

B. Franchisee shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, computer software, procedures, and techniques associated with the System; the mark "Up The Creek Fish Camp & Grill"; and all other Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms and any other articles which display the Marks.

C. Franchisee shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the mark "Up The Creek Fish Camp & Grill" or any other service mark or trademark of Franchisor or its affiliates, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after termination or expiration of this Agreement.

D. Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute Franchisor's rights in and to the Marks, and further agrees not to utilize any designation of origin or description or representation which falsely suggests or represents an association or connection with Franchisor constituting unfair competition.

E. Franchisee and its Controlling Principals shall promptly pay all sums owing to Franchisor and its affiliates. Such sums shall include all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default by Franchisee, which obligation shall give rise to and remain, until paid in full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures, and inventory owned by Franchisee and on the premises operated hereunder at the time of default.

F. Franchisee and the Controlling Principals shall pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor in connection with obtaining any remedy available to Franchisor for any violation of this Agreement and, subsequent to the termination or expiration of this Agreement, in obtaining injunctive or other relief for the enforcement of any provisions of this Section XVIII.

G. Franchisee shall immediately deliver to Franchisor all Manuals, software (if any) licensed by Franchisor, records, files, instructions, correspondence, all materials related to operating the Restaurant, including, without limitation, agreements, invoices, and any and all other materials relating to the operation of the Restaurant in Franchisee's possession or control, and all copies thereof (all of which are acknowledged to be Franchisor's property), and shall retain no copy or record of any of the foregoing, except Franchisee's copy of this Agreement and of any correspondence between the parties and any other documents which Franchisee reasonably needs for compliance with any provision of law.

H. Franchisee and the Controlling Principals shall comply with the restrictions on confidential information contained in Section X. of this Agreement and shall also comply with the non-competition covenants contained in Section X. Any other person required to execute similar covenants pursuant to Section X. shall also comply with such covenants.

I. Franchisee shall also immediately furnish Franchisor an itemized list of all advertising and sales promotion materials bearing the Marks or any of Franchisor's distinctive markings, designs, labels, or other marks thereon, whether located on Franchisee's premises or under Franchisee's control at any other location. Franchisor shall have the right to inspect these materials. Franchisor shall have the option, exercisable within thirty (30) days after such inspection, to purchase any or all of the materials at Franchisee's cost or fair market value, whichever is less, or to require Franchisee to destroy and properly dispose of such materials. Materials not purchased by Franchisor shall not be utilized by Franchisee or any other party for any purpose unless authorized in writing by Franchisor.

J. If Franchisee operates the Restaurant under a lease for the Restaurant premises with a third-party or, with respect to any lease for equipment used in the operation of the franchised business, then, Franchisee shall, at Franchisor's option, assign to Franchisor any interest which Franchisee has in any lease or sublease for the premises of the Restaurant or any equipment related thereto. Franchisor may exercise such option at or within thirty (30) days after either termination or (subject to any existing right to renew) expiration of this Agreement. In the event Franchisor does not elect to exercise its option to acquire the lease or sublease for the Restaurant premises, Franchisee shall make such modifications or alterations to the Restaurant premises as are necessary to distinguish the appearance of the Restaurant from that of other restaurants operating under the System and shall make such specific additional changes as Franchisor may reasonably request. If Franchisee fails or refuses to comply with the requirements of this Section XVIII.J., Franchisor shall have the right to enter upon the premises of the franchised business, without being guilty of trespass or any other crime or tort, to make or cause to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

K. (1) Except as provided in Section XVIII.I, Franchisor shall have the option, to be exercised within thirty (30) days after termination or expiration of this Agreement, to purchase from Franchisee any or all of the furnishings, equipment (including any electronic cash register or computer hardware and software systems), signs, fixtures, motor

vehicles, supplies, and inventory of Franchisee related to the operation of the Restaurant, at fair market value. Franchisor shall be purchasing Franchisee's assets only and shall be assuming no liabilities whatsoever, unless otherwise agreed to in writing by the parties. If the parties cannot agree on the fair market value within thirty (30) days of Franchisor's exercise of its option, fair market value shall be determined by two (2) appraisers, with each party selecting one (1) appraiser. The appraisers appointed by each party shall select a third appraiser and the average of the determination of each of the three (3) appraisers shall be binding. The costs of the third-party appraiser shall be paid equally by the Franchisor and the Franchisee. In the event of such appraisal, each party shall bear its own legal and other costs and shall split the other appraisal fees equally. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set off (i) all fees for any such independent appraiser due from Franchisee, (ii) all amounts due from Franchisee to Franchisor or any of its affiliates, and (iii) any costs incurred in connection with any escrow arrangement (including reasonable legal fees), against any payment therefor and shall pay the remaining amount in cash.

(2) In addition to the options described above and if Franchisee owns the Restaurant premises, then, Franchisor shall have the option, to be exercised at or within thirty (30) days after termination or expiration of this Agreement, to purchase the Restaurant premises including any building thereon, if applicable, for the fair market value of the land and building, and any or all of the furnishings, equipment, signs, fixtures, vehicles, supplies and inventory therein at fair market value. Franchisor shall purchase assets only and shall assume no liabilities whatsoever, unless otherwise agreed to in writing by the parties. If Franchisee does not own the land on which the Restaurant is operated and Franchisor exercises its option for an assignment of the lease, Franchisor may exercise this option for the purpose of purchasing the building if owned by Franchisee and related assets as described above. If the parties cannot agree on fair market value within thirty (30) days of Franchisor's exercise of its option, fair market value shall be determined in accordance with appraisal procedure described above.

(3) With respect to the options described in Sections XVIII.J. and K.(1) and (2), Franchisee shall deliver to Franchisor in a form satisfactory to Franchisor, such warranties, deeds, releases of lien, bills of sale, assignments and such other documents and instruments which Franchisor deems necessary in order to perfect Franchisor's title and possession in and to the properties being purchased or assigned and to meet the requirements of all tax and government authorities. If, at the time of closing, Franchisee has not obtained all of these certificates and other documents, Franchisor may place the purchase price or rent in escrow pending issuance of any required certificates or documents.

(4) The time for closing of the purchase and sale of the properties described in Section XVIII.K.(1) and (2) shall be a date not later than sixty (60) days after the purchase price is determined by the parties or the determination of the appraisers, or such date Franchisor receives and obtains all necessary permits and approvals, whichever is later, unless the parties mutually agree to designate another date. The time for closing on the assignment of the lease described in Section XVIII.J. shall be a date no later than ten (10) days after Franchisor's exercise of its option thereunder unless Franchisor is exercising its options under either Section XVIII.K.(1) or (2), in which case the date of the closing shall be on the same closing date prescribed for such option. Closing shall take place at Franchisor's corporate offices or at such other location as the parties may agree.

L. Franchisor shall be entitled to assign any and all of its options in this Section to any other party, without the consent of Franchisee.

M. Franchisee, at the option of Franchisor, shall assign to Franchisor all rights to the telephone numbers of the Restaurant and any related Yellow Pages trademark listing or other business listings and execute all forms and documents required by Franchisor and any telephone company at any time to transfer such service and numbers to Franchisor. Notwithstanding any forms and documents which may have been executed by Franchisor under Section VII.J., Franchisee hereby appoints Franchisor its true and lawful agent and attorney-in-fact with full power and authority, for the sole purpose of taking such action as is necessary to complete such assignment. This power of attorney shall survive the expiration or termination of this Agreement. Franchisee shall thereafter use different telephone numbers at or in connection with any subsequent business conducted by Franchisee.

## **XIX. MISCELLANEOUS**

A. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by prepaid facsimile, telegram or telex (provided that the sender confirms the facsimile, telegram or telex by sending an original confirmation copy by certified or registered mail or expedited delivery service within three (3) business days after transmission) to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:	Up The Creek Restaurants of America, Inc. 6620 McGinnis Ferry Road, Suite B Duluth, Georgia 30097 Attention: President Tele: (770) 623-0360
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Fax: (770) 623-0557

Copy To: William M. Davidson, Esquire  
Davidson, Fuller & Sloan, L.L.P.  
11330 Lakefield Drive,  
Suite 250, Building One  
Duluth, Georgia 30097  
Tele: (770) 622-4700  
Fax: (770) 622-4705

Notices to Franchisee and  
the Controlling Principals:

Any notice shall be deemed to have been given at the time of personal delivery or, in the case of facsimile, telegram or telex, upon transmission (provided confirmation is sent as described above) or, in the case of expedited delivery service or registered or certified mail, three (3) business days after the date and time of mailing.

B. This Agreement, the documents referred to herein, and the Attachments hereto, constitute the entire, full and complete agreement between Franchisor and Franchisee and the Controlling Principals concerning the subject matter hereof and shall supersede all prior related agreements between Franchisor and Franchisee and the Controlling Principals. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

C. No delay, waiver, omission or forbearance on the part of Franchisor to exercise any right, option, duty or power arising out of any breach or default by Franchisee or the Controlling Principals under this Agreement shall constitute a waiver by Franchisor to enforce any such right, option, duty or power against Franchisee or the Controlling Principals, or as to a subsequent breach or default by Franchisee or the Controlling Principals. Acceptance by Franchisor of any payments due to it hereunder subsequent to the time at which such payments are due shall not be deemed to be a waiver by Franchisor of any preceding or existing breach by Franchisee or the Controlling Principals of any terms, provisions, covenants or conditions of this Agreement.

D. Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor, and such approval or consent shall be obtained in writing.

E. Franchisor makes no warranties or guarantees upon which Franchisee may rely and assumes no liability or obligation to Franchisee or any third-party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

F. If a Force Majeure event shall occur, then, in addition to payments required under Section XVII.A.(3)(e), Franchisee shall continue to be obligated to pay to Franchisor any and all amounts that it shall have duly become obligated to pay in accordance with the terms of this Agreement prior to the occurrence of any Force Majeure event and the Indemnitees shall continue to be indemnified and held harmless by Franchisee in accordance with Section XV. Except as provided in Section XVII.A.(3)(e) and the immediately preceding sentence herein, none of the parties hereto shall be held liable for a failure to comply with any terms and conditions of this Agreement when such failure is caused by an event of Force Majeure. Upon the occurrence of any event of the type referred to herein, the party affected thereby shall give prompt notice thereof to the other parties, together with a description of the event, the duration for which the party expects its ability to comply with the provisions of the Agreement to be affected thereby and a plan for resuming operation under the Agreement, which the party shall promptly undertake and maintain with due diligence. Such affected party shall be liable for failure to give timely notice only to the extent of damage actually caused.

**G. THE PARTIES AGREE TO SUBMIT ANY CLAIM, CONTROVERSY OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT (AND ATTACHMENTS) OR THE RELATIONSHIP CREATED BY THIS AGREEMENT TO NON-BINDING MEDIATION PRIOR TO BRINGING SUCH CLAIM, CONTROVERSY OR DISPUTE IN A COURT OR BEFORE ANY OTHER TRIBUNAL.** The mediation shall be conducted through either an individual mediator or a mediator appointed by a mediation services organization or body, experienced in the mediation of disputes between Franchisors and Franchisees, agreed upon by the parties and, failing such agreement within a reasonable period of time after either party has notified the other of its desire to seek mediation of any claim, controversy or dispute (not to exceed fifteen (15) days), by the NFMB (National Franchise Mediation Board) or any successor organization, in accordance with its rules governing mediation, at Franchisor's then corporate headquarters. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys fees incurred by either

party), shall be borne by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the Mediator has been chosen, then either party may bring a legal proceeding under Section XIX.H. below to resolve such claim, controversy or dispute unless such time period is extended by written agreement of the parties. **NOTWITHSTANDING THE FOREGOING, FRANCHISOR MAY BRING AN ACTION (1) FOR MONIES OWED, (2) FOR INJUNCTIVE OR OTHER EXTRAORDINARY RELIEF, OR (3) TO OBTAIN POSSESSION OF OR TO SECURE OTHER RELIEF RELATING TO, THE RESTAURANT PREMISES IN A COURT HAVING JURISDICTION AND IN ACCORDANCE WITH SECTION XIX.H. BELOW, WITHOUT FIRST SUBMITTING SUCH ACTION TO MEDIATION. ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE PERFORMANCE OF FRANCHISOR HEREUNDER, SHALL BE COMMENCED BY FRANCHISEE AGAINST FRANCHISOR WITHIN ONE (1) YEAR FROM THE OCCURENCE FIRST GIVING RISE TO SUCH CLAIM, CONTROVERSY OR DISPUTE, OR SUCH CLAIM, CONTROVERSY OR DISPUTE SHALL BE BARRED. FRANCHISEE ACKNOWLEDGES AND AGREES THAT FRANCHISEE SHALL NOT INITIATE OR PARTICIPATE IN LITIGATION AS A MEMBER OR REPRESENTATIVE OF, OR ON BEHALF OF, ANY CLASS OF PERSONS, OR ENTITIES, OR ANY OTHER PERSON OR ENTITY, ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR BREACH HEREOF.**

**H. WITH RESPECT TO ANY CLAIMS, CONTROVERSIES OR DISPUTES WHICH ARE NOT FINALLY RESOLVED THROUGH MEDIATION OR AS OTHERWISE PROVIDED ABOVE, FRANCHISEE AND THE CONTROLLING PRINCIPALS HEREBY IRREVOCABLY SUBMIT THEMSELVES TO THE JURISDICTION OF THE STATE COURTS WHERE FRANCHISOR'S THEN HEADQUARTERS IS LOCATED. FRANCHISEE AND THE CONTROLLING PRINCIPALS HEREBY AGREE THAT SERVICE OF PROCESS MAY BE MADE UPON ANY OF THEM IN ANY PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP CREATED BY THIS AGREEMENT BY ANY MEANS ALLOWED BY STATE OR FEDERAL LAW. FRANCHISEE AND THE CONTROLLING PRINCIPALS FURTHER AGREE THAT VENUE FOR ANY PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT SHALL BE THE GOVERNMENTAL UNIT WHERE THE FRANCHISOR'S THEN HEADQUARTERS IS LOCATED; PROVIDED, HOWEVER, WITH RESPECT TO ANY ACTION (1) FOR MONIES OWED, (2) FOR INJUNCTIVE OR OTHER EXTRAORDINARY RELIEF, OR (3) INVOLVING POSSESSION OR DISPOSITION OF, OR OTHER RELIEF RELATING TO, REAL PROPERTY, FRANCHISOR MAY BRING SUCH ACTION IN ANY STATE OR FEDERAL DISTRICT COURT WHICH HAS JURISDICTION. WITH RESPECT TO ALL CLAIMS, CONTROVERSIES, DISPUTES OR ACTIONS, THIS AGREEMENT SHALL BE GOVERNED AND ENFORCED UNDER STATE LAW WHERE THE FRANCHISOR'S THEN HEADQUARTERS IS LOCATED (EXCEPT FOR THAT STATE'S CHOICE OF LAW RULES).**

I. Franchisee, the Controlling Principals and Franchisor acknowledge that the parties' Agreement regarding applicable state law and forum set forth in Section XIX.H. above provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any dispute arising out of this Agreement or the parties' relationship created by this Agreement. Each of Franchisee, the Controlling Principals and Franchisor further acknowledges the receipt and sufficiency of mutual consideration for such benefit.

J. Franchisee, the Controlling Principals and Franchisor acknowledge that the execution of this Agreement and acceptance of the terms by the parties occurred at the then headquarters of the Franchisor and further acknowledge that the performance of certain obligations of Franchisee arising under this Agreement, including, but not limited to, the payment of monies due hereunder and the satisfaction of certain training requirements of Franchisor, shall occur at the then headquarters of the Franchisor.

K. Without limiting any of the foregoing, Franchisor reserves the right, at any time, to create a dispute resolution program and related specifications, standards, procedures and rules for the implementation thereof to be administered by Franchisor or its designees for the benefit of all Franchisees conducting business under the system. The standards, specifications, procedures and rules for such dispute resolution program shall be made part of the manuals, and Franchisee shall comply with all such standards, specifications, procedures and rules in seeking resolution of any claims, controversies or disputes with or involving Franchisor or other Franchisees, if applicable under the program. If such dispute resolution program is made mandatory, then Franchisee and Franchisor agree to submit any claims, controversies or disputes arising out of or relating to this Agreement (and attachments) or the relationship created by this Agreement for resolution in accordance with such dispute resolution program prior to seeking resolution of such claims, controversies or disputes in the manner described in Sections XIX.G. - J. (Provided that the provisions of Section XIX concerning Franchisor's right to seek relief in a court for certain actions including for injunctive or other extraordinary relief shall not be superseded or affected by this Section XIX.K.) Or if such claim, controversy or dispute relates to another Franchisee, Franchisee agrees to participate in the program and submit any such claims, controversies or disputes in accordance with the program's standards, specifications, procedures and rules, prior to seeking resolution of such claim by any other judicial or legally available means.

**L. FRANCHISEE AND THE CONTROLLING PRINCIPALS HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM OR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT,**

**SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS) AGAINST FRANCHISOR, ITS AFFILIATES, AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AGENTS, REPRESENTATIVES, INDEPENDENT CONTRACTORS, SERVANTS AND EMPLOYEES OF EACH OF THEM, IN THEIR CORPORATE AND INDIVIDUAL CAPACITIES, ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) AND AGREES THAT IN THE EVENT OF A DISPUTE, FRANCHISEE AND THE CONTROLLING PRINCIPALS SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT. IF ANY OTHER TERM OF THIS AGREEMENT IS FOUND OR DETERMINED TO BE UNCONSCIONABLE OR UNENFORCEABLE FOR ANY REASON, THE FOREGOING PROVISIONS OF WAIVER BY AGREEMENT OF PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS) SHALL CONTINUE IN FULL FORCE AND EFFECT.**

M. This Agreement may be executed in multiple counterparts, each of which when so executed shall be an original, and all of which shall constitute one and the same instrument.

N. The captions used in connection with the sections and subsections of this Agreement are inserted only for purpose of reference. Such captions shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part thereof nor shall such captions otherwise be given any legal effect.

O. Any obligation of Franchisee or the Controlling Principals that contemplates performance of such obligation after termination or expiration of this Agreement or the transfer of any interest of Franchisee or the Controlling Principals therein, shall be deemed to survive such termination, expiration or transfer.

P. Except as expressly provided to the contrary herein, each portion, section, part, term and provision of this Agreement shall be considered severable; and if, for any reason, any portion, section, part, term or provision is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, this shall not impair the operation of, or have any other effect upon, the other portions, sections, parts, terms or provisions of this Agreement that may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties; the invalid portions, sections, parts, terms or provisions shall be deemed not to be part of this Agreement; and there shall be automatically added such portion, section, part, term or provision as similar as possible to that which was severed which shall be valid and not contrary to or in conflict with any law or regulation.

Q. All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. Without limiting the obligations individually undertaken by the Controlling Principals under this Agreement, all acknowledgments, promises, covenants, agreements and obligations made or undertaken by Franchisee in this Agreement shall be deemed, jointly and severally, undertaken by all of the Controlling Principals.

R. All rights and remedies of the parties to this Agreement shall be cumulative and not alternative, in addition to and not exclusive of any other rights or remedies which are provided for herein or which may be available at law or in equity in case of any breach, failure or default or threatened breach, failure or default of any term, provision or condition of this Agreement or any other agreement between Franchisee or any of its affiliates and Franchisor or any of its affiliates. The rights and remedies of the parties to this Agreement shall be continuing and shall not be exhausted by any one or more uses thereof, and may be exercised at any time or from time to time as often as may be expedient; and any option or election to enforce any such right or remedy may be exercised or taken at any time and from time to time. The expiration, earlier termination or exercise of Franchisor's rights pursuant to Section XVIII. of this Agreement shall not discharge or release Franchisee or any of the Controlling Principals from any liability or obligation then accrued, or any liability or obligation continuing beyond, or arising out of, the expiration, the earlier termination or the exercise of such rights under this Agreement.

S. The term "Franchisee's Principals" shall include, collectively and individually, all officers and directors of Franchisee (including the officers and directors of any general partner of Franchisee) whom Franchisor designates as Franchisee's Principals, all holders of an ownership interest in Franchisee and in any entity directly or indirectly controlling Franchisee, and any other person or entity controlling, controlled by, or under common control with Franchisee. The initial Franchisee's Principals shall be listed on Attachment C. The term "Controlling Principals" shall include, collectively and individually, any Franchisee's Principal who has been designated by Franchisor as a Controlling Principal hereunder. For purposes of this Agreement, a publicly-held corporation is a corporation registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of such Act. If you are an individual, the term "Controlling Principal" shall include your spouse. Each of the Controlling Principals must sign the Controlling Principals Agreement attached to this Franchise Agreement as Attachment F.

T. Each reference in this Agreement to a corporation or partnership shall be deemed to also refer to a limited liability company and any other entity or organization similar thereto. Each reference to the organizational documents, equity owners, directors, and officers of a corporation in this Agreement shall be deemed to refer to the functional equivalents of such organizational documents, equity owners, directors, and officers, as applicable, in the case of a limited liability company or any other entity or organization similar thereto.

U. Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee, Franchisor, Franchisor's officers, directors and personnel and such of Franchisee's and Franchisor's respective successors and assigns as may be contemplated (and, as to Franchisee, authorized by Section XIV.), any rights or remedies under or as a result of this Agreement.

V. This Agreement shall not become effective until signed by either Chairman of the Board, President or Vice President of Franchisor.

**XX. ACKNOWLEDGMENTS**

A. Franchisee acknowledges that it has conducted an independent investigation of the business venture contemplated by this Agreement and recognizes that the success of this business venture involves substantial business risks and will largely depend upon the ability of Franchisee. Franchisor expressly disclaims making, and Franchisee acknowledges that it has not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

B. Franchisee acknowledges that Franchisee has received, read and understands this Agreement and the related Attachments and agreements and that Franchisor has afforded Franchisee sufficient time and opportunity to consult with advisors selected by Franchisee about the potential benefits and risks of entering into this Agreement.

C. Franchisee acknowledges that it received a complete copy of this Agreement and all related Attachments and agreements at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it has received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" at least ten (10) business days prior to the date on which this Agreement was executed.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative as of the date first above written.

FRANCHISOR:

UP THE CREEK RESTAURANTS OF AMERICA, INC.  
a Georgia corporation

ATTEST:

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

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

By: \_\_\_\_\_  
William F. Palmer, Jr., President

FRANCHISEE:

\_\_\_\_\_ corporation

ATTEST:

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

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

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

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

**ATTACHMENT A TO FRANCHISE AGREEMENT**

**APPROVED LOCATION, ASSIGNED AREA,  
AREA OF PRIMARY RESPONSIBILITY AND OPENING DATE**

**1. APPROVED LOCATION**

Pursuant to Sections I.B. and II.C. of the Franchise Agreement, the Restaurant shall be located at the following approved location:

**2. ASSIGNED AREA**

Pursuant to Section I.C. of the Franchise Agreement, the Assigned Area shall be:

A radius surrounding the Restaurant which is equal to, the lesser of three (3) miles or the area containing forty thousand (40,000) population.

**3. OPENING DATE**

Pursuant to Section II.G. of the Franchise Agreement, the Opening Date of the Restaurant is  
\_\_\_\_\_.

## ATTACHMENT B TO FRANCHISE AGREEMENT

### LEASE RIDER

This Lease Rider is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between UP THE CREEK RESTAURANTS OF AMERICA, INC., a Georgia corporation ("Franchisor"), and \_\_\_\_\_ ("Landlord").

WHEREAS, Franchisor and Franchisee are parties to that certain Franchise Agreement date \_\_\_\_\_, ("Franchise Agreement");

WHEREAS, Franchisee and Landlord desire to enter into a lease (the "Lease") pursuant to which Franchisee will occupy the premises located at \_\_\_\_\_ (the "Premises") for a restaurant (hereinafter "Restaurant" or "franchised business") licensed under the Franchise Agreement; and

WHEREAS, as a condition to entering into the Lease, the Franchisee is required under the Franchise Agreement to execute this Lease Rider along with the Landlord and Franchisor;

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein and in the Franchise Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- (1) During the term of the Franchise Agreement, the Premises shall be used only for the operation of the Restaurant.
- (2) Landlord consents to Franchisee's use of such marks and signs, and interior and exterior decor items, color schemes and related components of the Up The Creek Fish Camp & Grill system, plans, specifications, location of the building and its entrance, as Franchisor may prescribe for the Restaurant.
- (3) Landlord agrees to furnish Franchisor with copies of any and all letters and notices sent to Franchisee pertaining to the Lease and the Premises, at the same time that such letters and notices are sent to Franchisee.
- (4) Franchisor shall have the right to enter the Premises to make any modification or alteration necessary to protect the Up The Creek Fish Camp & Grill system and marks or to cure any default under the Franchise Agreement entered into between Franchisor and Franchisee or under the Lease, without being guilty of trespass or any other crime or tort, and Landlord shall not be responsible for any expenses or damages arising from Franchisor's action in connection therewith.
- (5) Franchisee shall be permitted to assign the Lease to Franchisor or its designee upon the expiration or earlier termination of the Franchise Agreement and the Landlord hereby consents to such assignment and agrees not to impose or assess any assignment fee or similar charge, accelerate rent under the Lease in connection with such assignment, or to require Franchisor to pay any past due rent not paid by Franchisee.
- (6) In the event of such assignment, Franchisor or any designee designated by Franchisor will agree to assume from the date of assignment all obligations of Franchisee remaining under the Lease, and in such event Franchisor or any designee shall assume Franchisee's occupancy rights, and the right to sublease the Premises, for the remainder of the term of the Lease.
- (7) Franchisee shall not assign the Lease or renew or extend the term thereof without the prior written consent of Franchisor.
- (8) Landlord and Franchisee shall not amend or otherwise modify the Lease in any manner that could materially affect any of the foregoing requirements without the prior written consent of Franchisor.
- (9) The terms of this Lease Rider will supersede any conflicting terms of the Lease.
- (10) Franchisor is not a party to the Lease and shall have no liability under the Lease unless and until said Lease is assigned to, and assumed by, Franchisor as herein provided.

IN WITNESS WHEREOF, the parties have executed this Lease Rider as of the date first above written.



**FRANCHISOR:**

**UP THE CREEK RESTAURANTS OF AMERICA, INC.**  
a Georgia corporation

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

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

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

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

**LANDLORD:**

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

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

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

**ATTACHMENT C TO FRANCHISE AGREEMENT**

**STATEMENT OF OWNERSHIP INTERESTS  
AND FRANCHISEE'S PRINCIPALS**

A. The following is a list of shareholders, partners or other investors in Franchisee, including all investors who own or hold a direct or indirect interest in Franchisee, and a description of the nature of their interest:

<u>NAME</u>	<u>PERCENTAGE OF OWNERSHIP/ NATURE OF INTEREST</u>
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B. In addition to the persons listed in paragraph A, the following is a list of all of the Franchisee's Principals described in and designated pursuant to Section XIX.S. of the Franchise Agreement. Unless designed as a Controlling Principal, each of Franchisee's Principals shall execute the Confidentiality Agreement and Ancillary Covenants Not to Complete substantially in the form set forth in Attachment D (see Section X.B.(2) and X.C.(4) of the Franchise Agreement):

C. In addition each of the Controlling Principals is required to execute the Controlling Principals Agreement (Attachment F to the Franchise Agreement.)

ATTACHMENT D TO FRANCHISE AGREEMENT

CONFIDENTIALITY AGREEMENT AND  
ANCILLARY COVENANTS NOT TO COMPETE

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between UP THE CREEK RESTAURANTS OF AMERICA, INC., a Georgia corporation ("Franchisor"), \_\_\_\_\_, a \_\_\_\_\_ ("Franchisee"), and \_\_\_\_\_ ("Covenantor").

RECITALS

WHEREAS, Franchisor has obtained the right to develop a unique system (the "System") for the development and operation of restaurant under the name and mark "Up The Creek Fish Camp & Grill" ("Restaurants"); and

WHEREAS, the System includes, but is not limited to, distinctive exterior and interior design, decor and color scheme and furnishings, a unique process and secret recipes for the preparation of signature beverages, secret recipes and special menu items; uniform standards, specifications and procedures for inventory and management and financial control; operations; quality and uniformity of products and services offered; procedures for management and financial control; training and assistance; and advertising and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time and are used by Franchisor in connection with the operation of the System ("Trade Secrets"); and

WHEREAS, Restaurants under the System are operated under certain trade names, service marks, trademarks, logos, emblems and indicia of origin, including, but not limited to, the marks "Up The Creek Fish Camp & Grill" and such other trade names, service marks, trademarks, logos, insignia, slogans, emblems, designs and commercial symbols as Franchisor may develop in the future to identify for the public the source of services and products marketed under such marks and under the System and representing the System's high standards of quality, appearance and service ("Marks"); and

WHEREAS, the Marks and Trade Secrets provide economic advantages to Franchisor and are not generally known to, and are not readily ascertainable by proper means by, Franchisor's competitors who could obtain economic value from knowledge and use of the Trade Secrets; and

WHEREAS, Franchisor has taken and intends to take all reasonable steps to maintain the confidentiality and secrecy of the Trade Secrets; and

WHEREAS, Franchisor has granted Franchisee the limited right to operate a Restaurant using the System, the Marks and the Trade Secrets for the period defined in the franchise agreement made and entered into on \_\_\_\_\_, ("Franchise Agreement"), by and between Franchisor and Franchisee; and

WHEREAS, Franchisor and Franchisee have agreed in the Franchise Agreement on the importance to Franchisor and to Franchisee and other licensed users of the System of restricting the use, access and dissemination of the Trade Secrets; and

WHEREAS, it will be necessary for certain employees, agents, independent contractors, officers, directors and interest holders of Franchisee, or any entity having an interest in Franchisee ("Covenantor") to have access to and to use some or all of the Trade Secrets in the management and operation of Franchisee's business using the System; and

WHEREAS, Franchisee has agreed to obtain from those covenantors' written agreements protecting the Trade Secrets and the System against unfair competition; and

WHEREAS, Covenantor wishes to remain, or wishes to become associated with or employed by Franchisee; and

WHEREAS, Covenantor wishes and needs to receive and use the Trade Secrets in the course of his employment or association in order to effectively perform his services for Franchisee; and

WHEREAS, Covenantor acknowledges that receipt of and the right to use the Trade Secrets constitutes independent valuable consideration for the representations, promises and covenants made by Covenantor herein;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

## Confidentiality Agreement

1. Franchisor and/or Franchisee shall disclose to Covenantor some or all of the Trade Secrets relating to the System. All information and materials, including, without limitation, manuals, drawings, specifications, techniques and compilations of data which Franchisor provides to Franchisee and/or Covenantor shall be deemed confidential Trade Secrets for the purposes of this Agreement.
2. Covenantor shall receive the Trade Secrets in confidence and shall, at all times, maintain them in confidence, and use them only in the course of his employment or association with an Franchisee and then only in connection with the development and/or operation by Franchisee of a Restaurant for so long as Franchisee is licensed by Franchisor to use the System.
3. Covenantor shall not at any time make copies of any documents or compilations containing some or all of the Trade Secrets without Franchisor's express written permission.
4. Covenantor shall not at any time disclose or permit the disclosure of the Trade Secrets except to other employees of Franchisee and only to the limited extent necessary to train or assist other employees of Franchisee in the development or operation of a Restaurant using the System.
5. Covenantor shall surrender any material containing some or all of the Trade Secrets to Franchisee or Franchisor, upon request, or upon termination of employment by Franchisee, or upon conclusion of the use for which such information or material may have been furnished to Covenantor.
6. Covenantor shall not at any time, directly or indirectly, do any act or omit to do any act that would or would likely be injurious or prejudicial to the goodwill associated with the Trade Secrets and the System.
7. All manuals are loaned by Franchisor to Franchisee for limited purposes only and remain the property of Franchisor and may not be reproduced, in whole or in part, without Franchisor's written consent.

## Covenants Not To Compete

1. In order to protect the goodwill and unique qualities of the System and the confidentiality and value of the Trade Secrets, and in consideration for the disclosure to Covenantor of the Trade Secrets, Covenantor further agrees and covenants during Covenantor's association with Franchisee, as follows:
  - a. Not to divert, or attempt to divert, any business, or business opportunity or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and the System.
  - b. Not to employ, or seek to employ, any person who is at the time or was within the preceding one hundred eighty (180) days employed by Franchisor, any of its affiliates or any franchisee (including, as applicable, any developer) of Franchisor, or otherwise directly or indirectly induce such person to leave that person's employment.
  - c. Except for the Restaurant described in the Franchise Agreement, not to directly or indirectly, for himself or through, on behalf of, or in conjunction with any person, partnership or corporation, without the prior written consent of Franchisor, own, maintain, operate, engage in, or have any financial or beneficial interest in (including any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to, any business that is of a character and concept similar to the Restaurant. As used herein, the term "similar" means a restaurant business which looks like, copies, imitates, or operates in a manner similar to a "Up The Creek Fish Camp & Grill" restaurant, including, but not limited to, a restaurant business which offers and sells seafood, fish, shellfish, or similar fare, and such menu items constitute forty percent (40%) or more of the appetizers or entrees listed in its menu as determined by Franchisor, in its sole discretion, and which business is located within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which Franchisor has used, sought registration of or registered the same or similar Marks or operates or licenses others to operate a business under the same or similar Marks.
2. In further consideration for the disclosure to Covenantor of the Trade Secrets and to protect the uniqueness of the System, Covenantor agrees and covenants that for two (2) years following the earlier of the expiration, termination or transfer of all of Franchisee's interest in the Franchise Agreement or the termination of his association with or employment by Franchisee, Covenantor will not without the prior written consent of Franchisor:
  - a. Divert, or attempt to divert, any business, or business opportunity or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise.

b. Employ, or seek to employ, any person who is at the time or was within the preceding one hundred eighty (180) days employed by Franchisor, any of its affiliates or any franchisee (including, as applicable, any developer) of Franchisor, or otherwise directly or indirectly induce such persons to leave that person's employment.

c. Directly or indirectly, for himself or through, on behalf of or in conjunction with any person, partnership or corporation, own, maintain, operate, engage in, or have any financial or beneficial interest in (including any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to, any business that is of a character and concept similar to the Restaurant. As used herein, the term "similar" means a restaurant business which looks like, copies, imitates, or operates in a manner similar to an "Up The Creek Fish Camp & Grill" restaurant, including, but not limited to, a restaurant business which offers and sells seafood, fish, shellfish, or similar fare, and such menu items constitute forty percent (40%) or more of the appetizers or entrees listed in its menu as determined by Franchisor, in its sole discretion, and which business is, or is intended to be located within the Territory, as such term is defined in the Development Agreement (and as described in the map attached thereto), or within a twenty-five (25)-mile radius of the location of any Up The Creek Fish Camp & Grill restaurant or other food service facility in existence or under construction (or where land has been purchased or a lease executed) at any given time during such period.

#### Miscellaneous

1. Franchisee shall make all commercially reasonable efforts to ensure that Covenantor acts as required by this Agreement.
2. Covenantor agrees that in the event of a breach of this Agreement, Franchisor would be irreparably injured and be without an adequate remedy at law. Therefore, in the event of such a breach, or threatened or attempted breach of any of the provisions hereof, Franchisor shall be entitled to enforce the provisions of this Agreement and shall be entitled, in addition to any other remedies which are made available to it at law or in equity, including the right to terminate the Franchise Agreement, to a temporary and/or permanent injunction and a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm and without being required to furnish a bond or other security.
3. Covenantor agrees to pay all expenses (including court costs and reasonable attorneys' fees) incurred by Franchisor and Franchisee in enforcing this Agreement.
4. Any failure by Franchisor or the Franchisee to object to or take action with respect to any breach of any provision of this Agreement by Covenantor shall not operate or be construed as a waiver of or consent to that breach or any subsequent breach by Covenantor.
5. THIS AGREEMENT SHALL BE INTERPRETED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE FRANCHISOR'S THEN HEADQUARTERS IS LOCATED, EXCEPT FOR THAT STATE'S CHOICE OF LAW PRINCIPLES. COVENANTOR HEREBY IRREVOCABLY SUBMITS HIMSELF TO THE JURISDICTION OF THE COURTS WHERE FRANCHISOR'S THEN HEADQUARTERS IS LOCATED. COVENANTOR HEREBY WAIVES ALL QUESTIONS OF PERSONAL JURISDICTION OR VENUE FOR THE PURPOSE OF CARRYING OUT THIS PROVISION. COVENANTOR HEREBY AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON HIM IN ANY PROCEEDING RELATING TO OR ARISING UNDER THIS AGREEMENT OR THE RELATIONSHIP CREATED BY THIS AGREEMENT BY ANY MEANS ALLOWED BY STATE OR FEDERAL LAW. COVENANTOR FURTHER AGREES THAT VENUE FOR ANY PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT SHALL BE THE GOVERNMENTAL UNIT WHERE THE FRANCHISOR'S THEN HEADQUARTERS IS LOCATED; PROVIDED, HOWEVER, WITH RESPECT TO ANY ACTION WHICH INCLUDES INJUNCTIVE RELIEF OR OTHER EXTRAORDINARY RELIEF, FRANCHISOR OR FRANCHISEE MAY BRING SUCH ACTION IN ANY COURT IN ANY STATE WHICH HAS JURISDICTION.
6. The parties acknowledge and agree that each of the covenants contained herein are reasonable limitations as to time, geographical area, and scope of activity to be restrained and do not impose a greater restraint than is necessary to protect the goodwill or other business interests of Franchisor. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in any unappealed final decision to which Franchisor is a party, Covenantor expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.
7. This Agreement contains the entire agreement of the parties regarding the subject matter hereof. This Agreement may be modified only by a duly authorized writing executed by all parties.

8. All notices and demands required to be given hereunder shall be in writing and shall be sent by personal delivery, expedited delivery service, certified or registered mail, return receipt requested, first-class postage prepaid, facsimile, telegram or telex by sending an original confirmation copy by certified or registered mail ore expedited delivery service within three (3) business days after transmission), to the respective parties at the following addressed unless and until a different address has been designed by written notice to the other parties:

If directed to Franchisor: Up The Creek Restaurants of America, Inc.  
6620 McGinnis Ferry Road, Suite B  
Duluth, Georgia 30097  
Attention: President  
Tele: (770) 623-0360  
Fax: (770) 623-0557

Copy To: William M. Davidson, Esquire  
Davidson, Fuller & Sloan, L.L.P.  
11330 Lakefield Drive,  
Suite 250, Building One  
Duluth, Georgia 30097  
Tele: (770) 622-4700  
Fax: (770) 622-4705

If directed to Franchisee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Tele: \_\_\_\_\_  
Fax: \_\_\_\_\_

If directed to Covenantor:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Tele: \_\_\_\_\_  
Fax: \_\_\_\_\_

Any notices sent by personal delivery shall be deemed given upon receipt. Any notices given by telex or facsimile shall be deemed given upon transmission, provided confirmation is made as provided above. Any notice sent by expedited delivery service or registered or certified mail shall be deemed given three (3) business days after the time of mailing. Any change in the foregoing addressed shall be effected by giving thirty (30) days written notice of such change to the other parties. Business day for the purpose of this Agreement excludes Saturday, Sunday and the following national holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving and Christmas.

9. The rights and remedies of Franchisor under this Agreement are fully assignable and transferable and shall inure to the benefit of its respective affiliates, successors and assigns. The respective obligations of Franchisee and Covenantor hereunder may not be assigned by Franchisee or Covenantor, without the prior written consent of Franchisor.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

ATTEST:

\_\_\_\_\_

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

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

FRANCHISOR:

UP THE CREEK RESTAURANTS OF AMERICA, INC.  
a Georgia corporation

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

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

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

ATTEST:

\_\_\_\_\_

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

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

FRANCHISEE:

\_\_\_\_\_ Company

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

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

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

ATTEST:

\_\_\_\_\_

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

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

COVENANTOR:

\_\_\_\_\_

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

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

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

**ATTACHMENT E TO FRANCHISE AGREEMENT**

**CHRONOLOGICAL TABLE OF SELECTED EVENTS**

<u>ITEM</u>	<u>TIME</u>	<u>SECTION</u>
Payment of Initial Franchise Fee	Execution of Franchise Agreement	IV.A.
Designation of Operating Principal (and Designee, if applicable); Designation of General Manager	Execution of Franchise Agreement	VI.C., D.
Acquisition of Insurance	Execution of Franchise Agreement	XII.A.
Submission of Proposed Site	180 days following execution of first Franchise Agreement and 90 days after each subsequent Franchise Agreement	II.B.
Approval or Disapproval of Proposed Site by Franchisor	45 days after receipt of information	II.B.
Execution of Lease or Other Acquisition of Approved Site	60 days following Franchisor's approval of the site (up to 180 days on approval)	II.C.
Approval or Disapproval of Proposed Architectural Plans by Franchisor	45 days after receipt of plans	II.E.
Commencement of Construction	Initiation of site work at the Restaurant	II.F.
Submission of Notice of Completion of Construction	60 days prior to scheduled completion of construction	II.F.
Completion of Initial Training By Managers	120 days prior to Opening Date	VI.E.(1)
Opening of Restaurant	one (1) year following execution of Franchise Agreement for the first Restaurant developed and one (1) year for each subsequent Restaurant developed	II.G.
Payment of Royalty Fee and Advertising Fees	On or before the 12th day following the end of each Accounting Period	IV.B.(1); VIII.C.
Expiration of Term	15 Years from Opening Date or the Expiration or Termination of Franchisee's Right to Possess the Restaurant Premises	III.A.



ATTACHMENT F TO FRANCHISE AGREEMENT

CONTROLLING PRINCIPALS AGREEMENT

Each of the undersigned acknowledges and agrees as follows:

(1) Each has read the terms and conditions of the Franchise Agreement and acknowledges that the execution of this guaranty and the undertakings of the Controlling Principals in the Franchise Agreement are in partial consideration for, and a condition to the granting of this license, and that Franchisor would not have granted this license without the execution of this guaranty and such undertakings by each of the undersigned;

(2) Each is included in the term "Controlling Principals" as described in Section XIX.S. of the Franchise Agreement;

(3) Each individually, jointly and severally, makes all of the covenants, representations, warranties and agreements of the Controlling Principals set forth in the Franchise Agreement and is obligated to perform thereunder; and

(4) Each individually, jointly and severally, unconditionally and irrevocably guarantees to Franchisor and its successors and assigns that all of Franchisee's obligations under the Franchise Agreement will be punctually paid and performed. Upon default by Franchisee or upon notice from Franchisor, each will immediately make each payment and perform each obligation required of Franchisee under the Franchise Agreement. Without affecting the obligations of any of the Controlling Principals under this guaranty, Franchisor may, without notice to the Controlling Principals, waive, renew, extend, modify, amend or release any indebtedness or obligation of Franchisee or settle, adjust or compromise any claims that Franchisor may have against Franchisee. Each of the Controlling Principals waives all demands and notices of every kind with respect to the enforcement of this guaranty, including, without limitation, notice of presentment, demand for payment or performance by Franchisee, any default by Franchisee or any guarantor and any release of any guarantor or other security for this guaranty or the obligations of Franchisee. Franchisor may pursue its rights against any of the Controlling Principals without first exhausting its remedies against Franchisee and without joining any other guarantor hereto and no delay on the part of Franchisor in the exercise of any right or remedy shall operate as a waiver of such right or remedy, and no single or partial exercise by Franchisor of any right or remedy shall preclude the further exercise of such right or remedy. Upon receipt by Franchisor of notice of the death of any of the Controlling Principals, the estate of the deceased will be bound by the foregoing guaranty, but only for defaults and obligations under the Franchise Agreement existing at the time of death, and in such event, the obligations of the remaining Controlling Principals shall continue in full force and effect.

Additionally, with respect to the individual designated as Operating Principal, Operating Principal acknowledges that the undertakings by Operating Principal under this guaranty are made and given in partial consideration of, and as a condition to, Franchisor's grant of rights to operate the Restaurant as described herein; Operating Principal individually, jointly and severally, makes all of the covenants, representations and agreements of Franchisee and Operating Principal set forth in the Franchise Agreement and is obligated to perform hereunder.

ATTEST:

CONTROLLING PRINCIPALS:

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

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

\*Denotes individual who is Franchisee's Operating Principal