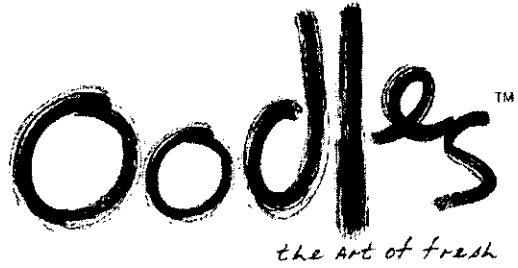


**NOODLES DEVELOPMENT, L.P.**

**EXHIBIT C**

**AREA DEVELOPMENT AGREEMENT**



**NOODLES DEVELOPMENT, L.P.**

**EXHIBIT C**

**AREA DEVELOPMENT AGREEMENT**

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### ATTACHMENTS

- Attachment A – Description of Development Territory and Area Development Fee
- Attachment B – Development Schedule
- Attachment C – Personal Guaranty
- Attachment D – Statement of Shareholders/Members/Partners

**NOTHING BUT NOODLES, L.P.**  
**AREA DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“**Effective Date**”) by and between **Noodles Development, L.P.**, a Texas limited partnership, with a business address at 14500 N. Northsight Blvd., Suite 216, Scottsdale, Arizona 85260 (“**Noodles Development**”) and \_\_\_\_\_, with its business address at \_\_\_\_\_ (“**Area Developer**”).

**WITNESSETH:**

**WHEREAS**, Noodles Development holds the exclusive franchise rights to a proprietary system which has been developed through significant expenditures of time, skill, effort and money (“**System**”) relating to the establishment, development and operation of a Oodles the Art of Fresh™ restaurant (“**Franchised Restaurant**”) which specializes in the retail sale of high quality noodle and pasta-based food items, salads, and other food menu items related to the Oodles the Art of Fresh™ concept, as Noodles Development may authorize occasionally, using the trademark OODLES THE ART OF FRESH™; and

**WHEREAS**, the System features use of the Marks (defined below), a distinctive exterior and interior design, decor, color scheme, fixtures and furnishings for the Franchised Restaurant, as well as uniform standards, specifications, methods, policies and procedures for store operations, proprietary inventory and management control, training and assistance, and advertising and promotional programs (all as further defined in the Operations Manual), all of which may be changed, improved upon, and further developed occasionally by Noodles Development;

**WHEREAS**, Noodles Development, through its dedicated operations, marketing methods, and merchandising policies, has developed the reputation, public image and good will of its System and established a firm foundation for its franchised retail operations consisting of the highest standards of training, management, supervision, appearance, services and quality of products;

**WHEREAS**, the System is identified by means of certain trademarks, including the marks OODLES THE ART OF FRESH™ and OODLES THE ART OF FRESH™ logo, and any other trade names, service marks, and trademarks as are now, and may hereafter be, designated for use in connection with the System (“**Marks**”);

**WHEREAS**, Noodles Development continues to develop, expand, use, control and add to the Marks and the System for the benefit of and exclusive use by Noodles Development and its franchisees in order to identify for the public the source of the products and services marketed thereunder and to represent the System’s high standards of quality and service;

**WHEREAS**, Area Developer desires to obtain the exclusive right to develop, construct, manage and operate a series of Nothing But Noodles Franchised Restaurants under the

development schedule described in **Attachment B** attached hereto (“**Development Schedule**”) and within the territory described in **Attachment A** attached hereto (“**Development Territory**”), under the System and Marks, as well as to receive the training and other assistance provided by Noodles Development in connection therewith;

**WHEREAS**, the Area Developer hereby acknowledges that it has read this Agreement and Noodles Development’s Uniform Franchise Offering Circular (“**Offering Circular**”), and that it has no knowledge of any representations about the Nothing But Noodles franchise or about Noodles Development or its franchising program or policies made by Noodles Development or by its officers, directors, shareholders, employees or agents which are contrary to the statements in Noodles Development’s Offering Circular or to the terms of this Agreement, and that it understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain Noodles Development’s high standards of quality and service and the uniformity of those standards at all facilities which operate pursuant to the System and thereby to protect and preserve the goodwill of the System and the Marks; and

**WHEREAS**, Area Developer understands and acknowledges the importance of Noodles Development’s uniformly high standards of quality and service and the necessity of operating the Nothing But Noodles franchises in strict conformity with Noodles Development’s quality control standards and specifications.

**NOW, THEREFORE**, the parties, in consideration of the promises, undertakings and commitments of each party to the other party set forth herein, hereby mutually agree as follows:

## 1. GRANT

1.1 Noodles Development hereby grants to Area Developer the right and license to develop, construct, operate and manage \_\_\_\_\_ (\_\_\_) Franchised Restaurants in strict accordance with the System and under the Marks within the Development Territory described in **Attachment A**. Each Franchised Restaurant shall be operated according to the terms of the individual franchise agreement (“**Franchise Agreement**”) with respect thereto.

1.2 If the Area Developer is developing Franchised Restaurants, and complies with the terms of this Agreement, the Development Schedule, and the individual Franchise Agreement for each Franchised Restaurant, then Noodles Development will not franchise or license others, nor will it itself directly or indirectly develop, own, lease, construct or operate in any manner, any Franchised Restaurants in the Development Territory during the term hereof; however, Noodles Development reserves the right to sell products and services, including frozen products and other branded proprietary products, under the Marks or any other marks, through any other retail location, including grocery stores, convenience stores, hotel shops, kiosks, theatres, malls, airports, college campuses, gas stations, military bases, at special events or through any other channels of distribution, including through mail order, catalogue sales or over the Internet. In addition, Noodles Development reserves the right to establish or grant express units (“**Express Units**”) at any time within the Development Territory. Noodles Development also reserves the right to (a) establish, operate or license to any other person or entity the right to establish or operate a restaurant owned or licensed by Noodles Development at any location outside the Development Territory; (b) develop, lease and license the use of, at

any location side or outside of the Development Territory, trademarks other than the Marks, in connection with the operation of a system which offers products or services which are the same as or similar to those offered under the System, on any terms or conditions which Noodles Development deems advisable; (c) merge with, or be acquired by any other business, including a business that competes with Franchised Restaurants operated by Area Developer, or to acquire and convert to the System operated by Noodles Development any restaurants, including restaurants operated by competitors, located inside or outside of the Development Territory or otherwise operated independently as part of, or in association with, any other system or chain, whether franchised or corporately owned; and (d) implement multi-area marketing programs which may allow Noodles Development or others to solicit or sell to customers anywhere, and to issue mandatory policies to coordinate these multi-area marketing programs. Upon the expiration or termination of this Agreement, the Area Developer will no longer have an exclusive Development Territory and each Franchised Restaurant will be limited to operating solely at the franchised location (“**Franchised Location**”) described in the individual Franchise Agreement. Area Developer understands, acknowledges and agrees that as a Franchisee, Area Developer will not receive any exclusive or protected territorial rights other than the exclusive right to operate each Franchised Restaurant at each Franchised Location.

1.3 This Agreement is not a franchise agreement and Area Developer shall have no right to use in any manner the Marks or System by virtue hereof. Each Franchised Restaurant will be governed by the individual Franchise Agreement signed by Noodles Development and Area Developer for each Franchised Restaurant.

1.4 The Area Developer must contribute some amount of its personal capital to the development of each Franchised Restaurant and must own at least a fifty-one percent (51%) equity interest in each Franchised Restaurant developed hereunder. In addition, Franchisee shall ensure that a person having at least a ten percent (10%) beneficial equity interest in the Franchisee (“**Operating Partner**”) shall at all times devote his or her full time and attention to managing, supervising, and developing each Franchised Restaurant and that the person is at all times identified to the Noodles Development. Area Developer shall identify all equity owners of Area Developer by completing the Statement of Shareholders/Members/Partners attached to this Agreement as **Attachment D**. Area Developer shall provide Noodles Development with an updated form of **Attachment D** within ten (10) business days of any change in the equity ownership of Area Developer. The failure of Area Developer to provide Noodles Development with an updated **Attachment D** within the time frame specified in this Section 1.4 shall constitute a material default of this Agreement.

## 2. **TERM**

Unless sooner terminated pursuant to the provisions of Section 7, the term of this Agreement shall expire upon the earlier of (a) \_\_\_\_\_ years from the Effective Date, or (b) completion of the term of the Development Schedule. Noodles Development, in its sole discretion, may permit Area Developer to renew this Agreement for an additional term; provided that, without limiting the foregoing, the Area Developer has not defaulted in its obligations under this Agreement or any other agreement with Noodles Development, and the parties agree in writing to an extension of the Development Schedule.

### 3. FRANCHISE AGREEMENT, INITIAL FRANCHISE FEE, AREA DEVELOPMENT FEE AND INITIAL TRAINING

3.1 With respect to each Franchised Restaurant to be developed under this Agreement:

(a) As soon as Area Developer locates a site within the Development Territory that it believes is suitable for construction of a Franchised Restaurant, Area Developer shall submit to Noodles Development the information about the proposed location including, without limitation, lease terms, land acquisition terms, demographic criteria and preliminary site plans showing building orientation, proposed unit location, parking layout, and certain other information, as Noodles Development may require occasionally in Noodles Development's operations manual ("**Operations Manual**"). If Area Developer proposes that another entity will operate the Franchised Restaurant, Area Developer must also submit information to Noodles Development regarding the proposed franchisee entity. Noodles Development reserves the right to request as much additional information regarding the site and the proposed franchisee entity as it deems necessary, in its sole discretion, and Area Developer agrees to provide the information immediately upon request.

(b) Should Noodles Development approve of the site location per Section 3.1(a) above, it will give its written approval to the Area Developer to proceed with architectural drawings and final site plans, containing the information as Noodles Development requires. The approval of the site location shall not constitute final approval of the site for the Franchised Restaurant, or of the entity proposed as franchisee. Upon receipt of the site location approval, Area Developer should make an offer to secure the site via purchase or lease, which offer must be contingent upon final approval by Noodles Development of the site and of the proposed franchisee entity.

(c) Should Noodles Development provide final site approval and approve of the proposed franchisee entity for a Franchised Restaurant, Noodles Development and Area Developer (or its affiliate) shall promptly enter into an individual Franchise Agreement for this Franchised Restaurant before the date Area Developer begins construction on the Franchised Location, which agreement shall be in the form of Noodles Development's then-current form of Franchise Agreement. The terms of the individual Franchise Agreement will then govern the further development and build-out of the Franchised Restaurant.

3.2 The Area Developer shall pay to Noodles Development an Initial Franchise Fee for each Franchised Restaurant to be developed hereunder. At all times during the term of this Agreement and any renewal thereof, the initial franchise fee ("**Initial Franchise Fee**") shall be a minimum of Twenty Five Thousand Dollars (\$25,000), or the higher Initial Franchise Fee as Noodles Development may be charging new franchisees for Franchised Restaurants at the time Area Developer submits the proposed site to Noodles Development. The Area Developer shall pay upon execution of this Agreement an area development fee ("**Area Development Fee**"), based on the residential population ("**Area Population**") located in the Development Territory, in accordance with the table set forth below:

Area Population	Area Development Fee
75,000 to 250,000	\$50,000.00
250,001 to 500,000	\$75,000.00
500,000 to 1,000,000	\$100,000.00

If the Development Territory includes an Area Population with more than 1,000,000 residents, the Area Development Fee shall be equal to the number of residents living in the Development Territory, multiplied by ten cents (\$.10). Noodles Development shall have the right, in Noodles Development's sole discretion, to determine the Area Population in the Development Territory using any method Noodles Development determines to be reasonable. The Area Development Fee for this Agreement is set forth in **Attachment A**. At the time the Area Developer signs each Franchise Agreement for each individual Franchised Restaurant to be opened pursuant to this Agreement, Area Developer shall receive a credit ("**Development Fee Credit**") towards the Initial Franchise Fee for each Franchised Restaurant which is equal to the then-current Initial Franchise Fee being charged by Noodles Development. Area Developer shall continue to receive a Development Fee Credit until such time as the Area Development Fee is exhausted. In the event that the Development Fee Credit is less than the Initial Franchise Fee being charged by Noodles Development at the time Area Developer is required to sign its next Franchise Agreement, Area Developer will be required to pay the Initial Franchise Fee, less any unused balance of the Area Development Fee. In that case, the Initial Franchise Fee, less any remaining Development Fee Credit, will be due upon the execution of that Franchise Agreement. Once the Area Development Fee is exhausted, Franchisee shall be responsible for paying the entire Initial Franchise Fee at the time Franchisee signs each subsequent single-unit Franchise Agreement. All amounts paid by or on behalf of Area Developer to Noodles Development shall be deemed fully earned immediately upon receipt and shall be non-refundable, regardless of whether Area Developer opens any of the Franchised Restaurants it is obligated to open in the Development Territory.

3.3 The terms of the Franchise Agreement notwithstanding, Noodles Development shall provide the Area Developer with Noodles Development's then-current Training Program (as defined in the Franchise Agreement) and on-site opening assistance for the first three (3) Franchised Restaurants to be developed hereunder. Thereafter, Noodles Development shall provide only the Training Program, and then only for the designated Operating Partner (as defined in the Franchise Agreement) and one other employee of each additional Franchised Restaurant, and will not provide on-site assistance. Instead, the Area Developer shall, after the opening of its first Franchised Restaurant, begin assembly of its own store opening assistance team, and said team must be fully trained and in place before the opening of the fourth Franchised Restaurant hereunder. After the opening of the third Franchised Restaurant, the Area Developer's store opening team must provide the on-site opening assistance as stipulated by Noodles Development and continue to provide said assistance for each and every Franchised Restaurant to be opened by the Area Developer under the Development Schedule.



#### **4. DEVELOPMENT SCHEDULE**

Area Developer shall open and continuously operate the Franchised Restaurants in accordance with the System and the Development Schedule set forth in **Attachment B**. In the event that Area Developer opens and operates a greater number of Franchised Restaurants than is required to comply with the current period of the Development Schedule, the requirements of the succeeding period(s) shall be deemed to have been satisfied to the extent of these excess number of Franchised Restaurants. Area Developer will be permitted to open Franchised Restaurants in excess of the number of Franchised Restaurants set forth in the Development Schedule subject to the prior written approval of Noodles Development if, in Noodles Development's sole discretion, Noodles Development determines that the Development Territory could support additional Franchised Restaurants. Area Developer shall pay Noodles Development the then-current Initial Franchise Fee applicable at the time Area Developer signs a Franchise Agreement for any additional Franchised Restaurants.

#### **5. LOCATION OF FRANCHISED RESTAURANTS**

The location of each Franchised Restaurant shall be selected by the Area Developer, within the Development Territory, subject to Noodles Development's prior approval as set forth in Section 3 hereof, which approval shall take into account all relevant demographic information then available to Noodles Development. The establishment of any proposed site by Area Developer before approval of Noodles Development shall be the sole risk and responsibility of Area Developer and shall not obligate Noodles Development in any way to approve the same. The approval of a proposed site by Noodles Development does not in any way constitute a warranty or representation by Noodles Development as to the suitability of the site for location of a Franchised Restaurant.

#### **6. FRANCHISE AGREEMENT**

Area Developer shall not commence construction on, or open any Franchised Restaurant until, among other things, the entire Initial Franchise Fee for said Franchised Restaurant has been paid in full and the individual Franchise Agreement for this Franchised Restaurant has been signed by both the Area Developer and Noodles Development.

#### **7. DEFAULT AND TERMINATION**

Area Developer shall be in default under this Agreement should Area Developer (or its affiliate): (a) fail to comply with the Development Schedule; (b) fail to perform any of its obligations under this Agreement or any individual Franchise Agreement; (c) cease to be a franchisee of Noodles Development in good standing; or (d) fail to comply with the provisions on transfer contained herein.

Upon the default, Noodles Development shall have the right, at its option, and in its sole discretion, to do any or all of the following:

- 7.1 terminate this Agreement;
- 7.2 terminate the territorial exclusivity granted to Area Developer;

7.3 reduce the size of the Area Developer's Development Territory or the number of Franchised Restaurants Area Developer may develop in the Development Territory; or

7.4 accelerate the Development Schedule on immediate written notice.

In addition, if any individual Franchise Agreement issued to Area Developer, whether or not issued pursuant to this Agreement, is terminated for any reason, Noodles Development shall have the right to terminate this Agreement on immediate written notice to Area Developer. Upon termination or expiration of the term of this Agreement, this Agreement shall be of no further effect, and Noodles Development shall have the right to itself open, or license others to open, Franchised Restaurants within the Development Territory. For purposes of this Section 7, any Franchise Agreement issued by Noodles Development to Area Developer or its affiliates, or any corporation, partnership or joint venture, or their affiliates, in which Area Developer or any stockholder, partner or joint venturer of Area Developer, has any direct or indirect ownership or participation interest, shall be deemed a Franchise Agreement issued to Area Developer.

## 8. ASSIGNMENT

8.1 By Noodles Development. Noodles Development shall have the absolute right to transfer or assign all or any part of its rights or obligations hereunder to any person or legal entity which assumes its obligation under this Agreement and Noodles Development shall thereby be released from any and all further liability to Area Developer.

8.2 By Area Developer.

(a) Area Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Area Developer and are granted in reliance upon the personal qualifications of Area Developer or Area Developer's principals. Area Developer has represented to Noodles Development that Area Developer is entering into this Agreement with the intention of complying with its terms and conditions and not for the purpose of transferring the development and option rights hereunder.

(b) Neither Area Developer nor any partner, member, or shareholder thereof shall, without Noodles Development's prior written consent, directly or indirectly assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest in this Agreement or in Area Developer. Any proposed assignment occurring by operation of law or otherwise, including any assignment by a trustee in bankruptcy, without Noodles Development's prior written consent, shall be a material default of this Agreement.

(c) Any assignment, transfer or other disposition by the Area Developer of a single-unit Franchised Restaurant within the Development Territory will be governed by the Franchise Agreement to which the single-unit Franchised Restaurant is bound.

(d) Subject to the other provisions of Section 8 herein, including Section 8.2(c) above and Section 8.2(e) below, if Area Developer wishes to sell, transfer or otherwise assign any portion, or all, of the Development Territory, the Area Developer

shall notify Noodles Development which may approve or disapprove the same in its sole discretion, and in addition Noodles Development may require any or all of the following as conditions of its approval:

(i) All of the Area Developer's accrued monetary obligations and all other outstanding obligations to Noodles Development, its affiliates and suppliers must be fully paid and satisfied;

(ii) The Area Developer must not be in default of any provision of its Franchise Agreements, any amendments thereof or successors thereto, or any other agreement between the Area Developer and Noodles Development, its subsidiaries or affiliates;

(iii) The Area Developer and each of its affiliates, shareholders, members, partners, officers and directors must sign a general release, under seal, the consideration for which shall be the approval of the transfer, in a form satisfactory to Noodles Development, of any and all claims against Noodles Development and its affiliates, officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;

(iv) The transferee must enter into a written assignment, under seal and in a form satisfactory to Noodles Development, assuming and agreeing to discharge all of the Area Developer's obligations under the relevant Franchise Agreements and, if deemed necessary by Noodles Development, the transferee's principals, individually, shall guarantee the performance of all these obligations in writing in a form satisfactory to Noodles Development;

(v) The transferee must demonstrate to Noodles Development's satisfaction that the transferee meets Noodles Development's educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to operate the Franchised Restaurants (as may be evidenced by prior related experience or otherwise); has at least the same managerial and financial acumen required of new Area Developers and shall have sufficient equity capital, as determined by Noodles Development in Noodles Development's sole discretion, to operate the Franchised Restaurants;

(vi) At Noodles Development's option, the transferee must sign (and, upon Noodles Development's request, shall cause all interested parties to sign), for a term ending on the expiration date of the Franchise Agreement(s) and with the renewal term as may be provided by the Franchise Agreement(s), the standard form of Franchise Agreement and Area Development Agreement then being offered to new Area Developers and any other ancillary agreements as Noodles Development may require for the Franchised Restaurants, which agreements shall supersede the Franchise Agreements and the Area Development Agreement between the Area Developer and Noodles Development in all respects and the terms of which agreements may differ from the terms of the Franchise

Agreements and Area Development Agreement, including, without limitation, the implementation of other fees and different royalty rates;

(vii) The Area Developer and its principals must remain liable for all direct and indirect obligations to Noodles Development in connection with the Franchised Restaurants before the effective date of transfer and will continue to remain responsible for their obligations of nondisclosure, noncompetition and indemnification as provided in the Franchise Agreements and Personal Guaranty, attached into this Agreement as **Attachment C**, and shall sign any and all instruments reasonably requested by Noodles Development to further evidence this liability; and

(viii) Area Developer or its approved transferee shall pay to Noodles Development, at the time of said transfer, a transfer fee equal to twenty five percent (25%) of the then-current Initial Franchise Fee for each Franchised Restaurant to be transferred to cover Noodles Development's administrative and other expenses in connection with the transfer of the Franchised Restaurants by the Area Developer.

(e) If Area Developer or its principals shall at any time determine to sell, transfer or otherwise dispose of all or part of the rights under this Agreement or an ownership interest in Area Developer, and Area Developer or its principals shall obtain a bona fide, signed written offer from a responsible and fully disclosed purchaser, Area Developer shall notify Noodles Development in writing of each offer, and Noodles Development shall have the right and option, exercisable within a period of thirty (30) days from the date of delivery of this offer, by written notice to Area Developer or its owners, to purchase the rights under this Agreement or this ownership interest for the price and on the terms and conditions contained in said purchaser's offer. If Noodles Development does not exercise its right of first refusal, Area Developer or its principals may complete the sale of Area Developer or this ownership interest, subject to Noodles Development's approval of the purchaser and all other conditions set forth in this Section 8.2, provided that if this sale is not completed within one hundred twenty (120) days after delivery of this offer to Noodles Development, Noodles Development shall again have the right of first refusal herein provided. In the event that the Area Developer wishes to publicly offer its shares in any partnership or corporation which has an ownership interest in the Area Developer, said public offering shall be subject to the approval of Noodles Development, this approval to not be unreasonably withheld.

8.3 Entity Ownership. Each shareholder, member, or partner of the corporation, limited liability company, or partnership which is granted the rights to serve as the Area Developer hereunder shall be a party to a shareholders' agreement, operating agreement, or partnership agreement which shall provide, inter alia, that upon any dissolution of the corporation, limited liability company, or partnership, or upon any divorce decree among the parties who are also shareholders, members, or partners, that ownership of the shares, membership interest, or partnership interest shall be transferred to the shareholder, member, or partner for agreed upon consideration, which has primary responsibility for sales and marketing

activities, typically the President, following any dissolution or decree. The form and content of the shareholders' agreement, operating agreement, or partnership agreement must be approved by Noodles Development before execution. Area Developer's failure to comply with this Section 8.3 shall constitute a material default of this Agreement.

## **9. FORCE MAJEURE**

In the event that Area Developer is unable to comply with the Development Schedule due to strike, riot, civil disorder, war, failure to supply, fire, natural catastrophe or other similar events beyond its control, and upon notice to Noodles Development, the Development Schedule and this Agreement shall be extended for a corresponding period, not to exceed ninety (90) days; provided, however, that this Section 9 shall not extend the time for payment of any monetary obligations owed to Noodles Development.

## **10. CONFIDENTIALITY**

10.1 Nothing contained in this Agreement shall be construed to require Noodles Development to divulge to Area Developer any trade secrets, techniques, methods or processes except the material contained in Noodles Development's Operations Manuals and training materials, and then only pursuant to the terms, conditions and restrictions contained in the applicable Franchise Agreement. Area Developer acknowledges that its knowledge of Noodles Development's know-how, processes, techniques, information and other proprietary data is derived entirely from information disclosed to it by Noodles Development and that the information is proprietary, confidential and a trade secret of Noodles Development. Area Developer agrees to adhere fully and strictly to the confidentiality of the information and to exercise the highest degree of diligence in safeguarding Noodles Development's trade secrets during and after the term of this Agreement. Area Developer shall divulge the material only to its employees and agents and only to the extent necessary to permit the efficient operation of the Franchised Restaurants. It is expressly agreed that the ownership of all the items and property is and shall remain vested solely in Noodles Development.

10.2 The Area Developer agrees that all terms of this Agreement shall remain confidential and shall not make any public announcement, issue any press release or publicity, make any confirmation of statements made by third parties concerning the terms of this Agreement, or make any other disclosures other than the existence of this Agreement without the prior written consent of Noodles Development unless compelled by law or ordered to do so by a court of competent jurisdiction. It is agreed and understood that Area Developer may disclose the terms of this Agreement to its professional advisors and lenders. Noodles Development shall be free to make the disclosure of the terms of this Agreement as it determines, in its sole discretion, to be in the best interest of Noodles Development or the System.

## **11. NONCOMPETITION**

11.1 Area Developer has heretofore specifically acknowledged that, pursuant to this Agreement, Area Developer will receive valuable specialized Confidential Information and information regarding the business of Noodles Development, and its System. Area Developer

covenants that during the term of this Agreement and subject to the post-term provisions contained herein, except as otherwise approved in writing by Noodles Development, Area Developer shall not, either directly or indirectly, for itself or through, on behalf of or in conjunction with any person, persons, partners or corporations:

(a) Divert or attempt to divert any business or customer of the Franchised Restaurants 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 Noodles Development's Marks or the System;

(b) Employ or seek to employ any person who is at that time employed by Noodles Development or by Area Developer or any other Area Developer or franchisee of Noodles Development, or otherwise directly or indirectly induce this person to leave his or her employment; or

(c) Own, maintain, engage in, be employed by, advise, assist, invest in, franchise, make loans to or have any interest in any business which is the same as or substantially similar to the Franchised Restaurants.

11.2 Area Developer covenants that, except as otherwise approved in writing by Noodles Development, Area Developer shall not, for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement, regardless of the cause for termination, and continuing for two (2) years thereafter, either directly or indirectly, for itself or through, on behalf of or in conjunction with any person, persons, partnership or corporation, own, maintain, engage in, be employed by, advise, assist, invest in, franchise, make loans to, or have any interest in any business which is the same as or substantially similar to the Franchised Restaurant and which is located within a radius of fifty (50) miles of the Development Territory hereunder or the location of any area developer, company-owned restaurant, or Franchised Restaurant under the System which is in existence on the date of expiration or termination of this Agreement.

11.3 Sections 11.1 and 11.2 shall not apply to ownership by Area Developer of less than a five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation.

11.4 The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If any or all portions of the covenants in this Section 11 are held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Noodles Development is a party, Area Developer expressly agrees to be bound by any lesser covenant subsumed within the terms of this 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 11.

11.5 Area Developer understands and acknowledges that Noodles Development shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 11.1 and 11.2 in this Agreement, or any portion thereof, without Area Developer's consent, effective immediately upon receipt by Area Developer of written notice thereof, and Area

Developer agrees that it shall forthwith comply with any covenant as so modified, which shall be fully enforceable.

11.6 Area Developer expressly agrees that the existence of any claims it may have against Noodles Development, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Noodles Development of the covenants in this Section 11. Area Developer agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Noodles Development in connection with the enforcement of this Section 11 provided Noodles Development prevails in any or all of its claims against Area Developer.

11.7 Area Developer acknowledges that Area Developer's violation of the terms of this Section 11 would result in irreparable injury to Noodles Development for which no adequate remedy at law may be available, and Area Developer accordingly consents to the issuance of an injunction by any court of competent jurisdiction or arbitrator having jurisdiction over the Agreement prohibiting any conduct by Area Developer in violation of the terms of this Section 11.

11.8 At Noodles Development's request, Area Developer shall require and obtain execution of covenants similar to those set forth in this Section 11 (including covenants applicable upon the termination of a person's relationship with Area Developer) from any or all of the following persons: (a) all directors and managers of each Franchised Restaurant; (b) all officers, directors and holders of a beneficial interest of five percent (5%) or more of the securities of Area Developer and of any corporation directly or indirectly controlling Area Developer if Area Developer is a corporation; and (c) the members or general partners and any limited partners (including any corporation, and the officers, directors and holders of a beneficial interest of five percent (5%) or more of the securities of any corporation which controls, directly or indirectly, any general or limited partner) if Area Developer is a limited liability company or partnership. All covenants required by this Section 11 shall be in forms satisfactory to Noodles Development, including, without limitation, specific identification of Noodles Development as a third party beneficiary of these covenants with the independent right to enforce them. Failure by Area Developer to obtain execution of a covenant required by this Section 11 shall constitute a material default under Section 7 hereunder.

## **12. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding of the parties with respect to the development of the Development Territory, and shall not be modified except by a written agreement signed by the parties hereto. Where this Agreement and any Franchise Agreement between the parties conflict with respect to initial training, the amount or payment terms of Initial Franchise Fees or equity interests held by the franchisee or operating partners and unit managers, the terms of this Agreement shall govern. Under no circumstances do the parties intend that this Agreement be interpreted in a way as to grant Area Developer any rights to grant sub-franchises in the Development Territory.

### **13. MONTHLY REPORTS**

Area Developer agrees that it shall provide to Noodles Development a monthly report of its activities and progress in developing and establishing Franchised Restaurants as provided herein. The monthly reports shall be submitted no later than the fifth (5th) day following the end of the preceding month during the term of this Agreement.

### **14. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

14.1 It is acknowledged and agreed that Area Developer and Noodles Development are independent contractors and nothing contained herein shall be construed as constituting Area Developer as the agent, partner or legal representative of Noodles Development for any purpose whatsoever. Area Developer shall enter into contracts for the development of the Development Territory contemplated by this Agreement at its sole risk and expense and shall be solely responsible for the direction, control and management of its agents and employees. Area Developer acknowledges that it does not have authority to incur any obligations, responsibilities or liabilities on behalf of Noodles Development, or to bind Noodles Development by any representations or warranties, and agrees not to hold itself out as having this authority.

14.2 Area Developer agrees to protect, defend, indemnify and hold Noodles Development harmless from and against all claims, actions, proceedings, damages, costs, expenses and other losses and liabilities, directly or indirectly incurred as a result of, arising from, out of, or in connection with Area Developer's carrying out its obligations hereunder.

### **15. COMPLIANCE WITH APPLICABLE LAWS**

Area Developer shall develop all Franchised Restaurants in the Development Territory in accordance and compliance with all applicable federal, state and local statutes, laws, including liquor laws, ordinances and regulations and agrees to promptly pay all financial obligations incurred in connection therewith.

### **16. CHANGE IN DEVELOPMENT TERRITORY**

The parties acknowledge that the development of the Development Territory as anticipated hereunder has been determined according to the needs of the Area Developer's targeted market in the Development Territory, as determined by Noodles Development, as of the date of execution of this Agreement. The Area Developer understands that, if there is an increased public demand for the products and services offered by Noodles Development due to an increase in the number of individuals or corporations in the Development Territory, Noodles Development will expect the Area Developer to establish additional Franchised Restaurants within the Development Territory. While Noodles Development will not require the Area Developer to establish the additional Franchised Restaurants, Noodles Development will strongly encourage Area Developer to do so. Any additional Franchised Restaurant shall be governed by Noodles Development's then-current form of individual Franchise Agreement.



**17. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their heirs, successors, permitted assigns and personal representatives.

**18. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona which laws shall govern in the event of any conflict of laws, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et. seq.). The parties expressly consent to personal jurisdiction in the State of Arizona and agree that, except as set forth in Section 21, the state and federal court(s) located in Phoenix, Arizona will have exclusive jurisdiction for the purposes of carrying out this provision.

**19. RECEIPT OF DOCUMENTS**

Area Developer acknowledges receipt of the Offering Circular, Franchise Agreement, financial statements and other contracts for the Franchised Restaurant at least ten (10) business days before execution hereof or payment of any monies.

**20. NOTICE**

Whenever this Agreement requires notice, it shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the other party at the addresses set forth below, unless written notice is given of a change of address.

All notices to Area Developer shall be conclusively deemed to have been received by Area Developer upon the delivery or attempted delivery of this notice to Area Developer's address listed herein, or the changed address.

**Notices to Noodles Development:** Noodles Development, L.P.  
14500 N. Northsight, Suite 216  
Scottsdale, AZ 85260  
Attention: Todd Welker

**With a Copy to:** Kevin P. Hein, Esq.  
(which shall not constitute notice) Snell & Wilmer LLP  
1200 Seventeenth Street, Suite 1900  
Denver, Colorado 80202

**Notices to Area Developer:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **21. ARBITRATION**

21.1 The parties agree that all controversies, claims and disputes between them arising out of or relating to this Agreement, the rights and obligations of the parties hereto, or any other claims or causes of action relating to the performance of either party, and/or the purchase of the franchise by Area Developer shall be finally resolved by submitting this matter to binding arbitration under the commercial arbitration rules of the American Arbitration Association in effect as of the date the demand for arbitration is filed. Each party shall agree on one arbitrator selected from a panel of neutral arbitrators provided by the National Franchise Mediation Program of the CPR Institute for Dispute Resolution (located in New York, NY), and the arbitrator shall be chosen by the striking method. In accordance with the terms of the Federal Arbitration Act, the Arbitrator shall hear the dispute in Scottsdale, Arizona. Each party shall bear its own costs and attorney fees and one-half of the arbitrator's expenses. The arbitrator shall have no authority to amend or modify the terms of this Agreement. Each party further agrees that, unless a limitation is prohibited by applicable law, the other party shall not be liable for punitive or exemplary damages and the arbitrator shall have no authority to award the same. The decision of the arbitrator shall be final and binding. The Area Developer knows, understands, and agrees that it is the intent of the parties that any arbitration between Noodles Development and the Area Developer shall be of the Area Developer's individual claims and that the claims subject to arbitration shall not be arbitrated in conjunction with the claims of other area developers or franchisees or on a class-wide basis, and Area Developer hereby waives any right it may assert to have its claims arbitrated in conjunction with the claims of other area developers or franchisees or on a class-wide basis.

21.2 Notwithstanding any provision contained in this Section 21, Noodles Development may, at its sole option, institute an action or actions for temporary or preliminary injunctive relief or seeking any other temporary or permanent equitable relief against the Area Developer that may be necessary to protect its trademarks or other rights or property. However, in Noodles Development's sole discretion, the final right of determination of the ultimate controversy, claim or dispute shall be decided by arbitration as aforesaid and recourse to the courts shall thereafter be limited to seeking an order to enforce an arbitral award. In no event shall the Area Developer be entitled to make, the Area Developer shall not make, and the Area Developer hereby waives, any claim for money damages by way of set-off, counterclaim, defense or otherwise based upon any claim or assertion by the Area Developer that Noodles Development has unreasonably withheld or unreasonably delayed any consent or approval to a proposed act by the Area Developer under any of the terms of this Agreement. The Area Developer's sole remedy for any claim shall be an action or proceeding to enforce any provisions, for specific performance or declaratory judgment.

## **22. MODIFICATION BY NOODLES DEVELOPMENT**

Noodles Development may modify and update its Operations Manual, the Marks and the System unilaterally under any conditions and to any extent which Noodles Development, in the exercise of its sole discretion, deems necessary to meet competition, protect trademarks or trade name, or improve the quality of the products or services provided through the Franchised Restaurants, and Area Developer shall exclusively incur the costs of any change in the Franchised Restaurant or the System which has been caused by this modification. In the event

that any improvement or addition to the Operations Manual, the System or the Marks is developed by Area Developer, then Area Developer agrees to grant to Noodles Development an irrevocable, world-wide, exclusive, royalty free license, with the right to sub-license the improvement or addition.

## **23. ACKNOWLEDGEMENTS**

23.1 Area Developer acknowledges and recognizes that different terms and conditions, including different fee structures, may pertain to different area development agreements and franchise agreements offered in the past, contemporaneously herewith, or in the future, and that Noodles Development does not represent that all area development agreements or franchise agreements are or will be identical.

23.2 Area Developer acknowledges that it is not, nor is it intended to be, a third party beneficiary of this Agreement or any other agreement to which Noodles Development is a party.

23.3 Area Developer represents to Noodles Development that it has the business acumen, corporate authority, and financial wherewithal to enter into this Agreement and to perform all of its obligations hereunder and furthermore that the execution of this Agreement is not in contravention of any other written or oral obligation of the Area Developer.

23.4 Area Developer acknowledges that it received from Noodles Development this Agreement with all blanks filled in at least five (5) business days before the execution of this Agreement.

23.5 Area Developer acknowledges and accepts the following:

THE SUCCESS OF THE AREA DEVELOPER IN MANAGING AND OPERATING MULTIPLE FRANCHISED RESTAURANTS IS SPECULATIVE AND WILL DEPEND ON MANY FACTORS INCLUDING, TO A LARGE EXTENT, AREA DEVELOPER'S INDEPENDENT BUSINESS ABILITY. AREA DEVELOPER HAS BEEN GIVEN THE OPPORTUNITY AND BEEN ENCOURAGED TO OBTAIN INDEPENDENT ADVICE FROM LEGAL AND OTHER PROFESSIONALS BEFORE ENTERING INTO THIS AGREEMENT. THIS OFFERING IS NOT A SECURITY AS THAT TERM IS DEFINED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS. THE OBLIGATION TO TRAIN, MANAGE, PAY, RECRUIT AND SUPERVISE EMPLOYEES OF THE FRANCHISED RESTAURANTS RESTS SOLELY WITH AREA DEVELOPER. AREA DEVELOPER HAS NOT RELIED ON ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL SUCCESS OR PROJECTED INCOME OF THE BUSINESS VENTURE CONTEMPLATED HEREBY. NO REPRESENTATIONS OR PROMISES HAVE BEEN MADE BY NOODLES DEVELOPMENT TO INDUCE AREA DEVELOPER TO ENTER INTO THIS AGREEMENT EXCEPT AS SPECIFICALLY INCLUDED HEREIN. NOODLES DEVELOPMENT HAS NOT MADE ANY REPRESENTATION, WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, AS TO THE POTENTIAL REVENUES, PROFITS OR SERVICES OF THE BUSINESS VENTURE TO AREA DEVELOPER AND CANNOT, EXCEPT UNDER THE TERMS OF THIS AGREEMENT, EXERCISE CONTROL OVER AREA DEVELOPER'S BUSINESS. AREA DEVELOPER ACKNOWLEDGES AND AGREES THAT IT HAS NO KNOWLEDGE OF

ANY REPRESENTATION MADE BY NOODLES DEVELOPMENT OR ITS REPRESENTATIVES OF ANY INFORMATION THAT IS CONTRARY TO THE TERMS CONTAINED HEREIN.

**[Signatures on following page]**

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

**NOODLES DEVELOPMENT, L.P.,  
a Texas limited partnership**

By: **NOODLES MANAGEMENT, LLC**, a Texas  
limited liability company, General Partner

By: \_\_\_\_\_  
Todd Welker, Operating Partner

**AREA DEVELOPER:**

\_\_\_\_\_  
a(n) \_\_\_\_\_

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

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

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