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EINSTEIN AND NOAH CORP.
AREA DEVELOPMENT AGREEMENT

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**EINSTEIN AND NOAH CORP.
AREA DEVELOPMENT AGREEMENT**

THIS AREA DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into on this ___ day of _____, 200__ ("**Effective Date**") by and between:

- Einstein and Noah Corp., a Delaware corporation whose principal place of business is 1687 Cole Boulevard, Golden, Colorado 08401 ("**Franchisor**"); and
- _____, a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**Developer**").

RECITALS:

WHEREAS, Franchisor owns a format and system (the "**System**") relating to the establishment and operation of businesses operating in buildings that bear Franchisor's interior and exterior trade dress, under the "Einstein Bros." name and marks ("**Restaurants**"), and specializing in the sale of Proprietary Items including fresh-baked bagels, cream cheese and other spreads, specialty coffees and teas, and creative soups, salads and sandwiches, and other such additional products as Franchisor may specify from time to time, as well as non-Proprietary Items such as sandwiches, salads, soups, and other beverage items for on-premises and carry-out consumption (collectively, the "**Products**");

WHEREAS, the distinguishing characteristics of the System include, without limitation, a specially-designed building or facility, with specially developed equipment, equipment layouts, signage, distinctive interior and exterior design and accessories, Products, procedures for operations; quality and uniformity of products and services offered; procedures for management and inventory control; training and assistance; and advertising and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time;

WHEREAS, Franchisor identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the marks "Einstein Bros." and logo, and such other trade names, service marks, and trademarks as are now designated (and may hereinafter be designated by Franchisor in writing) for use in connection with the System (the "**Proprietary Marks**");

WHEREAS, Franchisor continues to develop, use, and control the use of such Proprietary Marks in order to identify for the public the source of services and products marketed thereunder and under the System, and to represent the System's high standards of quality, appearance, and service;

WHEREAS, Developer wishes to obtain certain rights to develop "Einstein Bros." restaurants under Franchisor's System, within the Development Area specified in this Agreement and according to the Development Schedule specified in this Agreement; and Developer and Franchisor wish to enter into this Agreement in order to reflect the understandings and agreements that they have reached with respect to the foregoing points and the other matters that are addressed herein.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other party set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. GRANT

1.1 Franchisor hereby grants to Developer the right (and Developer hereby accepts the obligation), pursuant to the terms and conditions of this Agreement, to develop _____ () Restaurants. In this regard, the parties further agree that:

1.1.1 The Restaurants shall be developed by Developer pursuant to the development schedule set forth in Paragraph 2 of Exhibit A, attached hereto (the "**Development Schedule**").

1.1.2 Each Restaurant shall be developed under this Agreement and operated pursuant to a separate Einstein and Noah Corp. Franchise Agreement (a "**Franchise Agreement**") that shall be executed as provided in Section 3.1 below.

1.1.3 Each Restaurant developed hereunder shall be located in the area described in Paragraph 1 of Exhibit A, attached hereto (the "**Development Area**"); however, the parties hereto expressly acknowledge and agree that the Development Area shall not include any toll road or interstate highway, "Institutional Facility" (as defined below), Co-Branded Location (as defined below), or any non-traditional facility (including without limitation, sports arenas and stadiums, supermarkets, and gasoline convenience stores) located within the area described in paragraph 1 of Exhibit A hereto.

1.1.4 Each Restaurant for which a development right is granted hereunder shall be established and operated pursuant to a separate Franchise Agreement to be entered into between Developer and Franchisor in accordance with Section 3.1. hereof.

1.1.5 Definitions. The parties agree that the following terms shall have the following meanings.

1.1.5.1 The term “**Co-Branded Location**” is agreed to include, among other things, businesses of any sort within which an “Einstein Bros.” facility is established and operated, including for example book stores, department stores, restaurants, and supermarkets.

1.1.5.2 The term “**Institutional Facility**” is agreed to include, among other things: airports; bus stations; factories; federal, state or local government facilities (including military bases); hospitals and other health-care facilities; recreational facilities; schools, colleges and other academic facilities; seasonal facilities; shopping malls; theaters; train stations; and workplace cafeterias.

1.2 If Developer is in compliance with its obligations under this Agreement and all of the Franchise Agreements between Developer (including any affiliate of Developer) and Franchisor, then Franchisor shall not establish, nor license anyone other than Developer to establish, a Restaurant in the Development Area until the last date specified in the Development Schedule, except as otherwise provided under Sections 1.3 and 1.4 below.

1.3 Except as otherwise specifically provided under Section 1.2 above, Franchisor retains all other rights, and therefore Franchisor shall have the right (among others) on any terms and conditions Franchisor deems advisable, and without granting Developer any rights therein, to:

1.3.1 establish, and license others to establish, Restaurants at any location outside the Development Area notwithstanding their proximity to the Development Area or any Restaurant operated by Developer;

1.3.2 establish, and license others to establish, Restaurants at any Institutional Facility, Co-Branded Location, or non-traditional facility, within or outside the Development Area, notwithstanding such Restaurants’ proximity to any Restaurant operated by Developer;

1.3.3 establish, and license others to establish, stores under other systems or other proprietary marks, which stores may offer or sell products that are the same as, similar to, or different from the Products offered from the Restaurant, and which stores may be located within or outside the Development Area, notwithstanding such stores’ proximity to any Restaurant operated by Developer;

1.3.4 acquire and operate any business or store of any kind, whether located within or outside the Development Area (excluding Restaurants operated under the System within the Development Area), notwithstanding such the proximity of any such businesses or stores to any Restaurant operated by Developer; and/or

1.3.5 sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any Products from any location or to any purchaser (including, but not limited to, sales made at retail locations, supermarkets, gourmet shops, mail order, and on

the Internet), so long as such sales are not conducted from a retail Restaurant operated from a location inside the Development Area.

1.4 In addition to the rights retained by Franchisor, as described in Section 1.3 above, Developer acknowledges and agrees that:

1.4.1 Franchisor and certain of Franchisor's affiliates and designees now sell and shall have the right to sell Products (and items of a similar nature) to wholesale accounts (such as restaurants), retail accounts (such as groceries and supermarkets), or otherwise, to any account and at any location.

1.4.2 Franchisor shall not prohibit other "Einstein Bros." Restaurants (whether owned or franchised by Franchisor) from providing delivery or catering service to customers at any location, whether within or outside the Development Area.

1.5 This Agreement is not a franchise agreement, and does not grant to Developer any right to use in any manner Franchisor's Proprietary Marks or System.

1.6 Developer shall have no right under this Agreement to license others to use in any manner the Proprietary Marks or System.

2. DEVELOPMENT FEE

2.1 In consideration of the development rights granted herein, Developer shall pay to Franchisor a development fee of _____ Dollars (\$_____) (the "Development Fee"), to be paid to Franchisor on or before the date of this Agreement.

2.2 If Developer is in compliance with its obligations under this Agreement, then upon execution of each Franchise Agreement, Franchisor shall credit to Developer the sum of Five Thousand Dollars (\$5,000) toward the initial franchise fee payable under said Franchise Agreement with respect to each Restaurant that Developer is required to open under this Agreement; provided that in no circumstances will Franchisor grant credits in excess of the total Development Fee.

2.3 The Development Fee shall be fully earned when received by Franchisor and shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor and for the development opportunities lost or deferred as a result of the rights granted Developer herein.

3. DEVELOPMENT OBLIGATIONS

3.1.1 Developer shall execute a Franchise Agreement for each Restaurant. Each Restaurant shall be located at a site approved by Franchisor, within the Development Area, as provided below (the "Approved Location"). The Franchise Agreement for the first Restaurant developed hereunder shall be in the form of the Franchise Agreement attached hereto as Exhibit D. The Franchise Agreement for each additional Restaurant developed hereunder shall be the form of Franchise Agreement being offered generally by Franchisor at the time each such Franchise Agreement is executed. The Franchise Agreement for each Restaurant shall be executed by Developer and submitted to Franchisor for countersignature within fifteen (15) days of receipt of Franchisor's written notice of site approval. If Developer is in full compliance with this Agreement, then, notwithstanding anything to the contrary in any of the Franchise Agreements, for each Franchise Agreement for a Restaurant required to be established under Section 1.1 above, the initial franchise fee, royalty fee, and advertising contribution shall be as set forth in the form of Franchise Agreement appended hereto as Exhibit D; and

3.2 For each proposed site for a Restaurant, Developer must submit to Franchisor, in a form specified by Franchisor, a completed Site Approval Package and such other information or materials as Franchisor may reasonably require. Developer must submit the Site Approval Package, information, and materials by no later than one hundred and eighty (180) days before the date on which the Restaurant must open, as listed in the Development Schedule. Notwithstanding the foregoing, Developer must obtain site approval from Franchisor for the first Restaurant to be developed hereunder within eight (8) months of the date of this Agreement. If Franchisor gives its written approval to a proposed site, Franchisor shall send written notice of approval to Developer within thirty (30) days of Franchisor's receipt of the completed Site Approval Package. If Franchisor does not send such notice to Developer within the said thirty (30) day period, then the site shall be deemed disapproved by Franchisor.

3.3 If Developer will occupy the premises from which the Restaurant is to be operated under a lease, then before signing the lease, Developer shall submit the draft lease or sublease to Franchisor for its approval. Franchisor's approval of the lease may be conditioned upon the inclusion in the lease of such provisions as Franchisor may reasonably require. Developer must obtain Franchisor's prior written approval as to the site for each Restaurant before Developer enters into a lease or sublease for such site, and before Developer starts construction at each such site. Within thirty (30) days after site approval by Franchisor, Developer shall execute a lease, after obtaining Franchisor's approval of the terms of the lease, or a binding agreement to purchase the site, subject only to Developer obtaining any necessary zoning variances, building, or use permits. Nothing in Section 3.2 above or this Section 3.3 shall be deemed to amend or modify Developer's obligation to meet the Development Schedule. As used in this Agreement, the term "lease" includes subleases and similar subordinate grants of property rights.

3.4 Recognizing that time is of the essence, Developer agrees to satisfy the Development Schedule. Failure by Developer to adhere to the Development Schedule, or failure

by Developer to submit a completed Site Approval Package and obtain Franchisor's approval thereof within the time specified in Section 3.2 hereof shall constitute a default under this Agreement as provided in Section 6.2 hereof.

4. TERM

The term of this Agreement and all rights granted hereunder shall expire on the last date specified in the Development Schedule, unless this Agreement is earlier terminated in accordance with the terms set out in this Agreement.

5. DUTIES OF THE PARTIES

5.1 For each Restaurant developed under this Agreement Franchisor shall furnish to Developer the following:

5.1.1 Site selection guidelines, including Franchisor's minimum standards for a location for the Restaurant, and such site selection counseling and assistance as Franchisor may deem advisable.

5.1.2 Such on-site evaluation as Franchisor may deem advisable in response to Developer's request for site approval; provided, however, that Franchisor shall not provide on-site evaluation for any proposed site prior to the receipt of a completed Site Approval Package and all information relating to the site as required under Section 3.2 above. Franchisor shall provide one (1) on-site evaluation at no charge to Developer for each Restaurant required to be developed pursuant to the Development Schedule. For any additional on-site evaluation, Developer shall reimburse Franchisor for all reasonable out-of-pocket expenses incurred by Franchisor in connection with such on-site evaluation, including, without limitation, the costs of travel, lodging, wages, and meals.

5.2 Developer accepts the following obligations:

5.2.1 If Developer is a corporation, then it shall comply, except as otherwise approved in writing by Franchisor, with the following requirements throughout the term of this Agreement:

5.2.1.1 Developer shall furnish Franchisor with its Articles of Incorporation, Bylaws, other governing documents, any other documents Franchisor may reasonably request, and any amendments thereto.

5.2.1.2 Developer shall confine its activities, and its governing documents, if any, shall at all times provide that its activities are confined, exclusively to the management and operation of the business contemplated hereunder, including the establishment and operation of the Restaurants to be developed hereunder.

5.2.1.3 Developer shall maintain stop transfer instructions against the transfer on its records of any voting securities; and shall issue no certificates for voting securities upon the face of which the following printed legend does not legibly and conspicuously appear:

The transfer of this stock is subject to the terms and conditions of an Area Development Agreement with Einstein and Noah Corp., dated _____. Reference is made to the provisions of the said Development Agreement and to the Articles and Bylaws of this Corporation.

5.2.1.4 Developer shall maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Developer and shall furnish the list to Franchisor upon request.

5.2.1.5 Such owners of a beneficial interest in the corporation as Franchisor may request shall execute a guarantee of the performance of Developer's obligations under this Agreement in the form attached hereto as Exhibit B.

5.2.2 If Developer is a partnership or limited liability entity of any sort (a "LLC"), then it shall comply, except as otherwise approved in writing by Franchisor, with the following requirements throughout the term of this Agreement:

5.2.2.1 Developer shall furnish Franchisor with its partnership agreement, operating agreement, and/or organizational documents, as well as such other documents as Franchisor may reasonably request, and any amendments thereto.

5.2.2.2 Developer shall prepare and furnish to Franchisor, upon request, a list of all general and limited partners, and/or members, in Developer.

5.2.2.3 Such partners in the partnership, or such members in the LLC, as Franchisor may request shall execute a guarantee of the performance of Developer's obligations under this Agreement in the form attached hereto as Exhibit B.

5.2.3 Developer shall at all times preserve in confidence any and all materials and information furnished or disclosed to Developer by Franchisor, and shall disclose such information or materials only to such of Developer's employees or agents who must have access to it in connection with their employment. Developer shall not at any time, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person.

5.2.4 Developer shall comply with all requirements of federal, state, and local laws, rules, and regulations. To the extent that the requirements of said laws are in conflict with

the terms of this Agreement or other instructions of Franchisor, Franchisee shall: (a) comply with said laws; and (b) immediately provide written notice describing the nature of such conflict to Franchisor.

5.2.5 Franchisor shall have the right to require Developer to employ one or more district managers (who shall be individuals reasonably acceptable to Franchisor) to supervise the day to day operations of Developer's stores. Any such district managers shall be required to attend and successfully complete (to Franchisor's reasonable satisfaction) such training course as Franchisor may reasonably require.

6. DEFAULT

6.1 Developer shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Developer, if Developer shall become insolvent or makes a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by Developer or such a petition is filed against and not opposed by Developer; or if Developer is adjudicated a bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of Developer or other custodian for Developer's business or assets is filed and consented to by Developer; or if a receiver or other custodian (permanent or temporary) of Developer's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Developer; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless unappealed or a supersedeas bond is filed); or if Developer is dissolved; or if execution is levied against Developer's business or property; or if suit to foreclose any lien or mortgage against the premises or equipment of any Restaurant developed hereunder is instituted against Developer and not dismissed within thirty (30) days; or if the real or personal property of Developer shall be sold after levy thereupon by any sheriff, marshal, or constable.

6.2 If Developer fails to meet its obligations under the Development Schedule, such action shall constitute a default under this Agreement, upon which Franchisor, in its discretion, may terminate this Agreement and all rights granted hereunder without affording Developer any opportunity to cure the default, effective immediately upon the delivery of written notice to Developer (in the manner set forth in Section 9 of this Agreement).

6.3 Except as otherwise provided in Sections 6.1 and 6.2, above, if Developer fails to comply with any material term and condition of this Agreement, or fails to comply with the terms and conditions of any Franchise Agreement or other development agreement between the Developer (or a person or entity affiliated with or controlled by the Developer) and Franchisor, such action shall constitute a default under this Agreement. Upon the occurrence of any such default, Franchisor may terminate this Agreement by giving written notice of termination stating the nature of such default to Developer at least fifteen (15) days prior to the effective date of termination; provided, however, that Developer may avoid termination by immediately initiating

a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the fifteen-day period (or such longer period as applicable law may require). If any such default is not cured within the specified time (or such longer period as applicable law may require), this Agreement and all rights granted hereunder (including but not limited to, the right to develop any new Restaurants) will terminate without further notice to Developer, effective immediately upon the expiration of the fifteen (15) day period (or such longer period as applicable law may require).

6.4 In lieu of termination, Franchisor shall have the right to reduce or eliminate all or only certain rights of Developer under this Agreement; and if Franchisor exercises said right, Franchisor shall not have waived its right to, in the case of future defaults, exercise all other rights, and invoke all other provisions, that are provided in law and/or set out under this Agreement.

6.5 Upon termination or expiration of this Agreement, Developer shall have no right to establish or operate any Restaurants for which a Franchise Agreement has not been executed by Franchisor at the time of termination. Thereafter, Franchisor shall be entitled to establish, and to license others to establish, Restaurants in the Development Area (except as may be otherwise provided under any Franchise Agreement that has been executed between Franchisor and Developer).

6.6 No default under this Area Development Agreement shall constitute a default under any Franchise Agreement between the parties hereto.

6.7 No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or equity.

7. TRANSFERS

7.1 Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.

7.2 If Developer is a corporation, partnership, or LLC, each principal of Developer ("**Principal**"), and the interest of each Principal in Developer, is identified in Exhibit C hereto. Any person or entity which owns a direct or indirect interest in Developer may be designated as a Principal by Franchisor in its sole discretion, and Exhibit C shall be so amended automatically upon notice thereof to Developer.

7.3 Franchisor shall have a continuing right to designate as a Principal any person or entity which owns a direct or indirect interest in Developer.

7.4 Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Developer, and that Franchisor has granted the rights described in this Agreement in reliance on Developer's or Developer's Principals' business skill, financial capacity, and personal character. Accordingly:

7.4.1 Developer shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and obligations of the Developer under this Agreement; or (b) any material asset of Developer.

7.4.2 If Developer is a corporation, Developer shall not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities shall become a Principal under this Agreement, if so designated by Franchisor.

7.4.3 If Developer is a partnership or LLC, the partners of the partnership or members of the LLC shall not, without the prior written consent of Franchisor, admit additional general partners or managing members, remove a general partner or managing member, or otherwise materially alter the powers of any general partner or managing member. Each general partner or member of a partnership or LLC shall automatically be deemed a Principal of Developer.

7.4.4 A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Developer as shown in Exhibit C.

7.5 Franchisor shall not unreasonably withhold any consent required by Section 7.4; provided, if Developer proposes to transfer its obligations hereunder or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Developer, Franchisor shall have absolute discretion to require any or all of the following as conditions of its approval:

7.5.1 The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Developer and Franchisor or its affiliates, and federal, state, and local laws and rules;

7.5.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Developer; and, if the obligations of Developer were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor;

7.5.3 After the transfer, the Principals of the Developer shall meet Franchisor's educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the business of Developer, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the business;

7.5.4 If a proposed transfer would result in a change in control of the Developer, at Franchisor's option, the Developer shall execute, for a term ending on the expiration date of this Agreement the form of area development agreement then being offered to new System Developers, and such other ancillary agreements required by Franchisor for the business contemplated hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement;

7.5.5 The transferor shall remain liable for all of the obligations to Franchisor in connection with this Agreement that arose prior to the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;

7.5.6 At Developer's expense, one Principal designated by Franchisor shall successfully complete all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require;

7.5.7 Developer shall pay a transfer fee of the greater of: (a) Ten Thousand Dollars (\$10,000); or (b) two percent (2%) of the total selling price paid by transferee for Franchisor's legal, accounting, training, and other expenses incurred in connection with the transfer;

7.5.8 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Section 8.2 and Section 8.3 of this Agreement; and

7.5.9 Developer shall have paid Franchisor all of remaining installments of the Development Fee, if any, that Developer has not yet paid to Franchisor under Section 2.2 above.

7.6 Right of First Refusal.

7.6.1 If Developer or any Principal desires to accept any *bona fide* offer from a third party to purchase Developer, any material assets of Developer, or any direct or indirect interest in Developer, Developer or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor.

7.6.2 Any material change in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 7.6 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 7, with respect to a proposed transfer.

7.6.3 In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they shall attempt to appoint a mutually acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Franchisee, which two appraisers will, in turn, promptly designate a third appraiser; all three appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Franchisee. The cost of any such appraisal shall be shared equally by Franchisor and Franchisee. If Franchisor elects to exercise its right of first refusal, it shall have the right to set off all amounts due from Franchisee, and one-half of the cost of the appraisal, if any, against any payment to the Seller.

7.7 Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.

7.8 Upon the permanent disability of any Principal with a controlling interest in Developer, Franchisor may, in its sole discretion, require such interest to be transferred to a third party in accordance with the conditions described in this Section 7 within six (6) months after notice to Developer. "**Permanent Disability**" shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) months from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician selected by Franchisor upon examination of such person or, if such person refuses to be examined, then such person shall automatically be deemed permanently disabled for the purposes of this Section 7.8 as of the date of refusal. Franchisor shall pay the cost of the required examination.

7.9 Upon the death or permanent disability of any Principal of Developer, such person or his representative shall promptly notify Franchisor of such death or claim of permanent

disability. Any transfer upon death or permanent disability shall be subject to the same terms and conditions as any *inter vivos* transfer.

7.10 Franchisor's consent to a transfer which is the subject of this Section 7 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

7.11 If Developer or any person holding any interest (direct or indirect) in Developer becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of Developer, Developer's obligations and/or rights hereunder, any material assets of Developer, or any indirect or direct interest in Developer shall be subject to all of the terms of this Section 7, including without limitation the rights set forth in Sections 7.4, 7.5, and 7.6 above.

7.12 All materials for an offering of stock or partnership interests in Developer or any affiliate of Developer which are required by federal or state law shall be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by Developer or any affiliate of Developer shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the securities of Developer or Developer's affiliates; and Franchisor's review of any offering shall be limited solely to the relationship between Franchisor and Developer and any subsidiaries and affiliates, if applicable. Franchisor may, at its option, require the offering materials to contain a written statement prescribed by Franchisor concerning the limitations stated in the preceding sentence. Developer (and the offeror if not Developer), the Principals, and all other participants in the offering must fully indemnify Franchisor, its subsidiaries, affiliates, successor, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, Developer shall pay Franchisor a non-refundable fee of Seven Thousand Five Hundred Dollars (\$7,500) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering. Developer shall give Franchisor written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 7.12 commences. Any such offering shall be subject to all of the other provisions of this Section 7, including without limitation those set forth in Sections 7.4, 7.5, and 7.6; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to Franchisor's approval as to the structure and voting control of the offeror (and Developer, if Developer is not the offeror) after the financing is completed.

8. COVENANTS

8.1 Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer (or one (1) designated management employee who will assume primary responsibility for the operations of Developer and shall have been previously approved in writing by Franchisor) shall devote full time, energy, and best efforts to the management and operation of the business contemplated hereunder.

8.2 Developer specifically acknowledges that, pursuant to this Agreement, Developer will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership corporation or entity:

8.2.1 Divert or attempt to divert any business or customer of the Restaurant or of any Restaurant using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System.

8.2.2 Unless released in writing by the employer, employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee or developer of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment.

8.3 Developer covenants that, except as otherwise approved in writing by Franchisor, it shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant; and shall not for a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 7 above; (b) expiration or termination of this Agreement (regardless of the cause for termination); or (c) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Section 8.3; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity), own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the business operated under this Agreement or the Restaurants required to be developed under this Agreement and which business is, or is intended to be, located (i) within the Development Area; (ii) within a five (5) mile radius of any Restaurant developed under this Agreement; or (iii) within a five (5) mile radius of any Restaurant under the System at the time the obligations under this Section 8.3 commenced. As used in this Agreement, the term "same as or similar to the business operated under this Agreement or the Restaurants required to be developed under this Agreement" shall mean any

other retail business that sells or offers bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business' gross revenues at any one or more retail location(s).

8.4 Section 8.3 hereof shall not apply to ownership by Developer of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "**publicly-held corporation**" shall be deemed to refer to a corporation which has securities that have been registered under the federal Securities Exchange Act of 1934.

8.5 At Franchisor's request, Developer shall require and obtain execution of covenants similar to those set forth in Sections 7 and 8 (as modified to apply to an individual) from any or all of the following persons: Developer's Principals and senior level management personnel. The covenants required by this Section 8.5 shall be in the form provided in Exhibit E to this Agreement. Failure by Developer to obtain execution of a covenant required by this Section 8.5 shall constitute a default under Section 6.3 hereof.

8.6 The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 8 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Developer expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 8.

8.7 Developer understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 8.2 and 8.3 in this Agreement, or any portion thereof, without Developer's consent, effective immediately upon receipt by Developer of written notice thereof; and Developer agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 13 hereof.

8.8 Developer expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 8. Developer agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 8.

8.9 Developer acknowledges that Developer's violation of the terms of this Section 8 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Developer accordingly consents to the issuance of an injunction prohibiting any conduct by Developer in violation of the terms of this Section 8.

9. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.

10. PERMITS AND COMPLIANCE WITH LAWS

10.1 Developer shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business contemplated under this Agreement.

10.2 Developer shall notify Franchisor in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation or financial condition of Developer and/or any Restaurant established pursuant to this Agreement.

11. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

11.1 It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them, that Developer shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

11.2 At all times during the term of this Agreement, Developer shall hold itself out to the public as an independent contractor operating pursuant to this Agreement. Developer agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place in the Developer's offices, the content of which Franchisor reserves the right to specify.

11.3 It is understood and agreed that nothing in this Agreement authorizes Developer to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and that Franchisor shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Franchisor be liable by reason of any act or omission of Developer in Developer's operations hereunder, or for any claim or judgment arising therefrom against Developer or Franchisor.

11.4 Developer shall indemnify and hold Franchisor, Franchisor's owners and affiliates, and their respective officers, directors, employees, and agents, harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with Developer's operation of the business contemplated hereunder, as well as the costs, including attorneys' fees, of defending against them.

12. APPROVALS AND WAIVERS

12.1 Whenever this Agreement requires Franchisor's prior approval or consent, Developer shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing.

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

12.3 No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Developer under any of the terms, provisions, covenants, or conditions of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power as against Developer, or as to subsequent breach or default by Developer. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Developer of any terms, provisions, covenants, or conditions of this Agreement.

13. ENTIRE AGREEMENT AND AMENDMENT

This Agreement and the exhibits referred to herein constitute the entire, full, and complete Agreement between Franchisor and Developer concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Developer to execute this Agreement. No amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

14. SEVERABILITY AND CONSTRUCTION

14.1 Except as expressly provided to the contrary herein, each portion, section, part, term, and/or provision of this Agreement shall be considered severable; and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise

intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement.

14.2 Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Developer, Franchisor, Franchisor's officers, directors, and employees, and such of Developer's and Franchisor's respective successors and assigns as may be contemplated (and, as to Developer, permitted) by Section 7 hereof, any rights or remedies under or by reason of this Agreement.

14.3 Developer expressly agrees 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 unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

14.4 All capitalized terms not defined herein shall have the meaning ascribed to them in the Franchise Agreement.

14.5 All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

14.6 All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.

15. APPLICABLE LAW

15.1 This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State of Colorado, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Colorado choice of law rules); provided, however, that if the covenants in Section 8 of this Agreement would not be enforceable under the laws of Colorado, and Developer is located outside of Colorado, then such covenants shall be interpreted and construed under the laws of the state in which the Developer's principal place of business is located. Nothing in this Section 15.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Colorado to which this Agreement would not otherwise be subject.

15.2 The parties agree that any action brought by Developer against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against

Developer in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 15.2 shall not be construed as preventing either party from removing an action from state to federal court. Developer hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

15.3 Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided below). Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 15.3 shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation.

15.4 No right or remedy conferred upon or reserved to Franchisor or Developer by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

15.5 Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

15.6 Franchisor and Developer irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Developer and Franchisor, or Developer's operation of the business contemplated hereunder, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred.

15.7 Franchisor and Developer hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

16. ACKNOWLEDGMENTS

16.1 Developer acknowledges that it has conducted an independent investigation of the business contemplated hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability

of Developer and if a corporation, partnership, or LLC, its owners as independent businesspersons. Franchisor expressly disclaims the making of, and Developer acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

16.2 Developer acknowledges that it received a complete copy of this Agreement and the Exhibits hereto, with all of the blank lines herein filled in, at least five (5) business days prior to the date on which this Agreement was executed. Developer further acknowledges that it received the uniform franchise offering circular required by the Federal Trade Commission Franchise Rule, 16 C.F.R. Part 436, at least ten (10) business days prior to the date on which this Agreement was executed.

16.3 Developer acknowledges that it has read and understood this Agreement, the Exhibits hereto, and agreements relating thereto, if any, and that Franchisor has accorded Developer ample time and opportunity to consult with advisors of Developer's own choosing about the potential benefits and risks of entering into this Agreement.

[signature page to follow]

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

Einstein and Noah Corp.
Franchisor

Developer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address for Notices:

Address for Notices:

Einstein and Noah Corp.
1687 Cole Boulevard
Golden, Colorado 80401

Telephone: _____

Fax: _____

Attn: _____

Telephone: _____

Fax: _____

Attn: _____

**EINSTEIN AND NOAH CORP.
AREA DEVELOPMENT AGREEMENT**

**EXHIBIT A
DEVELOPMENT AREA AND DEVELOPMENT SCHEDULE**

1. Development Area. All Restaurants developed under this Development Agreement shall be located within the boundaries of the following area:

2. Development Schedule. Recognizing that time is of the essence, Developer agrees to satisfy the development schedule set forth below:

By (Date)	Cumulative Total Number of Restaurants Which Developer Shall Have Open and in Operation	By (Date)	Cumulative Total Number of Restaurants Which Developer Shall Have Open and in Operation

INITIALED:

FRANCHISOR: _____ DEVELOPER: _____

**EINSTEIN AND NOAH CORP.
DEVELOPMENT AGREEMENT**

**EXHIBIT B
GUARANTEE**

As an inducement to Einstein and Noah Corp. (“Franchisor”) to execute the Einstein and Noah Corp. Area Development Agreement between Franchisor and _____ (“Developer”) dated _____, 200__ (the “Agreement”), the undersigned hereby agree to defend, indemnify and hold Franchisor, Franchisor’s affiliates, and their respective officers, directors, employees, and agents harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney’s fees, reasonable costs of investigation, court costs, and arbitration fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Developer to perform any obligation of Developer under the Agreement, any amendment thereto, or any other agreement executed by Developer referred to therein.

The undersigned hereby acknowledge and agree to be individually bound by all of the covenants contained in Section 8 of the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with Section 15 of the Agreement. This Guarantee shall be interpreted and construed under the laws of the State of Colorado. In the event of any conflict of law, the laws of Colorado shall prevail (without regard to, and without giving effect to, the application of Colorado conflict of law rules).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement.

GUARANTOR

(Seal)

_____, Individually
[Name]

(Seal)

_____, Individually
[Name]

(Seal)

_____, Individually
[Name]

(Seal)

_____, Individually
[Name]

**EINSTEIN AND NOAH CORP.
AREA DEVELOPMENT AGREEMENT**

**EXHIBIT C
LIST OF PRINCIPALS**

Name of Principal	Address	Interest (%)

INITIALED:

FRANCHISOR: _____ DEVELOPER: _____

**EINSTEIN AND NOAH CORP.
DEVELOPMENT AGREEMENT**

**EXHIBIT D
FRANCHISE AGREEMENT**

The form of Franchise Agreement currently offered by Franchisor is attached.

EXHIBIT E
NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("Agreement") is made this _____ day of _____, 200____, by and between _____ (the "**Developer**"), and _____, who is a Principal, manager, supervisor, member, partner, or a person in a managerial position with, Developer (the "**Member**").

RECITALS:

WHEREAS, Einstein and Noah Corp. ("**ENC**") owns a format and system (the "**System**") relating to the establishment and operation of businesses operating in buildings that bear ENC's interior and exterior trade dress, under the "Einstein Bros." name and marks ("**Restaurants**"), and specializing in the sale of Proprietary Items including fresh-baked bagels, cream cheese and other spreads, specialty coffees and teas, and creative soups, salads and sandwiches, and other such additional products as ENC may specify from time to time, as well as non-Proprietary Items such as sandwiches, salads, soups, and other beverage items for on-premises and carry-out consumption (collectively, the "**Products**");

WHEREAS, ENC and Developer have executed an Area Development Agreement ("**Development Agreement**") granting Developer the right to develop "Einstein Bros." Restaurants and to use the Proprietary Marks in connection therewith under the terms and conditions of the Development Agreement;

WHEREAS, the Member, by virtue of his or her position with Developer, will gain access to certain of ENC's Confidential Information, as defined herein, and must therefore be bound by the same confidentiality and non-competition agreement that Developer is bound by.

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. Confidential Information. Member shall not, during the term of the Development Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised thereunder which may be communicated to Member or of which Member may be apprised by virtue of Developer's operation under the terms of the Development Agreement. Any and all information, knowledge, know-how, and techniques which ENC designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Developer can demonstrate came to its attention prior to disclosure thereof by ENC; or which, at or after the

time of disclosure by ENC to Developer, had become or later becomes a part of the public domain, through publication or communication by others.

2. Covenants Not to Compete.

(a) Member specifically acknowledges that, pursuant to the Development Agreement, and by virtue of its position with Developer, Member will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of ENC and the System.

(b) Member covenants and agrees that during the term of the Development Agreement, except as otherwise approved in writing by ENC, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

(i) Divert or attempt to divert any business or customer of the Restaurant or of any Restaurant using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with ENC's Proprietary Marks and the System.

(ii) Employ or seek to employ any person who is at that time employed by ENC, Developer, any other developer, master franchisee, franchisee, or development agent, or otherwise directly or indirectly induce such person to leave his or her employment; or

(iii) Either directly or indirectly for him/herself or on behalf of, or in conjunction with any person, persons, partnership, corporation or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant.

(c) Member covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by ENC, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the business operated under the Development Agreement or the Restaurants required to be developed under the Development Agreement and which business is, or is intended to be, located (i) within the Development Area; (ii) within a five (5) mile radius of any Restaurant developed under the Development Agreement; or (iii) within a five (5) mile radius of any Restaurant under the System at the time the obligations under this Section 2(c) commenced.

(d) As used in this Agreement, the term "same as or similar to the business operated under this Agreement or the Restaurants required to be developed under the Development Agreement" shall mean any other retail business that sells or offers bagels, cream cheese, and/or

coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business' gross revenues at any one or more retail location(s).

(e) As used in this Agreement, the term "Post-Term Period" shall mean a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 7 of the Development Agreement; (b) expiration or termination of the Development Agreement (regardless of the cause for termination); (c) termination of Member's employment with Developer; and/or (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Agreement; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity).

3. Injunctive Relief. Member acknowledges that any failure to comply with the requirements of this Agreement will cause ENC irreparable injury, and Member agrees to pay all court costs and reasonable attorney's fees incurred by ENC in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

4. Severability. All agreements and covenants contained herein are severable. If any of them, or any part or parts of them, shall be held invalid by any court of competent jurisdiction for any reason, then the Member agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect ENC's and/or Developer's legitimate business needs as permitted by applicable law and public policy. In so doing, the Member agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5. Delay. No delay or failure by ENC or Developer to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided herein, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6. Third-Party Beneficiary. Member hereby acknowledges and agrees that ENC is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly with Developer.

[signature page to follow]

IN WITNESS WHEREOF, the Developer and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on this ____ day of _____, 200__.

DEVELOPER

MEMBER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____