclosed is more than two percent (2%) of the Net Sales for the period in question, you must also pay the costs of the audit and examination. Additionally, if the audit is required due to your failure to maintain and/or provide records as required in Section 5.5, you must pay all costs of the audit and/or examination, regardless of the result of such audit or examination. Furnishing any fraudulent statement is a breach of this Agreement. Our acceptance of payments of royalties or reports of Net Sales shall be without prejudice and shall in no case constitute a waiver of our rights to claim any delinquent royalties, or to require an examination and audit of your books of accounts and records, including the statements of Net Sales, as provided for herein.

7.6. Taxes and Assessments. In the event any governmental, quasi-governmental, or administrative authority or agency, or any other authority, determines that the grant of the Franchise, or any part thereof, is subject to sales tax, or any other tax based upon said grant or sale (excluding taxes based upon our income or profit from such grant), you agree to be responsible for payment of all such taxes immediately as due, subject to our right, as provided for in applicable law, to appeal or otherwise challenge such assessment. In the event we challenge the assessment, you agree to cooperate fully with us. Each of us will pay our own respective expenses in connection with any such challenge.

7.7. Application of Payments. Notwithstanding any designation by you, we will have sole discretion to apply any payments to any of your past due indebtedness for royalty fees, advertising contributions, purchases from us or its affiliates, interest or any other indebtedness.

7.8. Grant of Security Interest. For valuable consideration, as security for the payment of all amounts from time to time owing by you to us for whatever reason and performance of all the obligations to be performed by you under this Agreement, you hereby grant us a security interest in all of your assets, including equipment, furniture, fixtures and signs of the Store (and all additions to, replacements and substitutions thereof), whether now owned or hereafter acquired, and all proceeds of the Store (the "Collateral"). You warrant and represent that the security interest granted herein is and shall be prior to all other security interests in the Collateral. You agree not to remove or otherwise sell (except in the ordinary course of business), transfer, convey or encumber the Collateral or any portion thereof without our prior written consent. Upon the occurrence of any event entitling us to terminate this Agreement or any other agreement between us, we will have all the rights and remedies of a secured party under the Uniform Commercial Code of the state in which the Store is located, including, without limitation, the right to take possession of the Collateral. You agree to execute and deliver to us financing statements or such other documents as we reasonably deem necessary to perfect our interest in the Collateral within 10 days of your receipt of such documents from us.

8. ADVERTISING AND PROMOTION

8.1. Local Advertising. You agree to conduct such advertising of the Store as is required under your lease or sublease and otherwise as you, in your reasonable discretion, deems necessary or appropriate to achieve the objectives set forth in section 8.4 below. You agree to spend at least 1% of Net Sales on such local advertising annually.

8.2. National and Regional Marketing Funds. We reserve the right to establish at any time, in our discretion, both national and regional marketing funds into which you may be obligated to contribute, in the aggregate, up to 2% of Net Sales on a weekly basis. In the event any such fund is created, we will notify you, and you will be obligated to begin contributing thereto, in the specified amount, 30 days thereafter. The following provisions shall be applicable to such funds upon formation:

(a) We, in our sole discretion, will determine the area to be covered by any regional marketing fund which is formed. You will contribute to the regional fund for the region, as specified by us, in which the Store is located.

(b) Contributions will be made weekly, together with, at the same time and in the same manner, the royalty fee payments are made. The marketing fund contributions will be subject to the same late charges as the royalty fees.

(c) Any Stores owned and operated by us will contribute to the funds on the same basis as you contribute.

(d) We or our designee will administer and control the national and regional funds, if formed. The funds may be used for production and placement of media advertising, direct response literature, direct mailings, brochures, collateral advertising material, surveys of advertising effectiveness, other advertising or public relations expenditures relating to advertising the Stores, and providing professional services, materials and personnel to support the marketing function. We may reimburse ourselves for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes and other reasonable direct and indirect expenses we or our representatives incur in connection with the programs funded by the marketing funds.

(e) We, on behalf of the funds, may spend in any fiscal year more or less than the aggregate contribution of all Stores to the marketing funds in that year, and we may lend monies to the funds to cover deficits or invest any surplus for future use. All interest earned on monies contributed to the funds will be used to pay advertising costs before other assets of the funds are expended. We may cause the funds to be separately incorporated or operated through a separate entity, and such entity shall have all rights and duties specified in this section.

(f) We will undertake no obligation to ensure that the funds, if formed, benefit each Store in proportion to its respective contribution. The primary purpose of the funds, if formed, will be to support sales by the entire Bernie's System and to build brand identity. You agree to participate in any promotional campaigns and advertising and other programs that we establish from time to time.

8.3. Grand Opening Expenditures. You agree to conduct a grand opening advertising and promotional program, which we must approve in advance, during the 90-day period commencing at least one (1) week prior to the opening of the Store, and expend at least \$5,000 thereon.

8.4. Approval of Materials. You agree to make every reasonable effort to vigorously and aggressively promote and increase the business of the Store by conducting local advertising during the term of the Franchise. We will furnish you with approved local marketing plans and materials, including newspaper layouts, sales aids and other promotional and marketing materials that are furnished to other Stores. Any advertising conducted by you in any medium must be conducted in a dignified manner, conform to the standards and requirements in the Manuals, and must display the Marks only in such form as we approve. You agree to submit samples to us (through the mail, return receipt requested) and obtain our prior approval (except with respect to prices to be charged) of any advertising and promotional plans and materials that you desire to use and that have not been prepared or previously approved by us.

9. TRAINING AND MANAGEMENT CONSULTATION

9.1. Initial Management Training Program. We will offer and make available to you and your initial management employees, a management training program at our headquarters or such other place as we may designate from time to time. The content and duration of the management training program will be within our sole discretion. You will be responsible for all personal travel and living expenses, as well as all other expenses, in connection with attendance and completion of the management training program. You and your designated manager must attend and successfully complete the initial management training program prior to opening the Store.

9.2. General Training of Employees. Training of employees after the initial grand opening will be conducted by you in strict accordance with the Manuals.

9.3. Periodic Meetings. During the term of this Agreement, we may periodically hold meetings of franchisees, at various locations, for the purpose of discussing specific issues involving the operation of Stores. The purpose and intent of these meetings are to recognize and attempt to confront problems, or potential problems, in the operation of a Store, and attendance at such meetings is mandatory.

9.4. Supplemental or Recertification Management Training Programs. We may, in our sole discretion, offer and make available to you supplemental or recertification management training programs. Any such program will be given at our headquarters, unless we specify another location. You will be responsible for all personal travel and living expenses, as well as all other expenses, in connection with attendance and completion of any of the supplemental or recertification management training programs.

10. THE MARKS

10.1. Ownership of the Marks. You expressly acknowledge that we are the owner of all right, title and interest in and to the Marks and the goodwill associated with and symbolized by them. Your use of the Marks pursuant to this Agreement does not give you any ownership interest in the Marks, and all such use shall inure to our benefit.

10.2. Protection of the Marks. We will have the sole right to take actions that we deem appropriate, in our 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 us, under any circumstances, to take any action to protect or maintain our rights in the Marks, or to prevent any encroachments, infringement, misuse or unauthorized use of the Marks except as we may, in our sole discretion and judgment, deem desirable. We will use, and permit you and other franchisees to use, the Marks only in accordance with the *Barnie's System* and the Manuals and the standards and specifications attendant thereto that underlie the goodwill associated with and symbolized by the Marks.

10.3. Your Use of the Marks. With respect to your use of the Marks pursuant to this Agreement, you agree that:

(a) Authorized Use. Except as otherwise provided herein, you will use only the Marks we designate, will not use any confusingly similar marks, slogans, logos or the like, and will not use any Marks, symbols, logos, trade names or any other indicia of origin not designed by us, and will cease using any Marks that we may hereafter disapprove. You agree to use the Marks only in the manner we authorize and permit. You will use the Marks only for the operation of the Store at the Location and at such other locations as we approve in writing. You agree to emphasize the Marks and such other characteristics of the *Barnie's System* as we may require in the Manuals or otherwise in writing, in the operation of the Store and in all advertising matters (subject to our approval as required by this Agreement);

(b) Public Notices; Representations to Customers. During the term of this Agreement and any renewal hereof, you will identify yourself as the owner of the Store in conjunction with any use of the Marks, including but not limited to invoices, order forms, receipts, and contracts. You agree to post a notice, in the form and in the place we approve, that you independently own and operate the Store under a Franchise from us;

(c) Infringement. You agree that you do not own and will not establish title to the Marks or to similar or related logos, names, marks, and slogans. Your 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 our rights;

(d) No Authority to Contract. You will not use the Marks to incur any obligation or indebtedness on either your or our behalf;

(e) Use in Name. You agree that you will not use the Marks, or any word, name or other symbol tending to be confusingly similar to the Marks, as part of your corporate or other legal name or in the name of any of your bank accounts;

(f) Cooperation with Us. You will comply with our instructions in filing and maintaining the requisite trade name or fictitious name registrations, and will execute any documents we or our counsel deem necessary to obtain protection for the Marks or to maintain their continued validity and enforceability;

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

(h) Use by Others. You agree to promptly report to us any unauthorized use of any of the Marks by any person(s) or entity(ies) that comes to your attention in any manner whatsoever, and we will 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. You agree to fully cooperate with us in any such litigation or other action;

(i) Litigation. In the event that litigation involving the Marks is instituted or threatened or any claim relating to the Marks is asserted against you, you will promptly notify us. In the event we, in our sole judgment and discretion, undertake the negotiation, settlement, defense or prosecution of any claim or litigation relating to the Marks, you agree to execute any

and all documents, and to render such assistance (exclusive of monetary assistance) as may, in the opinion of our counsel, be reasonably requested to carry out such defense or prosecution; and

(j) No Right to Goodwill. The Marks serve to identify the Barbie's System and those who are franchised to use and operate within the Barbie's System. Any and all goodwill arising from your use of the Marks in your franchised operation under the Barbie's System shall inure solely and exclusively to our 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 your use of the Barbie's System or the Marks.

11. CONFIDENTIAL INFORMATION.

11.1. Disclosure. We possess 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 Stores (the "Confidential Information"). We will disclose some or all of the Confidential Information in the 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, you covenant not to communicate, directly or indirectly, or to divulge to or use for its benefit or the benefit of any other person or legal entity, any Confidential Information, except as we permit in writing. Upon the expiration, termination or nonrenewal of this Agreement, you agree that you will never use our Confidential Information in any manner whatsoever, including, without limitation, in the design, development or operation of any retail establishment substantially similar to the Store. Notwithstanding the foregoing, the obligations in this Section will 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 you 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.

11.2. Interest and Use. You will acquire no interest in the Confidential Information other than the right to use it in developing and operating a Store pursuant to this Agreement. You acknowledge that it would be an unfair method of competition to use or duplicate any Confidential Information other than in connection with the operation of the Store. 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 us. Unauthorized distribution, utilization or production, in any form, may be subject to criminal and/or civil penalties of law.

11.3. Your Agreement. You expressly agree that you will (a) not use the Confidential Information for any purpose other than the operation of the Store pursuant to this Agreement; (b) maintain absolute confidentiality of the Confidential Information during and after the term of this

Agreement; (c) not make unauthorized copies of any portion of the Confidential Information disclosed in written form; and (d) adopt and implement all reasonable procedures we prescribe from time to time to prevent unauthorized use or disclosure of the Confidential Information, including, without limitation, restrictions on disclosure to your employees and the use of nondisclosure and non-competition clauses in employment agreements with employees who have access to the Confidential Information.

12. TRANSFER, ASSIGNMENT AND ENCUMBRANCE

12.1. Voluntary Transfers, Generally. The Franchise is personal to you (or your owners) and neither the Franchise, this Agreement (except as hereinafter provided at Section 12.6 with respect to assignment to a controlled corporation or partnership), the Store or its assets, the day-to-day management responsibilities for operation of the Store pursuant to a management agreement or otherwise, nor any part or all of your ownership interests may be voluntarily, involuntarily, directly or indirectly assigned, encumbered, subdivided, sub franchised or otherwise transferred (collectively, a "Transfer") by you or your owners (including, without limitation, in the event of your death or that of one of your owners, by will, declaration of, or transfer in trust or the laws of intestate succession) without our prior written approval, and any Transfer without such approval shall constitute a breach hereof and shall convey no rights to or interest in the Franchise, this Agreement, the Store or its assets or any part or all of your the ownership interests.

12.2. Approval of Transfer. If your are in full compliance with this Agreement, we will not unreasonably withhold approval of a Transfer to proposed transferees who are of good moral character and otherwise meet the standards applicable to our franchisees at the time of the Transfer, and the transferee or owners of the transferee, in a form approved by the Company, agree to be personally bound jointly and severally by all provisions of this Agreement and guarantee performance thereof and all other agreements between you and us and any affiliates to the same extent as if they had been original parties to the agreements.

12.3. Conditions to be Met. A Transfer (except a transfer of your ownership interests) must include a transfer of the Store and the Franchise. If the Transfer is of the Franchise, this Agreement or a controlling interest in you, or is one of a series of Transfers which in the aggregate constitute the Transfer of the Franchise, this Agreement or controlling interest in you, all of the following conditions must be met prior to, or concurrently with, the effective date of the Transfer:

(a) the transferee must meet all of our then-current criteria for new franchisees, including, without limitation, having sufficient business experience and financial resources and not owning interests or being involved in a Competitive Business (as defined in below);

(b) the transferee must assume all existing obligations of the transferor hereunder and under the lease or sublease;

(c) the transferee must attend and complete the Management Training Program to our satisfaction;

(d) all fees and other amounts you owe to us (whether under this Agreement or any other Agreement between you and us) must be paid current;

(e) the Store must meet or be upgraded to meet all then-current image, equipment and operational criteria for Bernie's Stores; and

(f) the transferor must comply with all post-term non-competition and confidentiality provisions of this Agreement.

12.4. Transfer Fee. We will not charge the transferee an Initial Franchise Fee for the Franchise, but will charge the transferor a transfer fee in the amount of 50% of the then-current Initial Franchise Fee charged to a new franchisee entering into an initial franchise agreement with us. We will accept payment of such transfer fee from the transferee provided that such payment is accompanied by a copy of the assignment and assumption agreement or the equivalent between transferor and transferee stating, in part, that the transferee shall pay such transfer fee on behalf of transferor. If we are not then offering franchises for Stores, the transfer fee will be one-half of the initial franchise fee under the last franchise program under which we offered franchises for Stores.

12.5. General Release. You (and each of your owners, as applicable) or the transferring owner, as applicable, shall execute a general release, in form acceptable to us in our sole discretion, of all claims against us, any affiliates, officers, agents and employees as a condition of approval of a Transfer.

12.6. Transfer to Wholly Owned Corporation or Partnership. If you are in full compliance with this Agreement, we will not unreasonably withhold our consent to a Transfer to a partnership or corporation which conducts no business other than the Store (and other Stores under franchise agreements with the Company), which is actively managed by you and in which you own and control all of the issued and outstanding ownership units of such entity, provided that the corporation or partnership executes an assignment and assumption agreement satisfactory to us, and the shareholders or partners, in a form we approve, agree to be personally bound jointly and severally by all provisions of this Agreement and guarantee the performance thereof and all other agreements between you and us and any affiliates, to the same extent as if they had been parties to the original agreements, and all issued and outstanding stock certificates of such corporation shall bear a legend reflecting or referring to the restrictions on transfer set forth in this Agreement.

12.7. Transfer upon Death or Permanent Disability. Upon your death or permanent disability or if you are a corporation or partnership, upon the death or permanent disability of the owner of the controlling interest in you, 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 we approve 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 we will not require the payment of any transfer fee in connection with a Transfer pursuant to this Section 12.7. Failure to so dispose of the interest within the designated period of time will be a breach of this Agreement. You will shall be deemed to have a "permanent disability" if the usual, active

participation in the Store by you or your managing owner as required under this Agreement is for any reason curtailed for a continuous period of six (6) months.

12.8. Right of First Refusal.

(a) In the event you or your owners wish to engage in a Transfer (other than pursuant to Sections 12.6 or 12.7 above), you or such owner must obtain a bona fide, executed written offer to purchase from a responsible fully disclosed purchaser and to submit an exact copy of the offer to us. The offer must apply only to your interest in this Agreement and the Store and not include any other property. We will 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 will be deemed a separate offer on which we will have a new 30-day right of first refusal; (b) the 30-day right of first refusal period will run concurrently with the period in which we have to approve or disapprove the proposed transferee; (c) if the consideration or manner of payment offered by a proposed transferee is such that we may not reasonably be required or able to furnish the same, then we 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 us, whose determination will be binding upon the parties; all expenses of the appraiser shall be paid for equally by us and you. 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 we choose not to exercise our right of first refusal, you will be free to complete the transfer subject to compliance with Sections 12.2, 12.3, 12.4 and 12.5 above.

12.9. Transfer by Us. This Agreement is fully transferable by us and will inure to the benefit of any transferee or other legal successor to our interests.

13. RELATIONSHIP OF THE PARTIES

13.1. Independent Contractor Status. It is understood and agreed that this Agreement does not create a fiduciary relationship between us, that you will 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, you must hold yourself out to the public as an independent contractor operating the business pursuant to a license and franchise from us. You agree 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 the franchised premises, the content of which we reserve the right to specify.

13.2. No Liability for Your Debts and Obligations. We will not be liable for any of your debts or obligations, except to the extent that we by an agreement separate from this Agreement agree to be liable for any such debt or obligation.

13.3. Indemnification of Us. You agree to indemnify and hold us harmless from and against any and all claims, actions, proceedings, damages and liabilities arising out of the operation of the Store, any of your acts or omissions, or any action taken or liability incurred pursuant to any claim against us as a partner, joint venturer, principal or employer. This indemnification shall include payment of costs and reasonable attorney's fees we incur in the defense of any such action or claim.

13.4. Indemnification of You. We agree to indemnify you against and to reimburse you for all damages for which you are 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 you in the defense of any such claim brought against it or in any such proceeding in which you are named as a party, provided that you have notified us of any such claim or proceeding and cooperates in the defense of the same as required by Article 10 of this Agreement.

14. TERMINATION

14.1. Termination By Us Upon Written Notice. We may terminate this Agreement upon written notice to you upon the occurrence of any of the following events:

You or any of your owners makes an assignment for the benefit of creditors or an admission of your inability to pay your obligations as they become due;

(a) You or any of its owners files a voluntary petition in bankruptcy, files any pleading seeking any reorganization, liquidation or dissolution under any law, admits or fails to contest the material allegations of any such pleading filed against them, is adjudicated bankrupt or insolvent, a receiver is appointed for a substantial part of your assets or any of your owners or the Store, or the claims of your creditors or any of its owners or the Store are abated or subject to a moratorium under any law;

(b) You or any of your owners makes an unauthorized assignment of the Franchise, this Agreement, the Store or its assets or an ownership interest in the Franchisee contrary to Article 12 of this Agreement;

(c) Without our consent your ownership, or any part thereof, is pledged or given as security for debt;

(d) You use or disclose Confidential Information in violation of Article 11 hereof;

(e) You or any of the Bound Parties (defined below) engages in a competitive business in violation of Article 15 hereof;

(f) You are in default of any loan, lease or sublease affecting the Store, Location or any equipment used in the operation of the Store and does not cure the default within a cure period which will be five days shorter than whatever cure period exists in such agreement;

(g) You fail or refuse to enter into a lease or sublease for the Store;

(h) You fail to meet your obligations to any of your suppliers when we reasonably believe that such failure may adversely affect the business relationship between us or the Bernie's System and such supplier;

(i) You submit materially false royalty reports and other substantial financial information to us (it is understood that patent arithmetic errors do not constitute a false report);

(j) You made any material misrepresentation of fact in your application for a franchise;

(k) You refuse to permit us to inspect the Store at reasonable times and under reasonable circumstances;

(l) Your full-time store manager, a partner, or the majority owner (sole proprietor, partner or shareholder) fails to complete certification and recertification training programs sponsored by us;

(m) You abandon the Store by an unauthorized closing of the Store, or otherwise, or fail to open the Store for business within the time periods specified in this Agreement;

(n) We terminate, with cause, any other franchise agreement between you (or any other legal entity in which you or one of your controlling owners has a controlling interest);

(o) You fail to pay any amounts due under this Agreement or for any purchases made by you from us within 10 days of notice of such failure;

(p) There exist any conditions in the Store which, in our discretion, present health, safety or sanitation issues for customers or employees of the Store; or

(q) We have been required to issue at least three (3) notices of default within a 12-month period, regardless of whether such defaults were subsequently cured.

14.2. Termination Upon Written Notice and Thirty-Day Opportunity to Cure. In addition to the right to terminate this Agreement in the manner and for the reasons set forth in Section 14.1, above, this Agreement will terminate automatically for any default set forth below, upon our providing you written notice of default, including the specified cure for such default, and your failure to cure such default within 30 days of such notice:

(a) You offer for sale any item not approved in advance in writing by us;

(b) You fail to submit, when due, sales reports and financial statements;

(c) You commit any other default of this Agreement (including the Manuals) not specified in Section 14.1 above; or

(d) You fail to continuously operate the Store during the hours required by the lease or, if the lease does not specify the hours during which the Store is to remain open, then during reasonable business hours as specified by us.

14.3. Obligations upon Termination or Expiration. Upon termination or expiration of this Agreement in any manner whatsoever, this Agreement and all rights granted hereunder to you immediately terminate, and you must immediately (a) cease to operate the Store, and forever, directly or indirectly, representing to the public or hold yourself out as a present or former franchisee of ours, (b) turn over to us all Confidential Information and manuals (including the Manuals), Product Order Books, price books, point-of-purchase materials, advertising materials, videotapes, signs, training literature, operating literature, customer lists, records, files, instructions, brochures, agreements, disclosure statements and any and all other materials provided by us to you relating to the operation of the Store (all of which are acknowledged to be our property), (c) pay to us all monies which you owe to us or any affiliate, (d) permanently cease to use by advertising, or in any manner whatsoever, any Confidential Information and Marks, distinctive forms, slogans, signs, symbols, logos or devices associated with the *Barnie's* System and/or the Store.

14.4. Option to Repurchase Inventory. If this Agreement expires or is terminated for any reason, we will have the right, but not the obligation, for a period of 30 days from the effective date of expiration or termination to repurchase, free and clear of any and all liens and encumbrances, any or all of your saleable inventory, whether such inventory bears the Marks or otherwise, and which has been fully paid for by you, at a price equal to 80% of the original invoice price charged to you, provided, that we will pay all freight costs in connection with the shipment of the saleable inventory to such location as we may designate.

14.5. Our Right to Purchase a Store.

Upon termination or expiration of this Agreement, we will have the option, exercisable by transmitting notice thereof within 30 days from the effective date of expiration or termination, to purchase from you some or all the assets (including inventory of saleable products, supplies, equipment and fixtures) of the Store. We will have the unrestricted right to assign this option to purchase.

The purchase price for the assets of the Store, if we elect to purchase them, will be the "adjusted book value" as determined below, provided, however, that we will have the right to set off against and reduce the purchase price by any and all amounts owed by you to us or any of our affiliates. The "adjusted book value" consists of the book value of the assets of the Store as disclosed by the balance sheet in the financial statements of the Store on the date of such termination or expiration; provided, however, that there shall be no allocation for goodwill.

The purchase price will be paid as follows: 40% at closing, with the balance represented by a promissory note bearing interest at the rate of eight (8%) percent per annum, and payable in 36 equal monthly installments, with the first monthly payment commencing on the first day of the second full calendar month following the effective closing date. The closing will take place no later than 45 days after receipt by you of our notice to purchase the Store, at which time you must: (1) deliver instruments transferring good and merchantable title to the assets purchased, free and clear of all liens and encumbrances, with all sales and other transfer taxes paid by you, and (2) transfer or assign all licenses or permits which may be assigned or transferred. In the event that you cannot deliver clear title to all of the purchased assets, then the funds payable toward the purchase price shall be utilized to pay all liens and obligations

affecting the Store, or in the event this is not capable of being accomplished, then the closing will be accomplished through an escrow with our counsel. Further, you and we will, prior to closing, comply with the applicable Bulk Sales provisions of the Uniform Commercial Code as enacted in the state where the Store is located.

After expiration or termination, and pending the time period in which we may exercise our option to purchase the Store, we will have the right to operate the Store for your account, provided that we will only have a duty to utilize good faith efforts in the operation of the Store and will not be liable to you for any losses incurred by the Store or to any of your creditors for any merchandise, supplies or services purchased by the Store during any period in which it is managed by us. Alternatively, we may require you to close the Store during such time period without removing any assets.

14.6. State and Federal Law. YOU AND WE 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 YOUR RIGHTS REGARDING TERMINATION OR EXPIRATION OF THIS AGREEMENT.

15. AGREEMENTS WITH RESPECT TO COMPETITION.

15.1. Bound Party Defined. The term “Bound Party” as used in this Article include, collectively and individually, and shall apply to, jointly and severally: (a) any individual(s) operating the Store either individually or as a proprietorship; (b) if you are 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 you; and (c) if you are 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). A “controlling interest,” for purposes of this Article, 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.

15.2. Acknowledgement of Reasonableness and Legitimate Business Interest. You acknowledge that over the term of this Agreement, the Bound Parties and you will receive confidential information which we 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. You further acknowledge 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 your own present skills and experience and that of the Bound Parties, and that it would be expensive, time consuming and difficult for you or the Bound Parties to develop it. You further acknowledge that the Confidential Information provides a competitive advantage and would be valuable to you in the development of its business, and that gaining access to it is, therefore, a primary reason why you are entering into this Agreement. You further acknowledge and agree that substantial customer goodwill will be developed and associated with the Store, including the use of the Marks. You agree that the covenants set forth in this Article are reasonable and necessary to

protect our legitimate business interests and those of our other franchisees in the Marks and Bernie's System including, without limitation, the legitimate business interests described in this Section.

15.3. Competing Business During Term of Agreement. During the term of this Agreement and any renewal thereof, except as otherwise approved in writing by us, you and the Bound Parties will not, either directly or indirectly, for yourself, 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 Bernie's store 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 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 business, other than as our franchisee, anywhere in the world, that either (a) sells, at wholesale or retail, gourmet coffee in bulk and/or in packages or (b) generates 20% or more of its net revenue from the sale of gourmet coffee products by the cup, including, without limitation, such businesses as coffee and tea stores, espresso/coffee cafes and coffee houses (a "Competitive Business"); or

(c) employ or solicit for employment any of our employees or those of any other of our franchisees, or induce any such employee to leave his or her employ, without our prior written consent and that of the employer/franchisee

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

15.4. Competing Business After Expiration or Termination of Agreement. You agree that, except as otherwise approved in writing by us, for a period of two (2) years after the expiration or termination of this Agreement, regardless of the cause of termination, neither you 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 our franchisee), located within a 10 mile radius of the Store or within a 10 mile radius of any other Store in the Bernie's System.

15.5. Modifications of Certain Covenants by Us. You understand and acknowledge that we will have the right, in our sole discretion, to reduce the scope of any covenant set forth in Sections 15.3 and 15.4 in this Agreement, or any portion thereof, without your consent, effective immediately upon your receipt of written notice thereof, and you agree to comply with any covenant as so modified.

15.6. 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 15 regarding confidentiality and competition are unreasonable, you and we agree that such court may determine, in its discretion, an appropriate limitation to accomplish the intent and purpose of this Section, and the parties, and each of them, agree to be bound by any such determination.

15.7. Covenants and Agreements to be Signed by Other Employees. We will have the right to require your full-time Store manager, all of your personnel performing sales, managerial or supervisory functions, all personnel receiving special training from us, and all family members of a person owning a 10% or more interest in you, and the spouses of each, to execute covenants similar to those set forth in this Article 15, in a form as set forth in the Manuals. We will also have the right to require any other of your employees and any holder of a beneficial interest in you to execute covenants similar to those in this Article.

15.8. Limited Exclusion. The restrictions contained in Sections 15.3 and 15.4 above 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.

16. INSURANCE

In addition to, or as part of, any insurance required by the lease or sublease for the Store, you must at all times, at your expense, carry comprehensive general liability insurance covering your operation of the Store in amounts shown in the Manuals from time to time but with, at least, a combined single limit of at least \$2,000,000, naming us as additional insureds. You must furnish us with a certificate of valid insurance and provide a similar certificate with respect to all renewals. You must also us in writing immediately of any cancellation of your insurance policy.

17. WAIVER

No waiver of any default by either of us shall be implied from any omission or failure to take any action with respect to any such default. A written waiver will affect only the action specified in the waiver, and then only for the time and to the extent stated. Any waiver of any provision by either of us shall not be construed as a waiver of any subsequent breach of the same provision or any other provision.

18. GOVERNING LAW/CONSENT TO JURISDICTION/DISPUTE RESOLUTION

18.1. 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 our 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. You and we have negotiated regarding a forum in which to resolve any disputes arising between us and have agreed to select a forum in order to promote stability in our relationship. Therefore, if a claim is asserted in any legal proceeding involving you or any Bound Party and

us, you and we agree that the exclusive venue for such disputes shall be in the federal or state courts located in the location of our principal office in the State of Florida. Each of us hereby irrevocably submits to the jurisdiction of such courts and waives any objection we might have to the personal jurisdiction of or venue in such courts.

18.2. Waiver of Jury Trial. YOU, WE AND THE BOUND PARTIES EACH WAIVE THEIR RIGHT TO A TRIAL BY JURY. You, we and the Bound Parties acknowledge that our waiver of jury trial rights provides each of us with the mutual benefit of uniform interpretation of this Agreement and resolution of any disputes arising out of this Agreement or any aspect of our relationship. You, we and the Bound Parties further acknowledge the receipt and sufficiency of mutual consideration for such benefit.

18.3. Remedies. Except as set forth in Section 18.4, 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. Each of us further agrees that, in addition to such other damages as may be awarded by the court, if this Agreement is terminated because of your default, you will be liable to us for a lump sum amount equal to the Royalties and other fees that would have become due following termination of this Agreement for the period this Agreement would have remained in effect but for the your default. Royalties and other continuing fees for purposes of this paragraph shall be calculated based on the Store's average monthly Net Sales for that period, commencing on the date the Store first opened for business or the date that precedes the closing of the Store by one year, whichever date shall be the last to occur chronologically, and ending on the date the Store closed for business.

18.4. Limitation of Claims. You and the Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Except with regard to your obligations to pay Royalty payments and other fees and other payments due us and our affiliates pursuant to this Agreement, any claims between us must be commenced within one year from the occurrence of the facts giving rise to such claim, or such claim shall be barred. You understand that such time limit may be shorter than otherwise allowed by law. You agree that your sole recourse for claims against us arising out of this Agreement or the operation of the Store shall be against us or its successors and assigns. You agree that our shareholders, directors, officers, and employees and agents and or those of our affiliates shall not be personally liable or named as a party in any action between you and us. You agree that any proceeding will be conducted on an individual, not a class-wide, basis, and that a proceeding between you and us or the Bound Parties may not be consolidated with any other proceeding between us and any other person or entity. Neither of us will be entitled to an award of punitive or exemplary damages. No previous course of dealing will 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. YOU AND WE (INDIVIDUALLY AND ON BEHALF OF OUR RESPECTIVE 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.

19. 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.

20. ATTORNEY'S FEES AND COSTS

Should it become necessary for either of us 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.

21. INJUNCTION

You recognize the unique value and secondary meaning attached to the Bernie's System and the Marks, and you agree that any non-compliance with the terms of this Agreement or any unauthorized or improper use of the Bernie's System or the Marks will cause irreparable damage to us and to our other developers and franchisees. You therefore agree, that if you should engage in any such unauthorized or improper conduct or acts during or after the period of this franchise, we will be entitled to both permanent and temporary injunctive relief from any court of competent jurisdiction, in addition to any other remedies prescribed by law.

22. GENERAL PROVISIONS

22.1. Notices. Any and all notices required or permitted under this Agreement shall be in writing and shall be (i) personally delivered, (ii) mailed by certified or registered mail or (iii) delivered by overnight or other delivery service providing documentation of receipt, to the noticed party at the following addresses unless and until a different address has been designated by either of in a written notice to the other:

Notices to Us:
Bernie's Franchise Service, LLC
2126 W. Landstreet Road, Suite 300
Orlando, Florida 32809
Attention: Executive Vice President

Notices to FRANCHISEE:

Unless expressly provided otherwise elsewhere in this Agreement, any notice by certified or registered mail will be effective at the date and time of mailing, any notice delivered by overnight or other delivery service or by telecopy or facsimile will be effective upon delivery to the appropriate address.

22.2. Lesser Obligations. You expressly agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable or unenforceable as described in Article 19, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

22.3. Binding Effect. This Agreement will be binding upon and inure to your and our benefit and to that of our respective heirs, executors, personal representatives, successors and assigns. Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you or us and our respective successors and assigns any rights or remedies under or by reason of this Agreement.

22.4. Cumulative Remedies. Each and every power and remedy herein given to us is cumulative and is in addition to every other power and remedy herein given or now or hereafter existing at law, in equity, or by statute, and each and every power and remedy whether given in this Agreement or otherwise existing may be exercised from time to time and as often and in such order as we may deem expedient, and the exercise or the beginning of the exercise of any power or remedy will not be construed as a waiver of the right to exercise at the same time or thereafter any other power or remedy.

22.5. Right to Obtain Equitable Relief. Nothing herein contained shall bar your or our right to obtain injunctive relief against threatened conduct that will cause loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

22.6. Continuing Obligations. All obligations 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.

22.7. Entire Agreement. This Agreement contains the entire agreement between us and supersedes any and all prior agreements concerning the subject matter hereof. Neither this Agreement nor any subsequent modifications will be effective unless and until signed by you and us. We do not authorize and will not be bound by any representation of any nature other than those expressed in this Agreement. You further acknowledge and agree that we have made no representations to you regarding projected sales volumes, market potential, revenues, profits of the Store, or operational assistance other than as stated in this Agreement and in any Uniform Franchise Offering Circular we provided.

23. ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES.

BEFORE SIGNING THIS AGREEMENT, YOU SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. YOU ACKNOWLEDGE, REPRESENT AND WARRANT THAT:

23.1. YOU HAVE CONDUCTED AN INDEPENDENT INVESTIGATION OF THE BUSINESS CONTEMPLATED BY THIS AGREEMENT AND UNDERSTAND AND ACKNOWLEDGE THAT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS MAKING THE SUCCESS OF THE VENTURE LARGELY DEPENDENT UPON YOUR BUSINESS ABILITIES AND PARTICIPATION AND YOUR EFFORTS AS AN INDEPENDENT BUSINESS OPERATOR.

23.2. YOU HAVE NO KNOWLEDGE OF ANY REPRESENTATIONS BY US OR OUR 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. YOU REPRESENT, AS AN INDUCEMENT TO OUR ENTRY INTO THIS AGREEMENT, THAT YOU HAVE MADE NO MISREPRESENTATIONS IN OBTAINING THIS AGREEMENT.

23.3. WE HAVE PROVIDED YOU 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. YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ OUR FRANCHISE OFFERING CIRCULAR AND UNDERSTAND ITS CONTENTS.

23.4. WE HAVE PROVIDED YOU WITH A COPY OF THIS AGREEMENT AND ALL RELATED DOCUMENTS, FULLY COMPLETED, AT LEAST FIVE (5) BUSINESS DAYS PRIOR TO YOUR EXECUTION OF THE AGREEMENT.

23.5. YOU HAVE HAD AMPLE OPPORTUNITY TO CONSULT WITH YOUR OWN ATTORNEYS, ACCOUNTANTS AND OTHER ADVISORS AND THAT OUR ATTORNEYS HAVE NOT ADVISED OR REPRESENTED YOU WITH RESPECT TO THIS AGREEMENT OR THE RELATIONSHIP THEREBY CREATED.

23.6. YOU, TOGETHER WITH YOUR ADVISORS, HAVE SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO MAKE AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE FRANCHISE.

23.7. YOU ARE AWARE OF THE FACT THAT OTHER PRESENT OR FUTURE FRANCHISEES OF COMPANY MAY OPERATE UNDER DIFFERENT FORMS OF AGREEMENT(S), AND CONSEQUENTLY THAT OUR OBLIGATIONS

AND RIGHTS WITH RESPECT TO OUR VARIOUS FRANCHISEES MAY DIFFER MATERIALLY IN CERTAIN CIRCUMSTANCES.

24.8 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”). WE THEREFORE REQUIRE CERTAIN CERTIFICATIONS THAT THE PARTIES WITH WHOM WE DEAL ARE NOT DIRECTLY OR INDIRECTLY INVOLVED IN TERRORISM. FOR THAT REASON, YOU HEREBY CERTIFY THAT NEITHER YOU NOR ANY OF YOUR OWNERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES, NOR ANY OTHER PERSON OR ENTITY ASSOCIATED WITH YOU, IS:

(A) A PERSON OR ENTITY LISTED IN THE ANNEX TO THE EXECUTIVE ORDER;

(B) 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;

(C) A PERSON OR ENTITY WHO ASSISTS, SPONSORS, OR SUPPORTS TERRORISTS OR ACTS OF TERRORISM; OR

(D) OWNED OR CONTROLLED BY TERRORISTS OR SPONSORS OF TERRORISM.

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

24.9 WE DO NOT GUARANTEE THE SUCCESS OF THE BUSINESS OR THE VIABILITY OF THE SITE AND DO NOT MAKE, APPROVE OR CONDONE ANY STATEMENTS OR REPRESENTATIONS IN THAT REGARD. IF A REPRESENTATIVE OF OURS SAYS OR HAS SAID ANYTHING WHICH YOU BELIEVE SUGGESTS THAT A PARTICULAR SITE WILL BE PROFITABLE, YOU WILL CONSTRUE SUCH STATEMENT TO BE NOTHING MORE THAN AN OPINION OF THE SPEAKER AND NOT OF OURS. YOU AGREE THAT YOU MAY NOT, HAVE NOT, AND WILL NOT RELY ON ANY SUCH OPINION.

IN WITNESS WHEREOF, you and we have executed this Agreement on the date first written above.

**BARNIE'S FRANCHISE SERVICE,
LLC**

FRANCHISEE:

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

**INDIVIDUAL ACKNOWLEDGEMENT
AND
GUARANTY OF FRANCHISEE'S UNDERTAKINGS**

In consideration of, and as an inducement to, the execution of the Franchise Agreement (the "Franchise Agreement") dated _____, 20____, by Bernie's Franchise Service, LLC ("Company") and _____ ("Franchisee") each of the undersigned, by his/her signature below, guarantees unto Company payment of all sums due by Franchisee pursuant to the Franchise Agreement, and further guarantees performance by Franchisee of all obligations, duties, conditions, undertakings, restrictions, and agreements (collectively, the "Conditions") contained in the Franchise Agreement; and each of the undersigned, individually and personally, covenants and agrees that if default shall at any time be made by Franchisee in the payment of any such sums due by Franchisee pursuant to the Franchise Agreement, or in the performance and fulfillment of any of the Conditions contained in the Franchise 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 Franchisee including all attorney's fees incurred by Company caused by such default and/or the enforcement of this guarantee.

The undersigned each further agree to personally comply with and abide by (i) the covenants and provisions of the Franchise Agreement relating to Confidentiality and Competition and (ii) the covenants and provisions of the Franchise Agreement relating to Transfer, Assignment and Encumbrance to the same extent as, and for the same period of time as, Franchisee is required to comply with and abide by such covenants and provisions, except to the extent otherwise required by the Franchise Agreement. These obligations of the undersigned shall survive any expiration or termination of the Franchise 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 Franchisee. 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 Franchise Agreement; (b) exercise or non-exercise of any right, power or remedy pursuant to the Franchise Agreement, or any waiver, consent, extension, renewal or modification to the terms of the Franchise Agreement; (c) any bankruptcy, insolvency, reorganization, liquidation or similar proceedings of the Franchisee; (d) limitations on the liability or obligations of the Franchisee under the Franchise 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 Franchisee, or assignment of Franchisee'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 A TO FRANCHISE AGREEMENT
IDENTIFICATION OF THE STORE PREMISES

The Location from which the Store is to be operated is:

Initials:

Company: _____

Franchisee: _____

Exhibit A to Franchise Agreement

EXHIBIT B TO FRANCHISE AGREEMENT

AUTHORIZATION AGREEMENT FOR PRE-AUTHORIZED PAYMENTS

COMPANY: BARNIE'S FRANCHISE SERVICE, LLC

COMPANY ID NUMBER: _____

The undersigned hereby authorizes BARNIE'S FRANCHISE SERVICE, LLC, hereinafter called the "Company," to initiate debit entries to the undersigned's Checking Account indicated below and the depository named below, hereinafter called the "DEPOSITORY," to debit the same to such account.

DEPOSITORY NAME _____ BRANCH _____

CITY _____ STATE _____ ZIP _____

TRANSIT/ABA NO. _____ ACCOUNT NO. _____

This authority is to remaining full force and effect until the Company and DEPOSITORY have received written notification from the undersigned of its termination in such time and in such manner as to afford Company and DEPOSITORY a reasonable opportunity to act on it.

NAME(S): _____ ID NUMBER _____

Signature

Signature

Signature

Signature

Date