

EXHIBIT C
(TO OFFERING CIRCULAR)

EXHIBIT C
DEVELOPMENT AGREEMENT
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THIS DEVELOPMENT AGREEMENT (the "Agreement") is made this _____ day of _____, 20____ by and between _____ located at _____ by and between _____ located at _____ ("Franchisee"), and SPICY PICKLE FRANCHISING, INC., a Colorado corporation, located at 90 Madison Street, Suite 700, Denver, Colorado 80206 ("Franchisor").

RECITALS

A. The Franchisor has developed methods for establishing and operating a restaurant which sells culinary inspired paninispanini, salads, submarine sandwiches and Neapolitan thin crust pizza, along with soups, soft drinks and our signature pickle that is served with every sandwich ("SPICY PICKLE Restaurants" or "Restaurants") which use the service mark "SPICY PICKLE" and related service marks, trade names and trademarks ("Marks") and the Franchisor's proprietary methods of doing business ("Licensed Methods").

B. The Franchisee would like to use the Franchisor's Marks and Licensed Methods in connection with the development of a certain number of Restaurants in a specific geographical area as set forth herein. The Franchisor desires to grant the Franchisee the right to establish and operate such Restaurants under the terms and conditions which are contained in this Agreement.

The parties therefore agree as follows:

1. GRANT OF DEVELOPMENT RIGHTS

1.1. Development Area. The Franchisor grants to the Franchisee the right to develop and establish Restaurants using the Franchisor's Marks and Licensed Methods in the geographic area described in Exhibit A attached hereto (the "Development Area"). ~~1.2.~~ Except pursuant to ~~Section~~ Sections 1.2 and 4.1 below, the Franchisor shall not establish, nor shall it license any other party to establish, Restaurants using the Marks and Licensed Methods anywhere within the Development Area for so long as this Agreement is in effect.

~~1.3.~~ Notwithstanding the above, the Franchisor reserves the right to 1.2. Franchisor's Reservation of Rights. The Franchisee acknowledges that the rights granted in this Agreement are non-exclusive and that the Franchisor, for itself and its successors and affiliates, reserve the right to (i) use and license the use of other marks or methods in connection with the sale of products or services similar to those which the Franchisee will sell in its Restaurants, whether in alternative channels of distribution or in connection with the operation of restaurants selling fresh, made to order, premium submarine, deli and panini sandwiches, pizza, salads, soups and soft drinks, at any location, including within the Development Area, which restaurants are the same as, or different from Restaurants, on any terms and conditions as the Franchisor deems advisable. ~~The Franchisor also reserves the right, and (ii)~~ to use the Marks to identify any type of services, products, promotional and marketing efforts or related items and to identify services and products made available by the Franchisor, in its sole discretion, through alternative channels of distribution (other than Restaurants), at any location, including within the Development Area.

~~1.4.~~ **1.3 Franchise Agreement – First Restaurant Developed.** The parties acknowledge that the Franchise Agreement, attached hereto as Exhibit B and by this reference incorporated herein, governing the operation of the Franchisee's first Restaurant to be opened hereunder, is being executed concurrently with this Agreement. The Franchisee agrees to comply with the terms and conditions of the Franchise Agreement as a part of its obligations hereunder and acknowledges that failure to execute and comply with such Franchise Agreement is a breach of this Agreement.

1.4 Guaranty. The Franchisee agrees that if the Franchisee is an entity, all of the owners of the Franchisee shall sign the Guaranty and Assumption of Franchisee's Obligations attached hereto as Exhibit C and incorporated herein by this reference.

2. INITIAL FRANCHISE FEES

2.1. Fees. Concurrently with the execution of this Agreement, the Franchisor acknowledges that in consideration of the development rights granted herein, the Franchisee has paid the sum of \$30,000-35,000, representing payment in full of the initial franchise fee for the first Restaurant to be developed hereunder, plus \$10,000 of the initial franchise fee for each of the remaining Restaurants to be developed. The Franchisee pays a discounted initial franchise fee of \$15,000-20,000 for the second and each subsequent Restaurant to be developed under this Agreement. The balance of the initial franchise fees for the second and subsequent Restaurants to be developed will be due at the earlier of (1) the date set forth in Section 3.1 of this Agreement which is the deadline for development of that particular Restaurant; or (2) the date which the Franchisee signs the Franchise Agreement and lease (or closes on the purchase) for the premises on which the Restaurant will be located. All fees hereunder are nonrefundable once paid to the Franchisor and under no circumstances will the Franchisee be entitled to a refund, return or rebate of any portion of initial franchise fees paid hereunder.

3. DEVELOPMENT OBLIGATIONS

3.1. The Franchisee agrees to develop the following number of Restaurants in the Development Area, in accordance with the following schedule ("Development Schedule"), including the Restaurant to be developed under the Franchise Agreement executed concurrently with this Agreement:

Number of Months After Date of This Agreement	Minimum Number of Restaurants Opened for Business

The Franchisee agrees that time is of the essence with respect to compliance with the Development Schedule, payment of the balance of the initial franchise fees under Section 2.1 above, obtaining the right to occupy the premises where each Restaurant will be located pursuant to Section 3.3 below and any and all other obligations to be performed by the Franchisee hereunder.

3.2. Subsequent Franchise Agreements. The parties agree that a separate Franchise Agreement shall be executed by the parties to this Agreement for each Restaurant to be developed under this Agreement. The Franchise Agreement for the second and subsequent Restaurants will be executed within 10 days after the Franchisor's approval of a location for the Restaurant to be operated thereunder. The Franchisee's failure to execute any additional Franchise Agreements or its default in any term of such

Franchise Agreements may, at the option of the Franchisor, be deemed a default under this Agreement and shall entitle the Franchisor to terminate this Agreement as further provided in Article 45 below.

~~3.3. The Franchisee shall not, without the prior written approval of the Franchisor, enter into any contract for the purchase or lease of any premises for use as a Restaurant. The Franchisor will assist the Franchisee in the selection and approval of locations for its Restaurants, although the Franchisee acknowledges that the Franchisor has no obligation to select or acquire a location on behalf of the Franchisee.~~ ~~3.4. Each Franchise Agreement to be executed by the Franchisee for each Restaurant to be developed hereunder shall be in a form substantially similar to the Franchise Agreement being executed herewith, although the Franchisor reserves the right to change provisions of the Franchise Agreement to conform with the then current Franchise Agreement being offered to new franchisees of the Franchisor. Notwithstanding the foregoing, the Franchisor agrees that it will not charge an initial franchise fee to the Franchisee which is greater than the amounts set forth herein and will not increase the Royalty percentage to a rate that is greater than the rate charged to the Franchisee in the Franchise Agreement being executed herewith. The Franchisee acknowledges that the Franchisor has the right, however, to charge then current published rates for advertising contributions and optional products and services offered to the Franchisee in accordance with the then current franchise offering of the Franchisor.~~

3.5-3.3. Lease or Purchase of Restaurant Location. The Franchisee shall not, without the prior written approval of the Franchisor, enter into any contract for the purchase or lease of any premises for use as a Restaurant. The Franchisor will assist the Franchisee in the selection and approval of locations for its Restaurants, although the Franchisee acknowledges that the Franchisor has no obligation to select or acquire a location on behalf of the Franchisee. Assistance by the Franchisor will consist of the provision of criteria for a satisfactory location.

3.4. Training and Other Development Assistance. The Franchisee acknowledges that the Franchisor shall have the right, at the Franchisor's sole discretion, to waive the initial training program, which is the same as or similar to the training provided under Section 6.1 of the Franchise Agreement executed concurrently herewith, for the second and each subsequent Restaurant developed under the terms of this Agreement. The Franchisee may also request additional assistance from the Franchisor in connection with site selection, site feasibility studies, lease negotiations and other issues related to development of its Development Area. If the Franchisor agrees to provide such assistance, in the Franchisor's sole discretion, the Franchisor reserves the right to charge the Franchisee for all travel, lodging, living expenses, telephone charges and other identifiable expenses incurred in connection with such assistance, plus a fee based on hourly time spent by any of the Franchisor's employees in connection with such assistance, which fee will be charged in accordance with the then current daily or hourly rates being charged by the Franchisor for assistance.

4. RIGHT OF FIRST REFUSAL

4.1. Right of First Refusal. So long as the Franchisee is in compliance with this Agreement and any other agreements with the Franchisor and its affiliates, and subject to the Franchisor's rights described in Section 4.31.2 above, between the date of execution of the Franchise Agreement for the last Restaurant to be developed under the Development Schedule and the expiration of this Agreement ("ROFR Period"), the Franchisor shall grant the Franchisee a right of first refusal to develop any additional proposed SPICY PICKLE Restaurants that the Franchisor determines to develop, in its sole discretion, within the Development Area. During the ROFR Period, the Franchisor shall provide written notice to the Franchisee of any proposed, new franchise locations for a SPICY PICKLE Restaurant within the Development Area, at any time before or after the location has been secured by the Franchisor for development. Any proposed locations for development of new Restaurants shall be outside of the Franchisee's Protected Territory(ies) surrounding the Restaurants developed hereunder. The notice shall include a copy of the then current Uniform Franchise Offering Circular of the Franchisor and execution copies of the Franchise Agreement and other applicable agreements. The Franchisee shall, within 30 days of receipt of the notice, exercise its right of first refusal by executing and returning to the Franchisor the

Franchise Agreement provided and the other required exhibits provided along with the then current initial franchise fee. If the Franchisee does not exercise the right of first refusal in accordance with the requirements of this Section 4.1, the Franchisor shall have the right to grant a franchise to any third party or otherwise develop the location within the Development Area and the Franchisee shall have no further rights to the Franchised Location, but shall maintain its right of first refusal for other locations in the Development Area during the term hereof.

5. TERM AND TERMINATION

5.1. Term. The term of this Agreement shall be for ten years from the date of execution hereof. After expiration of the term, or earlier termination of this Agreement as provided below, the Franchisor shall have the right to establish, or license any other party to establish Restaurants anywhere within the Development Area; provided, however, that the Franchisee's Protected Territory as defined in the Franchise Agreement(s) executed hereunder will remain in effect for the term of the Franchise Agreement(s), unless sooner terminated.

5.2. Termination by Franchisee. This Agreement may be terminated by the Franchisee for any reason upon 60 days prior written notice to all parties, provided that the Franchisee will not be entitled to a refund of any fees paid hereunder under any circumstances.

5.3. Termination by Franchisor. This Agreement may be terminated by the Franchisor on 30 days prior written notice, such notice containing a right to cure such default, if applicable, in the event of any of the following:

- a. If the Franchisee defaults on any term or condition of this Agreement; including without limitation, failure to develop in accordance with the schedule set forth in Section 3.1 above; or
- b. In the event of any occurrence which would entitle the Franchisor to terminate any Franchise Agreement executed in furtherance of this Agreement.

This Agreement shall automatically terminate at the end of such 30 day notice period, unless the Franchisee cures the default set forth in such notice within said 30 day period.

5.4. Post-Termination Obligations. In the event of termination of this Agreement for any reason, the Franchisee shall remain subject to the provisions of Article 7 of this Agreement regarding nondisclosure and covenants not to compete, in addition to the terms and conditions of any and all Franchise Agreements executed in furtherance of this Agreement which have not also been terminated.

6. ASSIGNMENT

6.1. Assignment By Franchisor. The Franchisor may transfer or assign its rights under this Agreement at any time upon notice to the Franchisee, provided that the Franchisor has fulfilled its obligations hereunder or has made adequate provisions therefor.

6.2. Assignment By Franchisee. The Franchisee may not sell, transfer or assign its rights under this Agreement or any interest in it or any part of the Franchisee entity, unless the Franchisee obtains the Franchisor's prior written consent, which consent shall not be unreasonably withheld if the Franchisee complies with the transfer provisions of the Franchise Agreement most recently executed by the Franchisor and the Franchisee, which provisions shall be deemed to be incorporated herein by reference. The Franchisor will consent to the Franchisee proposed transfer of rights to a specific Restaurant to be developed, at the time of execution of the Franchise Agreement which shall govern operation of such Restaurant, if the proposed transfer is to a corporation, limited liability company or

other entity owned by, controlled by, or under common control with, the Franchisee and the transfer fee described in Section 6.3 below shall not be charged.

6.3. Transfer Fee. In the event of any proposed sale, transfer or assignment by the Franchisee as described herein, the Franchisee and/or the proposed transferee shall pay to the Franchisor the standard transfer fee for each franchise to be transferred, as governed by the applicable Franchise Agreement executed pursuant to this Agreement, plus \$5,000 for every undeveloped franchise right for which no Franchise Agreement has been executed.

6.4. Franchisor's Right of First Refusal. In the event of any proposed sale, transfer or assignment of its rights under this Agreement or any interest in it or any part of the Franchisee entity, the Franchisee agrees to grant the Franchisor a 30 day right of first refusal to purchase such rights or assets on the same terms and conditions as are contained in the most recently executed Franchise Agreement.

7. RESTRICTIVE COVENANTS

7.1. Restrictive Covenants. During the term and after the termination of this Agreement or any Franchise Agreement signed in furtherance of this Agreement, the Franchisee and its officers, partners, directors, agents or employees who have completed the Franchisor's training programs or had access to the Operations Manual, as described in the Franchise Agreement, and/or the beneficial owners of a 5% or greater interest in the Franchisee and their respective immediate families, shall be subject to all restrictive covenants as set forth in the Franchise Agreement executed concurrently herewith, and in any Confidentiality and Noncompetition Agreements executed as exhibits to such Franchise Agreement, which covenants by this reference are incorporated herein.

8. BUSINESS RELATIONSHIPS

8.1. Independent Contractor. During the term of this Agreement, the Franchisee shall be an independent contractor and shall in no way be considered as an agent, partner or employee of the Franchisor. It is understood and agreed that no agency or partnership is created by this Agreement. As such, the Franchisee has no authority of any nature whatsoever to bind the Franchisor or incur any liability for or on behalf of the Franchisor or to represent itself as anything other than an independent contractor.

~~8.2. The Franchisee shall indemnify and hold harmless the Franchisor and its officers, directors, agents and representatives from all fines, suits, proceedings, claims, demands or actions of any kind or nature, including reasonable attorneys' fees, from anyone whomsoever, arising or growing out of, or otherwise connected with the Franchisee's development activities hereunder.~~

8.2. Indemnification. The Franchisee shall indemnify and hold harmless the Franchisor and its affiliated companies, and their respective officers, directors, members, managers, agents and representatives ("Indemnified Parties") from all fines, suits, proceedings, claims, demands or actions of any kind or nature, including reasonable attorneys' fees, from anyone whomsoever, arising or growing out of, or otherwise connected with the Franchisee's activities, actions or failure to act, under this Agreement, or the Franchisee's operation of its Restaurant(s) developed under this Agreement. For purposes of this indemnification, claims shall mean and include all obligations, actual and consequential damages and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. The Franchisor shall have the right to defend any such claim against it. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

9. MISCELLANEOUS

9.1. **Disputes.** The parties agree that any dispute between the parties arising out of or relating to this Agreement shall be governed by the applicable provisions of the Franchise Agreement executed concurrently herewith, which terms and conditions are by this reference incorporated herein, including all provisions relating to venue and jurisdiction.

9.2. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of each of the parties' respective heirs, successors, assigns and personal representatives.

9.3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

9.4. **Review.** The Franchisee acknowledges that it had a copy of this Agreement in its possession for a period of time not fewer than 10 full business days, during which time the Franchisee has had the opportunity to submit the same for professional review and advice of the Franchisee's choosing prior to freely executing this Agreement.

9.5. **No Waiver.** No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any party hereto shall be considered to imply or constitute a further waiver of the same or any other condition, covenant, right or remedy.

9.6. **Modification.** This Agreement may be modified only upon execution of a written agreement between the parties.

9.7. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, both oral and written, concerning the subject matter hereof, provided that any Franchise Agreement executed by the parties hereto shall remain binding, except to the extent that this Agreement specifically supersedes any term thereof.

9.8. **Invalidity.** If any provision of this Agreement is held invalid by any court of competent jurisdiction in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision shall be deemed a part of this Agreement as though originally included. The remaining provisions of this Agreement shall not be affected by such modification.

9.9. **Notices.** All notices required to be given under this Agreement shall be given in writing, by certified mail, return receipt requested, or by an overnight delivery service providing documentation of receipt, at the addresses first set forth above, or at such other address as either party may designate from time to time by written notice as set forth herein. Notice shall be deemed effective when deposited in the United States mail postage prepaid or when received by overnight delivery, as may be applicable.

9.10. **Controlling Terms.** In the event of any conflict between the terms of this Agreement and the terms of the Franchise Agreement, the terms of this Agreement shall control.

9.11. **Attorneys' Fees and Costs.** In the event of any default on the part of either party to this Agreement, in addition to all other remedies, the party in default will pay the aggrieved party all amounts due and all damages, costs and expenses, including reasonable attorneys' fees, incurred by the aggrieved party in any legal action, arbitration or other proceeding as a result of such default, plus interest at the highest rate allowable by law, accruing from the date of such default.

9.12. **Injunctive Relief.** Nothing herein shall prevent the Franchisor or the Franchisee from seeking injunctive relief to prevent irreparable harm, in addition to all other remedies.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the date first above written.

SPICY PICKLE FRANCHISING, INC.

Date: _____

By: _____
Title: _____

FRANCHISEE:

Date: _____

Individually

Print Name

Date: _____

Individually

Print Name

OR (if corporation or partnership)

(Print Name)

Date: _____

By: _____
Its: _____

(9/06)
(3/07)

EXHIBIT A TO DEVELOPMENT AGREEMENT
BETWEEN SPICY PICKLE FRANCHISING, INC.
AND

The Development Area, as referred to in Section 1.1 of the Development Agreement, is described below by geographic boundaries and on the attached map and shall consist of the following area or areas:

EXHIBIT B TO DEVELOPMENT AGREEMENT
BETWEEN SPICY PICKLE FRANCHISING, INC.
AND

Executed Franchise Agreement

**EXHIBIT C TO DEVELOPMENT AGREEMENT
BETWEEN SPICY PICKLE FRANCHISING, INC.
AND**

GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the above Development Agreement (the "Agreement") by Spicy Pickle Franchising, Inc. (the "Franchisor"), each of the undersigned hereby personally and unconditionally:

1. Guarantees to the Franchisor and its successors and assigns, for the term of the Agreement, including renewals thereof, that the franchisee as that term is defined in the Agreement ("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and

2. Agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement; and

3. Waives the following: (a) acceptance and notice of acceptance by the Franchisor of the foregoing undertaking; (b) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (d) any right he or she may have to require that any action be brought against Franchisee or any other person as a condition of liability; and (e) any and all other notices and legal or equitable defenses to which he or she may be entitled; and

4. Consents and agrees that: (a) his or her direct and immediate liability under this guaranty shall be joint and several; (b) he or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (c) such liability shall not be contingent or conditioned upon pursuit by the Franchisor of any remedies against Franchisee or any other person; and (d) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which the Franchisor may from time to time grant to Franchisee or to any other person; including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement, including renewals thereof.

IN WITNESS WHEREOF, each of the undersigned has affixed his or her signature effective on the same day and year as the Agreement was executed.

WITNESS

GUARANTOR(S)

