

charges, together with FRANCHISOR's expenses in so acting and any additional charges assessed by FRANCHISOR in connection with such insurance, shall be payable immediately upon demand by FRANCHISOR and/or deducted as an additional Insurance Charge prior to the payment of any Commissions to FRANCHISEE. The foregoing remedies shall be in addition to any other remedies FRANCHISOR may have.

## 11. TRANSFER OF INTEREST

11.1 Transfer by Franchisor. FRANCHISOR shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. With respect to any assignment which results in the subsequent performance by the assignee of all of FRANCHISOR's obligations under this Agreement, the assignee shall expressly assume and agree to perform such obligations, and shall become solely responsible for all obligations of FRANCHISOR under this Agreement from the date of assignment. In addition, and without limitation to the foregoing, FRANCHISEE expressly affirms and agrees that FRANCHISOR and or its affiliates may sell their assets, the Proprietary Marks, or the System; may sell securities in a public offering or in a private placement; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring.

11.2 Transfer by Franchisee. FRANCHISEE understands and acknowledges that the rights and duties set forth in this Agreement are personal to FRANCHISEE, and that FRANCHISOR has granted this franchise in reliance on FRANCHISEE's business skill, financial capacity, and personal character. Accordingly, neither FRANCHISEE nor any immediate or remote successor to any part of FRANCHISEE's interest in this Agreement, shall sell, encumber, assign, transfer, convey, pledge, merge, or give away any direct or indirect interest in this Agreement, in FRANCHISEE, or in all or substantially all of the assets of the Main Sushi Bar without the prior written consent of FRANCHISOR. Any purported assignment or transfer not having the written consent of FRANCHISOR required by this Paragraph 11.2 shall be null and void and shall constitute a material breach of this Agreement, for which FRANCHISOR may immediately terminate without opportunity to cure pursuant to Paragraph 12.2.4 of this Agreement.

11.3 Requirements for Transfer by Franchisee. FRANCHISOR may, in its sole discretion, require any or all of the following as conditions of its consent to a transfer set forth in Paragraph 11.2:

11.3.1 FRANCHISEE shall not be in default of any provision of this Agreement, any amendment of this Agreement or successor hereto, or any other agreement between FRANCHISEE and FRANCHISOR, or its affiliates;

11.3.2 The transferor shall execute a General Release, in substantially the form of Attachment A to this Agreement, of any and all claims which the transferor may have or believes to have against FRANCHISOR and/or its affiliates and their respective officers, directors, agents and employees, whether the claims are known or unknown, which are based on, arise from or relate to this Agreement, the Main Sushi Bar, the Satellite Stores or the Franchised Location, as well as claims, known or unknown, which are not based on, do not arise from or do not relate to this Agreement, the Main Sushi Bar, the Satellite Stores or the Franchised Location but which relate to other franchise agreements, sushi bars, satellite stores, franchised locations and other agreements between FRANCHISOR or its affiliates and FRANCHISEE which arose on or before the date of the General Release, including, without limitation, all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever

nature, character or description, arising under federal, state and local laws, rules and ordinances.

11.3.3 The transferee shall demonstrate to FRANCHISOR's satisfaction that the transferee has an acceptable credit report to proceed with the assignment and that the terms of the proposed assignment do not place an unreasonable financial burden on the transferee, and FRANCHISEE understands and acknowledges that FRANCHISOR shall be entitled, in connection with assessing the creditworthiness of the transferee and the financial burden placed upon any prospective transferee, to share with such prospective assignee information relating to the Main Sushi Bar, including information in FRANCHISOR's possession relating to operations and sales at the Main Sushi Bar.

11.3.4 The transferee shall demonstrate to FRANCHISOR's satisfaction that the terms of the proposed assignment do not place an unreasonable operational burden on the transferee, and that the transferee meets FRANCHISOR's standards for: (a) work experience and aptitude; (b) character and reputation; (c) absence of conflicting interests; and (d) such other criteria and conditions as FRANCHISOR shall then consider relevant in the case of an application for a new franchise by an applicant not currently operating an Main Sushi Bar.

11.3.5 At FRANCHISOR's request, the transferee shall execute, for a term ending on the expiration date of this Agreement, the current standard form Franchise Agreement (and individual Guarantees) then being offered to new franchisees, which Franchise Agreement shall supersede this Agreement in all respects and the terms of which Franchise Agreement may differ materially from the terms of this Agreement and may be less favorable to the transferee; provided, however, that the transferee shall not be required to pay an initial franchise fee.

11.3.6 The transferee shall successfully complete, at its expense, the required initial training as described in Paragraph 6.1, including payment of the then-current training fee charged by FRANCHISOR in those circumstances where FRANCHISEE is required to pay a fee for attendees at the initial training programs.

11.3.7 FRANCHISEE shall pay FRANCHISOR a transfer fee of \$3,000.

11.3.8 FRANCHISEE shall remain liable for all of FRANCHISEE's obligations to FRANCHISOR and its affiliates which arose prior to the effective date of the transfer, and shall execute any documents reasonably requested by FRANCHISOR to evidence such liability.

11.3.9 FRANCHISEE shall have paid all amounts due to FRANCHISOR.

11.3.10 At FRANCHISOR's request, the transferee shall secure a financially qualified guarantor to guarantee the obligation of FRANCHISEE under this Agreement if FRANCHISOR determines, in its sole discretion, that the transferee's credit report is deficient in any way. The guarantor shall execute the Guarantee in the form of Attachment C attached to this Agreement.

11.4 Granting of a Security Interest by Franchisee. FRANCHISEE shall not grant a security interest in the Main Sushi Bar or in any of the assets of the Main Sushi Bar.

11.5 Right of First Refusal. If FRANCHISEE desires to accept any bona fide offer from a third party to purchase the Main Sushi Bar and FRANCHISEE's interests

under this Agreement, FRANCHISEE shall notify FRANCHISOR of such offer at least twenty (20) days before such transfer is proposed to take place, and shall provide such information and documentation relating to the offer as FRANCHISOR may require. FRANCHISOR shall have the right and option, exercisable within ten (10) days after receipt of such written notification and any background materials concerning the proposed transfer that FRANCHISOR shall reasonably request, to send written notice to the seller that FRANCHISOR intends to purchase the seller's interest on the same terms and conditions offered by the third party. If FRANCHISOR elects to purchase the seller's interest, the closing on such purchase shall occur within twenty (20) days from the date of notice to the seller of the election to purchase by FRANCHISOR. If FRANCHISOR declines to purchase the seller's interest, FRANCHISEE shall have twenty (20) days to close on the transfer of such interest subject to FRANCHISOR's approval pursuant to Paragraph 11.3. Failure to effect a transfer with the third party within the twenty (20) day period, or any material change thereafter in the terms of the offer prior to closing, shall constitute a new offer subject to the same rights of first refusal by FRANCHISOR as in the case of the third party's initial offer.

**11.6 Transfer Upon Death or Incapacitation.** Upon the death or permanent incapacity (mental or physical) of FRANCHISEE, the executor, administrator, or personal representative of such person shall continuously operate the Sushi Bars as required by this Agreement and shall transfer such interest to a third party approved by FRANCHISOR within six (6) months after such death or mental incapacity. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer, except that the transfer fee shall be waived. In the case of transfer by devise or inheritance, however, if the heirs or beneficiaries of any such person are unable to meet the conditions of this Section 11, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by FRANCHISOR, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within such period, FRANCHISOR may, at its option, terminate this Agreement, pursuant to Paragraph 12.2.5 of this Agreement.

**11.7 Non-Waiver of Claims.** FRANCHISOR's consent to a transfer shall not constitute a waiver of any claims FRANCHISOR may have against the transferring party, nor shall it be deemed a waiver of FRANCHISOR's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

**11.8 Transfer by Franchisee in Bankruptcy - Right of First Refusal.** If, for any reason, this Agreement is not terminated pursuant to Paragraph 12.1 and this Agreement is assumed, or assignment of the same to any person or entity who has made a bona fide offer to accept an assignment of this Agreement is contemplated, pursuant to the United States Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth: (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment and assumption, shall be given to FRANCHISOR within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of this Agreement, and, in any event, within ten (10) days prior to the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and FRANCHISOR shall thereupon have the prior right and option, to be exercised by notice given at any time prior to the effective date of such proposed assignment and assumption, to accept an assignment of this Agreement to FRANCHISOR itself upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the proposed assignee, less any brokerage commissions which may be payable by FRANCHISEE out of

the consideration to be paid by such assignee for the assignment of this Agreement.

**11.9 Assignment to a Controlled Corporation or Limited Liability Company.**

If FRANCHISEE is an individual, individuals or a partnership, FRANCHISOR expressly consents to the assignment of this franchise to a corporation or limited liability company formed and controlled by FRANCHISEE to operate the Main Sushi Bar; provided, however, that FRANCHISEE shall be and remain, together with said corporation and its shareholders, or said limited liability company and its members, jointly and severally liable for all obligations under this Agreement and any Satellite Store Addendum, if applicable, and for all breaches thereof and, provided further, that FRANCHISEE shall continue to supervise the operation of the Main Sushi Bar. FRANCHISEE shall immediately notify FRANCHISOR of any such assignment and shall complete all appropriate agreements required by FRANCHISOR as a result thereof. No transfer fee shall be charged by FRANCHISOR for its participation in this type of transfer.

**12. DEFAULT AND TERMINATION**

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

**12.2 Termination with Notice and Without Opportunity to Cure.** FRANCHISEE shall be in default under this Agreement, and FRANCHISOR may, at its option, terminate this Agreement and all rights granted under this Agreement, without affording FRANCHISEE any opportunity to cure the default, effective immediately upon receipt of notice by FRANCHISEE (as "Receipt" is defined in Paragraph 17.3 of this Agreement) upon the occurrence of any of the following events:

12.2.1 If there has been any adulteration or contamination of the Proprietary Products, if FRANCHISEE has failed to maintain the Main Sushi Bar in compliance with all health and safety laws, if an imminent threat or danger to public health or safety results from the operation of the Main Sushi Bar or if there are, or have been, any contaminated products sold from the Main Sushi Bar.

12.2.2 If FRANCHISEE at any time ceases to operate or otherwise abandons the Main Sushi Bar without the consent of FRANCHISOR and/or the Store Owner for a period of more than three (3) consecutive days.

12.2.3 If FRANCHISEE is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that FRANCHISOR believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or FRANCHISOR's interest therein.

12.2.4 If any purported assignment or transfer of any direct or indirect interest in this Agreement, in FRANCHISEE, or in all or substantially all of the assets of the Main Sushi Bar is made to any third party without FRANCHISOR's prior written consent, contrary to the terms of Section 11 of this Agreement.

12.2.5 If an approved transfer as required by Paragraph 13.6 of this Agreement, is not effected within the time provided following a death or permanent incapacity (mental or physical).

12.2.6 If FRANCHISEE fails to comply with the covenants in Paragraph 14.1 of this Agreement.

12.2.7 If, contrary to the terms of Section 9 of this Agreement, FRANCHISEE, any principal or employee of FRANCHISEE, discloses or divulges the contents of the Confidential Operations Manual or other confidential information provided to FRANCHISEE by FRANCHISOR.

12.2.8 If FRANCHISEE has made any material misrepresentations in connection with FRANCHISEE's application to FRANCHISOR for the franchise granted under this Agreement.

12.2.9 If FRANCHISEE, after curing a default pursuant to Paragraph 12.4 of this Agreement, commits the same, similar, or different default again, whether or not cured after notice.

12.2.10 If FRANCHISEE loses, through renovation, forfeiture, failure to renew, or otherwise, any license required with respect to the operation of the Main Sushi Bar.

12.2.11 If FRANCHISEE or any employee fails to successfully complete the initial training required by Paragraph 6.1.

12.2.12 If FRANCHISEE fails to obtain or maintain required insurance coverage.

12.2.13 If FRANCHISEE fails to make timely payments upon any obligation of FRANCHISEE or any obligation of FRANCHISEE upon which FRANCHISOR has advanced any funds for or on behalf of FRANCHISEE.

12.2.14 If FRANCHISEE fails to comply with any or all of the terms of this Agreement or any other agreement between FRANCHISOR, or its affiliates, and FRANCHISEE within five (5) days after receipt of written notice from FRANCHISOR to do so.

12.2.15 If there are repeated complaints or any material subjective dissatisfaction expressed by the Store owner, regardless of the reason for such complaints or subjective dissatisfaction, or if the Store Owner requires the replacement of FRANCHISEE as the sushi chef at the Main Sushi Bar for any reason whatsoever.

12.2.16 If the Store Owner elects to close the Store or the Main Sushi Bar in the Store.

12.2.17 If FRANCHISEE engages in any unlawful form of harassment or discrimination.

12.3 **Termination Upon Notice.** FRANCHISOR and FRANCHISEE shall each have the right to terminate this Agreement for any reason or no reason by providing the other party with thirty (30) days advance written notice.

12.4 **Termination With Notice and Opportunity to Cure.** Except as otherwise provided in Paragraph 12.1 and Paragraph 12.2 of this Agreement, FRANCHISEE shall have ten (10) days after its receipt (as "Receipt" is defined in Paragraph 17.3 of this Agreement) from FRANCHISOR of a written notice of default within which to remedy any default under this Agreement and to provide evidence thereof to FRANCHISOR. If any such default is not cured within the specified time, or such longer period as applicable law may require, FRANCHISOR shall have the right to terminate this Agreement by providing written notice of termination to FRANCHISEE. FRANCHISEE shall be in default pursuant to this Paragraph 12.4 for failure to substantially comply with any of the requirements imposed by this Agreement, as it may from time to time reasonably be modified or supplemented by the Confidential Operations Manual, or failure to carry out the terms of this Agreement in good faith.

12.5 **Cross-Default.** Any default by FRANCHISEE under the terms and conditions of this Agreement or any other agreement between FRANCHISOR, or its affiliates, and FRANCHISEE, shall be deemed to be a default of each and every other such agreement. In the event of the termination of this Agreement for any cause, or the termination of any other agreement between FRANCHISOR, or its affiliates, and FRANCHISEE, FRANCHISOR may, at its option, terminate any or all of such other agreements.

12.6 **Inspection Fee.** If FRANCHISOR does not elect to terminate this Agreement upon the occurrence of the events described in Paragraph 7.14 of this Agreement, FRANCHISEE shall pay FRANCHISOR all of FRANCHISOR's costs to cover FRANCHISOR's inspection and re-inspection of the Main Sushi Bar, including a minimum fee of \$500, and FRANCHISOR's attorneys' fees and other expenses incurred as a result of the occurrence of such events.

### 13. **OBLIGATIONS UPON TERMINATION OR EXPIRATION**

Upon termination or expiration of this Agreement, all rights granted under this Agreement to FRANCHISEE shall forthwith terminate and:

13.1 **Cessation of Main Sushi Bar Operations.** FRANCHISEE shall immediately cease to operate the Main Sushi Bar, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of FRANCHISOR.

13.2 **Cessation of Use of Confidential Information and Proprietary Marks.** FRANCHISEE shall immediately and permanently cease to use, by advertising or in any other manner whatsoever, any confidential methods, procedures, and techniques associated with the System, and all Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System.

13.3 **Cancellation of Assumed Name Registration.** FRANCHISEE shall take such action as may be necessary to cancel any assumed name registration or equivalent registration obtained by FRANCHISEE which contains the Proprietary Marks; and FRANCHISEE shall furnish FRANCHISOR with evidence satisfactory to FRANCHISOR of

compliance with this obligation within thirty (30) days after termination or expiration of this Agreement.

**13.4 Payment of Franchisor's Costs.** FRANCHISEE shall pay to FRANCHISOR all damages, costs, and expenses, including reasonable attorneys' fees, incurred by FRANCHISOR prior or subsequent to a termination of this Agreement including, without limitation, all actual damages FRANCHISOR or its affiliates incur as a result of FRANCHISEE's failure to comply with the terms of this Agreement and all costs and expenses FRANCHISOR or its affiliates incur to ensure continuation of business operations at the Main Sushi Bar, including, without limitation, the costs of all transportation, lodging, meals, training materials and wages for FRANCHISOR's personnel and to obtain injunctive or other relief for the enforcement of any provisions of this Section 13. FRANCHISOR and its affiliates shall have the right to deduct and offset such amounts from any funds due to FRANCHISEE under this Agreement. FRANCHISOR and its affiliates shall further have the right to take possession of all useable inventory, tools, equipment and supplies located at the Main Sushi Bar and each Satellite Store, if applicable, and shall apply FRANCHISEE's costs for the same against any funds due to FRANCHISEE under this Agreement. Alternatively, FRANCHISOR may, in its sole discretion, supervise the transfer of all useable inventory, tools, equipment and supplies to another franchisee at a fee to be determined by FRANCHISOR and paid by FRANCHISEE. Upon demand by FRANCHISOR, in its sole and absolute discretion, FRANCHISEE shall pay FRANCHISOR a security deposit of \$2,500 -5,000 upon the parties' execution of this Agreement (the "**Security Deposit**") to secure FRANCHISEE's performance of its obligations under this Paragraph 13.4. Upon termination of this Agreement, FRANCHISOR may use, apply, or retain all or part of the Security Deposit for the payment all actual damages FRANCHISOR or its affiliates incur as a result of FRANCHISEE's failure to comply with the terms of this Paragraph 13.4 and all costs and expenses FRANCHISOR or its affiliates incur to ensure continuation of business operations at the Main Sushi Bar. If FRANCHISOR so uses or applies any portion of the Security Deposit prior to the termination of this Agreement, FRANCHISEE shall deposit sufficient funds with FRANCHISOR to restore the Security Deposit to its original amount within five (5) days after FRANCHISOR's written demand and FRANCHISEE's failure to do so shall be a material breach of this Agreement. FRANCHISEE shall not be entitled to interest on the Security Deposit. If FRANCHISEE fully and faithfully performs every obligation of FRANCHISEE under this Agreement, FRANCHISOR shall return any remaining balance of the Security Deposit to FRANCHISEE sixty (60) days after the termination of this Agreement. FRANCHISOR shall not be required to keep the Security Deposit separate from its general accounts. No trust relationship is created between FRANCHISOR and FRANCHISEE with respect to the Security Deposit.

**13.5 Return of Confidential Operations Manual and Other Confidential Information.** FRANCHISEE shall immediately deliver to FRANCHISOR the Confidential Operations Manual and all other manuals, records, correspondence, files, and any instructions containing confidential information relating to the operation of the Main Sushi Bar which are in FRANCHISEE's possession; and all copies thereof (all of which are acknowledged to be the property of FRANCHISOR). If FRANCHISEE has lost, damaged or destroyed the Confidential Operations Manual, FRANCHISEE shall pay FRANCHISOR the sum of \$1,000 therefore.

**13.6 Compliance with Post Term Covenants.** All covenants, obligations, and agreements of FRANCHISEE which by their terms or by reasonable implication are to be performed, in whole or in part, after the termination or expiration of this Agreement, shall survive such termination or expiration.

**13.7 Payment of Commissions** FRANCHISOR and/or its affiliates shall make a final payment of Commissions to FRANCHISEE, following the payment of all Expenses

and Franchisor's Compensation, usually within forty-five (45) days following FRANCHISOR's receipt of the Store Owners report of Gross Sushi Sales for the periods in question.

#### 14. COVENANTS

14.1 Non-Competition During Term of Agreement. FRANCHISEE specifically acknowledges that, pursuant to this Agreement, FRANCHISEE will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of FRANCHISOR and the System. FRANCHISEE (or, if FRANCHISEE is a corporation, limited liability company, or partnership, all principals of FRANCHISEE) covenants that during the term of this Agreement, except as otherwise approved in writing by FRANCHISOR, FRANCHISEE (or, if FRANCHISEE is a corporation, limited liability company, or partnership, all principals of FRANCHISEE) shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, or legal entity:

14.1.1 Divert or attempt to divert any present or prospective Main Sushi Bar customer to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System;

14.1.2 Employ or seek to employ any person who is or has been within the previous thirty (30) days employed by FRANCHISOR or an affiliate of FRANCHISOR as a salaried managerial employee, or otherwise directly or indirectly induce such person to leave his or her employment; or

14.1.3 Own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any business that is the same or similar to the Main Sushi Bar or which offers products or services which are the same as or similar to the products and services being offered by the Main Sushi Bar.

14.2 Non-Competition After Execution or Termination of Agreement. Commencing upon the date of: (a) a transfer permitted under Section 11 of this Agreement; (b) expiration of this Agreement; (c) termination of this Agreement (regardless of the cause for termination); or (d) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of this Paragraph 14.2, and continuing for an uninterrupted period of two (2) years thereafter, FRANCHISEE shall not, without FRANCHISOR's prior written consent, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, or legal entity, own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with a business which: (a) offers products or services which are the same as or similar to the products and services offered by the Main Sushi Bar, and (b) is, or is intended to be, located at or within a ten (10) mile radius of any ACE Sushi Bar.

14.3 Exceptions to Non-Compete Covenants. Paragraphs 14.1 and 14.2 shall not apply to ownership by FRANCHISEE of a less than five percent (5%) beneficial interest in the outstanding equity securities of any company registered under the Securities Act of 1933 or the Securities Exchange Act of 1934.

14.4 Reducing Scope of Covenants. FRANCHISEE understands and acknowledges that FRANCHISOR shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Paragraphs 14.1 and 14.2, or any portion thereof,

without FRANCHISEE's consent, effective immediately upon receipt by FRANCHISEE of written notice thereof; and FRANCHISEE agrees that FRANCHISEE shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Paragraph 14.1 or Paragraph 14.2 of this Agreement.

**14.5 Enforceability of Covenants Not Affected by Franchisee Claims.** FRANCHISEE expressly agrees that the existence of any claims FRANCHISEE may have against FRANCHISOR, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by FRANCHISOR of the covenants in this Section 14. FRANCHISEE agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by FRANCHISOR in connection with the enforcement of this Section 14.

**14.6 Breach of Covenants Causes Irreparable Injury.** FRANCHISEE acknowledges that FRANCHISEE's violation of any covenant of this Section 14 would result in irreparable injury to FRANCHISOR for which no adequate remedy at law may be available, and FRANCHISEE consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by FRANCHISOR in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

**15. TAXES**

FRANCHISEE shall promptly pay all taxes levied or assessed against the Main Sushi Bar, including, but not limited to, unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipt taxes, taxes on royalty fees, any similar taxes or levies, imposed upon or required to be collected or paid by FRANCHISOR by reason of the furnishing of products, intangible property (including trademarks and trade names) or services by FRANCHISOR to FRANCHISEE through the sale, license, or lease of property or property rights provided by this Agreement.

**16. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

**16.1 No Fiduciary Relationship.** This Agreement does not create a fiduciary relationship between the parties hereto. FRANCHISEE shall be an independent contractor; and nothing in this Agreement is intended to constitute or appoint either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

**16.2 Public Notice of Independent Status.** FRANCHISEE shall conspicuously identify itself and the Main Sushi Bar in all dealings with its customers, contractors, suppliers, public officials, and others, as an independent franchisee of FRANCHISOR, and shall place such notice of independent ownership in its Main Sushi Bar and on all forms. FRANCHISOR shall have the right to specify the language of any such notice.

**16.3 Independent Contractor.** FRANCHISEE acknowledges and agrees that FRANCHISEE is not authorized to make any contract, agreement, warranty, or representation on FRANCHISOR's behalf, or to incur any debt or other obligations in FRANCHISOR's name; and that FRANCHISOR shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action; nor shall FRANCHISOR be liable by reason of any act or omission of FRANCHISEE in its conduct of the Main Sushi Bar or for any claim or judgment arising therefrom against FRANCHISEE or FRANCHISOR.

**16.4 Indemnification.** FRANCHISEE shall indemnify and hold harmless to the fullest extent by law, FRANCHISOR, its affiliates and their respective directors, officers, employees, shareholders, and agents, (collectively the "Indemnitees") from any and all "losses and expenses" (as hereinafter defined) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, or formal or informal inquiry (regardless of whether same is reduced to judgment) or any settlement thereof which arises directly or indirectly from, as a result of, or in connection with FRANCHISEE's operation of the Main Sushi Bar or the Satellite Stores, including, but not limited to, claims arising as a result of the maintenance and operation of any vehicles operated by FRANCHISEE in connection with the Main Sushi Bar and/or the Satellite Stores (collectively an "Event"), and regardless of whether same resulted from any strict or vicarious liability imposed by law on the Indemnitees. For the purpose of this Paragraph 16.4, the term "losses and expenses" shall be deemed to include compensatory, exemplary, or punitive damages; fines and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensation for damages to FRANCHISOR's reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. FRANCHISEE shall give FRANCHISOR prompt notice of any Event of which FRANCHISEE is aware, for which indemnification is required, and, at the expense and risk of FRANCHISEE, FRANCHISOR may elect to assume (but under no circumstance is obligated to undertake) the defense and/or settlement thereof, provided that FRANCHISOR will seek the advice and counsel of FRANCHISEE. Any assumption of FRANCHISOR shall not modify FRANCHISEE's indemnification obligation. FRANCHISOR may, in its sole judgment, take such actions as FRANCHISOR seems necessary and appropriate to investigate, defend, or settle any Event or take other remedial or corrective actions with respect thereof as may be, in FRANCHISOR's sole judgment, necessary for the protection of the indemnities or the System.

**17. APPROVALS, WAIVERS, AND NOTICES**

**17.1 Obtaining Approvals.** Whenever this Agreement requires the prior approval or consent of FRANCHISOR, FRANCHISEE shall make a timely written request to FRANCHISOR therefor, and such approval or consent must be obtained in writing. FRANCHISOR makes no warranties or guarantees upon which FRANCHISEE may rely, and assumes no liability or obligation to FRANCHISEE, by providing any waiver, approval, consent, or suggestion to FRANCHISEE in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

**17.2 No Waiver.** No delay, waiver, omission, or forbearance on the part of FRANCHISOR to exercise any right, option, duty, or power arising out of any breach or default by FRANCHISEE, or by any other franchisee, of any of the terms, provisions, or covenants thereof, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by FRANCHISOR to enforce any such right, option, or power as against FRANCHISEE, or as to a subsequent breach or default by FRANCHISEE. Subsequent acceptance by FRANCHISOR of any payments due to FRANCHISOR under this Agreement shall not be deemed to be a waiver by FRANCHISOR of any preceding or succeeding breach by FRANCHISEE of any terms, covenants, or conditions of this Agreement.

**17.3 Notices.** All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail; or by private overnight delivery to the last known address of FRANCHISOR and FRANCHISEE. Service shall be deemed conclusively made (a) at the time of service, if personally served; (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (c) upon the earlier of actual receipt or three (3) calendar days

after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail; and (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery. Notices and demands and all changes of address shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

**Notices to FRANCHISOR:** ACE Sushi Franchise Corporation  
1447 West 178<sup>th</sup> Street, Suite 303  
Gardena, California 90248  
Attention: President

**Notices to FRANCHISEE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party.

18. **ENTIRE AGREEMENT, SEVERABILITY, AND CONSTRUCTION**

18.1 **Entire Agreement.** This Agreement, any attachments hereto, and any ancillary agreements between FRANCHISEE and FRANCHISOR or any affiliate which are executed contemporaneously with this Agreement, constitute the entire and complete Agreement between FRANCHISOR (and, if applicable, any affiliate) and FRANCHISEE concerning the subject matter thereof, and supersede all prior agreements. FRANCHISEE acknowledges that FRANCHISEE is entering into this Agreement, and any ancillary agreements executed contemporaneously herewith, as a result of its own independent investigation of the business franchised hereby and not as a result of any representation made by FRANCHISOR or persons associated with FRANCHISOR, or other franchisees, which are contrary to the terms herein set forth or which are contrary to the terms of any Franchise Offering Circular, or other similar document required or permitted to be given to FRANCHISEE pursuant to applicable law. Except for those permitted under this Agreement to be made unilaterally by FRANCHISOR, no amendment, change, or variation from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

18.2 **Severability and Construction.** Except as expressly provided to the contrary in this Agreement, each section, paragraph, part, term, and provision of this Agreement shall be considered severable; and if, for any reason, any section, paragraph, part, term, provision, and/or covenant in this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, paragraphs, parts, terms, provisions, and/or covenants of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and the invalid portions, sections, paragraphs, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement. Neither this Agreement or any uncertainty or ambiguity in this Agreement shall be construed or resolved against the drafter of this Agreement, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used to fairly accomplish the purposes and intentions of all parties to this Agreement. FRANCHISOR and FRANCHISEE intend that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision

unenforceable, the provision shall be given the meaning that renders it enforceable.

18.3 Survival of Obligations After Expiration or Termination of Agreement. Any provision or covenant of this Agreement which expressly or by its nature imposes obligations beyond the expiration or termination of this Agreement shall survive such expiration or termination.

18.4 Survival of Modified Provisions. FRANCHISEE expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which FRANCHISOR is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order.

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

## 19. APPLICABLE LAW

19.1 Choice of Law. This Agreement shall be interpreted and construed under the laws of California. In the event of any conflict of law, the laws of California shall prevail, without regard to the application of California conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of California, and if the Main Sushi Bar is located outside of California and such provision would be enforceable under the laws of the state in which the Main Sushi Bar is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Paragraph 19.1 is intended by the parties to subject this Agreement to any franchise or similar law, rules, or regulation of the state of California to which it would not otherwise be subject.

19.2 Venue. The parties agree that any action brought by either party against the other in any court, whether federal or state, shall be brought within the State of California in the county in which FRANCHISOR has its principal place of business at the time the action is initiated, and the parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

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

19.4 Limitation of Adjudicative Proceedings. FRANCHISOR and FRANCHISEE irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding. Any and all claims and actions arising out of or relating to this Agreement, the relationship of FRANCHISEE and FRANCHISOR, or FRANCHISEE's operation of the Main Sushi Bar, brought by any party hereto against the other, shall be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred. FRANCHISOR and FRANCHISEE hereby waive to the fullest extent permitted by law any right to or claim of any punitive or

exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

**19.5 Right to Injunctive Relief.** Nothing herein contained shall bar FRANCHISOR's right to seek injunctive relief without the posting of any bond or security to obtain the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement relating to FRANCHISEE's: (a) use of the Proprietary Products and/or the Proprietary Marks, (b) obligations upon termination or expiration of the Agreement, (c) assignment or proposed assignment of the Main Sushi Bar, this Agreement, or any ownership interest in FRANCHISEE, or (d) actions covered by the provisions of Section 11. FRANCHISOR also shall be able to seek injunctive relief to prohibit any act or omission by FRANCHISEE or its employees that constitutes a violation of any applicable law, is dishonest or misleading to FRANCHISEE's customers or to the public, or which may impair the goodwill associated with the Proprietary Marks; and FRANCHISEE agrees to pay all costs and reasonable attorneys' fees incurred by FRANCHISOR in obtaining such relief.

**19.6 Incorporation of Recitals.** The recitals set forth in Paragraphs A through G of this Agreement are true and correct and are hereby incorporated by reference into the body of this Agreement.

## **20. ACKNOWLEDGMENTS**

**20.1 Recognition of Business Risks.** FRANCHISEE acknowledges that FRANCHISEE has conducted an independent investigation of the proposed franchise, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon the ability of FRANCHISEE as an independent business person. FRANCHISOR expressly disclaims the making of, and FRANCHISEE acknowledges that FRANCHISEE has not received, any warranty or guarantee, express or implied, as to the potential sales, income, profits, or success of the business venture contemplated by this Agreement, or of other Sushi Bars.

**20.2 Receipt of Franchise Offering Material.** FRANCHISEE acknowledges that FRANCHISEE has received a copy of the complete ACE SUSHI FRANCHISE CORPORATION Uniform Franchise Offering Circular for ACE Sushi Bars, which contains a copy of this Franchise Agreement, at least fourteen (14) days prior to the date on which this Agreement was executed. FRANCHISEE further acknowledges that FRANCHISEE has received a copy of the complete ACE Sushi Franchise Agreement for ACE Sushi Bars, the attachments thereto, and agreements relating thereto, if any, at least fourteen (14) days prior to the date on which this Agreement was executed. FRANCHISEE acknowledges and agrees that FRANCHISOR has made no promises, representations, warranties or assurances to FRANCHISEE which are inconsistent with the terms of this Agreement or FRANCHISOR's Uniform Franchise Offering Circular, concerning the profitability or likelihood of success of the Main Sushi Bar at the Franchised Location, that he has been informed by FRANCHISOR that there can be no guaranty of success in the franchised business and that FRANCHISEE's business ability and aptitude is primary in determining his success.

**20.3 Review of Franchise Offering Material.** FRANCHISEE acknowledges that FRANCHISEE has read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that FRANCHISOR has accorded FRANCHISEE ample time and opportunity to consult with advisors and counsel of FRANCHISEE's own choosing about the potential benefits and risks of entering into this Agreement.

20.4 Attorneys' Fees. If FRANCHISOR becomes a party to any legal proceedings concerning this Agreement, the Main Sushi Bar, the Satellite Stores or the Franchised Location by reason of any act or omission of FRANCHISEE or its authorized representatives, FRANCHISEE shall be liable to FRANCHISOR for the reasonable attorneys' fees and court costs incurred by FRANCHISOR in the legal proceedings, as well as all cost of collection to obtain payment of all sums due from FRANCHISEE to FRANCHISOR under this Agreement, including, without limitation, the costs for collection agency services. If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

20.5 Atypical Arrangements. FRANCHISEE acknowledges and agrees that FRANCHISOR may modify the offer of its franchises to other franchisees in any manner and at any time, which offers have or may have terms, conditions, and obligations which may differ from the terms, conditions, and obligations in this Agreement. FRANCHISEE further acknowledges and agrees that FRANCHISOR has made no warranty or representation that all Franchise Agreements previously issued or issued after this Franchise Agreement by FRANCHISOR do or will contain terms substantially similar to those contained in this Franchise Agreement. FRANCHISOR may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Franchise Agreements previously executed or executed after the date of this Franchise Agreement with other ACE Sushi Bar franchisees in a non-uniform manner.

20.6 Additional Documents. Each of the parties agrees to execute, acknowledge and deliver to the other party and to procure the execution, acknowledgment and delivery to the other party of any additional documents or instruments which either party may reasonably require to fully effectuate and carry out the provisions of this Agreement.

20.7. Counterparts. This Agreement may be executed by the parties simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures; provided that the party delivering such electronic or facsimile signature shall deliver to the other an original signature page within twenty-four (24) hours after transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first shown above.

ACE SUSHI FRANCHISE CORPORATION

FRANCHISEE

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

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

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

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

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

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

**ACE SUSHI FRANCHISE CORPORATION  
FRANCHISE AGREEMENT  
ATTACHMENT A  
TO FRANCHISE AGREEMENT**

**GENERAL RELEASE**

**ACE SUSHI FRANCHISE CORPORATION  
FRANCHISE AGREEMENT  
ATTACHMENT A**

**GENERAL RELEASE**

\_\_\_\_\_ ("FRANCHISEE") enters into this  
General Release on \_\_\_\_\_, 200\_, with reference to the following  
facts:

1. [DESCRIPTION OF FACTS].

2. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FRANCHISEE hereby releases and forever discharges FRANCHISOR, its affiliates, parents and subsidiaries, and the directors, officers, shareholders, employees, attorneys and agents of said corporations, and each of them, from any and all claims, obligations, liabilities, demands, costs, expenses, damages, actions and causes of action, of whatever nature, character or description, known or unknown, suspected or unsuspected (collectively "Damages"), which arose on or before the date of this Agreement, including any Damages with respect to the [DESCRIPTION OF FACTS].

3. FRANCHISEE acknowledges that FRANCHISEE is aware that FRANCHISEE may hereafter discover claims or facts in addition to or different from those which FRANCHISEE now knows or believes to be true with respect to the released items, and the claims relative thereto, which do now exist, may exist, or heretofore have existed between FRANCHISOR, affiliates, parents and subsidiaries, and the directors, officers, shareholders, employees, attorneys and agents of said corporations, and each of them, on the one hand, and FRANCHISEE, on the other hand, with respect to such released items. In furtherance of such intention, this release shall be and remain in effect as a full and complete release of such released items, notwithstanding the discovery or existence of any such additional or different claims or facts relating thereto.

4. This Agreement shall be binding upon each of the parties to this General Release and their respective heirs, executors, administrators, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this General Release as of the day and year set forth above.

**FRANCHISEE:**

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

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

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

**ACE SUSHI FRANCHISE CORPORATION  
FRANCHISE AGREEMENT  
ATTACHMENT B**

**ADDITIONAL TERMS**

**ACE SUSHI FRANCHISE CORPORATION  
FRANCHISE AGREEMENT  
ATTACHMENT B**

**ADDITIONAL TERMS**

**FRANCHISED LOCATION:**

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**STORE OWNER:**

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**INITIAL TERM:**

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**COMMISSION PERCENTAGE:**

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**ACE SUSHI FRANCHISE CORPORATION  
FRANCHISE AGREEMENT  
ATTACHMENT C**

**GUARANTEE**

**ACE SUSHI FRANCHISE CORPORATION  
FRANCHISE AGREEMENT**

**ATTACHMENT C  
GUARANTEE**

As an inducement to ACE SUSHI FRANCHISE CORPORATION ("FRANCHISOR") to execute the Franchise Agreement with \_\_\_\_\_ ("FRANCHISEE") dated \_\_\_\_\_, and in consideration of FRANCHISOR's executing the Franchise Agreement, \_\_\_\_\_ ("GUARANTOR"), jointly and severally agree as follows:

A. GUARANTOR shall pay or cause to be paid to FRANCHISOR all monies payable by FRANCHISEE under the Franchise Agreement on the days and times in the manner therein appointed for payment thereof.

B. GUARANTOR shall unconditionally guarantee full performance and discharge by FRANCHISEE of all the obligations of FRANCHISEE under the Franchise Agreement at the times and in the manner therein provided.

C. GUARANTOR shall indemnify and save harmless FRANCHISOR and its affiliates against and from all losses, damages, costs, and expenses which FRANCHISOR and its affiliates may sustain, incur, or become liable for by reason of: (1) the failure for any reason whatsoever of FRANCHISEE to pay the monies payable pursuant to the Franchise Agreement or to do and perform any other act, matter or thing pursuant to the provisions of the Franchise Agreement; or (2) any act, action, or proceeding of or by FRANCHISOR for or in connection with the recovery of monies or the obtaining of performance by FRANCHISEE of any other act, matter or thing pursuant to the provisions of the Franchise Agreement.

D. FRANCHISOR shall not be obligated to proceed against FRANCHISEE or exhaust any security from FRANCHISEE or pursue or exhaust any remedy, including any legal or equitable relief against FRANCHISEE, before proceeding to enforce the obligations of GUARANTOR hereunder, and the enforcement of such obligations may take place before, after, or contemporaneously with, enforcement of any debt or obligation of FRANCHISEE under the Franchise Agreement.

E. Without affecting the GUARANTOR's obligations under this Guarantee, FRANCHISOR, without notice to the GUARANTORS, may extend, modify, or release any indebtedness or obligation of FRANCHISEE, or settle, adjust, or compromise any claims against FRANCHISEE. GUARANTORS waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by FRANCHISEE.

F. GUARANTOR's obligations under this Guarantee shall remain in full force and effect, and shall be unaffected by: (1) the unenforceability of the Franchise Agreement against FRANCHISEE; (2) the termination of any obligations of FRANCHISEE under the Franchise Agreement by operation of law or otherwise; (3) the bankruptcy, insolvency, dissolution, or other liquidation of FRANCHISEE, including, without limitation, any surrender or disclaimer of the Franchise Agreement by the trustee in bankruptcy of FRANCHISEE; (4) FRANCHISOR's consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor's proceedings of or against FRANCHISEE, or by the winding-up or dissolution of FRANCHISEE, or any other event or occurrence which would have the effect at law of terminating the existence of FRANCHISEE's obligations prior to the termination of the Franchise Agreement; or (5) by any other agreements or other dealings between FRANCHISOR and FRANCHISEE having the effect of amending or altering the Franchise Agreement or FRANCHISEE's obligations under this Guarantee, or by any want of

notice by FRANCHISOR to FRANCHISEE of any default of FRANCHISEE or by any other matter, thing, act, or omission of FRANCHISOR whatsoever.

G. The provisions of Section 18 of the Franchise Agreement shall apply as to any interpretation or enforcement of this Guarantee, and the provisions of Paragraph 17.3 of the Franchise Agreement shall apply to any notice to either party, except that notice to GUARANTOR shall be as follows:

Notices to GUARANTOR:

Name, Address and Telephone Number

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has signed this Guarantee as of the day and year set forth below.

GUARANTOR:

\_\_\_\_\_

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