

**EXHIBIT A TO THE  
SANSAI USA, INC.  
OFFERING CIRCULAR**

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**FRANCHISE AGREEMENT WITH EXHIBITS**

Franchise Agreement Number: \_\_\_\_\_

**SANSAI™ USA  
FRANCHISE AGREEMENT**

Date of this Agreement: \_\_\_\_\_

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

Franchisor: **SanSai USA, Inc.**

Franchisee: \_\_\_\_\_

In a number of places in this Franchise Agreement, you're asked to initial certain items to show that they've been fully discussed with you, and read, understood and agreed to by you. Initialing those areas doesn't lessen the importance of other areas or mean they're not fully enforceable. Please initial below and at all other points indicated.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

**1. INTRODUCTION, DEFINITIONS, AND PRELIMINARY AGREEMENTS.**

**1.1 Introduction.**

A. We've developed methods of operating SanSai™ Stores that provide, at a retail level, Japanese "fast casual" restaurant and food services and related products. We refer to these businesses as "Traditional SanSai Japanese Grills."

B. To simplify this Agreement and make it easier to read and understand, we have defined certain terms used in this Agreement in Article 22. When you see a capitalized word, or if you don't understand the meaning of a particular pronoun reference, look at Article 22 to see whether the term has been defined. Capitalized words that are not defined in Article 22 are defined in the section where they first appear.

C. You applied for a franchise to own and operate a Traditional SanSai Japanese Grill and your application has been approved by us in reliance on the information you gave us.

D. Your SanSai franchise is a licensing arrangement, awarded under specific terms and conditions. You must comply fully with this Agreement and the Manuals in order to use the SanSai Marks, System and other Intellectual Property.

E. You agree that it is critical to you, us and each Franchisee for the System to be flexible to respond to commercial opportunities and challenges. An inability to change the System could adversely affect all SanSai Franchisees. You, therefore, agree and anticipate that the Manual and the System may

be changed by us, from time to time in our Business Judgment. You agree to comply with the Manuals and the System as they are changed by us.

F. Every detail of your SanSai Franchised Business is important — not only to you, but to us and to all SanSai Franchisees — to increase and maintain the value of the Marks and the businesses associated with them. Therefore, during the term of this Agreement, you must at all times develop, maintain and operate your SanSai Business in accordance with each SanSai System Standard, as modified and supplemented by us from time to time in our Business Judgment, and understand that such changes may require additional investments and/or changes by you in operations and other areas of your Franchised Business.

G. Without your commitment to the System and to fulfill each of the obligations detailed in this Agreement, we would not form this franchise relationship with you.

## **2. AWARD OF FRANCHISE.**

### **2.1 Award of Franchise; Term, Your Basic Commitment.**

A. We're pleased to award you a franchise to operate a single Traditional SanSai Japanese Grill at a single location in the Territory and to be approved by us, and to use the Marks and the SanSai™ System in the operation of that Traditional SanSai Japanese Grill. If this Agreement is awarded in connection with a new franchise, the franchise is awarded for a term of ten (10) years, commencing on the date of this Agreement; but if the lease or sublease for the Premises is terminated or expires before the end of such franchise term (and no substitute location has been consented to by us in writing and occupied by you before the termination/expiration of such lease/sublease), we may Terminate this Agreement as of the termination/expiration of such lease/sublease

B. If this Agreement is awarded in connection with your acquisition of an existing franchised Traditional SanSai Japanese Grill, then the term of this Agreement will, at our option, either:

1) end on the expiration date of the franchise agreement granted to the party from whom you acquired the franchise; or

2) be for the term provided in Section 2.1 (A);

in each case subject to earlier termination upon termination/expiration of the relevant lease/sublease as described in Section 2.1 (A), above. The applicable Expiration Date is noted on the first page of this Agreement.

C. If this Agreement is awarded in connection with the grant of a successor franchise, then the term of this Agreement will be governed by the successor provisions of the franchise agreement under which you operated during the initial term (which is now expired). The applicable Expiration Date is noted on the first page of this Agreement.

D. The Franchise awarded to you by this Agreement is to operate the SanSai Japanese Grill and to use the Marks and the System only for purposes of conducting a business in accordance with the provisions of this Agreement, the Manuals and other communications from us. You must not conduct the business of the SanSai Japanese Grill, use the Marks and/or distribute the Products/Services from any location other than the Premises, or for any purpose other than as approved by us in writing. You must not conduct any activities from the Premises other than the operation of your SanSai Japanese Grill without our prior written consent. You will not engage in any other business or activity that may conflict with your obligations under this Agreement or reduce the Gross Volume of your SanSai Japanese Grill.

**2.2 Scope of Franchise Award, Start Up Period Rights, Right of First Refusal, No Other Territorial or Similar Rights, Our Retained Rights, etc.**

A. Subject to our rights as set forth anywhere in this Agreement and for its term, we will not enter into a Franchise Agreement licensing a Traditional SanSai Japanese Grill, or open a Franchisor-owned Traditional SanSai Japanese Grill, inside the area (the "Territory") described in Exhibit 2.2 for a period of eighteen (18) months from the Effective Date of this Agreement (the "Start Up Period"). After the Start Up Period expires and throughout the balance of the initial term of this Agreement, we will not license a Traditional SanSai Japanese Grill, or open a Franchisor-owned Traditional SanSai Japanese Grill, inside the Territory without first providing you with a right of first refusal, subject to all of the terms and conditions described in Section 2.2 D, below. Regardless of the foregoing, if you are awarded this Franchise as a successor Franchise Agreement or as a transferee of an existing Franchise, then the right of first refusal described in Section 2.2 D, below, shall apply from the Effective Date of this Agreement and there shall be no Start up Period for the purposes of this Agreement. Your rights in the Territory are exactly (and only) as expressly set forth in this Section 2.2. Except for your rights with respect to the location of a Traditional SanSai Japanese Grill within the Territory and any applicable right of first refusal as provided in Section 2.2 D, below, you have no right to exclude, control or impose conditions on the location, operation or otherwise of present or future SanSai (or any other brand) units or distribution channels of any type, franchised or SanSai-owned, regardless of their location or proximity to the Premises. This Franchise applies only to the establishment and operation of a Traditional SanSai Japanese Grill at a single site (and the offer/sale of certain Products and Services, as specified by us from time to time). The Franchise does not grant you any rights with respect to other and/or related businesses, products and/or services, in which we or any Franchisor Related Persons/Entities may be involved, now or in the future.

B. We and the Franchisor-Related Persons/Entities expressly reserve all other rights, and can (along with anyone we designate):

- 1) own and/or operate ourselves, and/or authorize others to own and/or operate:
  - a) any kind of business in the Territory whether or not using the SanSai Marks and System,
    - i) except for a Traditional SanSai Japanese Grill during a Start up Period (if you are not a Successor or Transfer Franchisee) and
    - ii) subject to any applicable right of first refusal as described in Section 2.2 D below; and
  - b) any kind of business outside of the Territory, including without limitation, Traditional SanSai Japanese Grills, whether or not using the SanSai Marks and System;
- 2) sell SanSai brand (or any other brand) Products and Services (whether or not competitive) to customers located anywhere (including within the Territory) using any channel of distribution (including, but not limited to, by mail and/or the Internet) other than a Traditional SanSai Japanese Grill located in the Territory;
- 3) develop or become associated with other concepts (including dual branding and/or other franchise systems), whether or not using the SanSai System and/or the Marks, and award franchises under such other concepts for locations anywhere;
- 4) acquire, be acquired by, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with units located anywhere. Such transactions may

include (but are not limited to) arrangements involving competing outlets and brand conversions (to or from the SanSai Marks and System). Such transactions are expressly permitted under this Agreement, and you agree to participate at your expense in any such conversion as instructed by us.

C. You understand that a "Traditional SanSai Japanese Grill" is defined in Article 22. The term does not include non-traditional SanSai Japanese Grills or other distribution opportunities. A non-traditional SanSai Japanese Grill concept may include (but is not limited to) limited square footage outlets like an "express" unit or a kiosk; units housed within other retail facilities, such as a department store, hotel, casino, etc.; Internet sites and/or direct mail operations.

D. We and Franchisor-Related Persons/Entities and Related Companies also expressly reserve the rights to sell SanSai Brand (or any other brand) Products and Services (whether or not competitive) to customers located anywhere (including within the Territory) using any channel of distribution located anywhere, subject only to the following conditions. If any such distribution opportunity involves the location of a Traditional SanSai Japanese Grill (after the expiration of any applicable Start Up Period) or any other physical unit for the distribution of competitive Products/Services under the SanSai Brand inside the Territory (a "Distribution Opportunity") the following terms and conditions will apply:

1) We will provide you with a right of first refusal for any Distribution Opportunity in the Territory, subject to the process described in Section 2.2 (D) 2, below, and to your being in Good Standing and meeting our then-current financial, operational and other business standards for the award of such Distribution Opportunities to Franchisees. Such standards may be modified by us from time to time in our Business Judgment.

2) A right of first refusal regarding a Distribution Opportunity will be processed as follows: We will provide you written notice of a Distribution Opportunity expected to be physically located in your Territory. You will have fifteen (15) days in which to advise us in writing that you wish to participate in the Distribution Opportunity. If you do not notify us within such period, then we may pursue such Distribution Opportunity and/or grant any other person/entity the right to participate in such Distribution Opportunity without any liability to you. If you timely notify us in writing that you do wish to participate in the Distribution Opportunity, then we may condition your participation on compliance with such terms and conditions as we consider appropriate to the particular Distribution Opportunity in our Business Judgment. Such conditions may include, but are not limited to: your execution of such agreements and related documents as are then generally used by us in connection with the award of the applicable Distribution Opportunity; payment of all initial fees and any other applicable fees; meeting any eligibility requirements as are then generally applied by us to candidates for a Distribution Opportunity; and the execution by you (and any Affiliate and owner of yours) of a General Release, as defined in Article 22.. When you provide us with such General Release, excepting only (where such releases are expressly prohibited by applicable law) those claims solely related to the offer and sale of the new Distribution Opportunity. If you do not meet the conditions applicable to the award of the Distribution Opportunity and/or any opening requirements that may be included in any Distribution Opportunity agreements, then we and/or any Related Company may pursue such Distribution Opportunity and/or grant any other person/entity the right to participate in it, without any liability to you.

### **2.3 E-Commerce/E-Mail Business and Special Accounts - Current Policies.**

A. Your use of the Internet, World Wide Web, and other electronic or other means of marketing and distribution of goods and/or services can be restricted by us in our Business Judgment. You will not market or sell through such venue(s) or any channel of distribution other than your Traditional SanSai Japanese Grill without our written permission, which we can grant, condition or deny in our Business Judgment. You agree not to deal with Special Account(s), as we may specify from time to time.

B. We, the Franchisor-Related Persons/Entities and anyone we designate may offer/provide any Products and/or Services or otherwise through the Internet, World Wide Web, direct mail and/or other

similar venues (no matter where the Customer is located), whether or not in connection with any use of the Marks and/or System. Our current policy on direct retail sales by us to Special Accounts, or through the Internet or by direct mail, is to credit to you a portion of our revenues (or net income) from sales to customers who designate your Traditional SanSai Japanese Grill at the time of purchase by entering your Traditional SanSai Japanese Grill account number, if you are in Good Standing, and may be subject to various conditions. Such credits may be applied to your royalty and/or other obligations/activities as we consider appropriate in our Business Judgment. This policy and any related terms and conditions may be changed and/or eliminated by us at any time in our Business Judgment.

**I have read Sec. 2.1, 2.2, & 2.3, understand them, and agree with them.**

**Your Initials:** \_\_\_\_\_ / \_\_\_\_\_

### **3. DEVELOPMENT AND OPENING OF YOUR SANSAI JAPANESE GRILL.**

#### **3.1 Site Selection.**

A. You must locate a site acceptable to us and sign a lease for a SanSai Japanese Grill within eight (8) months from the date of this Agreement. You must not operate a SanSai Japanese Grill, use any of the Marks from or at any location, or make any commitments about a site until you have our written site acceptance. We may also propose a site to you, which you must independently investigate as you are solely responsible for your selection, development and operation of the site. We won't unreasonably withhold our acceptance. Acceptance by us of any location is not a recommendation, approval or endorsement of such site. We make no representations or warranties as to the success of any site or as to any other matter of any kind relating to the site.

B. If you are unable to acquire a site within the time provided in 3.1 (A), and are not making diligent efforts or adequate progress to do so in our Business Judgment, then we may Terminate this Agreement and refund to you the lesser of:

- 1) one-half (1/2) of the initial franchise fee paid to us, or
- 2) the initial franchise fee, less all our expenses related to your franchise (both internal costs and outside expenses);

but only if you sign a General Release and a document acceptable to us that preserves the Post Termination Provisions of this Agreement.

C. All matters related in any way to your site are your sole responsibility, regardless of any assistance we may choose to provide. You are responsible for obtaining any architectural and engineering services required for your facility and for ensuring its compliance with local law. Neither we, nor any Franchisor-Related Persons/Entity, nor any other person or company associated with us will have any liability for any site-related matter. You agree not to make any claims against us and/or any of the Franchisor-Related Persons/Entities with regard to such matters.

#### **3.2 Lease of Premises.**

A. Upon approval of your site, you agree to submit any lease and all site-related documents to us for our review and negotiation prior to execution by you. We will retain an experienced real estate attorney who will negotiate the terms of your lease directly with the landlord or the landlord's agents and

we will use commercially reasonable efforts to arrange for the inclusion of the provisions of the Lease Addendum attached hereto as Exhibit 3.2 A or other appropriate site-related documents which will:

- 1) Obligate the lessor to provide us on request with sales and other operations information related to your SanSai Japanese Grill;
- 2) Permit you to operate your SanSai Japanese Grill in accordance this Agreement and the Manuals;
- 3) Provide that the Premises will be used only for the operation of a SanSai Japanese Grill, and prohibit you from assigning or modifying any of your lease rights, or extending the term without our prior written consent;
- 4) Require the lessor to concurrently provide us with a copy of any written notices (whether of default or otherwise) to you under the lease and give us the right to cure any default if we so choose;
- 5) Provide us with a right to take assignment and possession of your SanSai Japanese Grill, without the lessor's consent or any additional consideration. If we exercise this right, we will not have any liability for any obligations incurred prior to our occupancy. You agree to take whatever actions are necessary to accomplish such assignment and will, when you sign this Agreement, also sign the Collateral Assignment of Lease attached as Exhibit 3.2 B. If you lose your lease rights to the Premises in connection with any bankruptcy, the lessor will, on our request, enter into a new lease with us on essentially the same terms as the terminated lease;
- 6) Provide that the lessor consents to the use of the Marks, Trade Dress and other aspects of the System, as modified from time to time, and give us the right to enter the premises during normal business hours for purposes of inspection, to take steps to protect the Marks and Trade Dress and/or prevent/cure any default.

You won't execute a lease or sublease, or any modification or amendment, without our prior written consent, which we may grant, condition or withhold in our Business Judgment. We may, in our sole Business Judgment, elect to require you to enter into the negotiated lease directly with the Landlord of the Premises or with us or our designee as sub-tenant of the Premises, or we may assign our lease with the Landlord to you. You'll deliver a copy of the signed lease, sublease or lease assignment to us within five (5) days after it's signed.

7) In all future negotiations for amendments, modifications or renewals of the lease of the Premises you will notify us in writing and we reserve the right to retain an attorney to negotiate with the landlord, provided that we have no obligation to provide any legal services or to retain an attorney to represent you if you are in breach or default of the lease, or there is an alleged violation of the lease.

**3.3 SanSai Japanese Grill Design Standards.** You agree to comply with any standards, specifications and other requirements (the "Design Standards") that we furnish you for design, decoration, layout, equipment, furniture, fixtures, signs and other items for your SanSai Japanese Grill. Any changes from plans provided by us must be submitted to us for our consent, which may be provided in our Business Judgment. Your compliance with the Design Standards does not release you from your obligations to ensure that your SanSai Japanese Grill is designed, constructed and operated in compliance with all local, state, and federal laws, including (without limitation) the Americans with Disabilities Act ("ADA"). You agree to execute and deliver to us an ADA Certification in the form attached to this Agreement as Exhibit 3.3 before you open your SanSai Japanese Grill to confirm and certify that your SanSai Japanese Grill and any proposed renovations comply with the ADA and other requirements.

**3.4 Development for Your SanSai Japanese Grill.** You must select and employ a licensed contractor reasonably acceptable to us. You are solely responsible for the selection and work of any contractor selected and/or employed by you, even if referred by us.

**3.5 Equipment, Furniture, Fixtures and Signs.** You'll use only Designated Equipment and suppliers approved by us in the development and operation of your SanSai Japanese Grill as we may require. We and/or our Affiliates may be such approved suppliers.

**3.6 SanSai Japanese Grill Opening.** You will open your SanSai Japanese Grill for business within 4 months from signing your lease, and immediately upon our notice to you that: i) all of your pre-opening obligations have been fulfilled; ii) pre-opening training has been completed; iii) all amounts due us (and/or any Affiliate) have been paid; and iv) copies of all insurance policies (and payment of premiums), leases/subleases and other required documents have been received.

**3.7 Grand Opening Program - Marketing.** You agree to spend at least Five Thousand Dollars (\$5,000) on a grand opening marketing for your SanSai Japanese Grill. We'll furnish advice and guidance to you with respect to our Grand Opening Program that you agree to follow.

**3.8 Relocation of SanSai Japanese Grill Premises.** If you are in Good Standing, you may relocate your Store within your existing Territory (unless we waive this provision) with our prior written consent, which we may condition or withhold in our Business Judgment, including the requirement that you sign a General Release. Relocation costs and expenses will be borne solely by you. If your SanSai Japanese Grill is damaged, condemned or otherwise rendered unusable, or if, there is a change in the character of the location of your SanSai Japanese Grill sufficiently detrimental to its business potential to warrant relocation, you agree to relocate your SanSai Japanese Grill.

#### **4. COMPUTER HARDWARE AND SOFTWARE SYSTEMS.**

A. You must purchase, use, maintain and update at your expense the software, computer and other systems (including point-of-sale and back-office systems) meeting our specifications, as we may modify them. You agree to maintain your systems online to allow us access to system data and information. You agree to comply with our then-current Terms of Use and Privacy Policies and any other requirements regarding all computer and other systems, including Internet usage. Supplier and/or licensor charges for use, maintenance, support and/or updates of and to the required systems are payable by you upon receipt.

B. Neither we nor any of the Franchisor-Related Persons/Entities will have any liability and/or obligation (and neither you, nor any Affiliate of yours, will make any claims) about any failures, errors or any other occurrences relating to any computer or system hardware or software without an express written warranty from us, even if recommended or specified by us.

#### **5. TRAINING AND GUIDANCE.**

**5.1 Initial Orientation.** Prior to selecting and obtaining our approval for your site, we will schedule an orientation with you to provide you with materials and guidance related to selecting a site for your SanSai Japanese Grill, as well as leasing requirements and guidelines. We may also propose a site to you, which you must independently investigate as you are solely responsible for your selection, development and operation of the site.

##### **5.2 Training.**

A. You must select and have approved a site for your SanSai Japanese Grill before you begin our Sansai Japanese Grill Training Program (the "Training Program"). You and your initial SanSai Japanese Grill manager must successfully complete our Training Program before operating your SanSai

Japanese Grill. The Initial Franchise Fee covers the price of our Training Program for you and your initial SanSai Japanese Grill manager. You and your initial Store manager may, but need not attend our Training Program simultaneously. We may charge a reasonable fee for training of additional and/or subsequent managers. We can choose to eliminate or shorten training for persons previously trained or with comparable experience; however, any manager that has not successfully completed our Training Program must pass the then-current version of competency exam by a grade of 70% or higher.

B. The initial Training Program will be at a time and place, and for such period, as we specify. You'll be responsible for all travel, living, incidental and other expenses for you and your personnel attending the Training Program and any other voluntary or mandatory training programs, seminars or meetings, unless otherwise agreed to in advance in writing. We may charge a fee for any optional training programs.

C. If we, in our Business Judgment, determine that you and/or your initial manager have not successfully completed (or are not making satisfactory progress in) our Training Program we may either require that a substitute individual complete our Training Program or Terminate this Agreement. If we elect to Terminate, then we will refund to you the lesser of:

- 1) one-half (1/2) of the initial franchise fee paid to us; or
- 2) the initial franchise fee, less \$10,000.00 to cover our sales, training and other expenses;

and you and your Affiliates will return the Manuals and sign a General Release and a document acceptable to us that preserves the Post Termination Provisions of this Agreement. On performance of all of your obligations to us under this subsection, we will release you from your obligations to (a) operate the SanSai Japanese Grill subject to this Agreement and (b) pay royalties and Marketing Fund contributions for periods after the Termination date.

D. You and your manager must attend additional and/or refresher training programs, including national and regional conferences, conventions and meetings, as we may reasonably require to correct, improve and/or enhance your operations, the System and its members. You must obtain certification from a state approved provider as required by State agencies before opening, and you must maintain such certification at all times that your Store is operating. In addition, we can require successful completion of training by your personnel as specified by us from time-to-time.

**5.3 Guidance and Assistance.** We will provide guidance in the operation of your SanSai Japanese Grill. This guidance can be furnished in whatever manner we consider appropriate in our Business Judgment, including electronically, in writing or telephonically, through training programs and/or on-site consultations, among other methods. We may provide at your request on-site consultations at your SanSai Japanese Grill, based on notice, availability of personnel and your payment of reasonable travel, food, incidental and lodging expenses. We may elect to charge a reasonable fee for any such on-site consultations. If we believe in our Business Judgment that your operations warrant it, we can require that a manager or other person designated by us (and compensated by you) be placed in your SanSai Japanese Grill to supervise its day-to-day operations until operations meet System standards.

**5.4 Manuals.** During the term of the Franchise, we will loan you (or allow you electronic or other access to) one copy of the Manuals. If we advise you that all or part of the Manual or other specifications, standards and operating procedures are posted on a Website, you agree that it is your responsibility to monitor the Website for any changes, additions or deletions in the information provided. You will continuously comply, at your sole expense, with all provisions of, and additions/deletions/changes to, the Manuals. Any such additions/deletions/changes will take precedence over all prior communications. Mandatory specifications, standards and operating procedures prescribed from time to time by us in the Manuals, or otherwise communicated to you electronically or otherwise, are

a part of this Agreement. In the event of a dispute, the master Manuals maintained at our office will control. The Manuals and the information and data that they contain will at all times remain our sole and exclusive property. It is your sole responsibility to establish, with respect to your employees, appropriate personnel and security-related policies and procedures (provided that we always have the right to terminate your rights by declaring a breach under this Agreement for conduct by you which threatens the goodwill associated with the Marks.) You and we acknowledge and agree that we neither dictate nor control labor or employment matters for you and your employees, including (but not limited to) hiring, firing and/or discipline of employees, nor control the manner and means by which they carry out their duties. You and we agree that neither of us are, or shall be deemed to be, a joint employer with the other and you will indemnify us with respect to any such or similar claims against us.

## **6. MARKS.**

**6.1 Goodwill and Ownership of Marks.** You have a non-exclusive right to use the Marks and only as expressly authorized by us under this Agreement. We have all rights in and to the Marks. All goodwill belongs exclusively to us, and you will not obtain any goodwill in the Marks as a result of this Agreement, your operation of the Franchise or for any other reason. Any unauthorized use of the Marks is a breach of this Agreement and an infringement of our proprietary rights. You agree that if you breach any obligation regarding the Marks, we would have no adequate remedy at law and that we will be entitled to equitable relief. You won't oppose, or engage in any acts or omissions inconsistent with, our rights in and to the Marks. This Agreement applies to all trademarks, service marks and other commercial symbols that we may authorize you to use throughout its term.

**6.2 Limitations and Use of Marks.** You will use the Marks as the sole identification for your SanSai Japanese Grill. You will not use any Mark, or modified version or derivative of a Mark, or any other mark or form of commercial identification confusingly similar to the Marks or Trade Dress, as part of any business or trade name or in any other manner not expressly authorized by us in advance and in writing. Prior to adoption and/or use, any proposed corporate and/or trade name must be approved by us in our Business Judgment. You'll give such trademark and other notices (including notices of independent ownership) as we direct and will, at your expense, obtain fictitious or assumed name registrations as may be required under law. You will display the Marks as required by us and will not use the Marks so as to negatively affect their goodwill. You won't use any Mark in connection with the performance or sale of any unauthorized services or products or at any location or in any other manner not expressly authorized in writing by us.

**6.3 Notification of Infringements and Claims.** You'll take such actions as we consider important in our Business Judgment to protect the Marks. You will not take any action that jeopardizes our interests in, or the validity or enforceability of, the Marks. You agree to immediately notify us of any apparent or actual infringement of, or of any challenge to your use of, the Marks. You will not communicate with any third party with respect to such a claim. We will take such action as we deem appropriate in our Business Judgment. As owner of the Marks, we have the exclusive right to control any settlement, litigation or proceeding arising out of or related to any such matters.

**6.4 Discontinuance of Use of Marks.** You agree to comply at your expense with any directions from us to discontinue, modify, substitute or add Marks. We cannot and do not make any guaranty that a modification, discontinuance or otherwise may not be required for any reason. In such event, we will have no liability or obligation to you. You agree to make no claim in connection with any modification, discontinuance or other action, and/or with any dispute regarding the Marks. There is always a possibility that there might be one or more businesses using a name and/or marks similar to ours and with superior rights. We urge you to research this possibility, using telephone directories, local filings and other means, prior to signing any documents or making any payments or commitments

**7. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION.**

**7.1 Independent Contractor.** You will always identify yourself to all persons and in all dealings of your SanSai Japanese Grill as an independent owner under a SanSai franchise, clearly indicating that your Franchised Business is separate and distinct from our business. You will include notices of independent ownership on such forms, business cards, stationery, advertising, signs and other materials as we require from time to time. Subject to the requirements of this Agreement and the Manuals, you'll have complete operational control of your business, including the right to hire and fire each employee.

**7.2 No Liability for Acts of Other Party.** You will not represent that your and our relationship is other than that of independent Franchisor and Franchisee. Neither you nor we will have any liability under any acts, omissions, agreements or representations made by the other that are not expressly authorized in writing.

**7.3 Taxes.** Payment of all taxes related to your Franchised Business is your sole responsibility. We have no liability for any taxes on the sales made and/or business conducted by you (except for any taxes we are required by law to collect from you with respect to purchases from us).

**7.4 Responsibility, Indemnity, etc.**

A. You will indemnify and hold us and all of the Franchisor-Related Persons/Entities harmless from all fines, suits, proceedings, claims, demands, actions, losses, damages, costs, fees (including attorneys' fees and related expenses) and/or any other liability of any kind or nature, however arising, growing out of or otherwise connected with and/or related to any act, error and/or omission of yours (including, but not limited to, your ownership and/or management of your SanSai Japanese Grill and/or any transfer of any interest in this Agreement or your SanSai Japanese Grill). We'll have the right to control all litigation, and defend and/or settle any claim, against and/or including us and/or the Franchisor-Related Persons/Entities, or affecting our and/or their interests, in such manner as we deem appropriate in our Business Judgment, without affecting our rights under this indemnity.

B. Any goods and/or services provided by us, the Franchisor-Related Persons/Entities and/or any "approved" person/company/referral are provided without any warranties, express or implied, **THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE BEING EXPRESSLY DISCLAIMED**, absent a specific written warranty expressly provided in connection with a particular item or service.

**I have read Sec. 7.4, understand it, and agree with it.**  
**Your Initials:** \_\_\_\_\_ / \_\_\_\_\_

**7.5 Disclosure.** We can disclose, in offering circulars and other places we designate, and/or as required by law, any information relating to your SanSai Japanese Grill, including your name, any address and/or phone number(s), revenues, expenses, results of operations and/or other information. Any disclosure by us shall be for reasonable business purposes.

**8. CONFIDENTIAL INFORMATION; EXCLUSIVE RELATIONSHIP.**

**8.1 Confidential Information - Non-Disclosure and Non-Use.**

A. "Confidential Information" includes all information (current and future) relating to the operation of a SanSai Japanese Grill or the System, including, among other things, all: i) Manuals,

training, techniques, processes, policies, procedures, systems, data and know how regarding the development, marketing, operation and franchising of SanSai Japanese Grills; ii) designs, specifications and information about Products and Services and iii) all information regarding customers and suppliers, including any statistical and/or financial information and all lists.

"Confidential Information" is not intended to include any information that:

- 1) is or subsequently becomes publicly available other than by breach of any legal obligation,
- 2) was known by you prior to you becoming an SanSai Franchisee, or
- 3) became known to you other than through a breach by you of a legal obligation.

You agree that we own and control all domain names and URLs ("Uniform Resource Locator") relating to any SanSai Businesses, as well as all information, lists and data related to past, present and future customers of your SanSai Business. Your only interest in any of this proprietary and/or Confidential Information is the right to use it pursuant to this Agreement. You have the burden of proof and of going forward in any dispute between you and us involving the proprietary or confidential nature of any information.

B. Both during and for five (5) years after the term of this Agreement (except for trade secrets, which shall be subject to your permanent obligation), you agree:

- 1) to use the Confidential Information only for the operation of your SanSai Business under a SanSai Franchise Agreement;
- 2) to maintain the confidentiality of the Confidential Information;
- 3) not to make or distribute, or permit to be made or distributed, any unauthorized copies of any portion of the Confidential Information;
- 4) not to alter, appropriate, use or distribute any SanSai Equipment designs or specifications, or any substantially similar designs or specifications; and
- 5) to implement all prescribed procedures for prevention of unauthorized use or disclosure of the Confidential Information.

C. You agree to disclose to us all ideas, techniques, methods and processes relating to a SanSai Japanese Grill that are conceived or developed by you and/or your employees. We shall have the perpetual right to use, and to authorize others to use, such ideas, etc., without payment to you.

D. You'll cause each of your employees, agents, principals and Affiliates to sign a form of confidentiality agreement containing substantially the same provisions as are set forth in this Section and as may be approved by us. You will provide us copies of the same upon request. A sample copy of an employee confidentiality agreement is attached as Exhibit 8.1.

E. If your SanSai Japanese Grill is to be located and/or operated within, in conjunction with or as part of another business, you will first arrange for the other business and its personnel (as specified by us) to enter into appropriate arrangements to protect our Intellectual Property and other interests, including (but not limited to) signing of agreements with us regarding non-competition, confidentiality, non-solicitation of employees and customers and indemnity/insurance arrangements.

**8.2 Exclusive Relationship, Restrictions on Similar Businesses During Franchise Term and After Transfer, Termination, Expiration, Repurchase, etc.**

A) In Term Restrictions: During the term of this Agreement and any successor franchise, neither you, nor any Affiliate of yours, nor any shareholder, member or partner of yours (if a business entity), nor any Immediate Family member of any of the foregoing, will, without our prior written consent, which may be withheld or conditioned in our Business Judgment:

1) have any direct or indirect interest anywhere in any Similar Business, or in any entity awarding franchises or licenses or establishing joint ventures or other business enterprises for the operation of Similar Businesses; or

2) perform any services anywhere as an employee, agent, representative or in any capacity of any kind for any Similar Business, or for any entity awarding franchises or licenses or establishing joint ventures to operate Similar Businesses; or

3) employ or try to employ any employee of ours, of a Franchisor-Related Person/Entity or of any other SanSai Franchisee, without providing notice to the respective employer and obtaining their prior written consent.

If you violate Section 8.2 (A) during or after the term of this Agreement, then our remedies will include (but not be limited to) payment to us by you of Two Hundred and Fifty Thousand Dollars (\$250,000.00), such amount having been mutually agreed on by you and us as reasonable and not as a penalty in view of the damages potentially caused by such a breach and the difficulty in accurately determining such damages.

B. Post Term Restrictions: For two (2) years after the later of any one of the following terminating events: i) any transfer, Repurchase and/or Termination of this Agreement; ii) the expiration of this Agreement (if a Successor franchise or renewal term is not granted); and/or iii) the date on which you stop operating your final SanSai Japanese Grill or using the Marks and/or System; all of the persons and entities named in Section 8.2 (A), above:

1) shall not accept or solicit any person, firm or company that has been a SanSai customer during the period twelve (12) months prior to termination, nor try to divert any such customers from any SanSai Japanese Grill or SanSai enterprise of any kind (including any operations owned by any Franchisor-Related Persons/Entity); and

2) shall be subject to all of the restrictions stated in Section 8.2 (A), above, with respect to Similar Businesses located, and/or services to be performed, in the Territory and in the marketing area of any Traditional SanSai Japanese Grill ("Marketing Area"). For the purposes of this Agreement, a Marketing Area for a Franchisee-operated Store is the territory defined by such Franchisee's franchise agreement. For a Store owned by us or an Affiliate, or if a Franchisee does not have a designated Territory, the Marketing Area is defined as the geographic area within a five (5) mile radius of any Traditional SanSai Japanese Grill. However, the two (2) year period following such terminating event shall be extended for an additional one (1) year if, during the first two (2) years a SanSai Japanese Grill is located in a portion of your former SanSai Japanese Grill Marketing Area. You and we intend to provide any such newly established SanSai Japanese Grill a reasonable period of time in which to launch its operations in a new market without unfairly being competitively disadvantaged by having a party familiar with and experienced in the SanSai System operating in the same Marketing Area.

3) You are responsible for learning whether or not a particular location is within a SanSai Japanese Grill Marketing Area by providing us a written request for such information. Any and all determinations that we make regarding the Marketing Area will be final and binding on you.

4) You and we have expressly bargained and agreed that it is your obligation under this Agreement to ensure the compliance of each of the persons identified in Section 8.2 (A), with the restrictions described in this Section 8.2. The foregoing notwithstanding, we shall use reasonable judgment in evaluating whether or not the conduct of an Immediate Family member warrants our exercising any rights under this provision, considering your actual relationship to such member and his/her activities, among other factors. The restrictions of this Section do not apply to the ownership of shares of a Similar Business (of a class of securities listed on a stock exchange or traded on the over-the-counter market) which represent less than three percent (3%) of the number of shares of that class issued and outstanding.

5) You and we share a mutual interest in ensuring compliance with the limitations on competition described in this Section 8.2. A SanSai Franchisee's non-compliance with these restrictions would damage you, us and other SanSai Franchisees and unfairly limit reasonable expansion alternatives open to us and SanSai System members. You acknowledge and agree that such protections can enhance the value of the SanSai System to you as a Franchisee, represent a reasonable balancing of your and our respective interests and have been expressly bargained for. You confirm that you possess valuable skills unrelated to the Franchised Business and have the ability to be self-supporting and employed regardless of the competitive restrictions described in this Section 8.2. You and we also acknowledge that the restrictions of this Article 8 will not generally prevent you from practicing a lawful profession, trade, or business and are limited to the express restrictions on solicitation of customers and operation of a Similar Business in certain limited geographical areas as detailed herein.

6) If you violate any of the foregoing restrictions, our remedies will include (but not be limited to) the right to obtain equitable relief and to receive all profits generated in connection with the operation of any Similar Business until the date you cease to violate such restrictions. All competitive restrictions will be extended for the length of time that any breach of the Post Termination Obligations is ongoing. If any of the restrictions of this Section are determined to be unenforceable to an extent because of excessive duration, geographic scope, business coverage or otherwise, they will be reduced to the level that provides the greatest protection to us and the SanSai System, but which is still enforceable, notwithstanding any choice-of-law or other provisions in this Agreement to the contrary.

**I have read Sec. 8.1 and 8.2, understand them, and agree with them.**

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

## **9. FEES.**

### **9.1 Initial Franchise Fee, Releases, etc.**

A. An initial franchise fee of Thirty Five Thousand Dollars (\$35,000) is fully earned and payable to us on signing of this Agreement. The fee is entirely nonrefundable, with the limited exceptions noted elsewhere in this Agreement.

B. The language of the General Release, attached as Exhibit 1.2 is incorporated in and effective upon the signing of this Agreement, excepting only those claims solely related to the offer and sale of this Franchise where such releases are expressly prohibited by applicable law.

C. As a condition to the occurrence of any of the following events (the "Events"), you and/or any affiliate/owner of yours will sign a General Release, excepting only (where such releases are expressly prohibited by applicable law) those claims solely related to the offer and sale of the new Franchise:

- 1) the awarding of any future, additional or other franchise;
- 2) the renewal of this franchise and/or awarding of a successor franchise; any assignment or transfer (as defined in this Agreement) by you and/or any affiliate/owner of you; and/or
- 3) any other event described in this Agreement as being conditioned in whole or in part upon such a General Release (as defined in Article 22).

If we fail to request a General Release(s), as applicable, at the occurrence of any of the foregoing Events, then the occurrence of the Event itself shall constitute the grant of such General Release.

D. You and we have agreed on these provisions considering that: i) the releases to be provided in the future will be effective as of future dates only, ii) the release requirement generally is triggered by a discretionary choice made by you to receive various future benefits (e.g. an award of an additional, successor, assignment franchise, etc.), iii) you providing a release to us (and we informing you of possible known claims by us) is a practical business approach if you and/or we propose to change, extend, expand or otherwise modify our relationship at a future date. You and we agree that setting mutual expectations for the receipt of such future releases and assenting to grant them now is more productive than being surprised by such requirements at a later point in our relationship.

## **9.2 Royalty - Percentage and Minimum, Payment Dates.**

A. You shall pay us the then current minimum continuing royalty amount or the then current percentage royalty rate of the "Gross Volume" received or earned by you during the preceding royalty period, whichever amount is greater, in accordance with the following schedule:

Year 1: 3% of Gross Volume or \$500 per week whichever is greater  
Year 2: 4% of Gross Volume or \$750 per week whichever is greater  
Year 3 and thereafter, 5% of Gross Volume or \$1,000 per week whichever is greater.

The current percentage and minimum continuing royalties are subject to the inflation adjustment in Section 9.6, below. Minimum and/or percentage royalties are to be paid on Monday of each week after each royalty period. For Franchisees purchasing a new SanSai Japanese Grill, royalty payments are due commencing with the Royalty Period which is the earlier of three months after you begin SanSai Japanese Grill operations, or nine months after the date of this Agreement. Notwithstanding the above, Franchisees purchasing a SanSai Japanese Grill formerly owned and operated by Franchisor-Related Persons/Entities shall commence payment of royalties upon the Closing Date as that term is defined in our then current form of Asset Purchase Agreement. The current Royalty Period is from Monday through Sunday, but the time covered by a Royalty Period may be changed by us in our Business Judgment to any other period. If such change is made, any amounts, including minimums, which are paid based on, or calculated in relation to, a royalty period will be appropriately adjusted, as will any related matters. You will use your best efforts to maximize Gross Volume.

B. We can require that various Designated Equipment, Products and/or Services only be supplied by us, a Franchisor-Related Person/Entity and/or a designee of ours and we and/or one or more Franchisor-Related Person/Entities may derive additional revenues (and possibly profits) as a result of your purchases of such Designated Equipment, Products/Services. You and we have agreed on the foregoing royalty rates based, in part, on your commitment not to use and/or obtain any such Designated Equipment, Products and/or Services from any source other than the source we require. The possibility of such arrangements, and your and our mutual expectations that you will faithfully observe your obligations to purchase such items as provided herein, and that the provisions of this subsection will be fully enforceable, form part of the underlying financial and business model on which your relationship with us, and the economic provisions of this Agreement, including Royalty rates, are based.

Therefore, if you use and/or obtain such Designated Equipment, Products and/or Services from any source other than the source we require, (or if such restrictions are unenforceable for any reason), you will pay us a royalty of (a) twenty percent (20%) of the Gross Volume attributable to sales related to your purchase, use or otherwise of items, or from suppliers, in violation of the provisions of this subsection, or (b) if your violation of the provisions of this subsection cannot be easily related to sales of specific items by you, ten percent (10%) of the Gross Volume of your SanSai Japanese Grill, in each case during any period in which you are in violation of the provisions of this subsection, subject to the royalty described in Section 9.2 A., which will be regarded as a minimum against such percentage. Such increased royalty is intended by you and us to preserve a basic economic premise of this Agreement and is in addition to all other remedies available to us under this Agreement, at law and in equity for a breach of obligation. If an audit determines that you have used and/or obtained such Designated Equipment, Products and/or Services from any other source, you will pay the costs of such audit.

**9.3 Electronic Funds Transfer.** You must participate in our then-current electronic funds transfer and reporting program(s). All royalties owed and any other amounts designated by us must be received or credited to our account by pre-authorized bank debit by end of business on the Monday after a royalty period. You authorize us to debit your account by an amount equal to the minimum continuing royalty if a royalty payment is not received when due, and to collect the balance of any amounts owed in accordance with this Agreement. Any such non-payment or late payment of the actual amount due is a breach of this Agreement. We may also require that any amounts owed or to be owed to us and/or any of the Franchisor-Related Persons/Entities be paid by charges against your credit card, and you will provide us with appropriate authorizations on our request.

**9.4 Interest and Late Fees on Late Payments and/or Reports.** All amounts you owe us and/or our Affiliates bear interest at the highest applicable legal rate for open account business credit, but not to exceed one and one-half percent (1.5%) per month. Additionally, we may require you to pay an administrative late fee of Fifty Dollars (\$50.00) for each late report and/or late payment. The foregoing amount is subject to inflation adjustment under Section 9.6, but will not exceed any applicable legal restrictions. If we experience repeated late payments by you, then we may require you to pay all amounts by cashier's check.

**9.5 Application of Payments, Set-Offs etc.** As to you and/or any Affiliate of yours, we can:

A. apply any payments received to any past due, current, future or other indebtedness of any kind in our Business Judgment, no matter how payment is designated by you, except that Marketing Fund contributions may only be credited to the Marketing Fund;

B. set off, from any amounts that may be owed by us, any amount owed to us or any marketing fund; and

C. retain any amounts received for your account (and/or that of any Affiliate of yours), whether rebates from suppliers or otherwise, as a payment against any amounts owed to us.

We can exercise any of the foregoing rights in connection with amounts owed to or from us and/or any Franchisor-Related Person/Entity.

**9.6 Inflation Adjustments.** Amounts specified as being subject to inflation adjustment may be adjusted by us annually in our Business Judgment in proportion to the changes in the Consumer Price Index (U.S. Average, all items) maintained by the U.S. Department of Labor (or any successor index) as compared to the previous year. We will notify you of any such percentage adjustment.

**9.7 Mandatory Convention Attendance, Possible Fee.** You are required to attend all meetings designated by us as mandatory (including without limitation the SanSai annual convention), unless otherwise excused by us. One management-level individual shall attend on behalf of each of your

SanSai Japanese Grills. We will not charge any attendance fee for one (1) person per Store for each mandatory meeting. You will bear all other costs of attendance. We may elect to charge a Convention Support Fee not to exceed \$500.00 (subject to inflation adjustment), per SanSai Japanese Grill per year.

## **10. YOUR SANSAI JAPANESE GRILL — IMAGE AND OPERATION.**

### **10.1 System Compliance, Regular Upgrading.**

A. You agree to operate your SanSai Japanese Grill in full compliance with the then-current SanSai System and the Manuals. You agree to promptly comply at your expense with all then-current requirements, standards and operating procedures relating to every aspect of an SanSai Japanese Grill and its operations (including without limitation use of specified equipment, Products and Services, computer hardware and software; supplier programs and operating systems; signs, logos, designs and advertising/marketing materials and forms; website designs and formats).

B. You will maintain your SanSai Japanese Grill at your expense according to all SanSai standards for new Stores and promptly undertake all changes as are required by us from time to time in our Business Judgment. If you fail to do so, we may do so on your behalf. You agree to reimburse us within ten (10) days of our delivery of an account statement. You will not make any alterations to your SanSai Japanese Grill or its appearance as originally approved by us without our prior written approval.

C. You agree at your sole expense that you and your employees will wear then-current SanSai career apparel.

### **10.2 Designated Equipment, Products, Services and/or Suppliers.**

A. Your SanSai Japanese Grill will purchase, use and offer such Designated Equipment, Products and Services, as are specified by us from time to time. We may designate single or multiple suppliers for any given item or service and may concentrate purchases with one or more suppliers in our Business Judgment. Such suppliers may include, and may be limited to, us and/or companies affiliated with us. You will not offer or deal with any products or services not approved by us. If we disapprove a particular item, you won't use it.

B. Designation of a supplier may be conditioned on factors established by us in our Business Judgment, including without limitation performance relating to frequency of delivery, standards of service, and payment or other consideration to us or parties designated by us. We may approve, or revoke or deny approval, of particular items or suppliers in our Business Judgment.

C. You can request the approval of an item, service or supplier by notifying us in writing and submitting such information and/or materials we may request. We may require you to pre-pay any reasonable charges connected with our review and evaluation of any proposal. We'll notify you of our decision within a reasonable time.

D. You will not make any claims against us with respect to any supplier and/or related Products/Services (and/or our designation of, or our relationship with, any supplier/Products/Services). Claims with respect to any supplier-related and/or similar matters shall be made only against the supplier in question. You will provide us with written notice prior to taking any action in connection with such a claim. We will use diligent efforts to assist you in resolving any disputes with suppliers approved and/or designated by us.

**10.3 Purchasing Cooperative.** We may require that you join and make required purchases/leases through the SanSai purchasing cooperative or other entity designated by us. Such entity may adopt its own bylaws, rules, regulations and procedures, subject to our consent in our Business Judgment. We can require each such entity to submit monthly and annual financial statements,

and can require that the annual financial statements be audited, all at the expense of such cooperative. Your failure to timely pay amounts due to, or comply with the bylaws, rules, regulations and procedures of such cooperative is a breach of this Agreement. We may offset against amounts we owe to you the amount of your unpaid cooperative obligations.

**10.4 Compliance with Laws and Ethical Business Practices.**

A. You'll operate your SanSai Japanese Grill in full compliance with all applicable laws, ordinances and regulations. We make no representations or assurances as to what (if any) licenses, permits, authorizations or otherwise may be required in connection with your SanSai Japanese Grill. It is your sole responsibility to identify and obtain all authorizations necessary to your operation. You'll maintain high standards of honesty, integrity, fair dealing and ethical conduct in your business activities. You'll notify us in writing within five (5) days of the commencement of any proceeding and/or of the issuance of any governmental order or action impacting you and/or your SanSai Japanese Grill.

B. You agree to comply and/or assist us in our compliance efforts, as applicable, with any and all laws, regulations, Executive Orders or otherwise relating to antiterrorist activities, including without limitation the U.S. Patriot Act, Executive Order 13224, and related U.S. Treasury and/or other regulations. In connection with such compliance efforts, you agree not to enter into any prohibited transactions and to properly perform any currency reporting and other activities relating to your Franchised Business as may be required by us or by law. You are solely responsible for ascertaining what actions must be taken by you to comply with all such laws, orders and/or regulations, and specifically acknowledge and agree that your indemnification responsibilities as provided in Section 7.4 pertain to your obligations hereunder. You agree to sign and deliver to us, along with a signed copy of this Agreement, the attached Exhibit 10.4, "Executive Order 13224 and Related Certifications".

C. In circumstances designated by us in the Manuals, or where otherwise reasonably required by us, you will give those customers who have made complaints appropriate refunds or otherwise deal with such complaints as we reasonably direct, you and we agreeing that such responses to customer complaints are a vital element in maintaining and enhancing the goodwill associated with the Marks. Policies and procedures (including, but not limited to, refunds and credits) adopted by us for SanSai Japanese Grills owned and/or operated by us and/or our Affiliates will be conclusively presumed to be reasonable.

D. In the marketing and operation of your SanSai Japanese Grill you will use each of, and only, the contracts, waivers and/or other forms and/or materials as are designated by us from time to time. We may provide you with template or sample forms of such items but it is your responsibility to have all such items which are to be used with prospective and/or actual clients/customers reviewed, at your expense, by an attorney licensed to practice law in the state(s) where your SanSai Japanese Grill will be located and/or operate, for compliance with all applicable state legal requirements. We make no warranty or representation that any contracts, waivers and/or other forms and/or materials, whether supplied by us or otherwise, are in compliance with the laws of any particular state(s). Prior to opening, and prior to use of any such items to be used with prospective and/or actual clients/customers, you will provide us, at your expense, with a letter from such attorney to us indicating that he/she has completed such review and that such items to be used with prospective and/or actual clients/customers meet, or have been modified to comply with, all applicable state legal requirements.

**Your initials:** \_\_\_\_\_ / \_\_\_\_\_

**10.5 Management and Personnel of Your SanSai Japanese Grill, Training.**

A. You will keep us advised, in writing, of all management and non-management personnel involved in the operation or otherwise of your SanSai Japanese Grill. Your SanSai Japanese Grill must be personally managed on a full-time basis by a person who has successfully completed mandatory training and met then-current standards as specified by us. We require that you be personally and actively involved in the overall management of your SanSai Japanese Grill on an ongoing basis, since absentee management involves a greater risk of failure. We recommend that both you and your initial Manager attend our training.

B. You are solely responsible for the hiring and management of your SanSai Japanese Grill employees, for the terms of their employment and for ensuring their compliance with any training or other employment related requirements established by us from time to time in our Business Judgment.

C. We have the right to deal with the manager regarding routine operations and reporting requirements. You will ensure that our records for your SanSai Japanese Grill managers/supervisors are kept current.

#### **10.6 Insurance.**

A. You'll maintain in force policies of insurance issued by carriers approved by us covering various risks, as specified by us from time to time. We may specify the types and amounts of coverage required under such policies and require different and/or additional kinds of insurance at any time, including excess liability insurance. Each insurance policy must: i) name us and our Affiliates as additional named insureds; ii) contain a waiver of all subrogation rights against us, our Affiliates and any successors and assigns; iii) and provide thirty (30) days' prior written notice to us of any material modifications, cancellation, or expiration of such policies.

B. If you fail to maintain required insurance coverage, we may obtain such insurance coverage on your behalf. You will pay us on demand any costs and premiums incurred by us.

C. Current insurance requirements include the following and are subject to change by us: i) comprehensive general liability insurance against claims for bodily and personal injury, death and property damage caused by, or occurring in conjunction with, your SanSai Japanese Grill; ii) all risk property and casualty insurance for the replacement value of your SanSai Japanese Grill and all associated items; and iii) business interruption insurance providing for continued payment of all amounts due us and/or any Affiliate of ours under this Agreement.

**10.7 Program Participation.** We may condition your participation in any program, or your receipt of any SanSai System benefits, on your being in Good Standing.

**10.8 Continued Payment of Royalties, etc. During Closure.** You will immediately notify us of any closure of your SanSai Japanese Grill for any reason and submit a plan for re-opening. All financial obligations of yours to us or to any Franchisor-Related Person/Entity (including royalties) will remain in effect during such closure period. Any such closure not authorized and/or excused by us shall be a default of this Agreement, entitling us to all remedies available hereunder, at law and in equity.

**10.9 Customer Satisfaction, Quality Controls, etc.** We may institute various programs for auditing customer satisfaction and/or other quality control measures. We may require you to pay for such program costs. You agree to request your customers to participate in any surveys performed by or on behalf of us, using forms prescribed by us from time to time.

**10.10 Franchisee Advisory Council and Selection.** We may elect in our Business Judgment to form a Franchisee Advisory Council ("FAC") to provide Input to us. The FAC will consist of Franchisees in Good Standing, each FAC Franchisee member shall represent the interests of the Traditional SanSai Japanese Grills in their distinct geographical region (the "Region"). FAC members will

be elected by a majority of the Traditional SanSai Japanese Grills in Good Standing situated in their respective Region. The geographical area of each Region will be established by us in our Business Judgment, with due consideration given to achieving a representative group of Stores for each Region. The number of Regions and their respective boundaries will be subject to adjustment from time to time to reflect growth and Store population changes, among other appropriate factors. Each Store, whether franchised or non-franchised, will be entitled to one (1) vote, but in order to vote franchised Stores must be in Good Standing. We will always have the right to appoint one representative of ours to participate in all FAC meetings and any other FAC activities, as a non-voting participant. The FAC may adopt its own bylaws, rules, regulations and procedures, subject to our consent in our Business Judgment. While we're not required to do so except in those specific instances stated in this Agreement, if we submit any matters for approval to an FAC and approval is granted, the approval will be binding on you.

## **11. MARKETING.**

### **11.1 Marketing Fund.**

A. We may elect in our Business Judgment to establish an advertising, publicity and national marketing fund (the "Marketing Fund") to promote SanSai Japanese Grills and the Brand. You must contribute to the Marketing Fund the greater of two percent (2%) of Gross Volume or a minimum Marketing Fund Contribution of Three Hundred Dollars (\$300) per Royalty Period (currently weekly), subject to inflation adjustment. Such percentage and minimum marketing contributions will be calculated and payable at the same time and in the same manner as percentage and minimum royalties.

B. We have sole discretion over all matters relating to the Marketing Fund, operational, marketing or any other matter (consistent with its purposes and the provisions of this Agreement). The Marketing Fund may be used for (among other things) product development; signage; creation, production and distribution of marketing, advertising, public relations and other materials in any medium, including the Internet; administration expenses; brand/image campaigns; media; national, regional and other marketing programs; activities to promote current and/or future SanSai Japanese Grills and the Brand; agency and consulting services; research; any expenses approved by us and associated with FAC or other Franchisee advisory groups. Among other things, Marketing Fund Contributions may be used for website development/operation and to pay Internet, Intranet, URL, 800 or similar number, and other charges, fees and/or expenses. A brief statement regarding the availability of SanSai franchises may be included in advertising and other items produced using the Marketing Fund.

C. We and/or any Franchisor-Related Persons/Entities can provide goods, services, materials, etc. (including administrative services and/or "in-house advertising agency" services) and be compensated and/or reimbursed for the same by the Marketing Fund, provided that any such compensation must be reasonable in amount. We can arrange for goods, services, materials, etc. (including administrative services) to be provided by independent persons/companies and all related costs, fees, etc. will be paid by the Marketing Fund. While we're not required to do so, if we have formed an FAC and submit any matters for approval to the FAC and approval is granted by a majority of the members, the approval will be binding on you.

D. The Marketing Fund will be accounted for separately and may be used to pay all administrative and other costs of the Marketing Fund related to its activities and purposes and/or as authorized by the relevant Franchise Agreements. All taxes of any kind incurred in connection with or related to the Marketing Fund, its activities, contributions to the Marketing Fund and/or any other Fund aspect, whether imposed on us, the Marketing Fund or any other related party, will be the sole responsibility of the Marketing Fund. We will prepare financial statements for the Marketing Fund annually, which will be furnished to you upon written request. Such statements may be audited and any related accounting/auditing costs will be paid by the Marketing Fund. Funds in the Marketing Fund must be expended, prior to termination of the Marketing Fund, only for the purposes authorized by the relevant Franchise Agreement(s). No profit, gain or other benefit will directly accrue to us from the Marketing

Fund. All interest earned on monies contributed to, or held in, the Marketing Fund will be remitted to the Marketing Fund and will be subject to the restrictions of the relevant Franchise Agreement(s).

E. Financial management of the Marketing Fund will be our sole responsibility. We may in our Business Judgment:

- 1) compensate ourselves and/or any Franchisor-Related Person/Entity for salaries, administrative costs, overhead and other expenses incurred in Marketing Fund related programs/activities, including but not limited to production, research, insurance, and collection expenses, as well as any legal expense related to the activities and purposes of the Marketing Fund (consistent with the provisions of this Agreement);
- 2) charge the Marketing Fund for attorneys' fees and other costs related in any way to claims against us and/or any of the Franchisor-Related Persons/Entities regarding the Marketing Fund. However, we shall be required to reimburse the Marketing Fund for any attorneys' fees and/or costs paid by the Marketing Fund in connection with any action in which we are finally found to have acted unlawfully or to be guilty of wrongdoing with respect to the Marketing Fund;
- 3) spend in any fiscal year an amount greater or less than the aggregate contributions to the Marketing Fund in that year, and the Marketing Fund may borrow from us or other lenders to cover deficits of the Marketing Fund or cause the Marketing Fund to invest any surplus;
- 4) collect for remission to the Marketing Fund any advertising or promotional amounts offered by any supplier based upon franchisee purchases. Any such contributions, whether or not made with respect to purchases by you, will not count toward your required Fund contributions;
- 5) pay the advertising, marketing, public relations and related costs involved in any co-branding, dual franchising or other such multi-sponsor programs;
- 6) revise marketing and other programs, and/or make expenditures from the Marketing Fund, to take account of cultural and other differences (and/or we may delegate management of a portion of the Marketing Fund in connection therewith);
- 7) defer, waive and/or compromise claims for current/future contributions to, and/or claims against or with respect to, the Marketing Fund and fund the same with the Marketing Fund;
- 8) take legal or other action against any Franchisee in default of their obligations to the Marketing Fund;
- 9) merge the Marketing Fund with any marketing fund otherwise established for SanSai Japanese Grills for use as described in this Section 11.1, so long as the restrictions of the relevant Franchise Agreement(s) continue to apply to contributions made by Franchisees under such arrangements;
- 10) maintain Marketing Fund assets in one or more accounts designated as "trust accounts" for purposes of protecting such assets from claims of third-party creditors, (but such action shall not be deemed to create any "trust," "fiduciary relationship" or similar special arrangement);
- 11) incorporate the Marketing Fund or operate it through an entity separate from us, which is subject to all rights and duties of ours relating to the Marketing Fund;
- 12) take such other actions in connection with the Fund as we consider to be appropriate and as are consistent with the provisions of this Section 11.1.

F. You acknowledge and agree that we have no obligation to ensure that expenditures by the Marketing Fund are or will be proportionate or equivalent to contributions to the Marketing Fund by SanSai Japanese Grills operating in any geographic area, or that any SanSai Japanese Grill will benefit directly, indirectly or in proportion to its contribution to the Marketing Fund. We have no obligation to cause other SanSai Japanese Grills to contribute to the Marketing Fund or engage in local marketing, and we may permit a Franchisee to make direct advertising expenditures in place of contributions to the Marketing Fund. You understand that some SanSai Franchisees may have Marketing Fund obligations that are different from yours, if any.

G. Neither we (nor any of the Franchisor-Related Persons/Entities, including the FAC) will be liable for any act or omission in connection with the Marketing Fund which is consistent with this Agreement or which is done in subjective good faith. You and we expressly agree that none of the relationships with you in connection with the Marketing Fund are in the nature of a "trust," "fiduciary" or similar special arrangement.

H. Subject to the express requirements of this Agreement that your contributions will only be spent as authorized herein, you agree that we may deny access to any and all programs and/or materials created by, and benefits of, the Marketing Fund to you and to any Franchisees who are not in Good Standing.

**11.2 Your Participation in the Marketing Fund.** You agree to participate in all Marketing Fund programs. You have the right to set your own prices, except that we may specify maximum prices for goods or services to the greatest degree permitted by law. You will fully honor all coupons, price reduction and other promotions/programs as directed by us. The Marketing Fund may furnish you with marketing, advertising and promotional materials; however, we may require that you pay the cost of producing, shipping and handling for such materials.

**11.3 Your Local Store Marketing Activities.**

A. You must spend for local advertising and promotion of your SanSai Japanese Grill each month the greater of One Thousand Five Hundred Dollars (\$1,500) or three percent (3%) of Gross Volume, subject to inflation adjustment as set forth in Section 9.6. If we request it, you'll submit verification of your expenditures in a form prescribed by us in our Business Judgment. Appropriate local advertising expenditures may include, but are not limited to, classified telephone directory listings and advertising. The value of discounts, coupon redemptions and/or products or services given without charge shall not be considered to meet your local advertising obligation under this Section.

B. Your advertising will be in good taste and conform to ethical and legal standards and our requirements. Samples of all advertising and promotional materials (and any use of the Marks and/or other forms of commercial identification) for any media, including the Internet, World Wide Web or otherwise, must be submitted to us for our review and consent prior to use, which approval we may condition or withhold in our Business Judgment. You agree not to use any materials or programs disapproved by us at any time in our Business Judgment and will use all materials and programs designated by us as mandatory. We can require that a brief statement regarding the availability of SanSai franchises be included in advertising used by you and/or that brochures regarding purchase of SanSai franchises be displayed in your SanSai Japanese Grill.

C. We reserve the rights to all Internet and other electronic marketing and operational usage related to SanSai and do not currently permit franchisees to operate websites or internet sites in connection with the operation or marketing of SanSai products and/or services. Any future use of the Internet, World Wide Web or other electronic media by you in connection with your SanSai Japanese Grill will be as specified in advance and in writing by us in our Business Judgment from time to time, whether in the Manuals or otherwise. Among other things, we may require that any such use be through us, using a designated Internet/Intranet Service Provider (which can be us or an Affiliate), and that all

pages be accessed through a designated site and/or meet our specifications. In such an event, we may require you to pay by credit card, bank autodraft, or other method required by us, a reasonable Internet/Intranet Service Fee of \$150 per month, which we can collect in advance on an annual or other basis. Such Fee will be subject to annual adjustment by us.

**11.4 Franchisee Marketing Group(s) ("FMG").** We may decide to form one or more associations and/or sub-associations of SanSai Japanese Grills to conduct various marketing-related activities on a cooperative basis (an "FMG"). If one or more FMGs (local, regional and/or national) are formed covering your area, then you must join and actively participate. Each Store, whether franchised or non-franchised, will be entitled to one (1) vote, but in order to vote franchised Stores must be in Good Standing. You may be required to contribute such amounts as are determined from time-to-time by such FMGs. Each FMG may adopt its own bylaws, rules, regulations and procedures, subject to our consent in our Business Judgment. Any failure to timely pay amounts due to, or to comply with the bylaws, rules, regulations and procedures of an FMG, is a breach of this Agreement. We may offset against amounts we or any Affiliate owe to you the amount of your unpaid FMG obligations. We will have the right to have a representative participate in all FMG meetings as a non-voting participant. While we are not required to do so, if we submit any matters for approval to an FMG of which you are a member, and approval is granted, the approval will be binding on you.

## **12. STORE RECORDS AND REPORTING**

**12.1 Bookkeeping, Accounting and Records, Cash Register, Computer and Other Systems.** You must obtain and maintain at your sole expense accounting, sales, reporting and records retention systems conforming to any requirements prescribed by us from time to time, including electronic systems with online access for us. Such systems may include, but are not limited to, electronic cash register, computer and point-of-sale systems, and software programs, and may have components only available from us, a Franchisor-Related Person/Entity and/or designated suppliers. We reserve the right to use, and to have full access to, all cash register, computer and any other systems, and the information and data they contain. We may charge a reasonable fee for the license, modification, maintenance or support of software or any other goods and/or services that we furnish to you in connection with any of the systems.

### **12.2 Reports, Financial Statements and Tax Returns.**

A. You will provide to us such information regarding the sales and operation of your SanSai Japanese Grill, and in such form and format, as we specify from time to time in our Business Judgment. We may elect to obtain such information through a variety of methods, including direct online access, facsimile transmissions and written copies. Current information requirements include, but are not limited to, the following, and are subject to change by us:

- 1) Sales and operations reports for each Royalty Period, due at the same time as the corresponding royalty payment; and
- 2) within forty-five (45) days after the end of each fiscal year, an unaudited fiscal year-end balance sheet and income statement for your SanSai Japanese Grill, prepared in accordance with generally accepted accounting principles, and verified and signed by you;
- 3) retention of all records of or relating to your SanSai Japanese Grill, including all income, sales and other tax returns, for the term of this Agreement and one (1) year thereafter.

B. You agree to provide such other data, information and supporting records for your SanSai Japanese Grill as we reasonably may request from time to time, including without limitation copies of your sales tax returns and those portions of your income tax returns relating to your SanSai Japanese

Grill. We can require you to provide us, at your expense, with an annual audited financial statement prepared by a certified public accountant.

### **13. INSPECTIONS AND AUDITS.**

**13.1 Our Inspections, etc.** We and/or our agents will have the right, at any time during business hours, and without prior notice to you, to: i) inspect your SanSai Japanese Grill and related activities and items and record the same; ii) remove samples for testing and analysis; iii) interview personnel; iv) interview customers; and v) conduct inventories. You'll cooperate fully in connection with such matters. We may require you or an individual designated by us to meet at our headquarters or other location designated by us, for the purpose of discussing and reviewing your SanSai Japanese Grill's operations, financial performance and other matters.

**13.2 Audit.** We and/or our agents will have the right at any time during business hours, and without prior notice to you, to inspect and/or audit business records relating in any way to your SanSai Japanese Grill and the books and records of any person(s), corporation or partnership which holds, or does business with, the Franchise. Such business records may include, but are not limited to, bookkeeping and accounting records, sales and income tax records and returns, cash register tapes, invoices, and deposit receipts. Our right to audit includes the right to access all cash registers, computers and other equipment by electronic means. You'll cooperate fully with such an audit.

**13.3 Gross Volume Understatements.** If any inspection or audit discloses an understatement of Gross Volume, you will pay to us the royalties and marketing contributions due on the understated amount, plus interest, from the date originally due until the date of payment. We may require you to reimburse us for the cost of the inspection or audit, including, without limitation, the charges of any independent accountants, and related travel and per diem charges for our and their employees, if:

- A. any inspection or audit is necessary because of your failure to timely furnish required information/reports; or
- B. Gross Volume is understated for any period by more than two percent (2%).

In addition to all other remedies and rights of ours hereunder or under applicable law, we may Terminate this Agreement if:

- A. Gross Volume is understated for any period by more than five percent (5%); or
- B. any understatement is determined by us to be intentional.

### **14. TRANSFER.**

**14.1 Transfers by Us.** This Agreement, and any or all of our rights and/or obligations under it, are fully transferable by us in our Business Judgment, in whole or in part, without your consent; provided that any such transferee shall appear at the time of the transfer to have financial resources reasonably appropriate to fulfill its obligations under this Agreement. For the purposes of this Section 14.1, we shall be entitled to rely upon financial statements provided to us by the transferee. If we transfer this Agreement, only the transferee will have obligations to you and our obligations (and those of any of the Franchisor-Related Persons/Entities) will be extinguished. You specifically acknowledge and agree that we may: i) be sold and/or we may sell any or all of our intellectual property and/or other assets (including the Marks); ii) go public; iii) engage in a private or other placement of some or all of our securities; iv) merge, acquire other entities and/or assets (competitive or not); v) be acquired by a competitive or other entity; vi) and/or undertake any refinancing, leveraged buy-out and/or other transaction. You agree that we will have no liability to you resulting from our entering into any transactions permitted hereunder. We also may, on a permanent or temporary basis, delegate any or all of our duties to another company to perform. In such event, you will look only to such other company for the performance of such duties.

## **14.2 Transfers by You.**

A. The rights and duties created by this Agreement are personal to you (or your owners, if the Franchisee is a Business Entity). We have awarded the Franchise relying on the individual integrity, ability, experience and financial resources of you or such owners. Therefore, neither this Agreement, the Franchise, the Franchisee nor your SanSai Japanese Grill (or any interest in, or the assets of, any of the foregoing) may be transferred without our prior written approval. Any transfer or attempted transfer without our approval is null and void.

B. The term "transfer" includes (but is not limited to) any voluntary or involuntary assignment, sale, gift, pledge or any grant of any security or other interest (whether partial or whole, or direct or indirect), by you (or your owners, if the Franchisee is a Business Entity). A transfer also includes the following events: i) any transfer of ownership of capital stock or any partnership or similar interest; ii) any merger, consolidation or issuance of additional securities representing an ownership interest in the Franchisee; iii) any sale of voting stock of the Franchisee or of any security convertible to voting stock; iv) any transfer in a corporate or partnership dissolution, divorce, insolvency proceeding or otherwise by operation of law; v) any transfer of any interest in any revenues, profits, or assets of your SanSai Japanese Grill and which is not in the ordinary course of business; or vi) any transfer to a business entity and/or a trust or similar entity. A transfer of ownership, possession or control of your SanSai Japanese Grill, or of its assets, may only be made with a transfer of the Franchise. Any transfer in the event of death or disability will be governed by Section 14.5.

## **14.3 Conditions for Approval of Any Transfer.**

A. All of the following conditions must be met prior to, or concurrently with, the effective date of any transfer. We may waive any condition in our sole and absolute discretion.

1) You must be in compliance with this Agreement, the Manuals, all other agreements between you and us (including any of our respective Affiliates), and all leases/subleases with any party, and the transferee must expressly assume all obligations under all such agreements; and

2) The transferee and its owners must meet our then-current requirements for new franchisees, including but not limited to business experience, aptitude and financial resources; and

3) You must meet all payment and reporting obligations under the Franchise Agreement and any other agreements between you and us (and any of our respective Affiliates). Promissory notes shall be accelerated and paid in full; and

4) All obligations to third parties in connection with your SanSai Japanese Grill must be satisfied or assumed by the transferee; and

5) Your SanSai Japanese Grill and its operations must have been brought into full compliance with the Manuals and specifications and standards then-applicable for new SanSai Japanese Grills; and

6) At our option, the transferee must successfully complete, or agree to complete, our Training Program for new franchisees; and

7) The transferee must, at our option, i) agree to be bound by all the terms and conditions of this Agreement for the remainder of the term, or ii) execute our then-current form of Franchise Agreement and ancillary documents (including guarantees) as are then customarily used by us in the grant of franchises; the term of such new Franchise Agreement shall, at our option, be either for the

balance of the term of this Agreement or for the full term generally awarded to new franchisees as of the time of the transfer; and

8) The transfer must be completed in compliance with the terms of any applicable leases and other agreements and with all applicable laws, including but not limited to licensing and operations-related laws and/or laws governing franchise sales; and

9) You or the transferee must pay us with your application for a transfer a non-refundable transfer fee of Two Thousand Dollars (\$2,000), subject to inflation adjustment as provided in Section 9.6, above.

10) You and each of your owners and/or Affiliates, and the transferee (and each owner and/or Affiliate of the transferee), must sign a General Release; and

11) Any grant of a security or similar interest in connection with a transfer (which grant may or may not be permitted by us in our Business Judgment), will be subordinated to our rights and the rights of any Franchisor Related Person/Entity under the Franchise Agreement or any other agreement; provided that we may refuse to allow you or anyone else to grant or receive a pledge, mortgage, lien or any security or similar interest in and/or to the Franchise or the Franchised Business (or any of its assets) if, after having expended commercially reasonable efforts in discussions with lenders or other applicable parties, we are unable in our Business Judgment to obtain appropriate protections for our rights under this Agreement and/or for SanSai System interests; and

12) You will agree with the transferee not to compete after the transfer in accordance with restrictions acceptable to us and substantially similar to those described in Section 8.2 (B), above, to the maximum extent permitted by law. We shall be named a third party beneficiary of such agreement; and

13) We may (but are not required to) withhold or condition our consent to any transfer in our Business Judgment, particularly if we believe that the terms of transfer jeopardize the economic viability of the franchise or based on other circumstances of the transfer, and/or if we would not normally directly award a franchise in such a situation.

B. You agree that we may (but are not required to) discuss with you and/or the proposed transferee any matters related to any transfer and/or proposed transfer at any time which we consider to be appropriate in our Business Judgment without liability (including our opinion of the terms of sale, performance of your franchise, etc.). You expressly consent to any such discussions by us.

C. Neither you nor any transferee shall rely on us to assist in the evaluation of the terms of any proposed transfer. You acknowledge and agree that an approval of a proposed transfer shall not be deemed to be an approval of the terms, nor any indication as to any likelihood of success or economic viability.

**14.4 Additional Conditions for Transfer to a Business Entity.** We will consent to a transfer from you to a Business Entity entirely owned by you and formed for the sole purpose of operating the SanSai Japanese Grill if the conditions described in 14.3, above, and the following conditions are met. Such a transfer will not relieve you of your obligations under this Agreement. You will remain jointly and severally liable to us for your and the Business Entity's obligations.

1) The Business Entity's stock certificates (and/or other applicable evidences of ownership and all documents of formation/governance) must recite that any ownership interest in the Business Entity is restricted by the terms of this Agreement; and

2) You must have (and continue to maintain) management control and ownership of at least fifty-one percent (51%) of the Business Entity and personally manage its affairs; and

3) The individual Franchisee (or, if the Franchisee is a partnership, at least one of the partners) must be and remain the chief executive officer, chief operating officer or chief financial officer and meet our then-current training requirements. If the Franchisee is or becomes a corporation, LLC, partnership or other business entity, the chief executive officer, chief operating officer or chief financial officer of such entity must always meet all of our then-current training and other standards; and

4) The transferee must enter into an approved form of assignment in which the Business Entity assumes all of the Franchisee's obligations under this Agreement and any other agreements with us and/or a Franchisor-Related Person/Entity, and any other documents we may require as provided in 14.3 A. (7), above; and

5) All current and future owners of the Business Entity must agree in writing to comply with this Agreement and any other agreements with us and/or any Franchisor-Related Persons/Entities. We may at our option and in our Business Judgment require any and all owners to jointly and severally guarantee (in a written form approved by us) any such obligations of the Business Entity under any such agreements. The current approved form of Owner's Guaranty is attached as Exhibit 1 to this Agreement; and

6) No public offerings of debt or equity ownership in the transferee entity may be conducted, and no shares of any type issued without obtaining our prior written consent; and

7) We may require that each of the present and/or future shareholders, directors, and/or officers execute confidentiality and non-competition agreements with terms substantially similar to those described in Sections 8.1 and 8.2, respectively.

8) In any event, we may withhold or condition our consent to any transfer as we deem appropriate in our Business Judgment, based on the circumstances of the transfer or otherwise.

#### **14.5 Death or Disability of Franchisee.**

A. If the Franchisee, or if the owner of the Franchisee with a controlling interest, dies or is permanently disabled, then his or her interest in this Agreement, the Franchise and/or the Franchisee shall be transferred to a third party subject to all of the provisions of this Article 14. A "permanent disability" occurs if you are not able to personally, actively participate in the management of your SanSai Japanese Grill for six (6) consecutive months. Any transfer under this Section shall be completed within six (6) months from the date of death or permanent disability. If no transfer occurs, the Franchise will automatically terminate at the end of such period, unless a written extension is granted by us in our Business Judgment.

B. We can (but are not required to) operate the Franchised Business on your behalf and at your expense in the event of your death, disability or absence. We can pay ourselves a reasonable amount for our management services and other costs. We will use reasonable efforts and business judgment in managing the business, but will in all cases be indemnified by you (and/or your estate) against any costs and/or liabilities related in any way to our management and the operation of the Franchised Business. We are expressly authorized by you to manage in good faith and on terms that we consider appropriate in our Business Judgment, including payment of any past, current and/or future obligations to us or to any other creditor out of assets and/or revenues of the Franchised Business.

**14.6 Effect of Consent to Transfer.** Our consent to a transfer is not a waiver of any claims we may have against you, and you are not relieved of any obligations to us or any Franchisor-Related Persons/Entities (including any defaults by any transferee.) In any case, your obligations under the Post

Termination Provisions will survive any transfer of this Agreement. Any dispute regarding any proposed or completed transfer will be resolved through the dispute resolution provisions of this Agreement. Neither we nor any Franchisor-Related Persons/Entities will have any liability to you or any proposed or actual transferee in connection with our examination and/or possible consent or withholding of consent involving any transfer or proposed transfer, or our exercise of any right of ours, which is consistent with this Agreement. You agree to indemnify and hold us harmless from any liability to you, the proposed transferee or otherwise.

#### **14.7 Our Right of First Refusal.**

A. We have a right of first refusal regarding any proposed transfer subject to this Agreement, excluding only those transfers which are subject to Section 14.4. For each non-excluded proposed transfer, you will provide us with a true and complete copy of the offer received by you (and any ancillary agreements), and the conditions to transfer described in Sections 14.3 and 14.4, as applicable, will be met. The offer and the price and terms of purchase must apply only to an interest in this Agreement, the Franchise, your SanSai Japanese Grill or the Franchisee. Any value attributable to the goodwill of the Marks, SanSai System elements, Confidential Information or any other assets, tangible or intangible, related to the SanSai Brand and System will be excluded from the purchase price, but goodwill related solely to the value of your SanSai Japanese Grill as a going business may be included.

B. We will give you written notice of our decision to exercise our right of first refusal within thirty (30) days from the date of our receipt of the offer and ancillary documents. If any of the assets to be purchased do not meet the standards we then apply to new SanSai Japanese Grills, or if you are in default, we can require that the Store be brought into compliance and any defaults cured before the thirty (30) day period begins. We may substitute cash for any form of payment proposed in such offer and will have a reasonable period of time in which to prepare for the close of the transaction, generally sixty (60) days. The purchase price to be paid by us will be the price specified in the proposed transfer, less the value attributable to the goodwill of the Marks, SanSai System elements, Confidential Information or any other assets, tangible or intangible, related to the SanSai Brand and System. We'll be entitled to purchase any interest subject to all Customary Representations, Warranties and Agreements. We can require that the closing of the sale be through an escrow. You and we will comply with any applicable bulk sales and/or similar laws, and you will maintain all insurance policies until the date of closing. We will have the right to set off against any amount of money payable by us all amounts due from you and/or your Affiliates to us and/or our Affiliates. We will also have the right, in our Business Judgment, to pay any amount otherwise payable to you directly to your creditors in satisfaction of your obligations. If you violate any of your obligations that expressly or by their nature survive this Agreement, we will not be obligated to pay any amount otherwise due or payable to you thereafter. In connection with such purchase, you and each transferor (and your respective Affiliates) will sign a General Release.

C. If we do not exercise our right of first refusal, you or your owner may complete the sale to such purchaser on the exact terms of such offer, subject to the conditions of this Article 14. If there is a material change in the terms of the sale, we will have an additional right of first refusal on the same terms and conditions as are applicable to the initial right of first refusal. Our rights under this or any other Section are fully assignable.

#### **14.8 Options to Cease the Franchise Relationship or Repurchase.**

A. Ceasing the Franchise Relationship, Payment to You, You Continuing in Business at Your Location. Notwithstanding anything to the contrary in this Agreement or otherwise, at any time we may repurchase the Franchise and cancel your rights and our obligations under this Agreement on payment to you of the repurchase price.

The repurchase price will be calculated as follows:

1) if the reacquisition occurs during the initial term, the repurchase price will be the initial franchise fee paid by you, multiplied by a fraction, the numerator of which is the number of full months remaining of your initial term and the denominator of which is the number of full months originally in the total initial term; or

2) if the reacquisition occurs during a renewal term or successor franchise, the repurchase price will be the successor franchise fee paid by you, multiplied by a fraction, the numerator of which is the number of full months remaining in the renewal term or successor franchise and the denominator of which is the number of full months originally in the renewal or successor term of the franchise under which you are then operating.

The repurchase price will include compensation only for the term of the then-current Franchise Agreement, not for any successor terms that are not then in effect.

Your Post Termination Obligations will be continuing obligations of yours, except that we will waive (1) the post-term non-competition restrictions described in Section 8.2 as to your continued business operations at the single location for which you were approved and were operating at the time of the repurchase and (2) any rights to acquire your SanSai Japanese Grill and the Franchised Business, and/or any of the assets of your SanSai Japanese Grill, you can continue in business at that location (but, of course, not as a SanSai Franchisee or using any of the Marks or other Intellectual Property), and you and we will exchange General Releases.

**B. Limited Option to Repurchase the Business, etc. for Fair Market Value. If we:**

- 1) Receive a bona fide expression of interest from another company to merge and/or otherwise acquire control of our interests in a majority of the then-outstanding SanSai franchises, our assets and/or our outstanding stock (or that of any Affiliate of ours);
- 2) decide to go public, or private; and/or
- 3) or engage in any similar or related transaction,

then we can (but are not required to) purchase your Franchise, this Agreement, your SanSai Japanese Grill and the Franchised Business.

The purchase price shall be the Fair Market Value of the assets to be purchased, provided that the Fair Market Value of your SanSai Japanese Grill will, in any event, include its value as a going business, but in no event will the purchase price include any goodwill or other monetary factor related to the Intellectual Property, since you don't own the Intellectual Property, or leasehold improvements not owned by you. All sales, transfer and/or similar taxes will be paid by you. We will not be required to purchase any items not meeting our then-current specifications or reasonably required for the operation of a SanSai Japanese Grill in compliance with the System.

Pending the closing of such a purchase, we can appoint a manager to maintain the operation of your SanSai Japanese Grill, or we can require you to close your SanSai Japanese Grill during such period without removing any assets. You will forever indemnify and hold us harmless against all obligations incurred in connection with the business prior to purchase. You'll furnish us with a complete list of accounts unpaid by you within ten (10) days of our notice of intent to exercise this option. We may (but are not required to) pay these unpaid bills directly to the parties owed and deduct them from the purchase price in lieu of paying such portion of the purchase price directly to you.

The Post Termination Obligations will be continuing obligations of yours and we will receive all Customary Representations and Warranties from you and your Affiliates in connection with any such purchases. We can require that the closing of the sale be through an escrow. You and we will comply with any applicable bulk sales and/or similar laws, and you will maintain all insurance policies in effect

until the date of closing. If you violate any of your obligations that expressly or by their nature survive this Agreement, we will not be obligated to pay any amount otherwise due or payable to you thereafter.

C. Payments, Releases, etc. Any Repurchase price to be paid under this Section 14.8 will be paid, at our sole option, either in cash at closing, or under an unsecured, interest free promissory note, as follows: Twenty Percent (20%) at closing, Twenty Percent (20%) no later than 90 days after closing, Twenty Percent (20%) no later than 180 days after closing, Twenty Percent (20%) at the first anniversary date of the closing, and the final Twenty Percent (20%) at the second anniversary date of the closing. We can offset against the Repurchase price, and any installments thereof, any amounts owed by you (or any Affiliates) to us (or any Franchisor-Related Persons/Entities). In connection with our exercise of any rights under this Section 14.8, you (and each owner/Affiliate) and we will exchange General Releases.

D. No Assumption of Obligations, etc. We will not assume any liabilities, debts or obligations of yours in connection with any such transfer or payment, and you will indemnify us and each of the Franchisor-Related Persons/Entities from any and all claims arising out of any such transfer or payment. Notwithstanding the foregoing sentence, costs paid or incurred in connection with the transfer or payment, including but not limited to, all appraisal fees and closing costs, shall be shared equally between you and us, but excluding attorneys' fees paid or payable to the respective attorneys for the parties. You and we will comply with all applicable laws in connection with any such transfer and payment and you will cooperate with us in complying with all such requirements.

E. Termination of Agreement. This Agreement will Terminate upon the date the above-described purchases become effective, subject to any surviving obligations described in this Agreement. If you fail to complete or to continue to comply with any surviving obligation(s), we will not be obligated to pay that portion of the purchase price otherwise due or payable following such failure, in addition to any other remedies to which we are otherwise entitled, such amounts having been selected in view of the extreme difficulty in estimating possible damages arising from such breaches.

## **15. SUCCESSOR FRANCHISE.**

### **15.1 Your Rights.**

A. If you are awarded this Agreement for the initial term of your franchise, then this Agreement Terminates at the expiration of the initial term. At that time, subject to the provisions of this Article 15, you will be eligible to be awarded a Successor franchise. The Successor Franchise Agreement may differ materially from this one in financial and other ways and terms. The Successor term will be a single five (5) year period, without any further term or rights to additional Successor franchises or rights of renewal; but if the lease or sublease for the Premises is terminated or expires before the end of such Successor term (and no substitute location has been consented to by us in writing and occupied by you before the termination/expiration of such lease/sublease), we may Terminate the Successor agreement as of the termination/expiration of such lease/sublease. You have no right to an additional Successor term if this Agreement is being awarded to you as a Successor Franchise Agreement.

B. If we i) make an announcement (at any time) that we have made a determination that continued franchising (on a national, regional or other basis) is not appropriate for reasons that relate to our economic or other interests and that we do not intend to continue to regularly award franchises and maintain a franchise program for SanSai Japanese Grills in your state and ii) do not open or award franchises for SanSai Japanese Grills in your state for 12 months after the date of such announcement (provided that we may award renewal or successor franchises where an older form of Franchise Agreement or otherwise requires us to do so, and/or continue to service existing Franchisees under outstanding agreements), then we will not be required to offer you any Successor franchise, or renewal or similar rights and will have no liability or obligation to you with respect thereto. You agree that if any statute or court decision requires "good cause" (or any similar standard) for non-renewal, compliance by us with the provisions of this subsection will be considered to be good cause.

C. You agree that these provisions are commercially reasonable because commercial and other developments may make further participation in franchising by you or us inappropriate. Therefore, just as you have the option to not accept a Successor franchise, we have the option to no longer award Successor or other franchises, or grant renewals, in certain circumstances.

### **15.2 Notice of Election.**

A. You must give us written notice of election to obtain the Successor franchise not less than six (6) months, but not more than twelve (12) months, before the expiration of the initial term of this Agreement. Within ninety (90) days after our receipt of the notice, we will give to you in writing:

1) any reasons which could cause us to not award the Successor franchise, including any deficiencies requiring correction; and

2) our then-current requirements relating to the image, appearance, decoration, furnishing, equipping, stocking and programs for a SanSai Japanese Grill (collectively, the "specifications and standards then-applicable for new SanSai Japanese Grills and with the Manuals").

B. If you are subject to a Correction Process under Section 16.5 when i) you provide us with notice of your intent to obtain a Successor franchise, or ii) the Successor franchise would be awarded, then we may choose in our Business Judgment to defer the award of any Successor franchise until you have successfully complied with the applicable SanSai System Standards and Financial Standards.

**15.3 Conditions to the Award of a Successor Franchise.** Any award of the Successor franchise must meet all of the following conditions, together with the then-current standards applicable to Successor franchisees, each of which are agreed to be reasonable:

A. You (and each Affiliate of yours) must be in Good Standing;

B. Your SanSai Japanese Grill and its operations must fully comply with all specifications and standards then-applicable for new SanSai Japanese Grills and with the Manuals by the expiration of this Agreement;

C. You must present evidence satisfactory to us that you have the right to remain in possession of your SanSai Japanese Grill for the duration of the Successor franchise. If you are unable to maintain possession of your SanSai Japanese Grill, or in our Business Judgment your SanSai Japanese Grill should be relocated, you must have obtained our consent to and secured substitute premises by the expiration date of this Agreement. Such premises must comply with all specifications and standards then-applicable for new SanSai Japanese Grills and with the Manuals;

D. You (and each Affiliate of yours) must have paid all amounts owed to us and any Franchisor-Related Persons/Entities;

E. You must have executed our then-current form of Franchise Agreement and related documents then customarily used by us (with appropriate modifications to reflect the fact that the Franchise Agreement to be awarded relates to a single Successor franchise as contemplated by this Agreement). You will not be required to pay the then-current Initial Franchise Fee, and we will not be required to provide you any site location, initial training or other "start-up" services in connection with the award of any Successor franchise;

F. You must have complied with our then-current qualification and training requirements. We may require your personnel to successfully complete any retraining program(s), at such times and

location(s) as we then specify. There will be no charge for any retraining program(s), but you will be responsible for all travel, meals, lodging and other expenses of your personnel;

G. You (and each owner and/or Affiliate of yours) must have executed a General Release, except for any claims exclusively related to the successor franchise (where expressly so required by applicable law). If you, your owners and your Affiliates comply with all of the requirements of this Article 15, including providing us with a General Release; and

H. You must have paid us a successor fee equal to twenty percent (20%) of our then-current Initial Franchise Fee for an initial franchise (but in no event will the successor fee be less than \$5,000, which minimum amount is subject to adjustment as described in Section 9.6). The fee must be received from you at the time of your election and is non-refundable unless we do not grant a Successor agreement to you.

Failure by you and/or your owners to timely complete such requirements will be deemed an election by you not to obtain the successor franchise.

## **16. TERMINATION OF THE FRANCHISE.**

**16.1 Defaults with No Right to Cure.** This Agreement will automatically Terminate upon delivery of our written notice of Termination to you in compliance with Article 20 (without further action by us and without opportunity to cure) if you (or any of your owners):

A. fail to timely meet the site selection, development, opening and other requirements provided in Sections 3.1 (A) and 3.6, above;

B. abandon or fail to operate your SanSai Japanese Grill for more than seven (7) consecutive calendar days, or lose the right to possession of the premises and do not relocate your SanSai Japanese Grill in accordance with this Agreement;

C. make any material misrepresentation or omission in your application for the Franchise, including (but not limited to) failure to disclose any prior litigation or criminal convictions (other than minor traffic offenses);

D. are judged bankrupt, become insolvent, make an assignment for the benefit of creditors, are unable to pay your debts as they become due, or a petition under any bankruptcy law is filed by or against you (or any of your owners) or a receiver or other custodian is appointed for a substantial part of the assets of your SanSai Japanese Grill;

E. are convicted of, or plead no contest to, a felony, or to any crime or offense that is likely to adversely affect the reputation of the Franchisee or any owner, your SanSai Japanese Grill, us or the goodwill associated with the Marks;

F. engage in any misconduct which unfavorably affects the reputation of the Franchisee or any owner, your SanSai Japanese Grill, us or the goodwill associated with the Marks (including, but not limited to, child abuse, health or safety hazards, drug or alcohol problems, or permitting unlawful activities at your Store);

G. make, or attempt to make, an unauthorized "transfer" as defined in this Agreement or surrender control without our prior written approval;

H. make an unauthorized use of the Marks or any unauthorized copy, use or disclosure of any Confidential Information;

I. violate any of the In Term or Post Term Restrictions against competition provided in Section 8.2, above (or any other person identified therein commits such a violation);

J. commit any act or omission of fraud or misrepresentation, whether with respect to us, any of the Franchisor-Related Persons/Entities and/or any third party, including (but not limited to) any misrepresentation of Gross Volume;

K. have five (5) or more material customer complaints with respect to your SanSai Japanese Grill in any twelve (12) month period, whether or not resolved;

L. fail to permit or cooperate with us or our designee in any audit or inspection or fail to retain (or to produce on request) any records required to be maintained by you;

**16.2 Defaults with Right to Cure.** This Agreement will automatically Terminate on delivery of our written notice of Termination to you in compliance with Article 20 (without further action by us and without further opportunity to cure beyond that set forth in this Section):

A. 10 Day Cure. If within ten (10) calendar days after delivery of our written notice to you, you (or any of your owners) do not cure any:

- 1) failure to maintain required insurance;
- 2) failure to correct any condition that, in our reasonable judgment, might pose a danger to public health and/or safety;
- 3) failure to report accurately Gross Volume or fail to submit any other report due under this Agreement or any lease/sublease in accurate and complete form and when required;
- 4) failure to make payments of any amounts due us, any Franchisor-Related Person/Entity, any designee of ours and/or any supplier/creditor of yours and do not correct such failure(s);
- 5) failure to comply with any of the dispute resolution provisions of this Agreement, including (but not limited to) failure to pay/deposit any amounts or otherwise and/or unexcused failure to appear or respond to any dispute resolution proceedings.

With respect to items (A) 1 and/or (A) 2 above, we may require you to immediately cease all operations until such defaults are fully cured.

B. 30 Day Cure. If i) within ten (10) calendar days after delivery of our written notice to you, you have failed to commence steps to cure the following defaults and/or ii) within thirty (30) calendar days after delivery of our written notice to you, you (or any of your owners) do not cure any:

- 1) default under the lease or sublease for your SanSai Japanese Grill within the applicable cure period set forth in the lease or sublease. If such applicable cure period is less than thirty (30) days, then such applicable cure period shall apply, notwithstanding any cure period provided in this Article;
- 2) delinquency in your obligations to taxing authorities, landlords, equipment lessors, suppliers or others;
- 3) failure to comply with any other provision of this Agreement, any other agreement with us and/or any Affiliate of ours, or any specification, standard or operating procedure or rule prescribed by us in the Manuals or by other writing which does not provide for a shorter notice period.

If any such default under this Section 16.2 (B) cannot reasonably be corrected within such thirty (30) day period, then you must undertake diligent efforts within such thirty (30) day period to come into full compliance. You must furnish, at our request, proof acceptable to us of such efforts and the date full compliance will be achieved. In any event, all such defaults must be fully cured within ninety (90) days after delivery of the initial written notice to you of Termination.

**16.3 Repeated Defaults.** This Agreement will automatically Terminate upon delivery of our written notice of Termination to you in compliance with Article 20 (without further action by us and without opportunity to cure) if you or any Affiliate has committed two (2) or more applicable defaults within any twelve (12) consecutive months, or three (3) or more applicable defaults within any twenty-four (24) consecutive months. An "applicable default" is a single breach of any obligation under this Agreement and/or the Manuals, or under any other agreement with us and/or any of our Affiliates, whether or not such default is cured, or is the same as or similar to a prior event of default.

**16.4 Cross-Defaults.** Any default by you (or any owner or Affiliate of yours) under this Agreement may be regarded by us as a default under any other agreement between us (or any Franchisor-Related Persons/Entities) and you (or any owner or Affiliate of yours). Any default by you (or any owner or Affiliate of yours) under any other agreement or any other obligation between us (or any Franchisor-Related Persons/Entities) and you (or any owner or Affiliate of yours) may be regarded as a default under this Agreement. Any default by you (or any owner or Affiliate of yours) under any lease, sublease, loan agreement, or security interest relating to the Franchised Business may be regarded as a default under this Agreement, regardless of whether or not any such agreements are between you (or any owner or Affiliate of yours) and us (or any Franchisor-Related Persons/Entities).

**16.5 Failure to Meet Performance Standards.**

A. You and we have a shared interest in your SanSai Japanese Grill not performing below SanSai System Standards, or failing to achieve an appropriate level of Gross Volume, and we would not have entered into this franchise relationship if we had anticipated that you would not meet these Performance Standards. "Performance Standards" includes both SanSai System Standards and Gross Volume requirements as described below.

B. SanSai System Standards. We may choose in our Business Judgment to evaluate your SanSai Japanese Grill for compliance with SanSai System Standards using various methods (including, but not limited to, inspections, field service visits, customer comments/surveys and secret shopper reports). In conducting such an evaluation we will use the same methodology and scoring system then in use by us for evaluating any SanSai Japanese Grills owned and/or operated by us and/or our Affiliates. Your SanSai Japanese Grill will be assigned System Standards Scores for categories being scored at that time. Your scores will be compared with the average score in each such category achieved by all SanSai Japanese Grills in the United States (including those owned and/or operated by us and/or our Affiliates), or such other geographic area as we reasonably believe to be appropriate for evaluation purposes.

C. SanSai Financial Standards. We may choose in our Business Judgment to compare your Gross Volume with the then-current "Financial Standard". If we make such an election, we will make comparisons on a six (6) month basis. (For example, if the first comparison was on June 30, the next comparison would be on December 31, etc.) The Financial Standard will be determined as follows:

<b>PERIOD OPEN*</b>	<b>FINANCIAL STANDARDS (ADJUSTED EVERY 6 MONTHS)</b>
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Less than Three Years	50% of PUA**
Three Years or More, But Less Than Four Years	65% of PUA**
Four Years or More	75% of PUA**

\*Measured from the earlier of: actual opening date, or the date by which the Store is required to be open.

\*\*"PUA" or "Per Unit Average": The average Gross Volume for all SanSai Japanese Grills in the United States during the most recent six (6) month period before the measuring date.

D. We reserve the right to make reasonable revisions to elements of the Financial or System Standards upon six (6) months written advance notice to you. Such revisions may include, but are not limited to, changes in PUA percentages, measurement periods or geographical areas.

E. We may (but are not required to) implement the correction process described in Section 16.5 (F), below, if your:

- 1) System Standards Score in a scored category is lower than the average System Standards Score; or
- 2) Gross Volume for the applicable measurement period does not equal the then-current Financial Standard.

F. Correction Process

1) If we notify you of your failure to meet the then-current average System Standards Score in a scored category and/or the applicable Financial Standard, then you will have six (6) months from our delivery of written notice to you in accordance with Article 20, below, to meet all applicable Financial and System Standards.

2) We will reasonably cooperate with and assist you in your efforts to meet your performance objectives. Such assistance may include, but is not limited to, on-site consultations, meetings at our headquarters, and/or retraining activities or programs at designated locations. You are responsible for any costs associated with such activities, including travel, meals, lodging and any other related expenses and will participate in the same upon our request. Among other things, we can (1) require you and/or your manager to attend and successfully complete a re-training seminar at our then-current headquarters, with you to pay all related travel, meals, lodging and incidental expenses, or (2) send a trainer to your location to present a re-training seminar, which you and your manager must successfully complete, at a cost of \$500 per day retraining fee, payable to us, (maximum: \$1,500), subject to inflation adjustment.

G. If at the end of such six (6) month Correction Period your SanSai Japanese Grill does not meet the average SanSai System Standards score for any category and/or the then-applicable Financial Standards, then we may elect to Terminate this Agreement. You will have ninety (90) days after the end of such six (6) month Correction Period to complete a sale of your franchise to a third party if:

- 1) You provide us written notice of your desire to sell your franchise within ten (10) days of the expiration of such six (6) month Correction Period along with a General Release signed by you and each of your owners and Affiliates; and

2) Any such transfer meets all requirements of this Agreement, including those provided in Section 14.3, above.

H. If you do not provide us the notice described in Section 16.5 (G) 1, above, or complete an authorized sale within the ninety (90) day period provided in Section 16.5 (G), above, then we may elect to Terminate this Agreement immediately upon delivery of written notice to you in accordance with Article 20, below.

I. Nothing in this Section is intended to limit or diminish in any way any rights or remedies provided us under this or any other agreement, at law or in equity. The fact that any correction process may be ongoing shall not prevent us from exercising any such rights and/or remedies, including any right to Terminate this Agreement for another default under this or any other agreement.

**16.6 Non-Exclusive Remedies.** Whenever we have a right to Terminate this Agreement, we (and any Franchisor-Related Person/Entity) will have all remedies allowed at law and in equity. None of our rights or remedies (including Termination) is exclusive of any other right or remedy, and we may pursue any rights and/or remedies available. In every instance in which we have the right to Terminate this Agreement under this Article 16, we may elect in our Business Judgment to cancel any and/or all of your territorial or similar rights (including, but not limited to, any rights of first refusal), whether arising under this Agreement or in any other manner or document.

**16.7 No Equity on Termination, etc.** Your rights regarding the Franchise are controlled by the provisions of this Agreement. You will have no equity or any other continuing interest in the Franchise, any goodwill associated with it, or any right to compensation or refunds at the expiration and/or Termination of the term of the Franchise.

**16.8 Extended Cure Period.** Notwithstanding anything to the contrary in this Agreement, we reserve the right to grant to you in our Business Judgment an extended cure period for any breach. You acknowledge that our decision to grant such an extended cure period shall not operate as a waiver of any of our rights and that we may choose to condition such any such an extension upon the signing of a General Release by you, each owner and Affiliates of yours.

**16.9 Management of the Store After Issuance of Notice of Default.**

A. If we issue a notice of default, we will have the right (but not the obligation) to manage your SanSai Japanese Grill until you have cured all defaults. All revenues received by the SanSai Japanese Grill while we (or our designee) are managing it will be kept in a separate fund. All SanSai Japanese Grill expenses, including compensation, travel and living expenses for our appointed manager, may be paid out of such fund. We shall be paid Five Hundred Dollars (\$500) per day per manager as a management fee (subject to adjustment as provided in Section 9.6). If such fund is insufficient to pay SanSai Japanese Grill expenses, we shall notify you. You shall, within five (5) business days, deposit such amounts as shall be required by us to attain a reasonable fund balance.

B. Operation of the SanSai Japanese Grill by us during any such period shall be on your behalf; provided that we shall only have a duty to use reasonable efforts and shall not be liable to any creditor of yours or for any debts, losses or obligations incurred by the SanSai Japanese Grill. This Section 16.9 shall not limit our right to Terminate this Agreement as herein provided or affect any of our indemnity or other rights under this Agreement.

**16.10 Our Right To Discontinue Supplying Items Upon Default.** We and any Franchisor-Related Persons/Entities have the right, in addition to all other rights and remedies, to require upon the issuance of a default that you pay C.O.D (i.e., cash on delivery) or by certified check for any goods/services related to the operation of your Franchised Business. We and any Franchisor-Related