



**BUFF CITY SOAP FRANCHISING, LLC**

**Area Development Agreement**

## SUMMARY PAGE

This page summarizes certain provisions of the Area Development Agreement to which they are attached. The Area Development Agreement's provisions will control in the event of any conflict.

Effective Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Developer: \_\_\_\_\_

Business Entity: \_\_\_ corporation/ \_\_\_ partnership/ \_\_\_\_\_ limited liability company, formed under the laws of \_\_\_\_\_.

Designated Principal: \_\_\_\_\_

Development Fee: \_\_\_\_\_

Initial Franchise Fee: \_\_\_\_\_

Offering Fee: \$10,000

Territory: \_\_\_\_\_, as geographically constituted as of the Effective Date.

Transfer Fee: \$12,500

Extension Fee: \$2,000

Developer: \_\_\_\_\_

Address for Notices: \_\_\_\_\_

phone: \_\_\_\_\_

fax: \_\_\_\_\_

email: \_\_\_\_\_

Franchisor: Buff City Soap Franchising, LLC

Address for Notices: Attn: \_\_\_\_\_

5294 Beltline Road, Suite 100

Dallas, TX 75201

phone: 1-844-283-2489

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#### EXHIBITS:

- A Development Schedule and Franchisor’s Approval of Developer’s Existing Brands
- B Organizational and Ownership Information
- C Guaranty and Undertaking of Obligations
- D Form of Franchise Agreement
- E Designated Principal’s Confidentiality and Non-Compete Agreement

## **BUFF CITY SOAP**

### **AREA DEVELOPMENT AGREEMENT**

This Agreement is made as of the Effective Date between Franchisor and Developer.

WHEREAS, Franchisor has expended significant effort, money and time to develop the System, all of which may be periodically changed or modified, at Franchisor's sole option, for establishing and operating Makeries that offer the Products and utilize the System and Marks.

WHEREAS, Franchisor developed and will continue to develop valuable goodwill in the Marks and may periodically develop or acquire other trademarks and service marks for use under the System, all of which may be changed or modified at Franchisor's sole option.

WHEREAS, Developer desires to obtain the right to identify and propose locations for Makeries within the Territory and to develop and operate Makeries at Premises pursuant to one or more Franchise Agreements.

NOW, THEREFORE, in consideration of Franchisor's granting to Developer the right to develop Makeries in the Territory subject to and in accordance with the terms hereof, the mutual obligations provided for in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. DEFINITIONS.**

Certain initially capitalized terms used frequently in this Agreement are defined in this Section 1. Other terms are defined elsewhere in this Agreement in the context in which they arise.

- (a) “**ADA**” means the Americans with Disabilities Act.
- (b) “**Affiliate**” means with respect to a named Person, any Person that is controlled by, controlling or under common control with the named Person.
- (c) “**Agreement**” means this Buff City Soap Area Development Agreement between Franchisor and Developer.
- (d) “**Applicable Law**” means any federal, state, and local laws, ordinances, and codes, together with all rules, regulations, policies, and guidelines related thereto, applicable to the subject matter of this Agreement and either Party, including the development, construction and/or operation of the Makery pursuant to the terms hereof, including, without limitation, all laws and regulations related to cosmetics (e.g. U.S. Food & Drug Administration packaging and labeling requirements); environmental regulations (e.g. regulations applicable to the disposal of containers used in the storage of lye and similar component ingredients); labor; consumer privacy and data security; and those governing public accommodations for persons with disabilities.
- (e) “**Brand**” means the Buff City Soap brand.
- (f) “**Competitive Business**” means any retail establishment that, as determined by Franchisor, is the same as or substantially similar to the Makeries, including, without limitation, any personal body care

product retail establishment or chain of retail establishments that feature products free of artificial detergents, surfactants, dyes, or harsh chemicals, or any retail establishment that has soaps, lotions, bath bombs and similar facial, body and hair care products collectively accounting for 25% or more of its average monthly gross sales for the retail establishment during the preceding 12 months (or, if the retail establishment has operated less than 12 months, the number of full calendar months of operation). A Competitive Business does not include (i) other businesses that are licensed by Franchisor or any of its Affiliates; or (ii) Franchisee's Existing Brands.

(g) **“Conditions”** means collectively, the “Operational,” “Financial,” “Legal” and “Ownership” conditions to execution by Developer and Franchisor of a Franchise Agreement.

(h) **“Confidential Information”** means any and all information, knowledge, know-how, trade secrets, trade dress, methodologies, techniques, procedures, applications and materials, in whatever form, used in or related to the System which Franchisor provides to Developer, or which Developer or its employees develop or have access to, in connection with this Agreement or the operation of a Makery hereunder, including, without limitation, the Standards; the Manuals; any components and ingredients, formulae and recipes applicable to Products; Franchisor's or its Affiliates product sourcing, pricing, manufacturing, inventory management and control, supply and distribution; technology, point of sale and related computer software; advertising, marketing and promotional programs including gift card, loyalty and customer reward programs; customer data; financial data and statements; training and operational methodology, content (including without limitation, inventory and financial controls) and management programs and any other information or data regarding the business of Franchisor or any of its Affiliates that would reasonably be considered the proprietary or confidential information of Franchisor or its Affiliates.

(i) **“Consequential Damages”** means damages and injury that result from a Party's negligent performance of or other breach of this Agreement for (a) lost profits; or (b) compensation for damages to reputation and goodwill including costs of or resulting from delays, financing, marketing materials and media time and space, and costs of changing, substituting or replacing the same.

(j) **“Control,” “Controlling” or “Controlling Interest”** means the power, directly or indirectly, to direct or cause the direction of the management and policies of an Entity, whether by contract or otherwise.

(k) **“Crisis Management Event”** means an event affecting Developer or its Makerries that Franchisor determines may materially affect the Marks and goodwill associated therewith.

(l) **“Cybersecurity Incident”** means any event or occurrence that results in unauthorized access to or adversely affects the availability or integrity of the System, Buff City Soap Makerries or the Confidential Information, which event or occurrence could not have been prevented by commercially reasonable administrative, physical or technical security measures.

(m) **“Designated Principal”** means the employee of Developer who supervises and oversees the operation of the business contemplated by this Agreement. The first Designated Principal is identified in the Summary Page.

(n) **“Developer”** means the Entity so described in the Summary Pages.

(o) **“Development Fee”** means an initial fee in the amount set forth in the Summary Page owed to Franchisor upon Developer's execution of this Agreement.

(p) **“Development Period”** means, unless otherwise set forth in the Development Schedule, the 12-month period ending on the calendar day immediately preceding the first anniversary of the Effective Date and each subsequent 12-month period thereafter during the Initial Term.

(q) **“Development Schedule”** means the schedule set forth in Exhibit A.

(r) **“Effective Date”** means the effective date of this Agreement as set forth on the Summary Page.

(s) **“Entity”** means a business entity, including a corporation, limited liability company, general or limited partnership, limited liability partnership or any other type of legal entity.

(t) **“Equity Interest”** means any direct or indirect stock, unit, membership, partnership or other legal, equitable or beneficial ownership interest, or other voting rights, in an Entity, but does not include direct or indirect ownership solely as an investment of securities of any Entity traded on any securities exchange if the owner is not a Controlling Person (or a member of an Entity that Controls such Entity and does not, directly or indirectly, own 5% or more of any class of securities of such Entity).

(u) **“Event of Default”** means any breach by Developer of, or any failure by Developer to comply with, any condition or obligation of this Agreement as described in Section 12(a).

(v) **“Existing Brands”** means personal body care retail shops operated under a system and marks other than the System and Marks by Developer as of the Effective Date, as set forth in Exhibit A.

(w) **“Extension Fee”** means a monthly fee in the amount set forth in the Summary Page payable by Developer to Franchisor in connection with the extension of a Development Period.

(x) **“Force Majeure Event”** means acts of God (such as tornadoes, earthquakes, hurricanes, floods, fire or other natural catastrophe), strikes, lockouts or other industrial disturbances; war (declared or undeclared), riot, terrorist acts, Cybersecurity Incident, or other civil disturbances; epidemics; pandemics; or other forces, that materially and adversely affect the ability of a Party hereto to perform provided that with respect to any or all events they are not within the reasonable control of the Party affected thereby. Financial inability of a Party hereto will not constitute a Force Majeure Event.

(y) **“Franchise”** means the right to operate a Makery pursuant to this Agreement.

(z) **“Franchise Agreement”** means Franchisor’s then-current form of franchise agreement that governs the operation of a Makery. Franchisor’s current form of Franchise Agreement is attached to this Agreement as Exhibit D.

(aa) **“Franchisee”** means Developer or an Affiliate of Developer approved by Franchisor to operate a Makery pursuant to an executed Franchise Agreement between Franchisor and Developer.

(bb) **“Franchisor”** means the Entity so described in the Summary Page.

(cc) **“Franchisor Indemnitees”** means Franchisor, its Affiliates and their respective Principals, directors, officers, employees, agents, successors and assignees.

(dd) **“Ideas and Concepts”** means the recipes, processes, innovations, improvements, ideas, concepts, methods, techniques, materials or customer information relating to the System, Confidential Information and/or the Makery(ies) that Developer, any of its Principals or its Affiliates or any of their

respective Personnel or independent contractors creates or develops from time to time in connection with the development or operation of the Makeries.

(ee) “**Indemnified Matter**” means any action, suit, proceeding, claim, demand, investigation, or formal or informal inquiry (regardless of whether it is reduced to a judgment) or any settlement thereof, as described in Section 10..

(ff) “**Initial Franchise Fee**” means an initial fee in the amount set forth in the Summary Page owed to Franchisor upon Developer’s execution of a Buff City Soap Franchising, LLC Franchise Agreement in connection with each Makery developed hereunder, subject to application of any portion of the Development Fee pursuant to Section 6(a).

(gg) “**Initial Term**” means the initial term of this Agreement as set forth in Section 3.

(hh) “**Intellectual Property**” means all intellectual property or other proprietary rights throughout the world, whether existing under contract, statutes, convention, civil law, common law or any law whatsoever, now or hereafter in force or recognized, including (1) patents and rights to inventions; (2) trademarks, service marks, logos, trade dress and design rights; (3) works of authorship, including, without limitation, copyrights, source codes, moral rights, and neighboring rights; (4) trade secrets; (5) Ideas and Concepts; (6) publicity and privacy rights; (7) any rights analogous to those set forth herein and any other intellectual property and proprietary rights; (8) any application or right to apply for any of the rights referred to in subsections (1) through (7) above; and (9) any and all renewals, divisions, continuations, continuations-in-part, re-issuances, re-examinations, extensions and restorations of any of the foregoing (as applicable).

(ii) “**Internet**” means all modes of communications between computers and between computers and television, telephone, facsimile and similar communications devices, including the World Wide Web, proprietary online services, e-mail, news groups, social media, mobile applications, electronic bulletin boards and related communications.

(jj) “**Lease**” means the document executed by Developer or its Affiliate with an owner or lessor of real property in connection with the granting of the right to occupy the Premises and operate a Makery from the Premises, including the Lease Addendum (as defined in the Franchise Agreement). “Lease” includes any sublease or renewal of any lease or sublease.

(kk) “**Losses and Expenses**” means without limitation, all losses, compensatory, exemplary or punitive damages, arbitration costs, mediation costs, settlement amounts, judgments, court costs, fines, charges, costs, and expenses, including without limitation reasonable legal fees and Consequential Damages

(ll) “**Makery**” means a Buff City Soap shop operating under the Marks and System pursuant to Buff City Soap Franchising, LLC Franchise Agreement between Franchisor and a Franchisee..

(mm) “**Manuals**” means Franchisor’s operations and training manuals, and any other written directives related to the System, in whatever form and provided in whatever manner, as the same may be periodically amended and revised by Franchisor at its sole option, including the Standards, all bulletins, supplements and ancillary and additional manuals and directives established by Franchisor from time to time.

(nn) “**Marks**” means the Buff City Soap trademarks and service marks and such other registered and unregistered trademarks, trade names, service marks, logos, slogans, emblems and other indicia of



origin as are now designated, and may hereafter be designated, by Franchisor in writing for use in connection with the System.

(oo) **“Notice”** means any notice, demand, request, consent, approval, and other communication in writing required or permitted to be given or which are to be given with respect to this Agreement.

(pp) **“Offering Fee”** means a payment in the amount set forth in the Summary Page that will be owed to Franchisor in connection with any offerings of debt or any Equity Interest of Developer or any Affiliate or any of the Principals thereof as set forth in Section 11(f).

(qq) **“Opening Date”** means the date by which a Makery must be open for business to the public as set forth in the applicable Franchise Agreement.

(rr) **“Party”** or **“Parties”** means either Franchisor or Developer individually or collectively.

(ss) **“Permanently Disabled”** means being subject to any physical, emotional or mental injury, illness or incapacity that prevents Developer or any Principal holding a Controlling Interest in Developer from performing his or her obligations under this Agreement or any other agreement related hereto for at least 90 consecutive days, and from which recovery is unlikely within 90 days from the date such individual is determined to be Permanently Disabled. If the parties hereto disagree as to whether a Person is “Permanently Disabled” the determination will be made by an independent licensed practicing physician, selected by Franchisor, upon examination of the Person, or, if the Person refuses to submit to an examination, then for purposes of Section 11(e), the Person will automatically be considered Permanently Disabled as of the date of refusal.

(tt) **“Person”** means any natural person or Entity.

(uu) **“Personnel”** means all Persons employed by Developer or any of its Affiliates in connection with the development and operation of the Makeries.

(vv) **“Premises”** means the site approved by Franchisor for Developer’s Makery as set forth in the applicable Franchise Agreement.

(ww) **“Principal”** means collectively or individually, the Persons holding a direct or indirect Equity Interest in Developer or in any Affiliate of Developer which has entered into an agreement with Franchisor or any of its Affiliates with respect to the exercise of any of Developer’s rights or the performance of any Developer’s obligations under this Agreement or any Franchise Agreement. Any reference to “Principal” in this Agreement includes the Designated Principal.

(xx) **“Products”** means all ~~soaps, salts, bath bombs, shower fizzes, body and foot scrubs, shower oils, shave soaps, beard balms and oils, body butters, lotions, shampoos, bath truffles, facial masks, facial cleansers facial scrubs, lip balms, facial creams, toners, facial serums, pet products, laundry products, and related bath, body, facial and hair products and~~ upscale, body, facial, bath, shower, laundry, personal and home care products made with plant-based ingredients that are free of harsh chemicals, detergents and animal fats, as well as customization services and related accessories offered to our patrons, used, manufactured, produced or made available for purchase at or from the Makeries, as specified from time to time by Franchisor in the Manuals, or otherwise in writing. Products include the Proprietary Products.

(yy) **“Proprietary Products”** means all bath, body, facial and hair products, accessories and merchandise used or made available for purchase at or from the Makeries bearing any of the Marks or designated as proprietary by Franchisor or any Affiliate.

(zz) **“Reserved Area”** means any location that by their nature are unique and separate in character from locations generally developed as Buff City Soap Makeries which include military bases, airports, shopping malls, hospitals, campuses, schools, hotels, casinos and other mass gathering locations or events.

(aaa) **“Site Application”** means the documents and information that Developer must submit to Franchisor prior to Franchisor’s evaluation of a proposed site, including without limitation, demographic data, photographs, maps, artists’ renderings, site plans, and/or a copy of the Lease and documentation indicating Developer’s prospects for acquiring possessory interest in the Premises

(bbb) **“Standards”** means the standards, requirements, specifications, techniques, methods, policies and procedures of the System and Brand and for the development and operation of Buff City Soap Makeries, as set forth in the Manuals or otherwise specified by Franchisor in writing and as may be amended by Franchisor from time to time.

(ccc) **“Summary Page”** means the Summary Page of this Agreement that directly precedes the Table of Contents of this Agreement.

(ddd) **“System”** means the business system for establishing and operating Buff City Soap Makeries, the distinguishing characteristics of which include, without limitation, distinctive exterior and interior design, decor, color scheme, furnishings and equipment; special components and ingredients, recipes and Products; the Standards; quality and uniformity of products and services offered; procedures for product sourcing, inventory management, logistics, pricing; training and assistance; and marketing, advertising and promotional programs; all of which may be changed, improved and further developed by Franchisor from time to time.

(eee) **“Term”** means the term of this Agreement as set forth in Section 3.

(fff) **“Territory”** means the geographic area described in the Summary Pages.

(ggg) **“Trade Dress”** means the unique, distinctive, and non-functional overall appearance and image of the Makeries in the marketplace and includes the Standards.

(hhh) **“Transfer”** means any voluntary, involuntary, direct or indirect assignment, transfer, sale, conveyance, disposition, gift, encumbrance, pledge, hypothecation, or mortgage by Developer or any of its Principals of all or any part of its rights, interests or obligations in this Agreement, Developer, the Makeries (including the Premises), or any Equity Interest, directly or indirectly, in Developer to any Person or any other transaction that would, alone or together with other previous, simultaneous or proposed Transfer, have the effect of transferring Control, this Agreement, or substantially all of the assets of the business operated pursuant to this Agreement. Any transfer of an Equity Interest in Developer or the ownership, possession, or Control of the Makeries may be made only in conjunction with a Transfer of this Agreement.

(iii) **“Transfer Fee”** means the transfer fee Developer or the transferee must pay to Franchisor as set forth in Section 11(c)(7) and in the amount set forth in the Summary Page.

## 2. GRANT OF DEVELOPMENT RIGHTS.

(a) **Development Rights.** Franchisor grants to Developer and Developer accepts from Franchisor, the right to develop a pre-determined number of Makeries in the Territory during the Initial Term. This Agreement does not grant Developer the right to use the Marks, the System or operate a Makery. Each Makery must be operated under a separate Franchise Agreement. Developer has no rights under this Agreement to develop any Makeries outside of the Territory or to develop retail stores under other brands that may come to be owned, operated or franchised by Franchisor or its Affiliates and that do not utilize the System. Subject to the rights reserved to Franchisor in Section 2(b) and provided Developer and its Affiliates remain in full compliance with this Agreement and all other agreements with Franchisor or any of its Affiliates during the Term, Franchisor will not:

(1) operate, directly or indirectly, nor grant to Persons the right to operate, a Makery located within the Territory;

(2) operate, directly or indirectly, nor grant to Persons the right to operate, a Competitive Business located within the Territory; provided that, Franchisor and its Affiliates will have the right to: a) establish and operate, and grant Persons the right to establish and operate, Competitive Businesses located within the Territory under marks and business methods the rights to which are acquired by Franchisor or its Affiliates pursuant to, as the result of, or in connection with a merger with or acquisition by any Entity or acquisition by Franchisor or its Affiliates of any Entity, including an asset transfer; and b) in such case, operate or grant to Persons the right to operate such Competitive Business as a Makery.

The rights granted under this Section 2(a) are limited to the right to develop Makeries and do not include (1) any right to subfranchise, sublicense, subcontract, share, divide or partition this Agreement or any rights hereunder; (2) and right to sell Products identified by the Marks at any location or through any other channels or methods of distribution, including the Internet (or any other existing or future form of electronic commerce), other than at Makeries within the Territory; (3) any right to sell Products identified by the Marks to any Person for resale or further distribution; or (4) any right to exclude, control or impose conditions on Franchisor's development or operation of franchised, Affiliate or company-operated Makeries (whether under the Marks or different trade names or trademarks) at any time or at any location outside of the Territory.

(b) **Reserved Rights.** Franchisor retains all rights inside and outside the Territory except those that are expressly granted to Developer in this Agreement. Without limiting Franchisor's and its Affiliates' rights described in this Section 2(b), Franchisor and its Affiliates and any other authorized Person may, among other things:

(1) Advertise and promote the System within and outside the Territory;

(2) Operate, and license others to operate, Buff City Soap Makeries at any location outside the Territory, including locations that are adjacent to the Territory;

(3) Except for the restriction against the establishment of another Buff City Soap Makery in the Territory, offer and sell, and authorize others to offer and sell, approved collateral products and services, including those offered and sold at Buff City Soap Makeries (such as the Products and other Buff City Soap merchandise), under the Marks or other trademarks at or from any location or through any channel of distribution (including, but not limited to, grocery stores, club stores, convenience stores, wholesale, hospitals, health care facilities and fitness centers, airports, salons, business (e.g. office building), military installations, military commissaries, universities, schools, the Internet (or any other existing or future form of electronic commerce), other retail locations and other retail facilities such as kiosks or multi-brand

facilities providing a limited number or representative sample of the products and services normally offered by an Buff City Soap Makery);

(4) Establish and operate, and license others to establish and operate, any business other than a Buff City Soap Makery, including other retail stores or retail-related businesses, under the Marks or under other marks, including retail stores or other businesses that Franchisor or its Affiliates may operate, acquire, be acquired by, or be merged or consolidated with; and;

(5) Establish and operate, and license others to establish and operate, Buff City Soap Makeries and other retail facilities in any Reserved Area whether or not located within the Territory.

3. **TERM.** Unless sooner terminated in accordance with this Agreement, the Term will commence on the Effective Date described in the Summary Page and will expire on the earlier of the expiration date set forth in the Summary Page or the date upon which Developer opens for operation the cumulative number of **MAKERIES** in the Territory set forth in the Development Schedule.

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

(a) **Development Schedule.** Developer will exert its best efforts and take all steps necessary and consistent with this Agreement to fully develop the Makeries in the Territory. Without limiting the foregoing, Developer must have open and operating in the Territory, pursuant to Franchise Agreements, the cumulative number of Makeries by the corresponding dates as set forth in the Development Schedule. Developer must execute Franchisor's then-current form of Franchise Agreement for each Makery and open each such Makery by the Opening Date set forth in the applicable Franchise Agreement, provided that such Opening Date will not modify the cumulative number of Makeries that Developer must have open and operating as of the expiration of each Development Period.

(b) **Investment.** Developer acknowledges that: (1) the estimated expenses and initial investment requirements for any Makery are subject to increase over time and future Makeries likely will involve greater initial investment and operating capital requirements; and (2) it is required to open all of the Makeries on the dates set forth in the Development Schedule regardless of the requirement of a greater investment, the financial condition or performance of Developer's then-existing Makeries or any other circumstances, financial or otherwise.

(c) **Exercise of Development Rights.** Developer may not develop a Makery unless (1) at least 45 days prior to the execution of each Franchise Agreement, Developer requests that Franchisor send its then-current franchise disclosure document and Franchise Agreement, confirms its intent to develop the applicable Makery and sends to Franchisor all information necessary to complete the Franchise Agreement for the applicable Makery; and (2) all of the conditions set forth in Section 5(c) have been met.

(d) **Makery Casualty.** If an operating Makery is closed due to a Force Majeure Event, then such Makery will be deemed open and in operation as of the end of such Development Period, but not thereafter.

(e) **Failure to Comply With Development Schedule.** Developer's complete, timely, and strict compliance with the Development Schedule is the essence of this Agreement and without such compliance, Franchisor would not be willing to enter into this Agreement (or any Franchise Agreement) with Developer. Developer's failure to fulfill its obligations with respect to any Development Period of the Development Schedule (including without limitation executing a Franchise Agreement for each Makery and opening the Makery by the Opening Date prescribed in such Franchise Agreement) will constitute an Event of Default under this Agreement. If Developer fails to either execute a Franchise Agreement, open a Makery by the Opening Date set forth in the applicable Franchise Agreement or have operating at least the minimum

number of Makeries according to the applicable Development Period and Franchise Agreements, or if Developer ceases operation of any Makery prior to the expiration of the term of the applicable Franchise Agreement and does not re-open such Makery within the time period required by the Franchise Agreement (except in the event of closure due to a Force Majeure Event as provided in Section 14), Franchisor has the right but not the obligation to terminate this Agreement. Franchisor may, at its option, but not in lieu of termination or any other remedies available to Franchisor in this Agreement, the Franchise Agreement or at law, effective upon Notice to Developer: (1) terminate or modify Developer's exclusivity in the Territory; (2) modify the Territory; and/or (3) limit the number of remaining Makeries that may be developed by Developer in the Territory.

(f) **Option to Extend Development Period.** If Developer is unable to satisfy the minimum number of operating Makeries required during any Development Period, then Developer may, upon 90 days' Notice to Franchisor and payment of the Extension Fee each month during the extension of the Development Period, extend the deadline by which it must comply with the Development Schedule for the applicable Development Period by 180 days. However, in no event will any such extension extend the duration of the Development Schedule or otherwise affect the requirements that Developer must satisfy during any other Development Period. A Development Period may be extended only once and Developer may purchase no more than one extension during the Term.

## **5. SITE SELECTION AND FRANCHISE AGREEMENTS.**

(a) **Franchisor's Consent to Developer's Premises.** Developer is required to obtain Franchisor's prior written consent to each of the Premises before executing a lease for, or a binding agreement to purchase, any proposed Premises dedicated to a Makery. Developer assumes all cost, liability, expense and responsibility for locating, obtaining and developing the Premises for each Makery within the Territory and for finish-out or renovation and equipping the Makery at the Premises in accordance with the applicable Franchise Agreement. Developer will submit to Franchisor within 30 days after the commencement of each Development Period its Site Application for a proposed site for each Makery to be developed during the applicable Development Period in accordance with the Site Application procedures set forth in the Manuals. Franchisor will provide Developer with site selection assistance as Franchisor deems advisable, including without limitation Franchisor's site selection guidelines and design specifications and conducting an on-site evaluation of the proposed site. Franchisor may, but is not obligated to, conduct an on-site evaluation for any proposed site following the initial site proposed by Developer; provided, no on-site evaluation will be conducted prior to the receipt of the complete Site Application. Developer acknowledges and agrees that Franchisor providing its site selection guidelines and design specifications and any other site selection assistance to Developer prior to the proposed site being accepted by Franchisor will not create any reliance or expectation damages or liability for Franchisor and such activities will not create any expectations or representations to Developer that any proposed site will be accepted by Franchisor.

(b) **Site Acceptance.** Franchisor will have 30 days after receipt of the complete Site Application to accept or not accept, at its sole option, each site proposed by Developer. If Franchisor does not respond within the 30-day time period, Franchisor will be deemed to have rejected the proposed site. Upon Franchisor's written acceptance of a proposed site, the Developer (or its Affiliate, as Franchisee) will execute within 15 days of such written acceptance a Franchise Agreement and any exhibit thereto designating the Premises as the location of the Makery. No site may be used for the location of the Makery unless it is first accepted by Franchisor. Franchisor may revoke its acceptance of a proposed site if Developer commits a default of this Agreement and fails to cure such default within the applicable cure period, if any. FRANCHISOR'S APPROVAL OF THE PREMISES AND ITS RENDERING OF SITE SELECTION ASSISTANCE, IF ANY, IN THE SELECTION OF THE PREMISES DOES NOT CONSTITUTE A REPRESENTATION, PROMISE, WARRANTY, OR GUARANTEE BY FRANCHISOR, EXPRESS OR IMPLIED, THAT THE MAKERY OPERATED AT THE PREMISES



WILL BE PROFITABLE OR OTHERWISE SUCCESSFUL. Franchisor assumes no liability or responsibility for: (1) evaluation of a proposed site's soil for hazardous substances; (2) inspection of any structure on the proposed site for asbestos or other toxic or hazardous materials; or (3) compliance with the ADA and any other Applicable Law. Developer is solely responsible for obtaining satisfactory evidence and/or assurances that the proposed site and any structures thereon are free from environmental contamination and in full compliance with all Applicable Law.

(c) **Development Conditions.** In conjunction with Franchisor's decision to execute each Franchise Agreement, Franchisor may require that Developer and its Principals furnish to Franchisor financial statements (historical and pro forma), statements of the sources and uses of capital funds, budgets and other information about Developer, its Principals and each of Developer's Affiliates that is, or may be, involved in the development, ownership or operation of any Makery. All such information must be verified in writing by Developer and its Principals as being true, complete and accurate in all respects. Such information must be submitted to Franchisor promptly upon Franchisor's request and will be relied upon by Franchisor, among other factors, in determining whether to execute this Agreement. Each of the following conditions and approvals must have occurred or be obtained before Developer will have the right to execute each Franchise Agreement. Developer must meet all "Operational," "Financial," "Legal" and "Ownership" conditions, as set forth below, before such rights will become effective:

(1) **Operational Conditions:** Developer, its Affiliates and Principals must be in full compliance with all provisions of this Agreement and any other agreements (including any Franchise Agreements) between Developer and its Affiliates and Franchisor and its Affiliates. Developer must have opened each Makery in a timely manner as required under the Development Schedule. Developer must have at all times operated, and continue to operate, each of Developer's existing Makeries in accordance with the Standards. Developer further must demonstrate it is capable of operating each proposed Makery required under the Development Schedule in accordance with the Standards.

(2) **Financial Conditions:** Developer and its Principals must satisfy Franchisor's then-current financial criteria for developers of Makeries as set forth in the Manual. Developer must not be in default, and have not been in default during the 12 months preceding Developer's request for financial approval, of any monetary obligations owed to Franchisor or Franchisor's Affiliates under any Franchise Agreement or other agreement between Developer or any of its Affiliates and Franchisor or any of its Affiliates. Developer acknowledges and agrees that it is vital to Franchisor's interest that each of Franchisor's developers is financially sound to avoid failure of one or more Makeries and that such failure would adversely affect Franchisor's reputation, the goodwill associated with the Marks and the System.

(3) **Legal Conditions:** Developer must have prepared or obtained, and submitted to Franchisor upon Franchisor's request, in a timely manner, all information and documents requested by Franchisor in connection with this Agreement or any other agreements to be executed between Developer or any of its Affiliates and Franchisor or any of its Affiliates, and Developer have taken such additional actions in connection therewith as may be requested by Franchisor from time to time.

(4) **Ownership Conditions:** Neither Developer nor any of its Principals will have transferred or attempted to transfer a Controlling Interest in Developer without Franchisor's prior written consent.

(d) **Franchise and Related Agreements.** Each Franchise to be granted pursuant to this Agreement will be governed by Franchisor's then-current form of Franchise Agreement (including all attachments and related agreements and documents), which Developer (or its Affiliate, as Franchisee) agrees to execute and pay upon execution the Initial Franchise Fee (or, balance of the Initial Franchise Fee, as applicable, as further described in Section 6(a)) due thereunder. Upon Franchisor's approval of Developer's proposed site for each Makery in accordance with Sections 5(a) and 5(b), Developer must execute the Franchise

Agreement for each Makery. Concurrently with Developer's execution and delivery to Franchisor of each Franchise Agreement, Developer and its Principals and Affiliates must, except to the extent prohibited by Applicable Law, execute and deliver to Franchisor a general release in form and substance satisfactory to Franchisor, of any and all claims against Franchisor, its Affiliates and its owners, officers, directors, employees, agents, successors and assigns accruing prior to the effective date of the Franchise Agreement, subject to Applicable Law.

(c) **Development by Developer or its Affiliates.** Developer may develop the Makeries through one or more of its Affiliates provided such Affiliate is pre-approved in writing by Franchisor. In such case, (i) the Affiliate will execute the Franchise Agreement and its Principals will execute a Guaranty and Undertaking of Obligations, and (ii) Developer will guaranty the payment and performance of such Affiliate in the form prescribed by Franchisor.

## **6. AREA DEVELOPMENT FEE.**

(a) **Development Fee.** On the Effective Date, Developer will pay to Franchisor the Development Fee described in the Summary Page. The Development Fee is fully earned when paid to compensate Franchisor for expenses incurred during the negotiation and implementation of this Agreement as well as development opportunities lost or deferred as a result of the rights granted to Developer under this Agreement, and is not refundable or recoupable under any circumstances. The Development Fee is due and payable when this Agreement is signed. Upon signing the first Franchise Agreement executed in connection with this Agreement, a portion of the Development Fee will be applied in full satisfaction of the Initial Franchise Fee due under such Franchise Agreement. Thereafter, a portion of the remaining Development Fee will be applied toward 50% of the Initial Franchise Fee due upon the signing of each subsequent Franchise Agreement executed pursuant to the Development Schedule. The Development Fee and all other amounts payable to Franchisor under this Agreement will be in United States Dollars.

(b) **Taxes.** Any and all amounts expressed as being payable pursuant to this Agreement are exclusive of any applicable taxes. Accordingly, if applicable, all payments by Developer will, in addition, include an amount equal to any and all goods and services taxes, sales taxes or other taxes, assessments or amounts of a like nature imposed on any payments to be made pursuant to this Agreement. Developer agrees to fully and promptly cooperate with Franchisor to provide any information or records it requests in connection with any application by Franchisor to any taxing authority with respect to Developer.

## **7. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

### **(a) Business Entity Developer.**

(1) Developer warrants that it is duly organized or formed and validly existing in good standing under the laws of the jurisdiction of its incorporation or formation; it has the necessary consents, approvals, licenses and/or permits to carry out the business activities contemplated by this Agreement; it will furnish such other information about its organization or formation as Franchisor may reasonably request to confirm the same; and the execution and delivery of this Agreement has been duly authorized by it. Developer's company agreements must impose the restrictions against Transfer set forth in Section 11 of this Agreement

(2) If Developer is not publicly traded (*i.e.*, less than 20% of its equity shares that are entitled to participate in the election of its Board of Directors are traded on a national exchange in the United States), it will disclose to Franchisor all Principals holding in excess of 5% of all Equity Interests in Developer and will disclose to Franchisor all beneficial owners, directors, officers, employees or agents of Developer who are government officials. Developer will provide Franchisor with such financial information as Franchisor

may periodically request from Developer and each Principal, including copies of unaudited quarterly financial statements and annual financial statements.

(3) If Developer is not publicly traded, each Principal will execute and deliver to Franchisor a Guaranty and Undertaking of Obligations in the form attached hereto as Exhibit C.

(b) **Compliance With Applicable Law.** Developer will be solely responsible for complying with all Applicable Laws in connection with the development and operation of Makerries in the Territory, and will timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of its business, including, without limitation, licenses to do business, sales tax permits, importation of materials, transmission of royalties and all other payments relevant to Developer's performance under this Agreement, environmental and safety and fire clearances. Developer will notify Franchisor in writing immediately upon the commencement of any legal action, suit, or proceeding, any administrative action or the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental authority, which may adversely affect the operation or financial condition of Developer or which may have any materially adverse effect on Franchisor or its Affiliates, the goodwill associated with the Marks and the System or on Makerries generally.

(c) **Anti-Corruption, Anti-Boycott and Anti-Terrorism Laws; Code of Conduct.** Developer and each Principal represents and warrants to Franchisor that: (1) neither Developer nor, to the best of its knowledge after reasonable inquiry, any Principal or any executive officer of Developer is identified, either by name or an alias, pseudonym or nickname, on the lists of "Specially Designated Nationals" or "Blocked Persons" maintained by the U.S. Treasury Department's Office of Foreign Assets Control (text available at [www.treas.gov/offices/enforcement/ofac/](http://www.treas.gov/offices/enforcement/ofac/)); (2) neither Developer nor any Principal is directly or indirectly owned or controlled by the government of any country that is subject to a United States embargo; (3) neither Developer nor any Principal acts or will act directly or indirectly on behalf of the government of any country that is subject to a United States embargo; and (4) neither Developer nor any of Principal or executive officers have violated, and Developer will not violate and will cause Developer's Principals and executive officers not to violate, any Applicable Law prohibiting money laundering or the aid or support of Persons who conspire to commit acts of terror against any Person or government, including acts prohibited by the U.S. Patriot Act (text available at <http://www.epic.org/privacy/terrorism/hr3162.html>), U.S. Executive Order 13224 (text available at <http://www.treas.gov/offices/enforcement/ofac/legal/eo/13224.pdf>), or any similar Applicable Law. The foregoing constitute continuing representations and warranties, and Developer will immediately notify Franchisor in writing of the occurrence of any event or the development of any circumstance that might render any of the foregoing representations and warranties of this Section 7(c) incorrect, false, inaccurate, or misleading or which constitutes a breach of any of the covenants of this Section 7(c).

In addition, Developer and each Principal will comply with Franchisor's "Code of Conduct" set forth in the Manuals at all times in connection with the development and operation of the Makerries.

(d) **Designated Principal.** Developer will designate an individual to serve as the Designated Principal of the Developer. Developer's first Designated Principal is identified in the Summary Page. The Designated Principal will, at all times, meet the following qualifications:

(1) The Designated Principal will, during the entire period he or she serves as Designated Principal, have authority to make decisions for Developer in connection with Developer's obligations under this Agreement and the relationship with Franchisor.

(2) The Designated Principal will devote his or her energy, best efforts and the time required to supervise and oversee the conduct of the business contemplated by this Agreement.



(3) The Designated Principal will execute the Confidentiality and Non-Compete Agreement attached to this Agreement as Exhibit E. Developer is responsible for Designated Principal's compliance with and will take all reasonable steps to enforce the terms of the Confidentiality and Non-Compete Agreement.

If, at any time or for any reason, the Designated Principal identified in the Summary Page no longer satisfies each of the above qualifications, Developer will promptly designate another Designated Principal who possesses the qualifications listed above.

(e) **Management and Personnel.** At all times throughout the Term, Developer will and will cause its Affiliates (as Franchisee) to hire, train and supervise Personnel sufficient to meet its obligations under this Agreement in accordance with the Standards or otherwise in writing by Franchisor. Developer will maintain a competent, conscientious, trained staff and take such steps as are necessary to ensure that its Personnel preserve good customer relations and fully comply with Applicable Law.

## **8. RESTRICTIVE COVENANTS.**

Developer recognizes that Franchisor has developed and owns the goodwill in the Brand and must protect the Marks, Confidential Information, and System. Developer and its Principals each acknowledges and agrees that the access to and use of Confidential Information authorized by this Agreement are among the consideration for the restrictive covenants set forth in Section 8(a) and are necessary to prevent Franchisor from suffering irreparable harm. THE FOREGOING ACKNOWLEDGMENTS AND AGREEMENTS ARE A MATERIAL INDUCEMENT FOR FRANCHISOR TO ALLOW DEVELOPER AND ITS PRINCIPALS TO HAVE ACCESS TO AND USE CONFIDENTIAL INFORMATION.

(a) **Non-Compete.** Developer and each of its Principals covenant and agree that during the Term, and for a continuous uninterrupted period of two years following its expiration, termination, or an approved Transfer and with respect to a Principal, following the date the Principal ceases to be a Principal under this Agreement, Developer and each of its Principals, as applicable, will not, without Franchisor's prior written consent, either directly or indirectly, for itself or themselves, or through, on behalf of, or in conjunction with, any Person, firm, partnership, corporation, or other Entity:

(1) Divert or attempt to divert any actual or prospective business or customer of any of the Makerries to any Competitive Business, by direct or indirect inducement or otherwise.

(2) Do or perform directly or indirectly any other act injurious to or prejudicial to the goodwill associated with the Marks and the System;

(3) Own, maintain, operate, be employed by, engage in, franchise, lease property to, advise, help, make loans to, or have any interest in, either directly or indirectly, any Competitive Business. During the Term, these restrictions apply to any Competitive Business located within the United States (excluding Developer's Existing Brands). Following the expiration of the Term, termination of this Agreement, or an approved Transfer of this Agreement and with respect to a Principal, following the date the Principal ceases to be a Principal under this Agreement, this restriction will apply to any Competitive Business located (1) within the Territory; (2) at or within three miles of any Buff City Soap Makery then operating or under construction within or outside the United States, except as otherwise approved in writing by Franchisor.

If any part of these restrictions is found to be unreasonable in time or distance, each month of time or mile of distance may be deemed a separate unit so that the time or distance may be reduced by appropriate order of the court to that deemed reasonable. If, at any time during the two year period following the expiration, termination, or approved Transfer of this Agreement or the date any Principal ceases to be a

Principal under this Agreement, Developer or its Principals fail to comply with its obligations under this Section 8(a), that period of non-compliance will not be credited toward satisfaction of the two-year period.

(b) **Non-Disclosure of Confidential Information.** Developer and each of its Principals each acknowledges that Franchisor may provide Developer and its Principals with Confidential Information that derive value from not being generally known in the industry that are reasonably necessary for the operation of the Makery and that Developer has entered into this Agreement in order to use such Confidential Information to the economic benefit of Developer. Developer agrees that Confidential Information remains the sole property of Franchisor. Franchisor will take reasonable steps to mark as “confidential” or “proprietary” any Confidential Information that it deems as such but the failure to mark such Confidential Information will not cause it to be public information. Developer and each of its Principals will not use, duplicate, or disclose to others any Confidential Information except as expressly authorized by Franchisor in writing and will implement measures to maintain the confidentiality of such Confidential Information that is no less strict than the measures Developer uses with its own confidential information. To the extent that any Confidential Information is to be provided to Developer’s advisors, representatives, agents or any Personnel, each of them must use such Confidential Information solely in connection with their respective roles with the Makery or Developer’s business and execute a confidentiality and non-disclosure agreement in a form prescribed by Franchisor consistent with the foregoing.

(c) **Ownership.** All Confidential Information furnished or disclosed by Franchisor to Developer or any of its Principal or otherwise obtained by Developer or its Principals is and will remain the property of Franchisor. Any reproductions, notes, summaries or similar documents relating to the Confidential Information, and any files, memoranda, reports, price lists, proprietary information, and other documents relating to the System, will become and remain the Intellectual Property of Franchisor immediately upon their creation and Franchisor will be the sole owner of all right, title and interest in and to such Intellectual Property. Upon expiration or termination of this Agreement, Developer will immediately return all copies of such Confidential Information and Intellectual Property to Franchisor. Developer must promptly reveal to Franchisor any discoveries, inventions, innovations or improvements made by Developer, its Principal, personnel or independent contractors relating to the System, or any Confidential Information. Further, all proprietary interests in any devices, information, know-how, materials, methods, processes and techniques utilizing those discoveries, inventions, innovations and improvements are Franchisor’s Intellectual Property.

(d) **Interference with Employees.** Developer acknowledges that it is an independent business and responsible for the control and management of the day-to-day operations of the Makery, its Personnel and the Personnel of its Affiliates (as Franchisee) in the development and operation of the Makeries, including but not limited to the hiring and discharging of Developer’s and its Affiliates’ Personnel and setting and paying wages and benefits of Developer’s and Developer’s Affiliates’ Personnel. Developer acknowledges that Franchisor has no power, responsibility or liability in any respect to the hiring, discharging, setting and paying of wages or related matters, as the sole power, responsibility and liability for such matters rest exclusively with Developer and its Affiliates. Developer further acknowledges that none of its Personnel will be deemed to be an employee of Franchisor or its Affiliates for any purpose whatsoever, and no act by Franchisor to protect the Brand including without limitation the System or Marks in any way shifts any employee or employment-related responsibility from Developer to Franchisor.

(e) **Severability and Enforceability of Covenants.** Each of the covenants contained in this Section 8 will be considered separate and independent from each other. If any covenant in this Agreement which restricts competitive activity is deemed unenforceable for any reason, but would be enforceable by reducing or substituting any part of it in accordance with Section 17(b), such covenant will be enforced to the fullest extent permissible under Applicable Law.

## **9. INDEPENDENT CONTRACTORS.**

(a) **Independent Contractors.** It is understood and agreed by the Parties that this Agreement does not create a fiduciary relationship between them; that Franchisor and Developer are and will be independent contractors; and that nothing in this Agreement is intended to make either Party a general or special agent, joint venturer, partner or employee of the other for any purpose. Developer will conspicuously identify itself in all dealings as the owner of development rights granted under an Agreement with Franchisor and will place such notices of independent ownership on such forms, business cards, stationery and advertising and other materials as Franchisor may periodically require.

This Agreement (and the relationship of the parties which arises from this Agreement) grants Franchisor the right to make decisions, take actions and/or refrain from taking actions which are not inconsistent with Developer's explicit rights and obligations hereunder or under Applicable Law and that may affect favorably or adversely Developer's interest. Developer acknowledges and agrees that Franchisor may operate and change the System and Franchisor's business in any manner that is not expressly and specifically prohibited by this Agreement, the Franchise Agreements or Applicable Law. Whenever Franchisor has reserved in this Agreement a right and/or discretion to take or withhold an action, or to grant or decline to grant Developer a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement or prohibited by Applicable Law, Franchisor may make its decision or exercise its right and/or discretion on the basis of its judgment of what is in its best interests, including its judgment of what is in the best interests of the Buff City Soap franchise network, at the time Franchisor's decision is made, without regard to: (1) whether other reasonable or even arguably preferable alternative decisions or actions could have been made by Franchisor; (2) whether Franchisor's decision or the action it takes promotes its financial or other individual interest; (3) whether its decision or the action it takes applies differently to Developer and one or more other franchisees; or (4) whether Franchisor's decision or the exercise of its rights is adverse to Developer's individual interest or the individual interests of any other particular franchisees. Franchisor will have no liability to Developer for any such decision or exercise of its rights. Without limiting the foregoing, Franchisor will have no obligation to ensure that the Makeries are developed and operated in accordance with Applicable Law and will have no liability in the event Developer's development of the Makeries violates Applicable Law.

(b) **No Liability for Acts of Other Party.** Developer must not employ any of the Marks in signing any contract or applying for any license or permit, or in a manner (other than the use contemplated hereby) that may result in Franchisor's liability for any of Developer's indebtedness or obligations. Except as expressly authorized in writing, neither Franchisor nor Developer will make any express or implied agreements, warranties, guarantees or representations or incur any debt in the name or on behalf of the other or be obligated by or have any liability under any agreements or representations made by the other. Franchisor will not be obligated for any damages to any Person or property directly or indirectly arising out of the operation of Developer's business.

## **10. INDEMNIFICATION.**

DEVELOPER, ON ITS BEHALF AND ON BEHALF OF ITS AFFILIATES AND PRINCIPALS, WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE FRANCHISOR INDEMNITEES AGAINST AND REIMBURSE ANY ONE OR MORE OF THE FRANCHISOR INDEMNITEES FOR ANY AND ALL LOSSES AND EXPENSES ARISING OUT OF OR FROM OR RELATED TO, ANY CLAIMS, DIRECTLY OR INDIRECTLY, ARISING OUT OF OR FROM OR RELATED TO: (A) THE DEVELOPMENT, OPERATION OR CLOSING OF ANY MAKERY OWNED AND OPERATED BY DEVELOPER OR ITS AFFILIATES OR PRINCIPALS; (B) ANY BREACH BY DEVELOPER OR ANY PRINCIPAL OF THIS AGREEMENT, OR DEVELOPER'S OR ANY OF ITS AFFILIATES', PRINCIPALS', OR DESIGNATED PRINCIPAL'S BREACH OF ANY OTHER AGREEMENT WITH

FRANCHISOR OR ITS AFFILIATES; AND (C) THE MARKETING, PROMOTION OR ADVERTISEMENT OF DEVELOPER'S (OR ANY OF DEVELOPER'S AFFILIATES OR PRINCIPALS') MAKERIES OR PRODUCTS USING ADVERTISING MATERIALS OR CONTENT CREATED BY DEVELOPER, OR THE SALE OF ANY PRODUCTS OFFERED BY DEVELOPER'S (OR ITS AFFILIATES' OR PRINCIPALS') MAKERIES, INCLUDING UNFAIR OR FRAUDULENT ADVERTISING CLAIMS (WHETHER IN PRINT ADVERTISING OR ELECTRONIC MEDIA), AND PRODUCT LIABILITY CLAIMS, IN EACH CASE WHERE DEVELOPER DEVIATES FROM OR FAILS TO FOLLOW AND COMPLY WITH THE STANDARDS OR IN CONNECTION WITH PRODUCTS CREATED BY DEVELOPER. FRANCHISOR HAS THE RIGHT, AT ITS OPTION, TO DEFEND ANY SUCH INDEMNIFIED CLAIM AGAINST IT AT DEVELOPER'S SOLE COST AND EXPENSE. IF DEVELOPER DEFENDS ANY CLAIM, IT MAY NOT ENTER INTO ANY SETTLEMENT AGREEMENT OR OTHERWISE RESOLVE OR CONCLUDE THE MATTER WITHOUT FRANCHISOR'S PRIOR WRITTEN CONSENT. THIS INDEMNITY WILL CONTINUE IN FULL FORCE AND EFFECT SUBSEQUENT TO, AND NOTWITHSTANDING, THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL FRANCHISOR OR ANY OTHER FRANCHISOR INDEMNITEES BE REQUIRED TO SEEK RECOVERY FROM ANY INSURER OR OTHER THIRD PARTY, OR OTHERWISE TO MITIGATE ITS OR DEVELOPER'S LOSSES AND EXPENSES, IN ORDER TO MAINTAIN AND RECOVER FULLY AN INDEMNIFIED CLAIM AGAINST DEVELOPER UNDER THIS SECTION 10. ANY FAILURE TO PURSUE SUCH RECOVERY OR MITIGATE A LOSS WILL IN NO WAY REDUCE OR ALTER THE AMOUNTS RECOVERABLE BY FRANCHISOR OR ANOTHER FRANCHISOR INDEMNITEE FROM DEVELOPER UNDER THIS SECTION 10. IN NO EVENT DOES THE INDEMNIFICATION PROVIDED UNDER THIS SECTION 10 COVER OR INCLUDE CLAIMS ARISING FROM OR RELATED TO ADVERTISING MATERIALS OR CONTENT CREATED BY OR FOR FRANCHISOR OR ONE OF ITS AFFILIATES, OR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF FRANCHISOR OR ANY FRANCHISOR INDEMNITEE.

## **11. TRANSFERABILITY OF INTEREST.**

(a) **Transfer by Franchisor.** This Agreement is and any of Franchisor's rights, obligations and interests herein are fully assignable by Franchisor, in whole or in part, without the consent of Developer, and inures to the benefit of any assignee or other legal successor to the interests of Franchisor; if any such assignee expressly agrees to assume Franchisor's obligations under this Agreement, then upon such assumption Franchisor and its Affiliates will be fully released of any and all liabilities hereunder. Franchisor may also assign any or all of its rights, obligations and interests under this Agreement to an Affiliate; sell or encumber its assets, its Marks, or its System to any third party; merge, acquire other Entities, or be acquired by another Entity; engage in a public offering of its securities; engage in a private placement of some or all of its securities; or undertake a refinancing, recapitalization, leveraged buy-out or other economic or financial restructuring; provided that the assignee or successor to Franchisor's interests under this Agreement will assume all of Franchisor's obligations hereunder. Franchisor may take or perform any such actions without liability or obligation to Developer and Developer expressly waives any claims, demands or damages arising from or related to any or all of the above actions or variations thereof.

(b) **Transfer by Developer.** The rights and duties created by this Agreement are personal to Developer, and that Franchisor has granted rights under this Agreement in reliance upon the business skill, financial capacity and personal character of Developer and its Principals. Accordingly, no Transfer is permitted or authorized without Franchisor's prior written approval, subject to the conditions below.

(c) **Conditions for Approval of Transfer.** If the proposed Transfer by Developer is of this Agreement, Control of Developer or substantially all of its assets, or is one of a series of Transfers (regardless of the time period over which such Transfers occur) which in the aggregate constitute the

Transfer of this Agreement or Control of Developer, Franchisor will approve a Transfer only if the conditions set forth in this Section 11(c), as may be amended by Franchisor from time to time, are met prior to or concurrently with the proposed effective date of the Transfer:

(1) Developer (and its Principals if Developer is not publicly traded) has paid the Development Fee and other amounts owed to Franchisor and its Affiliates

(2) Developer has submitted all required documents, information statements and data and otherwise are in full compliance with this Agreement as of the date Developer requests for approval of the Transfer and as of the effective date of the Transfer.

(3) Developer and its Affiliates Transfer to transferee all Franchise Agreements and all existing Makeries developed and operated by Developer and its Affiliates under this Agreement and the Franchise Agreements in accordance with the conditions for approval of Transfer set forth in such Franchise Agreements.

(4) The proposed transferee (and its direct and indirect owners): (i) have sufficient business experience, aptitude, assets and financial resources to develop and operate the Makeries; (ii) are individuals that meet Franchisor's Makeries then-applicable Standards for Makery developers and operators; (iii) are not engaged and will not engage in the operation or ownership of a Competitive Business, and will engage only in the development and operation of the Makeries; and (iv) will cooperate with reasonable due diligence requests made by Franchisor promptly thereafter and if additional time is reasonably needed, then prior to the proposed effective date of the Transfer.

(5) The transferee and each of its owners as specified by Franchisor will provide Franchisor with a business plan for the Makeries acceptable to Franchisor.

(6) The transferee and each of its owners as specified by Franchisor will agree to be bound by all of the terms and conditions of Franchisor's then-current form of area development agreement and sign the ancillary agreements and documents Franchisor requires for Makery franchisees and any principal.

(7) Developer or the transferee pays to Franchisor a Transfer Fee in connection with the Transfer.

(8) Developer (and its transferring Principals if Developer is not publicly traded) and Franchisor have executed a general release, in form satisfactory to Franchisor, releasing Franchisor Indemnitees from any and all claims arising out of the development and operation of the Makeries, excluding claims related to the development of the Makery by Developer or any Principal which have not been expressly assumed by the transferee and its owners and those claims which cannot be released under Applicable Law.

(9) Developer and each Principal must have complied with any other conditions that Franchisor reasonably requires from time to time as part of its transfer policies, provided that such conditions will not be more stringent than any conditions otherwise imposed on new developers signing the then-current area development agreement.

(d) **Effect of Franchisor's Consent.** Any Transfer without Franchisor's consent constitutes an Event of Default rendering such Transfer void and of no effect. Franchisor's consent to a Transfer does not constitute a representation as to the fairness of the terms of any contract between Developer and the transferee, a guarantee of the prospects of success of the Makeries or transferee, or a waiver or release of



any claims Franchisor may have at any time against Developer (or its Principals) or of its right to demand the transferee's exact compliance with any of the terms or conditions of this Agreement.

(e) **Transfer Upon Death or Permanent Disability.** If any Principal that holds a Controlling Interest in Developer dies or becomes Permanently Disabled and Franchisor determines that such death or disability adversely affects the development of the Makeries required by this Agreement, such Principal's executor, administrator, or other personal representative must Transfer such Principal's interest in this Agreement or his or her interest in Developer (including Transfer by bequest or inheritance) to a third party approved by Franchisor in accordance with Section 11(c) within a reasonable period of time, not to exceed six months from the date of death or Permanent Disability. A failure to Transfer the interest of any such Principal in this Agreement or the Controlling Interest in Developer within this period of time in accordance with the foregoing constitutes an Event of Default.

(f) **Securities.** Developer will be permitted to engage in the public and/or private issuance of stock, notes, bonds and other securities during the Term, provided that such issuance of securities are in compliance with all Applicable Law in effect at the time of such issuance; prior to offering for sale such stock, notes, bonds or other securities, Developer secures Franchisor's written approval, which consent will not be unreasonably withheld; and Developer pays the Offering Fee to Franchisor. Developer further must secure Franchisor's consent to any and all press releases, news releases and any and all other publicity, the primary purpose of which is to confirm the description of the relationship between Franchisor and Developer is true, accurate and complete in Developer's offering. Only after Franchisor has provided its written approval may Developer proceed to file, publish, issue and release and make public any said data, material and information regarding the securities offering. Developer will not imply that Franchisor is participating in the underwriting, issuance or offering of such securities. Developer acknowledges and agrees that any review by Franchisor is solely for its own information and its approval does not constitute any kind of authorization, acceptance, agreement, endorsement, approval or ratification of the same, either expressly or implied. Developer may make no oral or written notice of any kind whatsoever indicating or implying that Franchisor and/or its Affiliates have any interest in the relationship whatsoever to the proposed securities offering other than acting as Franchisor. Developer will indemnify, defend and hold the Franchisor Indemnitees harmless from all Losses and Expenses arising from Developer's offering or information published or communicated by Developer in connection with such offering.

## **12. DEFAULT AND TERMINATION.**

The occurrence of any of the following will adversely and substantially affect the interests of Franchisor and will be deemed an Event of Default constituting just cause for exercising any of the remedies set forth herein.

(a) **Termination for Events of Default.** Franchisor may terminate this Agreement upon delivery to Developer of Notice as a result of the occurrence of any of the following Events of Default and Developer's failure to cure such Event of Default within the cure period described below, if any, and absent a cure period, immediately upon Franchisor's Notice to Developer:

(1) Developer fails to comply with the Development Schedule during any Development Period pursuant to Section 4 and Exhibit A of this Agreement and fails to cure such default within 30 days after Notice of such Event of Default is delivered to Developer.

(2) Developer fails to pay any fees or other amounts due hereunder to Franchisor within five days after Notice of nonpayment is delivered to Developer.

(3) Developer (or any of its Principals or Affiliates) has made any material misrepresentation or omission in connection with this Agreement that negatively impacts Franchisor.

(4) Developer or any of its Principals is or has been held liable or convicted by a court of law, pleads or has pleaded no contest to, a felony, indictable offense or other unlawful act, engages in any dishonest or unethical conduct or otherwise engages in any act or conduct which Franchisor believes will, if continued, materially and adversely affect the reputation of the Brand, the Makeries, any other Buff City Soap makeries or the goodwill associated with Marks.

(5) Developer (or any of its Principals or Affiliates) makes an unauthorized Transfer pursuant to Section 11.

(6) Developer (or any of its Principals or Affiliates) makes any unauthorized use or disclosure of any Confidential Information or uses, duplicates or discloses any portion of the Manuals in violation of this Agreement, Developer or any of its Affiliates or any of its or their principals or managers makes any unauthorized use of the Marks or any unauthorized use or disclosure of Trade Secrets or Confidential Information, or Developer or any of its Principals otherwise engages in conduct that materially and adversely affects the reputation of the Makeries or the goodwill associated with the Marks.

(7) Developer or any of Developer's Principals fails to comply with or perform its covenants, representations and warranties in this Agreement within 30 days after Notice of such Event of Default is delivered to Developer, including without limitation the representations, warranties and covenants set forth in Section 7 and the restrictive covenants against competition set forth in Section 8.

(8) Franchisor has delivered a Notice of termination of a Franchise Agreement with Developer or any of its Affiliates (as Franchisee) in accordance with its terms and conditions.

(9) Developer fails to pay when due any income, withholding, service, sales or any other applicable taxes due on the Makery's operations, unless it is in good faith contesting its liability for such taxes and has effectively stayed the enforcement of liability for such taxes.

Without limiting the foregoing, Franchisor may terminate this Agreement for failure by Developer (or any of its Principals) to comply with any other provision of this Agreement including without limitation the representations and warranties contained in this Agreement, the Manuals or any Standards material to development of the Makeries within 30 days after Notice of such Event of Default is delivered to Developer.

(b) **Termination for Repeated Default.** This Agreement will terminate immediately upon delivery of Notice to Developer if an Event of Default occurs with respect to Developer (or any of its Principals) on three or more separate occasions within any period of 12 consecutive months of any Event of Default under Section 12(a), whether the same or different Events of Default and whether or not such failures are corrected after Notice of such failure is delivered to Developer.

(c) **Termination for Insolvency.** This Agreement will automatically terminate upon any of the following: if any bankruptcy proceeding is commenced by or against Developer (or any Affiliate or Principal), Developer makes an assignment for the benefit of creditors or admits in writing its insolvency or inability to pay its debts generally as they become due; Developer consents to the appointment of a receiver, trustee or liquidator of all or the substantial part of its property; the Makery is attached, seized, subjected to a writ or distress warrant or levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within 30 days after Notice from Franchisor; or any order appointing a receiver, trustee or liquidator of Developer or the Mkaery is not vacated within 30 days following the entry of such order.

(d) **Termination for Violation of Applicable Law.** This Agreement will terminate immediately upon delivery of Notice to Developer if Developer (or any of its Principals or Affiliates) violates any Applicable Law or has any necessary license or certification revoked or suspended in whole or in part.

### **13. EFFECT OF TERMINATION, EXPIRATION OR NONRENEWAL.**

Upon expiration or earlier termination of this Agreement:

(a) **Payment of Amounts Owed.** Developer will pay to Franchisor within 15 days after the effective date of expiration or termination of this Agreement, or on such later date that the amounts due are determined, such fees, interest due on any of the foregoing and all other amounts owed to Franchisor or its Affiliates under this Agreement which are then unpaid. If this Agreement is terminated by Franchisor following the occurrence of an Event of Default and Developer's failure to cure within any applicable cure period, or if Developer delivers Notice of termination of this Agreement to Franchisor other than as a result of a material default by Franchisor (notwithstanding the absence of any right of termination hereunder otherwise), Developer will within 30 days following the effective date of such termination pay Franchisor in a single lump sum payment, as liquidated damages and not as a penalty, an amount equal to the balance of the Initial Franchise Fee for each then remaining undeveloped Shop under this Agreement. Developer's payment of such liquidated damages will be Franchisor's sole remedy for money damages under this Agreement for Developer's failure to satisfy the Development Schedule. Developer acknowledges and agrees that the liquidated damages provided for in this Section 13(a) are a fair and reasonable approximation of the amount of damages sustained by Franchisor. Except in connection with Developer's failure to satisfy the Development Schedule, payment to Franchisor of such liquidated damages will not excuse performance of Developer's post-termination obligations hereunder or preclude Franchisor from pursuing other remedies available to Franchisor for other Events of Default under this Agreement, at law or in equity, or from recovering its attorneys' fees and costs in accordance with Section 15(h) hereof.

(b) **Marks.** Developer may not directly or indirectly at any time or in any manner use any Mark, including any use of Marks in a derogatory, negative, or other inappropriate manner in any media, including, but not limited to, print or electronic media; use any colorable imitation of a Mark in any manner or for any purpose; utilize for any purpose any trade name, trade or service mark or other commercial symbol or other indicia that indicates or suggests a connection or association with Franchisor or the Makery; identify any business as a former Makery; or identify itself as one of Franchisor's licensees or franchisees (except with respect to other Makereries Developer or its Affiliate owns and operates under continuing agreements with Franchisor). Developer will take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to its use of any Mark.

(c) **System and Manuals.** Developer will immediately cease to use the System and Confidential Information in any business or otherwise; and return to Franchisor all copies of the Manuals and any other proprietary or confidential materials that Franchisor has loaned to Developer.

(d) **Restrictive Covenants and Continuing Obligations.** Developer will comply with the restrictive covenants set forth in this Agreement. Developer's (and its Affiliates' and its Principals') obligations which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until such obligations are satisfied in full or by their nature expire.

### **14. FORCE MAJEURE AND CRISIS MANAGEMENT EVENTS.**

(a) **Force Majeure.** Neither Franchisor nor Developer will be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform obligations results from a Force Majeure Event.



Any delay resulting from any Force Majeure Event will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable in the judgment of the Party to whom performance is owed. Developer or Franchisor will, within five days of the occurrence of the Force Majeure Event, give a written Notice to the other Party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance will be of no greater scope and of no longer duration than is reasonably required; provided, however, if the suspension of performance continues for 90 days from the date of the occurrence and such failure to perform would constitute an Event of Default of this Agreement in the absence of such Force Majeure Event, the Parties will meet and discuss in good faith any amendments to this Agreement required to prevent the waiver by Franchisor of its rights under this Agreement. If the Parties are not able to agree on such amendments within 60 days and if suspension of performance continues, Franchisor may terminate this Agreement immediately by giving written Notice to Developer and neither Party will have any further obligation hereunder. In no event will Developer's inability to pay amounts due under this Agreement constitute a Force Majeure Event and no Force Majeure Event will operate to excuse Developer from the prompt payment of any fee or other payment due to Franchisor pursuant to this Agreement..

(b) **Crisis Management Events.** Developer must notify Franchisor within 24 hours of the occurrence of any Crisis Management Event by the method periodically specified in the Manuals or otherwise in writing, comply with Franchisor's instructions and fully cooperate with Franchisor's instructions in response to the Crisis Management Event. Failure to notify Franchisor within the required time period is a material breach of this Agreement.

## **15. GOVERNING LAW; DISPUTE RESOLUTION.**

(a) **Non-Binding Mediation.** Before any Party may bring an action or commence a proceeding against the other, the Parties must first meet to mediate the dispute (except for controversies, disputes or claims related to or based on improper or unauthorized use of the Marks or breach of the covenants and obligations set forth in Section 8(a) or Section 8(b) in Dallas, Texas or such other location agreed upon by the Parties. Any such mediation will be non-binding and will be conducted by the International Institute for Conflict Prevention & Resolution in accordance with its then-current rules for mediation of commercial disputes.

Notwithstanding anything to the contrary, this Section 15 will not bar either Party from obtaining injunctive relief pursuant to Section 15(c)(5) against threatened conduct that will cause it to incur Losses and Expenses, under the usual equity rules, including the applicable rules for obtaining restraining orders and injunctions, without having to engage in mediation. In addition, this Section 15(a) will not apply to any claim or dispute relating to Developer's failure to pay fees or other amounts owed to Franchisor under this Agreement. Franchisor and Developer will each bear their own costs of mediation, and each will bear one-half the cost of the mediator or mediation service.

(b) **Governing Law.** This Agreement will be governed by and interpreted according to the laws (exclusive of the conflicts of laws rules) of the State of Texas applicable to contracts entered into in Texas, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act), the Copyright Act, and the Patent Act. As of the Effective Date, Franchisor has a place of business in the State of Texas, and Texas otherwise bears a reasonable relationship to this Agreement, the Parties' relationship established by this Agreement, and the Parties. By agreeing to the application of Texas law, the Parties do not intend to make this Agreement or their relationship subject to any franchise, dealership, distributorship, business opportunity, or similar statute, rule, or regulation of the State of Texas to which this Agreement or the Parties' relationship otherwise would not be subject. To the extent that this Agreement or the Parties' relationship otherwise would not, but for this Texas choice-of-law provision, be subject to such statutes, this Section 15 does not constitute a waiver of any statutory rights or remedies. Franchisee, its Principals

and Franchisor acknowledge and agree that the choice of applicable state law set forth in this Section 15(b) provides each of the Parties with the mutual benefit of uniform interpretation of this Agreement and the Parties' relationship created by this Agreement. Developer, its Principals and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit, and that each Party's agreement regarding applicable state law has been negotiated in good faith and is part of the benefit of the bargain reflected in this Agreement.

(c) **Arbitration.**

(1) **Claims Subject to Arbitration.** Subject to Paragraph 15(c)(2), the Parties agree that all controversies, claims, or disputes between Franchisor and Developer arising out of or relating to the following (each, an "Arbitrable Claim") will be finally resolved by binding arbitration in accordance with Section 15(c)(4):

(A) this Agreement or any other agreement between Franchisor and Franchisee or any of its Affiliates or Principals;

(B) the relationship between Developer and Franchisor;

(C) the scope and validity of this Agreement or any other agreement between Franchisor or its Affiliates and Developer or any of its Affiliates or Principals, specifically including all disputes regarding the scope, validity or existence of this arbitration agreement, except that Franchisor and Developer intend for the court to address the applicability and scope of the exceptions found in Section 15(c)(2)(A); and/or

(D) the offer or sale of the franchise opportunity.

(2) **Exception of Claims Subject to Arbitration.** Franchisor and Developer recognize and agree that certain claims of Franchisor may not be best suited to determination through arbitration and agree that Franchisor, at its sole option, may bring the following types of claims, cases, disputes and causes of action either in court or in arbitration:

(A) Claims seeking injunctive or other equitable relief to enforce provisions of this Agreement, including without limitation claims for infringement of Franchisor's intellectual property, violation of the confidentiality provisions of Section 8(b), or breach of the non-competition provisions of Section 8(a), provided however that non-equitable claims joined with any injunctive claims must be heard separately in arbitration, and that regardless of the forum, any injunctive relief may be given without the necessity of Franchisor posting bond or other security and any such bond or other security is hereby waived; further, Developer acknowledges that the termination of any litigation for injunctive or other equitable relief will not bar Franchisor from asserting non-equitable claims in an arbitration involving the same parties or causes of action;

(B) Claims seeking relief of any kind with respect to Developer's violation of any health or safety law; and/or

(C) Claims, including claims by an affiliate of Franchisor, seeking recovery or any other remedy based on Developer's failure to pay any moneys due under this Agreement, any agreement with an affiliate of Franchisor, or any unpaid invoices owed to an affiliate of Franchisor when due.

For resolution of any claim that is not subject to mandatory arbitration under Section 15(c)(1), such claim will be resolved in the Chosen Forum in accordance with Section 15(d).

(3) No Class Action. No party except Franchisor (including its employees, agents, officers or directors and its parent, subsidiary or affiliated companies) and Developer (including where applicable the immediate family members, owners, heirs, executor, successors, assigns, shareholders, partners, and guarantors (as applicable) may join in or become a party to any arbitration proceeding arising under or related to this Agreement or any other agreement between Franchisor and Developer, the relationship between Franchisor and Developer, the scope and validity of this Agreement or any other agreement between Franchisor and Developer, specifically including whether any specific claim is subject to arbitration at all (i.e. arbitrability questions) and/or the offer or sale of the franchise opportunity; and further, the arbitrator will not be authorized to permit any person or entity that is not a party to this Agreement or identified in this paragraph to be involved in or to participate in any arbitration conducted pursuant to this Agreement. No matter how styled by the party bringing the claim, any claim or dispute is to be arbitrated on an individual basis and not as a class action or representative action and further, no claim may be consolidated or joined. **DEVELOPER EXPRESSLY WAIVES ANY RIGHT TO ARBITRATE OR LITIGATE AS A CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.** Any question regarding the interpretation or enforceability of this prohibition on class-wide or representative arbitration will be resolved by a court of competent jurisdiction, and not the arbitrator.

(4) Binding Arbitration in Dallas, Texas. Subject to the provision for temporary injunctive relief pending arbitration contained in Section 15(c)(5), all Arbitrable Claims will be finally resolved by binding arbitration in accordance with the CPR Rules for Non-Administered Arbitration (the “CPR Rules”) then currently in effect. All Arbitrable Claims will be decided by one arbitrator chosen from the Panels of Distinguished Neutrals maintained by the International Institute for Conflict Prevention & Resolution (“CPR”) in accordance with Rules 5.3 and 6 of the CPR Rules. Unless otherwise agreed in writing, any arbitrator chosen to decide an Arbitrable Claim will be a current or former practicing attorney or judge; have at least ten years of experience in litigation, arbitration, and/or mediation of commercial disputes; and have prior experience as an arbitrator of at least three manufacturer/dealer or franchisor/developer disputes. Each Party will be responsible for its own attorneys’ fees associated with the arbitration and for such costs as it is liable pursuant to the CPR Rules. The place of arbitration will be Dallas, Texas unless otherwise agreed in writing. The arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “FAA”). It is expressly understood and agreed that arbitration proceedings under this Agreement are subject to the confidentiality provisions of Section 8(b) of this Agreement.

(5) Temporary Injunction Relief Pending Arbitration. The Parties to this Agreement understand, acknowledge, and agree that the CPR Rules specifically contemplate the availability of interim measures to preserve the status quo and/or prevent irreparable injury pending arbitration. The Parties expressly understand and agree that the advance notice requirements provided for in this Agreement, with respect to termination or amendment provide sufficient opportunity for a Party challenging any termination or amendment of this Agreement to seek interim measures (including the arbitral equivalent of a temporary restraining order, preliminary injunction, or other equitable relief) in arbitration pursuant to the binding arbitration provisions of Section 15(c)(4). By seeking or obtaining a temporary restraining order, preliminary injunction, or other equitable relief pending arbitration pursuant to the provisions of this Section 15(c)(5), a Party is not relieved of its obligation to have the merits of an Arbitrable Claim decided in accordance with the binding arbitration provisions of Section 15(c)(4).

(6) Enforcement of Arbitration Awards. Judgment upon the award rendered by the arbitrator(s) in any arbitration between the Parties may be entered by any court of competent jurisdiction.

(7) Contingency. If for any reason the binding arbitration provisions of this Agreement are not enforceable, the exclusive forum for resolution of any otherwise Arbitrable Claims will be the United States District Court for the Northern District of Texas, Dallas Division except that, if the federal court lacks subject matter jurisdiction, the forum will be the District Court of Dallas County, Texas. The

provisions of this Section 15(c)(7) will not apply to any claim for temporary injunctive relief pending arbitration filed pursuant to Section 15(c)(5) above.

(d) **Consent to Jurisdiction and Venue.** To the extent that this Agreement permits or requires litigation, the Parties hereby irrevocably submit to the exclusive jurisdiction provision of Section 15(c)(7) (the “Chosen Forum”). By execution and delivery of this Agreement, each Party hereby irrevocably waives, to the fullest extent it may effectively do so, any claim that it is not personally subject to the jurisdiction of the Chosen Forum or that the Chosen Forum is not a convenient forum. By execution and delivery of this Agreement, each Party hereby agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the Chosen Forum or that the Chosen Forum is not a convenient forum. Franchisor and Developer agree that a final judgment (as to which all appeals have been exhausted or the time within which such appeals may be made has expired) in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

(e) **Limitations of Claims.** Any and all claims arising out of or relating to this Agreement or the relationship among the Parties will be barred unless a judicial or arbitration proceeding is commenced within two years from the date on which the Party asserting such claim knew or should have known of the facts giving rise to such claims.

(f) **Limitation on Damages.** Except with respect to (1) Developer’s obligation to indemnify the Franchisor Indemnitees pursuant to Section 10, (2) claims for Developer’s disclosure of Confidential Information in Section 8(b); and (3) payment or recovery of liquidated damages described in Section 13(a), FRANCHISOR AND DEVELOPER WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, SPECIAL AND CONSEQUENTIAL DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN FRANCHISOR AND DEVELOPER, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY DIRECT OR GENERAL DAMAGES THE PARTY SUSTAINS.

(g) **Rights of Parties Are Cumulative.** Except as otherwise expressly provided in this Agreement, Franchisor’s and Developer’s rights under this Agreement are cumulative, and their exercise or enforcement of any right or remedy under this Agreement will not preclude their exercise or enforcement of any other right or remedy under this Agreement which they are entitled by Applicable Law to enforce.

(h) **Costs and Legal Fees.** If Franchisor incurs expenses in connection with the Developer’s failure to pay when due any monies owed, to submit when due any reports, information, or supporting records, or otherwise to comply with this Agreement, Developer will reimburse Franchisor for any of the costs and expenses which it reasonably incurs, including, without limitation, reasonable accounting, attorneys’, arbitrators’ and related fees to enforce such provisions of the Agreement.

(i) **WAIVER OF JURY TRIAL.** THE PARTIES HERETO IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM IN CONNECTION WITH ANY MATTER OR DISPUTE OF ANY KIND ARISING UNDER OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY RIGHT OR REMEDY HEREUNDER, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF FRANCHISOR OR DEVELOPER.

(j) **Material Inducement for Franchisor.** DEVELOPER AND ITS PRINCIPALS EACH EXPRESSLY ACKNOWLEDGES AND AGREES THAT THIS SECTION 15 IS ENTERED INTO VOLUNTARILY AND IS NOT THE PRODUCT OF COERCION ON THE PART OF FRANCHISOR. THE BINDING ARBITRATION, CHOICE OF LAW AND FORUM, WAIVER OF PUNITIVE

DAMAGES, LIMITATION ON ACTIONS, WAIVER OF CLASS ACTION, AND OTHER PROVISIONS OF THIS SECTION 15 ARE A MATERIAL INDUCEMENT FOR FRANCHISOR TO ENTER INTO THIS AGREEMENT.

## **16. NOTICES.**

All Notices required or permitted under this Agreement will be deemed given (1) when delivered by hand; (2) two days after electronically confirmed transmission by facsimile or electronically confirmed delivery receipt by electronic mail; or (3) three days after confirmed delivery if by certified or registered mail, postage prepaid; or (4) upon delivery by a nationally-recognized courier or delivery service. Either Party may specify a different address by notifying the other Party in writing of the different address. The notice address for each Party is set forth in the Summary Page.

## **17. MISCELLANEOUS.**

(a) **Severability; Substitution of Valid Provisions.** Except as expressly provided to the contrary in this Agreement, each section, paragraph, term and provision of this Agreement, and any portion thereof, will be considered severable. If for any reason any part of this Agreement is held to be invalid, that determination will not impair the other parts of this Agreement. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of geographical area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, Developer and Franchisor agree that it will be enforced to the fullest extent permissible under Applicable Law and public policy. If any Applicable Law requires a greater prior notice of the termination of or refusal to enter into a successor franchise than is required hereunder, a different standard of “good cause,” or the taking of some other action not required hereunder, the prior notice, “good cause” standard and/or other action required by such law will be substituted for the comparable provisions hereof. If any provision of this Agreement or any specification, standard or operating procedure prescribed by Franchisor is invalid or unenforceable under Applicable Law, Franchisor has the right, at Franchisor’s sole option, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to make it valid and enforceable.

(b) **Effect of Delay, Waiver, Omission or Forbearance.** No delay, waiver, omission or forbearance by Franchisor to exercise any right, option, duty or power arising out of any breach or default by Developer or its Principals under this Agreement will constitute a waiver by Franchisor to enforce any such right, option, duty or power against Developer or its Principals, or as to subsequent breach or default by Developer or its Principals. Subsequent acceptance by Franchisor of any payments due to it hereunder will not be deemed to be a waiver by Franchisor of any preceding breach by Developer or its Principals of any terms, provisions, covenants or conditions of this Agreement.

(c) **Binding Effect.** This Agreement is binding upon the Parties and their respective executors, administrators, heirs, assigns and successors in interest and will not be modified except by a written agreement signed by both Developer and Franchisor.

(d) **Entire Agreement.** This Agreement (including its exhibits, addenda, and attachments) constitutes the entire agreement between the Parties, and supersedes any and all prior or contemporaneous negotiations, discussions, understandings, or agreements. There are no other oral or written understandings or agreements between Franchisor and Developer relating to the subject matter of this Agreement. Notwithstanding the foregoing, nothing in this Agreement or in any related agreement is intended to disclaim the representations made by Franchisor in the Franchise Disclosure Document furnished to Developer.

(e) **Construction.** The preambles and exhibits are a part of this Agreement. Except for the third party beneficiary rights of Franchisor Indemnitees to enforce the terms and conditions of the general release executed pursuant to Section 5(d) and their respective rights under Sections 10, 11(c)(8) and 11(f) of this Agreement, nothing in this Agreement is intended, nor is deemed, to confer any rights or remedies upon any Person not a party to this Agreement. The singular usage includes the plural and the masculine and neuter usages include the other and the feminine.

(f) **Headings.** The headings of the several sections and paragraphs are for convenience only and do not define, limit or construe the contents of such sections or paragraphs.

(g) **Multiple Copies.** This Agreement may be executed in multiple copies, each of which will be deemed an original.

(h) **Conflicting Provisions.** The parties will strive to ensure that there is no conflict between this Agreement and the terms of any Franchise Agreement. If the parties agree to enter in a Franchise Agreement with provisions that conflict with the Agreement, the parties will simultaneously amend this Agreement to be consistent with the Franchise Agreement.

## **18. PUBLIC ANNOUNCEMENTS.**

No public communication, press release or announcement regarding this Agreement, the transactions contemplated hereby, any Franchise Agreement or Crisis Management Event will be made by Developer without Notice to Franchisor and Franchisor's prior approval of such communication, press release or announcement. Developer will not disclose the substance of this Agreement to any third party except Developer's employees, consultants, attorneys and accountants and except as necessary to obtain a lease or renewal or obtain any permit, license or other approvals, or to the extent required by the lawful order of any court of competent jurisdiction having jurisdiction over Developer or for any public disclosure otherwise required by Applicable Law.

***[Signature page follows]***



**IN WITNESS WHEREOF**, the Parties hereto have executed and delivered this Agreement as of the Effective Date.

**DEVELOPER:**

[\_\_\_\_\_]

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

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

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

**FRANCHISOR:**

**Buff City Soap Franchising, LLC**

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

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

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

**BUFF CITY SOAP FRANCHISING, LLC**

**AREA DEVELOPMENT AGREEMENT**

**EXHIBIT A**

**I. FRANCHISOR’S APPROVAL OF DEVELOPER’S EXISTING BRANDS**

In accordance with the restrictive covenants in Section 8(a) and the definition of Competitive Business in Section 1(f) the following Existing Brands operated by Developer and/or its Affiliates are deemed excluded from Competitive Business:\_\_\_\_\_

\_\_\_\_\_

Franchisor hereby approves the continued operation of the above-named brands existing as of the Effective Date and acknowledges that Developer may continue to develop additional units of the above-named existing brands anywhere during the Term of the Agreement without any obligation to Franchisor.

**II. DEVELOPMENT SCHEDULE**

<b>Development Period</b>	<b>Commencement</b>	<b>Expiration</b>	<b>Balance of Initial Franchise Fee Due Upon Execution of Franchise Agreement</b>	<b>Cumulative Makeries That Must Be Open and Operating at the Expiration of Each Development Period</b>
1	Effective Date			
2				
3				



**BUFF CITY SOAP FRANCHISING, LLC**

**AREA DEVELOPMENT AGREEMENT**

**EXHIBIT B**

**ORGANIZATIONAL AND OWNERSHIP INFORMATION**

Developer is a \_\_\_\_\_, organized on \_\_\_\_\_, \_\_\_\_ under the laws of the State of \_\_\_\_\_. Its Federal Identification Number is \_\_\_\_\_. It has not conducted business under another name. The following is a list of Developer directors and officers as of the Effective Date. Capitalized terms not defined in this Exhibit B have the meanings given in the Area Development Agreement dated \_\_\_\_\_ between Developer and Franchisor.

<b>Name</b>	<b>Position(s) Held</b>

Developer represents and warrants to Franchisor that all Equity Interests in Developer are disclosed in this Exhibit B. Developer will disclose to Franchisor such additional information as Franchisor may periodically request concerning all Persons having an Equity Interest in Developer. As of the Effective Date:

<b>Name</b>	<b>Mailing Address</b>	<b>% of Equity Interest</b>

**BUFF CITY SOAP FRANCHISING, LLC**

**AREA DEVELOPMENT AGREEMENT**

**EXHIBIT C**

**GUARANTY AND UNDERTAKING OF OBLIGATIONS**

This GUARANTY AND UNDERTAKING OF OBLIGATIONS (“Guaranty”) is given to Franchisor, by each of the undersigned as a Principal of Developer, in consideration of and as an inducement to the execution of the attached Area Development Agreement, including any exhibits and amendments thereto (“Agreement”) by and between Franchisor and Developer. Capitalized terms not defined in this Guaranty and Undertaking of Obligations have the meanings given in the Agreement.

Principal hereby personally and unconditionally guarantees to Franchisor and its successors and assigns, for the Term and afterward as provided in the Agreement, that Developer will punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement.

Principal represents that each and every representation of Developer made in connection with the Agreement is true, correct and complete in all respects as of the time given and as of the time of the undersigned Principal(s)’ execution of this Guaranty and Undertaking of Obligations.

Principal acknowledges that it is included in the term “Principal” as described in Section 1(wv) of the Agreement and without limiting any guarantee of Developer’s obligations under the Agreement, makes all covenants, representations, warranties and agreements of Principals set forth in the Agreement and is obligated to individually perform thereunder for so long as Principal qualifies as a Principal and thereafter to the extent expressly provided by the terms of the Agreement, including without limitation the representations, warranties and covenants described in the following sections of the Agreement: Section 7 (Representations, Warranties and Covenants), Section 8 (Restrictive Covenants), Section 10 (Indemnification), Section 11 (Transfer) and Section 15 (Governing Law; Dispute Resolution).

Principal hereby unconditionally agrees to be personally 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.

Principal consents and agrees that it will render any payment or performance required under the Agreement upon demand if Developer fails or refuses punctually to do so.

Principal consents and agrees that such liability will not be contingent or conditioned upon pursuit by Franchisor of any remedies against Developer or any other Person and waives any right it may have to require that an action be brought against Developer or any other Person as a condition of its liability. Principal further waives protest and notice of default, demand for payment or nonperformance or any obligations guaranteed, and any and all other notices and legal or equitable defenses to which Principal may be entitled in its capacity as guarantor.

Principal consents and agrees that such liability will not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence that Franchisor may periodically 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 will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the Term.

Principal waives all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Developer arising as a result of the undersigned’s execution of and performance under this Guaranty.

This Guaranty and all claims arising from, under or with respect to the relationship between Franchisor and Principal(s) will be interpreted, enforced and governed by the laws of Texas (without regard to Texas conflicts of law rules).

Principal further acknowledges and agrees as follows:

(a) he has read the terms and conditions of the Agreement and acknowledges that the execution of this Guaranty is in partial consideration for, and a condition to Franchisor's execution of the Agreement, and Franchisor would not have granted such rights without the execution of this Guaranty by each of the undersigned;

(b) This Guaranty will remain in force notwithstanding the death of the undersigned, and will be binding on the undersigned's personal representatives; and

(c) This Guaranty will continue and will be enforceable notwithstanding any change in the name or the constitution of Franchisor or Developer.

Principal represents and warrants that the following is a complete and accurate list of all Principals of Developer and a full description of the nature and extent of each Principal's Equity Interest in Developer. Developer, and Principal as to its Equity Interest, represents and warrants that Principal is the sole and exclusive legal and beneficial owner of its Equity Interest in Developer, free and clear of all liens, restrictions, agreements and encumbrances of any kind or nature, other than those required or permitted by this Guaranty.

**IN WITNESS WHEREOF**, each of the undersigned has affixed its signature as of the date shown above.

**PRINCIPAL:**

**EQUITY INTEREST**

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

\_\_\_\_\_%

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

\_\_\_\_\_%

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

\_\_\_\_\_%

**BUFF CITY SOAP FRANCHISING, LLC**

**AREA DEVELOPMENT AGREEMENT**

**EXHIBIT D**

**FRANCHISE AGREEMENT**

**BUFF CITY SOAP FRANCHISING, LLC**

**AREA DEVELOPMENT AGREEMENT**

**EXHIBIT E**

**DESIGNATED PRINCIPAL'S  
CONFIDENTIALITY AND NON-COMPETE AGREEMENT**

\_\_\_\_\_, a company with an address at \_\_\_\_\_ (“Developer”), for itself and on behalf of Franchisor, its franchisor pursuant to the ADA dated \_\_\_\_\_ between Developer and Franchisor, and \_\_\_\_\_, an individual having an address at \_\_\_\_\_ (“**Designated Principal**” or “**you**”), hereby enter into this Confidentiality and Non-Compete Agreement (this “Agreement”), effective as of \_\_\_\_\_, (“**Effective Date**”) and agree as follows:

All defined terms used in this Agreement and not otherwise defined will have the meanings set forth in Attachment E-1.

A. Confidentiality.

(1) Developer and Designated Principal, for their mutual benefit, desire to have Franchisor disclose to Designated Principal certain Confidential Information Purpose.

(2) Confidential Information means any and all information, knowledge, know-how, trade secrets, trade dress, methodologies, techniques, procedures, applications and materials, in whatever form, used in or related to the System which Franchisor provides to Developer, or which Developer or its Affiliates or its employees develop or have access to, in connection with this Agreement or the operation of a Makery hereunder, including, without limitation, the Standards; the Manuals; any component ingredients, formulae and recipes applicable to Products; Franchisor’s or its Affiliates product sourcing, pricing, manufacturing, inventory management and control, supply and distribution; technology, point of sale and related computer software; advertising, marketing and promotional programs including gift card, loyalty and customer reward programs; customer data; financial data and statements; training and operational methodology, content (including without limitation, inventory and financial controls) and management programs and any other information or data regarding the business of Franchisor or any of its Affiliates that would reasonably be considered the proprietary or confidential information of Franchisor or its Affiliates (“**Confidential Information**”). Confidential Information may be in any form or medium, tangible or intangible, and may be communicated in writing, orally, or through visual observation.

(3) For the duration of Designated Principal’s employment with Developer and at all times thereafter, Designated Principal will use Confidential Information solely for the Purpose, will not disclose such Confidential Information to any third parties without Franchisor’s consent and will reproduce Confidential Information only to the extent essential to fulfilling the Purpose.

(4) Designated Principal must notify Franchisor immediately upon discovery of any unauthorized use or disclosure of any Confidential Information, or any other breach of the ADA by Designated Principal or any representative of Designated Principal, and will cooperate with Franchisor in every reasonable way to help Franchisor regain possession of its Confidential Information and prevent its further unauthorized use or disclosure.

(5) The covenants of confidentiality set forth in this Agreement will apply after the Effective Date to all Confidential Information disclosed to Designated Principal before and after the Effective Date.

(6) Upon Franchisor's request, Designated Principal will either return to Franchisor all Confidential Information or, at Franchisor's option, will certify to Franchisor that all media containing Confidential Information have been destroyed. Provided, however, that an archival copy of the Confidential Information may be retained in the files of Designated Principal's counsel solely for the purpose of proving the contents of the Confidential Information.

(7) The foregoing restrictions on Designated Principal's use or disclosure of Confidential Information will not apply to Confidential Information that Designated Principal can demonstrate: a) was independently developed by or for the Designated Principal without reference to the Confidential Information, or was received without restrictions; b) has become generally available to the public through no wrongful act or breach of confidentiality obligations by the Designated Principal; c) was in the Designated Principal's possession without restriction or was known by the Designated Principal without restriction at the time of disclosure; or d) is required by a court order to be disclosed; provided, however, that the Designated Principal has given Franchisor prompt notice of such demand for disclosure, has taken reasonable steps to enable Franchisor to seek to protect the confidentiality of the Confidential Information required to be disclosed and will disclose only that part of the Confidential Information which, in the written opinion of her legal counsel, it is required to disclose.

(8) As between the parties, all Confidential Information will remain the property of Franchisor. By disclosing Confidential Information or executing this Agreement, Franchisor does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. Further, any Confidential Information provided by Franchisor hereunder is provided "AS IS" and no warranties are made by Franchisor regarding such Confidential Information.

(9) Execution of this Agreement and the disclosure of Confidential Information pursuant to this Agreement do not constitute or imply any commitment, promise, or inducement by Franchisor to make any purchase or sale, or to enter into any additional agreement of any kind. Moreover, unless otherwise specifically agreed in writing, any knowledge or information which Designated Principal discloses to Franchisor will not be deemed to be proprietary or confidential and will be acquired by Franchisor free from any restrictions; however, no license under any applicable patent(s) of Designated Principal will be granted or implied.

(10) Franchisor's failure to enforce any provision, right or remedy under this Agreement will not constitute a waiver of such provision, right or remedy.

(11) This Agreement and performance hereunder will be interpreted, enforced and governed by the laws of the location in which Designated Principal's services are performed, without regard to such state's conflicts of laws rules.

(12) Designated Principal acknowledges that money damages alone would be an inadequate remedy for the injuries and damages that would be suffered and incurred by Franchisor as a result of Designated Principal's breach of this Agreement. Therefore, Designated Principal agrees that if Designated Principal violates or threatens to violate this Agreement, Franchisor, in addition to any other remedies it may have at law or equity, will be entitled to a restraining order, injunction, or other similar remedy in order to enforce the provisions of this Agreement. In the

event Franchisor should seek an injunction hereunder, Designated Principal hereby waives any requirement for the submission of proof of the economic value of any Confidential Information or the posting of a bond or any other security. Designated Principal will bear all costs and expenses, including legal fees and costs, incurred by Franchisor in enforcing the provisions of this Agreement.

**B. Competition.**

For so long as you are Developer's Designated Principal under the ADA and for a period of two years from disassociation with Developer or date ceasing to be Developer's Designated Principal, you will not, either directly or indirectly, individually or through, on behalf of, or in conjunction with any other person:

- (1) Own, maintain, operate, be employed by, engage in, franchise, lease property to, advise, help, make loans to, or have any interest in, either directly or indirectly, any Competitive Business
- (2) Divert or attempt to divert any actual or prospective business or customer of the Makery to any Competitive Business, by direct or indirect inducement or otherwise; or
- (3) Do or perform, directly, any or indirectly, any other act injurious to or prejudicial to the goodwill associated with the Marks and the System

The above covenants apply exclusively in the Territory and the United States of America during the time that you serve as Developer's Designated Principal and within three miles of any then-existing Makery for the two-year period following the date you cease to be Developer's Designated Principal.

If all or any portion of this Agreement is held unreasonable or unenforceable by a tribunal, court or agency having valid jurisdiction in an unappealed final decision to which Developer is a party, you agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by applicable law. If any portion of the restrictions contained in this Agreement are held to be unreasonable, arbitrary or against public policy by any tribunal, court or agency having valid jurisdiction, then the restrictions will be considered divisible, both as to time and to the geographical area, with each month or the specified period being deemed a separate period of time and each radius mile of the restricted territory being deemed a separate geographical area, so that the lesser period of time or geographical area will remain effective and may be enforced against you so long as the same is not unreasonable, arbitrary, or against public policy. If you violate any of the covenants contained herein, and if any court, tribunal or agency action is instituted by Developer to prevent or enjoin such violation, then the period of time during which the covenants of this Agreement apply will be lengthened by a period of time equal to the period between the date of the breach of the terms or covenants contained in this Agreement and the date on which the decree of the disposition of the tribunal, court or agency having valid jurisdiction of the issues upon the merits will become final and not subject to further appeal.

You acknowledge that the geographical and time limitations contained in this Agreement are reasonable and properly required for the adequate protection of the Confidential Information, including Franchisor's trade secrets. You acknowledge that Franchisor and Developer will provide to you training and Confidential Information in reliance upon the covenants contained in this Agreement.

Without limiting any provision of this Agreement, you and Developer recognize and agree that Franchisor is a third party beneficiary of this Agreement, and at all times during and after your association with Developer as its Designated Principal Franchisor will have the independent right to enforce the terms of this Agreement.

You also recognize and agree that your designation as Developer's Designated Principal may be withdrawn by Developer or that Developer may disassociate with you at any time, with or without cause.

This Agreement and all claims arising from, under or with respect to the relationship between Developer and you will be interpreted, enforced and governed by the laws of [\_\_\_\_\_] (without regard to conflicts of law rules). Any dispute arising out of or under this Agreement not settled by agreement will be resolved in accordance with the terms of the ADA.

This Agreement constitutes the entire agreement of the parties with respect to the parties' respective obligations in connection with Confidential Information disclosed hereunder and supersedes all prior oral and written agreements and discussions with respect thereto.

This Agreement may be executed in one or more counterparts and in both original form and one or more electronic or photocopies, each of which will be deemed to be and constitute one and the same instrument.

The parties can amend or modify this Agreement only by a writing duly executed by their respective authorized representatives.

Designated Principal will not assign this Agreement without first securing Franchisor's written consent.

Franchisor will be an intended beneficiary of this Agreement with the full and independent right to enforce each and all of its terms.

As evidenced by your signature below, you hereby acknowledge that you have carefully read this Agreement completely and understand and agree to all of the terms set forth above, and that Developer has provided you with a copy for your records.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives on the date(s) indicated.

**DEVELOPER:**

**DESIGNATED PRINCIPAL**

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

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



**ATTACHMENT E-1**  
**TO CONFIDENTIALITY AND NON COMPETE AGREEMENT**

**DEFINITIONS**

“**ADA**” means the Area Development Agreement between Franchisor and Developer.

“**Affiliate**” means, with respect to a named Person, any Person that is controlled by, controlling or under common control with the named Person.

“**Agreement**” means this Confidentiality and Non-Compete Agreement between Developer and Designated Principal.

“**Competitive Business**” means any retail establishment that, as determined by Franchisor, is the same as or substantially similar to the Makeries, including, without limitation, any personal body care product retail establishment or chain of retail establishments that feature products free of artificial detergents, surfactants, dyes, or harsh chemicals, or any retail establishment that has soaps, lotions, bath bombs and similar facial, body and hair care products collectively accounting for 25% or more of its average monthly gross sales for the retail establishment during the preceding 12 months (or, if the retail establishment has operated less than 12 months, the number of full calendar months of operation).

“**Franchisor**” means Buff City Soap Franchising, LLC, a

“**Makery**” means a Buff City Soap shop.

“**Manuals**” means Company’s operations and training manuals, and any other written directives related to the System, in whatever form and provided in whatever manner, as the same may be periodically amended and revised, including the Standards, all bulletins, supplements and ancillary and additional manuals and directives established by Franchisor from time to time.

“**Person**” means any natural person or entity.

“**Purpose**” means the management of the day to day operations of Developer, including without limitation supervising and overseeing the operation of the business contemplated by this Agreement.

“**Standards**” means the standards, requirements, specifications, techniques, methods, policies and procedures of the System and Brand for the development and operation of the Makeries, as specified from time to time by Franchisor in the Manuals, or otherwise in writing.

“**System**” means the business system for establishing and operating the Makeries, the distinguishing characteristics of which include, without limitation, distinctive exterior and interior design, decor, color scheme, furnishings and equipment; special ingredients, recipes and Products; the Standards; quality and uniformity of products and services offered; procedures for product sourcing, inventory, management, logistics, pricing; training and assistance; and marketing, advertising and promotional programs; all of which may be changed, improved and further developed by Franchisor from time to time.

<b>Summary report:</b> <b>Litera Compare for Word 11.6.0.100 Document comparison done on</b> <b>5/7/2025 12:44:18 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://quarles.cloudimanage.com/ACTIVE/96111955/1	
<b>Modified DMS:</b> iw://quarles.cloudimanage.com/ACTIVE/96111955/2	
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<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	31