

# EXHIBIT 2A

## AREA DEVELOPMENT AGREEMENT

SILVER MINE SUBS<sup>®</sup> FRANCHISE, INC.

# AREA DEVELOPMENT AGREEMENT

SILVER MINE SUBS<sup>®</sup> FRANCHISE, INC.

925 E. HARMONY ROAD  
Suite 500  
FORT COLLINS, COLORADO 80525  
Phone: 1.970.266.2600  
Fax: 1.970.267.3538

**THIS CONTRACT IS SUBJECT TO ARBITRATION**

**TABLE OF CONTENTS**

**PAGE**

I. GRANT .....2  
II. DEVELOPMENT FEE.....3  
III. DEVELOPMENT FEE SCHEDULE AND MANNER  
OF EXERCISING OPTIONS.....4  
IV. TERM AND RIGHT OF FIRST REFUSAL .....4  
V. DUTIES OF THE DEVELOPER.....4  
VI. PROPRIETARY MARKS/CONFIDENTIALITY .....6  
VII. DEFAULT AND TERMINATION.....7  
VIII. TRANSFERABILITY .....8  
IX. COVENANTS .....11  
X. NOTICES .....13  
XI. INDEPENDENT CONTRACTOR AND INDEMNIFICATION .....14  
XII. APPROVALS.....14  
XIII. NON-WAIVER.....15  
XIV. SEVERABILITY AND CONSTRUCTION .....15  
XV. ENTIRE AGREEMENT .....15  
XVI. SUPERIORITY OF FRANCHISE AGREEMENT .....15  
XVII. APPLICABLE LAW.....16  
XVIII. ARBITRATION .....16  
XIX. “DEVELOPER” DEFINED AND GUARANTY .....18  
XX. CAVEAT .....18  
XXI. ACKNOWLEDGEMENTS .....18

**EXHIBITS**

- A. DESCRIPTION OF TERRITORY
- B. DEVELOPMENT SCHEDULE
- C. GUARANTY AND ASSUMPTION OF OBLIGATIONS



franchisees. Franchisor will continue to develop, use and control such Marks for the benefit and use of itself and its Franchisees in order to identify for the public the source of food products and services marketed thereunder and represent the System's high quality standards regarding Menu Items, operations, food products, ingredients, appearance and service; and

**WHEREAS**, Franchisor grants to qualified persons options to obtain franchises to develop and operate several Silver Mine Subs® restaurants offering food products and services authorized and approved by Franchisor and utilizing the System and Marks; and

**WHEREAS**, Developer understands and acknowledges the importance of Franchisor's high and uniform standards of quality, operations, and service and the necessity of operating a Silver Mine Subs® restaurant in strict conformity with Franchisor's standards and specifications; and

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

I. **GRANT**

A. Franchisor hereby grants to Developer, pursuant to the terms and conditions of this Development Agreement, obligation to obtain licenses to establish and operate a minimum of **five (5)** Silver Mine Subs® restaurants featuring the Menu Items and offering dine-in, carry-out and delivery services within the territory described in Exhibit A attached hereto and incorporated herein by this reference ("Designated Territory").

B. Developer shall be bound by the development schedule set forth on Exhibit B. Time is of the essence of the Agreement. Each Franchised Restaurant shall be established and operated pursuant to a separate Franchise Agreement to be entered into by Developer and Franchisor. Each Franchise Agreement ("Franchise Agreement") shall be in the form of the Franchisor's then-current form of Franchise Agreement.

C. Except as otherwise provided in this Agreement, Franchisor shall not establish, nor license anyone other than Developer the right to establish any business in the Designated Territory prior to the expiration of the development schedule set forth in Exhibit B.

D. This Agreement is not a Franchise Agreement, and Developer shall have no rights to use in any manner the Marks by virtue hereof.

E. Developer shall have no right under this Agreement to license others to operate a business or use the System or the Marks.

**II. DEVELOPMENT FEE**

A. As consideration for the rights and options granted herein, Developer shall pay to Franchisor an Initial franchise fee in the amount determined in accordance with the following schedule:

<u>NUMBER OF FRANCHISES RESTAURANTS</u>	<u>INDIVIDUAL FRANCHISE FEE</u>
For the first Silver Mine Subs <sup>®</sup> Franchised Restaurant .....	\$ 15,000
For the second and each subsequent Silver Mine Subs <sup>®</sup> Franchised Restaurant .....	\$ 15,000

Simultaneously with the execution of this Agreement, Developer shall execute a Franchise Agreement for the first Silver Mine Subs<sup>®</sup> restaurant to be developed, and shall pay (i) the initial franchise fee under the Franchise Agreement in the amount of FIFTEEN-THOUSAND dollars (\$15,000), and (ii) an amount equal to one-half (1/2) of the initial franchise fee specified above for each additional Silver Mine Subs<sup>®</sup> restaurant which the Developer is granted the option to develop under this Agreement ("Development Fee"). The Development Fee required to be paid at the time of execution of the Agreement is \_\_\_\_\_ dollars (\$\_\_\_\_\_). The balance of the initial Franchise Fee for each Silver Mine Subs<sup>®</sup> restaurant shall be due upon the execution of the applicable individual Franchise Agreement. Should the Developer be unable to obtain all necessary permits and licenses during the stated period and extension time period or periods as a result beyond reasonable control of Developer (unless the requirement for the issuance of such permits and licenses is waived in writing by Franchisor), this Agreement shall be deemed terminated upon written notice from either Developer or Franchisor to the other, without the necessity of further action by either party or further documentation. Upon such termination, the Franchisor shall retain one-third (1/3) of the Development Fee as a Termination Fee, two-thirds (2/3) of the Development Fee will be refunded to the Developer within thirty (30) days of the notice by Franchisor of the termination of this Agreement; notwithstanding any provision to the contrary contained in any Franchise Agreement.

The State of California has required us refrain from collecting your Initial Franchise Fee or the ADA Initial Franchise Fee until we have provided all of our services. If we meet our obligations, and if you are not otherwise permitted a refund as described above, the Initial Franchise Fee or the ADA Initial Franchise Fee will be due to us.

The state of Illinois has reviewed our financial documents and as a result, has imposed certain financial assurances for the benefit of Illinois residents. The Initial Franchise Fee in Illinois will be placed in escrow at Bank One of Chicago Illinois, where it shall be held until Illinois franchisees are open for Business.

The states of Maryland and North Dakota have required us to defer the payment of the Initial Franchise Fee and the ADA Initial Franchise fee until we have provided all of the services we promised and which are listed in Item 11 below.

B. Developer shall submit a separate application for each restaurant to be established within the Designated Territory by Developer. Upon approval of the site of the restaurant by Franchisor, a separate Franchise Agreement shall be executed for each restaurant, at which time payment representing the balance of the appropriate individual franchise fee is due and owing in accordance with the terms of the Franchise Agreement. Upon execution of each Franchise Agreement, the terms and conditions of such Franchise Agreement shall control the establishment and operation of such restaurant.

### III. DEVELOPMENT SCHEDULE AND MANNER OF EXERCISING OPTIONS

A. Developer shall be bound by and strictly follow the Development Schedule ("Development Schedule") set forth in Exhibit B. Time is of the essence. By the dates set forth under the Development Schedule ("Development Period(s)"), Developer shall exercise options by entering into Franchise Agreements with Franchisor pursuant to this Agreement for the number of Franchised Restaurants described under the Development Schedule. Developer shall at all times after the expiration of each of the Option Periods continuously maintain in operation pursuant to each Franchise Agreement at least the number of Franchised Restaurants set forth on the Development Schedule, provided however that such obligation does not apply to businesses that are transferred in accordance with the provisions of the Franchise Agreement, or are closed due to Force Majeure.

B. Developer shall exercise each option granted only as follows:

- 1.) By giving Franchisor written notice of Developer's intention to exercise such option at least thirty (30) days before the execution of the Franchise Agreement for the applicable business; and
- 2.) By executing the then-current form of Franchise Agreement for the applicable business and complying with its terms including, without limitation, the payment of the unpaid balance of the applicable franchise fee.

Franchisor shall execute the Franchise Agreement on if (i) Developer is in compliance with all requirements and obligations of this Agreement and all other agreements between Franchisor and Developer, and (ii) Developer is in compliance with all of its respective obligations under any Franchise Agreement. In order to meet the Development Schedule, the Franchise Agreement must be executed by Developer and Franchisor within the applicable Option Period. Developer must comply with all of the terms and conditions of each Franchise Agreement.

IV. **TERM AND RIGHT OF FIRST REFUSAL**

Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement and all rights granted hereunder to Developer shall expire on the date of Franchisor's acceptance and execution of a Franchise Agreement for the last of the Silver Mine Subs® restaurants to be established pursuant to the Development Schedule. There is no "Right to Renew" a Development Agreement.

V. **DUTIES OF THE DEVELOPER**

A. Developer shall perform the following obligations:

- 1.) Developer shall comply with all terms and conditions set forth in this Agreement.
- 2.) Developer shall comply with all of the terms and conditions of each Franchise Agreement, including without limitation the operating requirements specified in each Franchise Agreement, however, Developer will not be required to attend an initial franchise training course conducted at a Franchisor designated location in connection with the second or any subsequent Franchised Restaurant.
- 3.) Developer shall at all times preserve in confidence any and all materials and information furnished or disclosed to Developer by Franchisor, and Developer shall disclose such information and materials only to such of its 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 authorization, 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 or entity.
- 4.) Developer shall comply with all requirements of federal, state and local laws, rules and regulations.

B. Should Developer at some time in the future desire to make either a public or a private offering of its securities, prior to such offering and sale, and prior to the public release of any statements, data, or other information of any kind relating to the proposed offering of Developer's securities, Developer shall secure written approval of Franchisor, which approval shall not be unreasonably withheld. Developer shall secure Franchisor's prior written approval of any and all press releases, news releases and any and all other publicity, the primary purpose of which is in the public interest in its offering. Only to the extent that written approval has been given by Franchisor may Developer proceed to file, publish, issue and release and make public any non-proprietary data, material or information regarding its securities offering for the Franchised Restaurants. It is specifically understood that any review by Franchisor is solely for its own information, and its approval shall not constitute any kind of authorization, acceptance, agreement, endorsement, approval, or ratification of the same, either express or implied; and Developer shall make no oral or written notice of any kind whatsoever indicating or implying



that Franchisor and/or related corporations or persons have any interest in or relationship whatsoever to the proposed offering other than acting as the Franchisor. Developer agrees to indemnify and hold harmless Franchisor, affiliates, and its subsidiaries, and their owners, directors, officers, employees, successors and assigns, for all claims, demands, cost, fees, charges, liabilities or expense (including attorneys' fees) of any kind whatsoever arising from Developer's offering or information published or communicated and any actions taken with regard thereto.

## **VI. PROPRIETARY MARKS/CONFIDENTIALITY**

A. Notwithstanding any provision to the contrary under this Agreement, it is understood and agreed that this Agreement does not grant the Developer any right to use the Marks or to use any of Franchisor's trade secrets and/or confidential information, as defined below. Further, it is understood and agreed that this Agreement does not grant the Developer any right to any copyright or patent that the Franchisor now owns or may hereinafter own. Rights to the Marks, trade secrets (and/or confidential information), copyrights, or patents are granted only under the Franchise Agreements to be executed by Franchisor and Developer.

B. Developer and its owners, officers and directors, if any, acknowledge that their entire knowledge of the operation of the Franchised Restaurant including the knowledge or know-how regarding the preparation of Menu Items, Trade Secret Food Products and other food products, and other specifications, product formulas, standards and operating procedures of a Silver Mine Subs<sup>®</sup> restaurant, is derived from information disclosed to Developer by Franchisor and that certain elements of such information is proprietary, confidential and constitutes trade secrets of Franchisor. In addition, any improvements developed by Franchisee pursuant to Franchisee's operation of any Franchised Restaurant shall constitute proprietary information of Franchisor. "Trade Secrets" refer to the whole or any portion of know-how, knowledge, methods, recipes, formulas, specifications, processes, procedures and/or improvements regarding Silver Mine Subs<sup>®</sup> restaurant and the System that is valuable and secret in the sense that it is not generally known to competitors of the Franchisor. Developer and its owners, officers and directors, if any, jointly and severally agree that during and after the term of this Agreement for so long as any Franchisor treats any such information as its trade secrets, they will maintain absolute confidentiality of all trade secret information and will not disclose, sell or use any such information in any other business or in any manner not specifically authorized or approved in advance in writing by the Franchisor.

C. Developer and its owners, officers and directors, if any, shall divulge such trade secret and confidential information only to the extent and only to such of its employees as must have access to it in order to perform obligations under this Agreement or the Franchise Agreement. Any and all information, knowledge and know-how of Franchisor, including, without limitation, the Confidential Operations Manual, specifications and standards concerning the operation of Silver Mine Subs<sup>®</sup> Franchised Restaurants and other materials and information provided to the Developer by the Franchisor, shall be deemed confidential for the purposes of this Agreement, except information which the Developer can demonstrate lawfully came to its attention prior to disclosure thereof by Franchisor; or which, at the time of disclosure by

Franchisor to Developer, had lawfully become a part of public domain, through publication or communication by others; or which, after disclosure to Developer by Franchisor, lawfully becomes a part of the public domain, through publication or communication by others.

D. Due to the special and unique nature of the trade secrets, confidential information, proprietary marks and Confidential Operations Manual of the Franchisor, Developer and its owners, officers and directors, if any, hereby, jointly and severally, agree and acknowledge that the Franchisor shall be entitled to immediate equitable remedies, including but not limited to, restraining orders and injunctive relief, in order to safeguard such proprietary, confidential, unique, and special information of Franchisor and that money damages alone would be insufficient remedy with which to compensate Franchisor for any breach of the terms of Paragraph VI. Of this Agreement. Furthermore, Developer agrees that all owners, officers and directors, if any; shareholders, partners and employees of Developer having access to the trade secrets, confidential and proprietary information of the Franchisor and any owners, officers, directors or other employees designated by the Franchisor shall be required to execute a confidentiality agreement acceptable to the Franchisor.

E. Developer is granted access to certain confidential information and trade secrets pertaining to the System only pursuant to an individual Franchise Agreement executed between Developer and Franchisor, and the foregoing paragraphs are not intended, and shall not be interpreted, to grant or entitle the Developer to receive any such confidential information or trade secrets pursuant to this Agreement.

## **VII. DEFAULT AND TERMINATION**

A. The options and territorial exclusivity granted to the Developer in this Agreement have been granted in reliance on Developer's representations and warranties, and strictly on the conditions set forth in this Development Agreement, including without limitation, the condition that Developer comply strictly with the Development Schedule.

B. Developer shall be deemed in default under this Agreement, and all rights granted herein to Developer shall automatically terminate without notice: (i) If Developer shall be adjudicated bankrupt, becomes insolvent, commits any affirmative action of insolvency or files any action or petition of insolvency, or if a receiver (permanent or temporary) of its property or any part thereof is appointed by a court of competent authority, or if it makes a general assignment for the benefit of its creditors; (ii) If a final judgment remains unsatisfied of record thirty (30) days or longer (unless supersedeas bond is filed); (iii) If execution is levied against Developer's business or property, or; (iv) If suit to foreclose any lien or mortgage against Developer's premises or equipment is instituted against Developer and not dismissed within thirty (30) days, or is not in the process of dismissal; provided that Franchisor reserves the right to be named as trustee or receiver in any voluntary petition for bankruptcy or insolvency filed by the Developer.

C. If Developer (i) fails to meet the Development Period and enter into Franchise Agreements with the Franchisor pursuant to this Agreement for the Franchised Restaurants within any Options Period as set forth on the Development Schedule; (ii) fails to comply with

any other term and condition of this Agreement; or (iii) makes or attempts to make a transfer or assignment in violation of this Agreement, or if Developer fails to comply with the terms and conditions of any individual Franchise Agreement with the Franchisor, or of any agreement to which Developer and Franchisor are parties, any such event shall constitute a default under this Agreement. Upon any such default, Franchisor, in its discretion, may do any one or more of the following:

- 1.) Terminate this Agreement and all rights granted hereunder to Developer without affording Developer any opportunity to cure the default immediately upon receipt by Developer of written notice from Franchisor;
- 2.) Reduce the number of Franchised Restaurants, without any reduction of the Development Fee, which are subject to options granted to Developer pursuant to this Agreement; Terminate or reduce in any manner, in Franchisor's discretion, the territorial exclusivity granted Developer in Paragraph 1. hereof; or
- 3.) Exercise any other rights and remedies which Franchisor may have.

D. Upon termination of the Area Development Agreement, all remaining options granted Developer to establish Franchised Restaurants under this Agreement shall automatically be null and void. Developer shall have no right to establish or operate any Silver Mine Subs<sup>®</sup> Franchised Restaurant for which a Franchise Agreement has not been executed by Franchisor. Franchisor shall be entitled to establish, and to license others to establish, Franchised Restaurants which will operate in the Designated Territory except as may be otherwise provided under any Franchise Agreement which has been executed between Franchisor and Developer, or Developer's affiliates, which has not been terminated. No default under this Agreement shall constitute a default under any Franchise Agreement in accordance with the terms of the Franchise Agreement. Notwithstanding the above, the terms and conditions of each Franchise Agreement must be complied with by the Franchisee thereunder and shall control in determining whether any default exists under such Franchise Agreement.

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

## VIII. TRANSFERABILITY

A. This Agreement and all rights hereunder can be assigned and transferred by Franchisor and, if so, shall be binding upon and inure to the benefit of Franchisee's successors and assigns; provided, however, that with respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall:

- 1.) At the time of such assignment, be financially responsible and economically capable of performing the obligations of Franchisor hereunder; and

2.) Expressly assume and agree to perform such obligations. Specifically, and without limitation to the foregoing, Developer expressly agrees that Franchisor may sell its assets, Marks or System outright to a third party; may make a public offering of securities, may engage in a private placement of some or all of its securities; may merge, acquire other corporations or entities, or be acquired by another corporation or other entity; may undertake a refinancing, re-capitalization, leveraged buy-out or other economic or financial restructuring; and, with regard to any and all of the above sales, assignments and dispositions, Developer expressly and specifically waives any claims, demands or damages arising from or related to the loss of said Marks (or any variation thereof) and/or the loss of association with or identification of Silver Mine Subs<sup>®</sup> Franchise, Inc. as Franchisor hereunder. Nothing contained in this Agreement shall require Franchisor to remain in the business in the event that Franchisor exercises its rights hereunder to assign its rights in this Agreement.

B. Developer understands and acknowledges that the rights and duties set forth in this Development Agreement are personal to Developer and are granted in reliance upon the personal qualifications of Developer. Developer has represented and hereby represents to Franchisor that Developer is entering into this Agreement with the intention of complying with its terms and conditions and are not for the purpose of resale of the developmental or option rights hereunder.

C. Neither Developer nor any Business Entity thereof shall, without Franchisor's prior written consent, directly or indirectly sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest in this Agreement or in Developer. Any such proposed assignment occurring by operation of law or otherwise, including any assignment by or to any trustee in bankruptcy, without Franchisor's prior written consent, shall be a material default of this Agreement.

D. Neither Developer, nor any Business Entity, without Franchisor's prior written consent, by operation of law or otherwise, shall set, assign, transfer, convey, give away, or encumber to any person, firm, or business entity, all or any part of its interest in this Agreement or its interest in the rights granted hereby or its interest in any proprietorship, partnership or corporation which owns any interest in such rights, nor offer, permit, or suffer the same to be sold, assigned, transferred, conveyed, given away, or encumbered in any way to any person, firm, or corporation. Developer may not without prior written consent of Franchisor fractionalize any of the rights of Developer granted pursuant to this Agreement. Any purported assignment of any of Developer's or any of its partner's or shareholder's rights herein not having the aforesaid consent shall be null and void and shall constitute a material default hereunder. Subject to Paragraph VIII.F. of this Agreement, so long as Developer and its owners, directors and officers executing this Agreement are in full compliance with this Agreement and any other agreements to which Developer and Franchisor are parties, Franchisor shall not unreasonably withhold its approval of an assignment or transfer, to proposed assignees or transferees if such persons: (i) are of good moral character and have sufficient business experience, aptitude and financial resources, (ii) otherwise meet Franchisor's then applicable standards for developers, and (iii) are willing to assume all obligations of Developer hereunder and to execute and be bound by all provisions of

the Franchisor's then current for of Area Development Agreement for a term equal to the remaining term hereof. As a condition to granting its approval of any such assignment or transfer, Franchisor may require Developer or the assignee or transferee to pay to Franchisor its then-current assignment fee to defray expenses incurred by Franchisor in connection with the assignment or transfer, legal and accounting fees, credit and other investigation charges and evaluation of the assignee or transferee and the terms of the assignment or transfer. Franchisor shall have the right to require Developer and its owners to execute a general release of Franchisor and its owners, directors, officers, successors and assigns, in form and content satisfactory to Franchisor as a condition to its approval of the assignment of the Agreement or ownership of Developer.

E. This Agreement may be assigned to a Business Entity which conducts no business other than the business contemplated hereunder, which is actively managed by Developer and in which Developer owns and controls, and continues to own throughout the term of this Agreement, not less than fifty-one (51) percent of the general partnership interest or the corporate equity and voting power, provided that all partners or shareholders shall execute an assignment agreement in form approved by Franchisor undertaking to be bound jointly and severally by all provisions of this Agreement and all issued and outstanding stock certificates of such corporation or limited partnership units of such partnership shall bear a legend reflecting or referring to the restrictions of this Agreement as designated by Franchisor.

F. If Developer or its owners shall at any time determine to sell the rights under this Agreement or any respective ownership interests in Developer, or any of Developer's assets (except in the ordinary course of business), Developer or its owners shall obtain a bona fide, executed written offer from a responsible and fully disclosed purchaser and shall submit an exact copy of such offer to Franchisor, which shall, for a period of fifteen (15) days from the date of delivery of such offer, have the right, exercisable by written notice to Developer or its owners, to purchase such rights under this Agreement or such ownership interests for the price and on the terms and conditions contained in such offer, provided that Franchisor may substitute cash for any form of payment proposed in such offer and that Franchisor shall not have less than sixty (60) days to prepare before closing. If Franchisor does not exercise the right of first refusal, Developer or its owners, as applicable, may complete the sale of such interest in this Agreement or such ownership interest, subject to Franchisor's approval of the purchaser as provided in this Paragraph VIII., provided that if such sale is not completed within ninety (90) days after delivery of such offer to Franchisor, Franchisor shall again have the right of first refusal provided herein.

G. Developer must give Franchisor ninety (90) days written notice prior to any sale or assignment by Developer or any of its owners. The purpose of this paragraph is to enable Franchisor to comply with any applicable state or federal disclosure laws. Developer agrees to indemnify and hold harmless Franchisor for Developer's failure to comply with this paragraph.

H. Developer must promptly, within fifteen (15) days, give the Franchisor written notice whenever Developer or any of its owners have received an offer to buy Developer's or such owner's interest in this Agreement or any options pursuant to this Agreement. Developer must also give Franchisor written notice simultaneously with an offer to sell any interest in this Agreement or any option pursuant to this Agreement, made by, for, or on behalf of Developer or

any of its owners. The purpose of this paragraph is to enable Franchisor to comply with any applicable state or federal disclosure laws. Developer agrees to indemnify and hold harmless Franchisor for Developer's failure to comply with this paragraph.

I. No sale, assignment, transfer, conveyance, encumbrance, or gift of any interest in this Agreement or in the options granted thereby, shall relieve the Developer and its shareholders or partners participating in any transfer, of the obligations of the covenants not to compete with Franchisor contained in this Agreement, except where Franchisor shall expressly authorize in writing.

## **IX. COVENANTS**

A. Unless otherwise specified, the term "Developer" as used in this Paragraph IX. Shall include, collectively and individually, Developer as defined in Paragraph XIX.

B. Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer (if Developer is an individual), a shareholder of beneficial interest of ten (10) percent or more of the securities of Developer (if Developer is a corporation), or a general partner of Developer (if Developer is a partnership) or Developer's full-time manager approved by Franchisor shall devote full time, energy, and best efforts, to the management and operation of the restaurants to be franchised in accordance with the rights and options granted pursuant to this Agreement.

C. Developer, as defined in Paragraph IX.A., covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, shall not either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation:

1.) Divert or attempt to divert any business or customers of any 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 any of Franchisor's Marks or the System.

2.) Employ or seek to employ any person who is at that time employed by Franchisor or by any franchisee of Franchisor, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment.

3.) Own, maintain, engage in, consult with, or have any interest in any competitive business (including any business operated by Developer prior to entry into this Agreement) specializing, in whole or in part, in dispensing, promoting or selling prepared food products or services, the same as or similar to those offered or provided in the System.

D. Developer acknowledges that, pursuant to this Agreement, Developer will obtain knowledge of proprietary matters, techniques and business procedures of Franchisor that are necessary and essential to the operation of the Business, without which information Developer

could not effectively and efficiently operate such business, including, without limitation, knowledge regarding the System, the layout of the Business and the Manual. Developer further acknowledges that such proprietary information was not known to Developer prior to the execution of this Agreement and the methods of Franchisor are unique and novel to the System. As used herein, "Proprietary Information" shall mean confidential information concerning:

1. Persons, corporations or other business entities which are, have been of become Franchisees of the System and any investors therein;
2. Persons, corporations or other business entities which are, have been or become customers of the Business;
3. The terms of and negotiations relating to past or current Development Agreements with respect to the System;
4. The operating procedures of the System, including without limitation: distinctive management, bookkeeping and accounting systems and procedures, advertising, promotional and marketing methods, personnel hiring and training procedures, the manufacturers, suppliers and uses of equipment, and lists of vendors and suppliers;
5. The economic and financial characteristics of the System, Developers, and Franchisees, including without limitation: pricing policies and schedules, profitability, earnings and losses, and capital and debt structures;
6. The services and products offered to customers of Businesses, including, without limitation, the scope of services performed and services refused; and
7. During the term of this Agreement and following the expiration or termination of this Agreement, Developer agrees not to divulge, directly or indirectly, and Proprietary Information, without prior written consent of Franchisor. Nothing contained herein shall be construed so as to require Franchisor to divulge any secret processes, formulas, or the like.

Accordingly, Developer covenants that, except as otherwise approved in writing by Franchisor, Developer shall not, for a period of one (1) year after the expiration or termination of this Agreement, regardless of the cause of termination, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or business entity, own, maintain, engage in, consult with or have any interest in any business specializing, in whole or in part, in dispensing, promoting or selling prepared food products or services, the same as or similar to those offered or provided in the System. This paragraph may not be enforceable in California

E. 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 Paragraph IX. Is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Franchisor is 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 part of this Paragraph IX.

F. Developer understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Paragraph IX.C or IX.D of 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 full enforceable notwithstanding the provisions of Paragraph XV. hereof.

G. Franchisor shall have the right to require all of Developer's personnel performing managerial or supervisory functions and all personnel receiving special training from Franchisor to execute similar covenants in a form satisfactory to the Franchisor.

H. In addition to the foregoing covenants, Developer shall be bound by and comply with the covenants contained in each Franchise Agreement executed by Franchisor and Developer.

**X. NOTICES**

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, to the respective parties at the following addresses unless and until different addresses have been designated by written notice to the other party:

Notices to Franchisor: Silver Mine Subs® Franchise, Inc.  
925 E. Harmony Road  
Suite 500  
Fort Collins, Co. 80525

Copy to: Corporon, Eyler & Katz, LLC.  
Attn: Michael J. Katz  
13710 E. Rice Place  
Aurora, Colorado 80015

Notices to Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notice by certified mail shall be deemed to have been given at the date and time of mailing.



## **XI. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

A. It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them, that nothing in this Development Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, or employee of the other for any purpose whatsoever. Each party to this Agreement is an independent contractor, and neither shall be responsible for the debts or liabilities incurred by the other.

B. Developer shall hold himself/herself out to the public to be an independent contractor operating pursuant to this Agreement. Developer agrees to take such actions as shall be necessary to that end.

C. Developer understands and agrees that nothing in this Development 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 assumes no liability for, nor shall Franchisor be deemed liable by reason of, any act or omission of Developer in Developer's conduct of any Franchised Restaurant, or claim or judgment arising therefrom. Developer shall indemnify and hold harmless Franchisor against any and all such claims directly or indirectly from, as a result of, or in conjunction with Developer's operations hereunder or under any Franchise Agreement, as well as the costs, including attorneys' fees, of defending against them.

D. Developer acknowledges that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor specifically reserves the right and privilege, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, circumstance, business potential, population of trade area, existing business practices or any other condition which Franchisor deems to be of importance to the successful operation of such Developer's business under any Franchise Agreement. Developer shall not be entitled to require Franchisor to disclose or grant Developer a like or similar variation hereunder to that which may be accorded to any other developer.

## **XII. APPROVALS**

A. Whenever this Development Agreement requires the prior approval or consent of Franchisor, Developer shall make a timely written request to Franchisor therefore, and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing.

C. Franchisor makes no warranties or guarantees upon which Developer may rely and assumes no liability or obligation to Developer or any third party to which it would not otherwise be subject by providing any waiver, approval, advice, consent or services to Developer in connection with Development Agreement, or by reason of any neglect, delay or denial of any request therefore.

### **XIII. NON-WAIVER**

No failure of Franchisor to exercise any power reserved to it in this Agreement or to insist upon compliance by Developer with any obligation or condition in this Development Agreement, and no custom or practice of the parties at variance with terms hereof, shall constitute a waiver of Franchisor's rights to demand exact compliance with the terms of this Agreement. Waiver by Franchisor of any particular default shall not affect or impair Franchisor's right in respect to any subsequent default of the same or of a different nature, nor shall any delay, forbearance, or omission of Franchisor to exercise any power or right arising out of any breach or default by Developer of any of the terms, provisions, or covenants of this Agreement, affect or impair Franchisor's rights, nor shall the same constitute a waiver by Franchisor of any rights hereunder or rights to declare any subsequent breach or default.

### **XIV. SEVERABILITY AND CONSTRUCTION**

A. Each provision of this Agreement shall be deemed severable from the others.

B. Nothing in this Agreement shall confer upon any person or legal entity other than Franchisor or Developer and such of their respective successors and assigns as may be contemplated by Paragraph VIII. hereof, any rights or remedies under or by reason of this Agreement.

C. 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.

D. All references herein to gender and number shall be construed to include such other gender and number as the context may require, and all acknowledgements, promises, covenants, agreements and obligations herein made or undertaken by Developer shall be deemed jointly and severally undertaken by all parties hereto which execute this Agreement on behalf of Developer.

E. This Agreement may be executed in duplicate and each copy so executed shall be deemed an original.

### **XV. ENTIRE AGREEMENT**

This Agreement constitutes the entire, full, and complete Agreement between Franchisor and Developer concerning the subject matter hereof, and supersedes all prior agreements. No amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by themselves or their authorized officers or agents in writing.

**XVI. SUPERIORITY OF FRANCHISE AGREEMENT**

For each Silver Mine Subs® individual franchised restaurant developed in the Designated Territory, a separate Franchise Agreement shall be executed and any individual Franchise Fee as prescribed by Franchisor shall be paid to Franchisor. It is understood and agreed by Developer that any and all Franchise Agreements executed in connection with Silver Mine Subs® individual franchised restaurant within the Designated Territory are independent of this Area Development Agreement. The continued existence of any such Franchise Agreement shall not depend on the continuing existence of this Area Development Agreement. If any conflict shall arise in connection with this Area Development Agreement and any Franchise Agreement executed within the Designated Territory, the latter shall have precedence and superiority over the former.

**XVII. APPLICABLE LAW**

**A. THIS AGREEMENT TAKES EFFECT UPON ITS ACCEPTANCE AND EXECUTION BY FRANCHISOR IN THE STATE OF COLORADO; AND SHALL BE INTERPRETED AND CONSTRUED UNDER THE LAWS THEREOF, WHICH LAWS SHALL PREVAIL IN THE EVENT OF ANY CONFLICT OF LAW, EXCEPT TO THE EXTENT GOVERNED BY THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) UNLESS SUPERSEDED BY STATE LAW.**

**B. DEVELOPER ACKNOWLEDGES THAT THIS AGREEMENT IS ENTERED INTO IN LARIMER COUNTY, COLORADO AND THAT ANY ACTION SOUGHT TO BE BROUGHT BY EITHER PARTY, EXCEPT THOSE CLAIMS REQUIRED TO BE SUBMITTED TO ARBITRATION SHALL BE BROUGHT IN THE APPROPRAITE STATE OR FEDERAL COURT WITH JURISDICTION OVER LARIMER COUNTY, COLORADO, AND THE PARTIES DO HEREBY WAIVE ALL QUESTIONS OF PERSONAL JURISDICTION OR VENUE FOR THE PURPOSES OF CARRYING OUT THIS PROVISION.**

**C. 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.**

**D. 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.**

## **XVIII. ARBITRATION**

Except insofar as Franchisor elects to enforce this Agreement by judicial process, injunction, or specific performance (as hereinabove provided), all disputes and claims relating to any provision hereof, any specification, standard or operating procedure, or any other obligation of Developer prescribed by Franchisor, or any obligation of Franchisor, or the breach thereof (including, without limitation, any specification, standard or operating procedure or any other obligation of Franchisee or Franchisor, which is illegal or otherwise unenforceable or voidable under any law, ordinance, or ruling) shall be settled by mandatory binding arbitration in Larimer County, Colorado, in accordance with the U.S. Arbitration Act, if applicable, and the Rules of the American Arbitration Association (in accordance with the rules relating to the arbitration of disputes arising from franchise and license agreements, if any, or otherwise in accordance with the general rules of commercial arbitration), provided that at the option of Franchisor or Developer the arbitrator shall be selected from a list of retired federal or state judges supplied by the American Arbitration Association (if obtainable, or otherwise in accordance with the customary procedures for selecting an arbitrator). The arbitrator shall allow discovery in accordance with the Federal Rules of Civil Procedure and may apply the sanctions relating to noncompliance with discovery orders therein provided. The arbitrator shall issue a written opinion explaining the reasons for his or her decision and award and the arbitrator shall have the right to award or include in the award the specific performance of this Agreement. Judgment upon the award of the arbitrator will be entered in any court having competent jurisdiction thereof or of the Franchisor or Developer. During the pendency of any arbitration proceeding hereunder, Developer and Franchisor shall fully perform their respective obligations pursuant to the terms and conditions of this Agreement.

### **Governing Law/Consent to Jurisdiction**

A. Except to the extent governed by the Federal Arbitration Act, (FAA) and the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 105 1 et seq.) or other superceding state or federal law, the Area Development Agreement, and the relationship between Silver Mine Subs<sup>®</sup> Franchise, Inc. and Developer shall be governed by the laws of the State of Colorado.

B. Jurisdiction shall be in Larimer County, Colorado, unless mandatory provisions of state law prohibit the choice of any jurisdiction other than the county in which the Franchise is located.

If any mandatory provisions governing state law prohibit the use of arbitration, or otherwise limit the jurisdiction in which arbitration may be heard, or which in any manner impose different rights or obligations as are found herein, then such mandatory provisions of state law shall be deemed incorporated in the Area Development Agreement by reference and shall prevail over any inconsistent terms in the Area Development Agreement. If no such law exists, or if such law exists but permits the Developer to agree to abide by the law of a state other than the state in which the Development Territory is located, then the Developer shall agree that the Area Development Agreement shall be governed by the law of the State of Colorado and the rights to

terminate, the option to purchase and other rights or obligations in the Area Development Agreement shall prevail.

C. All controversies, disputes or claims arising between Franchisor and Developer in connection with, arising from, or with respect to: (1) any provision of this Agreement or in any other agreement related to this Agreement between the parties; (2) the relationship of the parties, hereto; (3) the validity of this Agreement or any other agreement related to this Agreement between the parties, or any provisions thereof; or (4) any specification, standard or operating procedure relating to the establishment or operation of the Franchised Restaurant (except controversies, disputes or claims relating to any of the Marks or any lease or sublease or real estate) which shall not be resolved within fifteen (15) days after either party shall notify the other in writing of such controversy, dispute, claim, shall be submitted to arbitration in accordance with the then-existing rules of the American Arbitration Association or any successor thereof. Arbitration shall take place at an appointed time and place in Larimer County, Colorado, unless superseded by state law.

D. Nothing herein contained shall bar the right of either party to seek and obtain temporary injunctive relief from a court of competent jurisdiction in accordance with applicable law against threatened conduct that will cause damage, pending completion of the arbitration.

E. It is the intent of the parties that any arbitration between Franchisor and Developer shall be of Developer's individual claim and that the claim subject to arbitration shall not be arbitrated on a classwide basis.

F. Developer hereby consents and agrees that any disputes arising between Franchisor and Developer be submitted to arbitration as provided in Paragraph XVIII.A. of this Agreement.

#### **XIX. "DEVELOPER" DEFINED AND GUARANTY**

As used in this Agreement, the term "Developer" shall include all persons who succeed to the interest of the original Developer by permitted transfer or operation of law and shall be deemed to include not only the individual or entity defined as "Developer" in the introductory paragraph of this Agreement, but shall also include all partners of the entity that executes this Agreement, in the event said entity is a Partnership, and all shareholders, officers and directors of the entity that executes this Agreement, in the event said entity is a corporation. By signatures hereto, all partners, shareholders, officers and directors of the entity that signs this Agreement as Developer acknowledges and accepts the duties and obligations imposed upon each of them, individually, by the terms of this Agreement. All partners of the entity that execute this Agreement, in the event said entity is a partnership, and all shareholders, officers and directors of the entity that executes this Agreement, in the event said entity is a corporation, shall execute the Guaranty and Assumption of Obligations attached hereto as Exhibit C and made hereof.

**XX. CAVEAT**

The success of the business venture contemplated to be undertaken by Developer by virtue of this Agreement is speculative and depends, to large extent, upon the ability of Developer as an independent business person or entity, and his/her/its active participation in the daily affairs of the business as well as other variable factors.

**XXI. ACKNOWLEDGEMENTS**

A. Developer has been advised to consult with its own advisors with respect to the legal, financial and other aspects of this Agreement, the business franchised hereby, and the prospects for that business. Developer has either consulted with such advisors or has deliberately declined to do so.

B. The covenants not to compete set forth in this Agreement are fair and reasonable, and will not impose any undue hardship on Developer, since Developer has other considerable skills, experience and education which afford Developer the opportunity to derive income from other endeavors.

C. Developer affirms that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, with Developer expressly acknowledging that Franchisor is relying upon the truthfulness, completeness and accuracy of such information.

D. Developer has conducted an independent investigation of the business contemplated by the Agreement and recognizes that, like any other business, an investment in a Silver Mine Subs® Franchised Restaurant involves business risks and that the success of the venture is primarily dependent upon the business acumen of the Developer.

E. Developer hereby consents and agrees that any disputes arising between Franchisor and Developer be submitted to arbitration as provided in Paragraph XVIII.A. of this Agreement.

**BEFORE SIGNING THIS AGREEMENT, DEVELOPER SHOULD READ IT CAREFULLY WITH THE ASISTANCE OF LEGAL COUNSEL.**

**DEVELOPER ACKNOWLEDGES THAT:**

- 1. THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED HEREIN INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON DEVELOPER'S ABILITY AS AN INDEPENDENT BUSINESSPERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND:**

2. NO ASSURANCE OR WARRANTY, EXPRESSED OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE EARNINGS LIKELY TO BE ACHIEVED, AND;
3. EXCEPT FOR THE COVENANTS SET FORTH IN THIS AGREEMENT, NO STATEMENT OR REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, HAS BEEN MADE TO THE DEVELOPER IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

**THE FOLLOWING ARE TRUE AND CORRECT AS OF THE DATE STATED HEREIN IMPORTANT DATES:**

1. THE DATE ON WHICH I AS DEVELOPER RECEIVED THE SILVER MINE SUBS<sup>®</sup> UNIFORM OFFERING CIRCULAR \_\_\_\_\_  
MONTH/DAY/YEAR
2. THE DATE OF THE FIRST FACE-TO-FACE MEETING WITH A SILVER MINE SUBS<sup>®</sup> REPRESENTATIVE TO DISCUSS THE POSSIBLE PURCHASE OF A SILVER MINE SUBS<sup>®</sup> DEVELOPMENT AGREEMENT \_\_\_\_\_  
MONTH/DAY/YEAR
3. THE DATES I AS A DEVELOPER RECEIVED THE FOLLOWING DOCUMENTS IN A FORM FOR EXECUTION:
  - a. Franchise Agreement with all exhibits. \_\_\_\_\_  
MONTH/DAY/YEAR
  - b. Area Development Agreement with all exhibits. \_\_\_\_\_  
MONTH/DAY/YEAR
  - c. Other \_\_\_\_\_  
MONTH/DAY/YEAR
  - d. Other \_\_\_\_\_  
MONTH/DAY/YEAR
4. THE EARLIEST DATE ON WHICH I DELIVERED CASH, CHECK, OR OTHER CONSIDERATION TO THE FRANCHISOR: \_\_\_\_\_  
MONTH/DAY/YEAR

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

If the Developer is an individual:

ATTEST:

FRANCHISOR:  
SILVER MINE SUBS® FRANCHISE, INC.

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Developer

If Developer is a corporation  
or partnership:

ATTEST:

FRANCHISOR:  
SILVER MINE SUBS® FRANCHISE, INC.

\_\_\_\_\_  
Witness

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

Developer:

\_\_\_\_\_  
Witness

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

\_\_\_\_\_

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



**AMENDMENT TO CALIFORNIA FRANCHISE AND AREA DEVELOPMENT  
AGREEMENTS OF  
SILVER MINE SUBS FRANCHISE, INC.**

1. The terms of this Amendment are in addition to the terms of the California Franchise and ADA Agreements or Area Development Agreement of Silver Mine Subs Franchise, Inc ("Franchise and ADA Agreements" or "ADA Agreement"). The terms of this Amendment shall prevail over any inconsistent terms in the Franchise and ADA Agreements.

2. The post-term covenants not to compete may not be enforceable under California Business and Professional Code Section 16600.

3. Notwithstanding anything in the Franchise and ADA Agreements to the contrary, the following shall prevail:

a. Except for non-renewal based upon the rights enumerated in Section XXIV of the Franchise and ADA Agreements, which rights to terminate shall not be subject to this sub-paragraph, Franchisor may not fail to renew the Franchise unless Franchisor provides the Franchisee at least 180 days prior written notice of its intention not to renew; and

i. During the 180 days prior to expiration of the franchise the Franchisor permits the Franchisee to sell his business to a purchaser meeting the franchisor's then current requirements for granting new franchises, or if the Franchisor is not granting a significant number of new franchises, the then current requirements for granting renewal franchises; or

ii. (1) The refusal to renew is not for the purpose of converting the Franchisee's business premises to operation by employees or agents of the Franchisor for such Franchisor's own account, provided, that nothing in this paragraph shall prohibit a Franchisor from exercising a right of first refusal to purchase the franchisee's business; and

(2) Upon expiration of the franchise, the Franchisor agrees not to seek to enforce any covenant of the nonrenewed Franchisee not to compete with the Franchisor or franchisees of the Franchisor; or

iii. The Franchisee and the Franchisor agree not to renew the franchise; or

iv. The Franchisor withdraws from distributing its products or services through franchises in the geographic market served by the Franchisee, provided that:

(1) Upon expiration of the franchise, the Franchisor agrees not to seek to enforce any covenant of the nonrenewed Franchisee not to compete with the Franchisor or franchisees of the Franchisor; and

(2) The failure to renew is not for the purpose of converting the business conducted by the Franchisee pursuant to the franchise agreement to operation by employees or agents of the Franchisor for such franchisor's own account; and

(3) Where the Franchisor determines to sell, transfer, or assign its interest in a marketing premises occupied by a Franchisee whose franchise agreement is not renewed pursuant to this paragraph:

(A) The Franchisor, during the 180-day period after giving notice offers such Franchisee a right of first refusal of at least 30 days' duration of a bona fide offer, made by another to purchase such Franchisor's interest in such premises; or

(B) In the case of the sale, transfer, or assignment to another person of the Franchisor's interest in one or more other controlled marketing premises, such other person in good faith offers the Franchisee a franchise on substantially the same terms and conditions currently being offered by such other person to other franchisees; or

v. The Franchisor and Franchisee fail to agree to changes or additions to the terms and conditions of the franchise agreement, if such changes or additions would result in renewal of the franchise agreement on substantially the same terms and conditions on which the Franchisor is then customarily granting renewal franchises, or if the Franchisor is not then granting a significant number of renewal franchises, the terms and conditions on which the Franchisor is then customarily granting original franchises. The Franchisor may give the Franchisee written notice of a date which is at least 30 days from the date of such notice, on or before which a proposed written agreement of the terms and conditions of the renewal franchise shall be accepted in writing by the Franchisee. Such notice, when given not less than 180 days before the end of the franchise term, may state that in the event of failure of such acceptance by the Franchisee, the notice shall be deemed a notice of intention not to renew at the end of the franchise term.

3. Franchisor may offset against any repurchase offer made, any sums owed the Franchisor by the Franchisee pursuant to the Franchise and ADA Agreements or any ancillary agreements.

4. Except as amended herein, the terms of the Franchise and ADA Agreements shall remain in full force and effect.

**EXHIBIT A TO THE AREA DEVELOPMENT AGREEMENT**

**DESCRIPTION OF TERRITORY**

SILVER MINE SUBS® FRANCHISE, INC.

\_\_\_\_\_  
FRANCHISOR

\_\_\_\_\_  
DEVELOPER

**EXHIBIT B TO THE AREA DEVELOPMENT AGREEMENT**

**DEVELOPMENT SCHEDULE**

At the dates set forth below, the Developer is obligated by Paragraph III. of the Area Development Agreement to have open the number of SILVER MINE SUBS® restaurants indicated:

SILVER MINE SUBS® Restaurants	Number of	Date
SMS#1 _____	On	_____
SMS#2 _____	On	_____
SMS#3 _____	On	_____
SMS#4 _____	On	_____
SMS#5 _____	On	_____
_____	On	_____
_____	On	_____
_____	On	_____
_____	On	_____
_____	On	_____

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2006

Developer's Printed Name: \_\_\_\_\_

Developer's Signature: \_\_\_\_\_

Franchisor's Printed Name: \_\_\_\_\_

Franchisor's Signature: \_\_\_\_\_

**EXHIBIT C TO THE AREA DEVELOPMENT AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS is given this \_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement of date herewith ("Agreement") by SILVER MINE SUBS® FRANCHISE, INC. ("Franchisor"), each of the undersigned hereby personally and unconditionally (1) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("Developer") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (2) shall personally be bound by, and personally liable for the breach of each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities. Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed; (4) any right he/she may have to require that an action be brought against Developer or any person as a condition of liability; and (5) any and all other notices and legal or equitable defenses to which he may be entitled.

Each of the undersigned consents and agrees that: (1) his/her direct and immediate liability under this guaranty shall be joint and several; (2) he/she shall render any payment or performance required under the Agreement upon demand if Developer fails or refuses punctually to do so; (3) such liability shall no be contingent or conditioned upon pursuit by Franchisor of any remedies against Developer or any other person; and (4) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Developer or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty which shall be continuing and irrevocable during the term of the Agreement.

INWITNESS WHEREOF, each of the undersigned has hereunto affixed his/her signature on the same day and year as the Agreement was executed.

GUARANTOR(S)	PERCENTAGE OWNERSHIP IN DEVELOPER
_____	_____ %
_____	_____ %
_____	_____ %