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entity to operate and manage the JOHNNY ROCKETS Restaurant who is so qualified and who is approved in writing by LICENSOR; and (b) performs all other applicable acts required under Section 15.B.

(2) Any subsequent sale or other Transfer by a Successor Transferee shall be subject to LICENSOR's right of written approval set forth in this Section 15.D. and the right of first refusal in favor of LICENSOR set forth in Section 15.C. A Transfer to a Successor Transferee shall not require the payment of the Transfer Fee.

(3) In the event LICENSOR does not approve the qualifications of any heir or beneficiary of DEVELOPER to operate the JOHNNY ROCKETS Restaurant, the executor or administrator of DEVELOPER's estate shall have a period of ninety (90) days following the date of such written disapproval to sell the JOHNNY ROCKETS Restaurant to a Successor Transferee acceptable to LICENSOR, subject to the provisions of Section 15.C. of this Agreement, during which period LICENSOR may elect, at its option, to manage or operate such JOHNNY ROCKETS Restaurant. If such a sale is not concluded within that period, LICENSOR may terminate this Agreement.

(4) At any time prior to LICENSOR's approval of such Successor Transferee or other entity or individual designated by the Successor Transferee or sale of the JOHNNY ROCKETS Restaurant to a Successor Transferee acceptable to LICENSOR, LICENSOR may, at its sole discretion, install LICENSOR's personnel or representatives to operate the JOHNNY ROCKETS Restaurant for such period of time as LICENSOR deems necessary. If LICENSOR deems it necessary to install any of its personnel or representatives to operate the JOHNNY ROCKETS Restaurant as provided for above, LICENSOR shall be reimbursed by the Successor Transferee or its assignee for all of LICENSOR's out-of-pocket expenses, including the wages of such personnel or representatives.

**16. PROTECTION OF TRADEMARKS AND RELATED PROPRIETARY RIGHTS**

**A. Rights to the Johnny Rockets System and the Marks**

(1) DEVELOPER's rights to use the Marks as granted in Section 2 herein, and the JRCMS if DEVELOPER so elects, are limited to their use in connection with the business operations of DEVELOPER's JOHNNY ROCKETS Restaurant as described herein or as is reasonably prescribed in writing by LICENSOR from time to time.

(2) DEVELOPER acknowledges LICENSOR's right, title and interest in and to the Marks and the JRCMS, along with the identification, schemes, standards, specifications, operating procedures and other concepts embodied in the Johnny Rockets System. Except as expressly provided by this Agreement, DEVELOPER shall acquire no right, title or interest therein and any and all goodwill associated with the Johnny Rockets System and the Marks shall inure exclusively to LICENSOR's benefit. Upon the expiration or termination of this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with DEVELOPER's use of the Johnny Rockets System or the Marks.

(3) LICENSEE agrees that it will not, at any time during the term of this Agreement or at any time thereafter: (a) use or attempt to use any or all portions of the Johnny Rockets System or of the Marks or any name or mark similar to the Marks in connection with any other entity or business in which he has an interest, direct or indirect, or as any part of the name of the entity operating a JOHNNY ROCKETS Restaurant, including any corporation, partnership or sole proprietorship; (b) directly or indirectly, commit an act of infringement or contest or aid in contesting the validity or ownership of the Marks or take any other action in derogation thereof; or (c) permit any third party supplier to imprint the Marks on any products, materials, documents or supplies utilized by DEVELOPER in connection with the operation of its JOHNNY ROCKETS Restaurant without first obtaining the consent of LICENSOR.

**B. Notice of Claim and Reimbursement**

(1) DEVELOPER shall give immediate written notice to LICENSOR of any improper use of the Marks or any other trade name or service mark used by any third party that is confusingly similar to the Marks that comes to DEVELOPER's attention. Upon receipt of written notification, LICENSOR may, at its option, elect to undertake and control the prosecution, defense or settlement of any legal action in connection with such improper usage or infringement. In connection therewith, DEVELOPER shall assist LICENSOR in carrying out such action provided that LICENSOR will reimburse DEVELOPER promptly for any expenses it incurs at LICENSOR's request, upon submission of proof of such expenses in form reasonably satisfactory to LICENSOR.

(2) DEVELOPER shall immediately notify LICENSOR if any third party shall assert any challenge, claim or action against DEVELOPER for infringement or unfair competition on account of DEVELOPER's use of the Marks. LICENSOR will undertake and control the defense or settlement of such challenge, claim or action and reimburse DEVELOPER promptly for all out-of-pocket expenses, and actual damages (other than loss of income), incurred by DEVELOPER in connection therewith, upon submission of proof thereof in form reasonably satisfactory to LICENSOR; provided, however, that such obligations of LICENSOR to defend and reimburse DEVELOPER will exist only if DEVELOPER: (a) has used the Marks in strict accordance with the terms of this Agreement and the rules, regulations, procedures, requirements and instruction of LICENSOR; (b) has promptly notified LICENSOR of the challenge, claim and action as set forth above; and (c) has otherwise fully cooperated with LICENSOR in the defense of any such action.

**C. Discontinued Use**

If it becomes advisable at any time, in the sole discretion of LICENSOR, to modify or discontinue the use of any one or more of its Marks or to use one or more additional or substitute marks, DEVELOPER agrees to immediately comply with the instructions of LICENSOR in that regard, including replacing sign faces and otherwise physically complying with this obligation.

**D. Notice**

DEVELOPER agrees to utilize the required trademark, service mark or copyright notices in the form specified by LICENSOR in connection with his use of LICENSOR's trademarked and copyrighted items.

**E. Trade Secrets**

(1) LICENSOR possesses and continues to develop, and during the course of the relationship established hereunder, DEVELOPER shall have access to, proprietary and confidential information, including, recipes, secret ingredients, specifications, procedures, concepts and methods and techniques of developing, marketing and operating JOHNNY ROCKET'S Restaurants, restaurants and other retail outlets featuring the sale of hamburgers, chili, malts, and related products ("Trade Secrets"). Certain of the Trade Secrets may be disclosed to DEVELOPER in the Manuals, bulletins, supplements, confidential correspondence, or other confidential communications, and through the LICENSOR's training program and other guidance and management assistance, and in performing LICENSOR's other obligations and exercising LICENSOR's rights under this Agreement. "Trade Secrets" shall not include information which: (a) has entered the public domain or was known to DEVELOPER prior to LICENSOR's disclosure of such information to DEVELOPER, other than by the breach of an obligation of confidentiality owed (by anyone) to LICENSOR; (b) becomes known to DEVELOPER from a source other than LICENSOR and other than by the breach of an obligation of confidentiality owed (by anyone) to LICENSOR; or (c) was independently developed by DEVELOPER without the use or benefit of LICENSOR's Trade Secrets. The burden of proving the applicability of the foregoing will reside with DEVELOPER.

(2) DEVELOPER shall acquire no interest in the Trade Secrets other than the right to use them in connection with operating the JOHNNY ROCKET'S Restaurant at the Restaurant Site pursuant to this

Agreement. DEVELOPER's duplication or use of the Trade Secrets in any other endeavor or business shall constitute an unfair method of competition. DEVELOPER shall: (a) not use the Trade Secrets in any business or other endeavor other than in connection with such JOHNNY ROCKETS Restaurant; (b) maintain absolute confidentiality of the Trade Secrets during and after this Agreement's term; (c) make no unauthorized copy of any portion of the Trade Secrets, including all or any part of the Manuals, bulletins, supplements, confidential correspondence, or other confidential communications, whether written or oral; and (d) operate and implement all reasonable procedures prescribed from time to time by LICENSOR to prevent unauthorized use and disclosure of the Trade Secrets, including restrictions limiting disclosure to certain employees and use of non-disclosure and non-competition provisions as LICENSOR prescribes in employment agreements with employees who may have access to the Trade Secrets. Promptly upon LICENSOR's request, DEVELOPER shall deliver executed copies of such agreements to LICENSOR. The provisions of this Section 16.E. shall be in addition to and not in lieu of any other confidentiality obligation of DEVELOPER, or any other person, whether pursuant to another agreement, or pursuant to applicable law.

(3) For purposes of this Section 16.E. only, "DEVELOPER" shall mean and include the individual DEVELOPER; DEVELOPER's spouse and minor children and its Owners, officers and directors if DEVELOPER is a corporation, limited liability company, partnership, trust or other entity, and DEVELOPER shall, except as LICENSOR may otherwise agree, cause each such person to acknowledge and agree to be bound by the provisions this Section 16.E. The provisions of this Section 16.E. shall not limit, restrain or otherwise affect any right or cause of action which may accrue to LICENSOR for any infringement of, violation of, or interference with, this Agreement, or LICENSOR's Marks, System, trade secrets, or any other proprietary aspects of LICENSOR's business.

## 17. COVENANTS

### A. Off-Site Operations

During the term of this Agreement and any renewal or extension thereof, DEVELOPER shall not directly or indirectly use the Marks (except to advertise the JOHNNY ROCKETS Restaurant) or sell, dispense, give away or otherwise provide any food, goods, wares, merchandise or services, except at the JOHNNY ROCKETS Restaurant at the Restaurant Site, except that, with the prior approval of LICENSOR upon application by DEVELOPER, DEVELOPER may sell food and authorized merchandise at fairs, exhibits, parties and similar temporary venues away from the JOHNNY ROCKETS Restaurant which are at least three (3) miles (by the most direct surface route) from the site of another JOHNNY ROCKETS Restaurant.

### B. In-Term Competition

During the term of this Agreement, neither DEVELOPER nor any of its Owners, officers, or directors (or similar executives) shall directly or indirectly engage or be financially involved in (except for operation by DEVELOPER of another Johnny Rockets Restaurant or ownership of not more than five percent (5%) of the outstanding stock, voting and nonvoting, of a corporation, the stock of which is traded on a national securities exchange), or be employed by any business which sells hamburgers, chili, malts or related products as a significant aspect of its operation.

### C. Post-Term Competition

For two (2) years following the termination or expiration of this Agreement, or upon the Transfer of this Agreement, neither DEVELOPER nor its Owners, officers or directors (or similar executives) shall directly or indirectly engage or be financially involved in (except for operation by DEVELOPER of another Johnny Rockets Restaurant or ownership of not more than five percent (5%) of the outstanding stock, voting and non-voting, of a corporation, the stock of which is traded on a national securities exchange), or be employed by any business which sells hamburgers, chili, malts or related products as a significant aspect of its operation (1) within the county in which the JOHNNY ROCKETS Restaurant operated by DEVELOPER hereunder is located, or (2) within an area within 10 miles from the Restaurant Site or any then existing JOHNNY

ROCKETS Restaurant, without LICENSOR's prior written consent. In applying for such consent, DEVELOPER will have the burden of establishing that any such activity by it will not involve the use of benefits provided under this Agreement or constitute unfair competition with LICENSOR or other franchisees or area developers of LICENSOR.

#### **D. Modifications**

The parties have attempted in Section 17.C. above to limit DEVELOPER's right to compete only to the extent necessary to protect LICENSOR from unfair competition. The parties hereby expressly agree that if the scope or enforceability of Section 17.C. is disputed at any time by DEVELOPER, a court or arbitrator, as the case may be, may modify either or both of such provisions to the extent that it deems necessary to make such provision(s) enforceable under applicable law. In addition, LICENSOR reserves the right to reduce the scope of either, or both, of said provisions without DEVELOPER's consent, at any time or times, effective immediately upon notice to DEVELOPER.

#### **E. Employees of LICENSOR**

DEVELOPER shall not interfere with the employees and agents of LICENSOR in the performance of such employees' and agents' duties. DEVELOPER further agrees that during the term of this Agreement, any renewal term or extension of this Agreement and for one (1) year thereafter, it will not employ or seek to employ any of LICENSOR's employees or agents, any employees or agents of LICENSOR's parent or affiliates, or any of LICENSOR's licensees, for a period of at least one (1) year following the separation of any such employee from employment by LICENSOR or its parent or affiliates or the termination of an agency relationship with LICENSOR, its parent or affiliate, nor shall DEVELOPER induce, contract or solicit in any manner whatsoever any such employee or agent during such period to leave such employment or affiliation.

In addition to the other rights and remedies provided herein and at law or in equity, and not in lieu thereof, in the event DEVELOPER violates the provisions of this Section 17.E., DEVELOPER shall pay to LICENSOR the sum of One Hundred Thousand Dollars (\$100,000). Said payment shall be required only if DEVELOPER knew that the employee was or had been employed by LICENSOR, LICENSOR's parent, affiliates or other licensees. DEVELOPER acknowledges that LICENSOR, LICENSOR's parent, affiliates and other licensees have expended a substantial amount of time and money in the selection and training of their respective employees and agents and that LICENSOR, LICENSOR's parent, affiliates or other licensees would suffer substantial loss and damage in the event DEVELOPER violates such provisions. DEVELOPER further agrees and acknowledges that this provision and the payment described herein is therefore reasonable under the circumstances existing as of the date of this Agreement.

#### **18. RELATIONSHIP OF THE PARTIES**

DEVELOPER is and shall be an independent contractor. Neither DEVELOPER nor any employee or agent of DEVELOPER shall be deemed to be an employee, commercial agent or agent of any kind, of LICENSOR. Nothing contained in this Agreement shall be construed so as to create a partnership, joint venture, commercial or other agency, and neither party to this Agreement shall be liable for the debts or obligations of the other. Since DEVELOPER acknowledges that it is an independent contractor and not an agent, DEVELOPER shall not at any time attempt in any way to register this Agreement as agency contracts or itself as a commercial or other agent with a federal or municipal authority without the prior written consent of LICENSOR.

19. **DEFAULT**

**A. Termination Without Cure Period**

In addition to the grounds for termination that may be stated elsewhere in this Agreement, LICENSOR may terminate this Agreement, and the rights granted by this Agreement, upon notice to DEVELOPER without opportunity to cure upon the occurrence of any of the following:

- (1) DEVELOPER's failure to enter into a lease for the Restaurant Site within one hundred and eighty (180) days after LICENSOR's execution of this Agreement, or within two hundred and seventy (270) days, as extended pursuant to Section 5.B. on terms and conditions satisfactory to LICENSOR, including the lease provisions required as set forth in Section 5.A.;
- (2) DEVELOPER's failure to carry out all necessary construction and fixturing of its JOHNNY ROCKETS Restaurant and commence restaurant operations within one hundred and eighty (180) days of the date on which DEVELOPER executes the lease for such Restaurant Site;
- (3) DEVELOPER's or any of its managerial personnel's failure to satisfactorily complete LICENSOR's initial training program in accordance with the provisions of Section 8.A.(1) of this Agreement;
- (4) There is a material breach of any obligation under Section 17 of this Agreement;
- (5) The attachment of any involuntary lien in the sum of \$15,000 or more upon any of the business assets or property of DEVELOPER, which lien is not promptly removed or bonded in full;
- (6) DEVELOPER's use of products similar or equivalent to the Proprietary Products other than the Proprietary Products supplied by LICENSOR or its affiliates or approved suppliers without LICENSOR's written approval;
- (7) Any attempted Transfer in violation of Section 15 of this Agreement;
- (8) Any material misrepresentation by DEVELOPER relating to its acquisition of the license for the JOHNNY ROCKETS Restaurant or conduct by DEVELOPER which reflects materially and unfavorably upon the operation and reputation of LICENSOR, the JOHNNY ROCKETS Restaurant or the Johnny Rockets System;
- (9) The JOHNNY ROCKETS Restaurant or Restaurant Site of DEVELOPER are seized, taken over or foreclosed by a government official in the exercise of his duties, or by a creditor, lienholder or lessor, as a final judgment against DEVELOPER remains unsatisfied for thirty (30) days (unless a superseder or other appeal bond has been filed); or a levy of execution has been made upon the license granted by this Agreement or upon any property used in the JOHNNY ROCKETS Restaurant and it is not discharged within five (5) days of such levy;
- (10) DEVELOPER, or any of its Owners, is convicted of, or pleads nolo contendere to a felony or any other criminal misconduct, or any offense involving moral turpitude, which LICENSOR deems relevant to the operation of the JOHNNY ROCKETS Restaurant;
- (11) LICENSOR makes a reasonable determination that the continued operation of the JOHNNY ROCKETS Restaurant by DEVELOPER will result in immediate danger to public health or safety;
- (12) DEVELOPER or any Owner remains in default beyond the applicable cure period under any other agreement with LICENSOR or its affiliates (provided that, if the default is not by

DEVELOPER, DEVELOPER is given written notice of the default and a thirty (30) day period to cure the default);

(13) DEVELOPER's failure to perform or observe any provision of the lease for the Restaurant Site or the termination of the lease or sublease pertaining to the Restaurant Site (except if DEVELOPER enters into a new lease or sublease for the Restaurant Site), together with DEVELOPER's failure or inability to locate and commence without interruption operation of the JOHNNY ROCKETS Restaurant at suitable replacement premises satisfactory to LICENSOR prior to the effective date of such termination of the lease;

(14) As more specifically described in Section 14.B. herein, DEVELOPER understates by two percent (2%) or more its Weekly Gross Sales in three (3) or more reports during any twenty-four (24) month period;

(15) DEVELOPER's failure, for a period of ten (10) days after receipt of notification, to comply with any federal, state or local laws or regulations applicable to the operation of the JOHNNY ROCKETS Restaurant; or

(16) DEVELOPER's abandonment of the JOHNNY ROCKETS Restaurant by failure to operate same for three (3) consecutive days or any shorter period by which LICENSOR reasonably concludes that DEVELOPER does not intend to continue to operate the JOHNNY ROCKETS Restaurant, unless such failure to operate is due to fire, flood, earthquake or other similar causes beyond DEVELOPER's control.

#### **B. Termination Following Expiration of Cure Period**

(1) Except for those items listed in preceding Section 19.A., DEVELOPER shall have thirty (30) days after receipt of written notice of default from LICENSOR in which to remedy the default and provide evidence of that remedy to LICENSOR. If any such default is not cured within that time, this Agreement shall terminate without further notice to DEVELOPER effective immediately upon expiration of that time, unless LICENSOR notifies DEVELOPER otherwise in writing.

(2) Notwithstanding the preceding Section 19.B.(1), with respect to the defaults identified in Section 19.B.(2) below, DEVELOPER shall have the cure period identified with respect to each default after receipt of written notice of default from LICENSOR in which to remedy the default and provide evidence of that remedy to LICENSOR or this Agreement will terminate immediately upon expiration of that time unless LICENSOR notifies DEVELOPER otherwise in writing:

(a) DEVELOPER's failure to promptly pay any sum due by virtue of this Agreement, including Weekly Royalty Fees and Weekly Creative Marketing Fees and payments to any suppliers within five (5) business days of the date due;

(b) DEVELOPER's failure to operate his JOHNNY ROCKETS Restaurant in compliance with the terms of this Agreement, including the provisions of Section 17.E. above, the Manuals, or any quality or operations standards or guidelines issued in writing by LICENSOR from time to time which failure is not corrected within five (5) business days after notice to DEVELOPER of such failure;

(c) DEVELOPER's failure to cure a default under this Agreement, which materially impairs the goodwill associated with the Marks, after delivery of written notice to cure at least twenty-four (24) hours in advance thereof; or

(d) DEVELOPER's failure to correct or repair any defects, deficiencies or unsatisfactory conditions discovered at the JOHNNY ROCKETS Restaurant by LICENSOR's personnel within ten (10) days of being advised of same.

(3) Notwithstanding the foregoing, if any breach or defect cannot be cured within the applicable time period, this Agreement shall not be deemed terminated if DEVELOPER shall give LICENSOR written notice of such fact and commence the cure of such breach or defect within the applicable time period and diligently prosecute such cure to completion. LICENSOR shall have the right to reject any such notice if, in LICENSOR's reasonable judgment, the breach or defect specified is capable of being cured within the applicable period.

(4) DEVELOPER acknowledges and agrees that complete performance of all the terms of this Agreement is necessary for the protection of LICENSOR, the Johnny Rockets System and the Marks and that complete and exact performance by DEVELOPER of each of his promises contained herein is a condition to the continuance of this license. If DEVELOPER has received 2 or more notices of default within the previous 12 months, LICENSOR shall be entitled to send DEVELOPER a notice of termination upon DEVELOPER's next default within that 12 month period under this Section 19.B. without providing DEVELOPER an opportunity to remedy the default.

C. Notwithstanding the provisions described in this Section 19, if any valid, applicable law or regulation of a competent governmental authority having jurisdiction over the JOHNNY ROCKETS Restaurant and/or the parties to this Agreement limits LICENSOR's rights of termination under this Agreement or requires different or longer notice periods than those set forth herein, Section 19 is deemed amended to conform to the minimum notice periods or restrictions upon termination required by such rules and regulations. LICENSOR shall not however, be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, arbitration, hearing or dispute relating to this Agreement or the termination of this Agreement.

#### **D. Obligations upon Termination**

Upon termination or expiration of this Agreement:

(1) DEVELOPER shall immediately pay LICENSOR and its affiliates all sums due and owing LICENSOR or its affiliates pursuant to this Agreement;

(2) DEVELOPER shall cease to operate the JOHNNY ROCKETS Restaurant and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former licensee of LICENSOR;

(3) DEVELOPER shall immediately and permanently cease to use, by advertising or in any manner whatsoever, any equipment, materials, confidential methods, procedures and techniques associated with the Johnny Rockets System or which display the Marks or any other distinctive forms, slogans, signs, symbols or devices associated with or belonging to LICENSOR;

(4) DEVELOPER shall make such modifications or alterations to the Restaurant Site operated hereunder (including the changing of all telephone numbers and other communication equipment listings), including the improvements thereon, as may be necessary or as specified by LICENSOR from time to time in order to prevent the operation of any business on the Restaurant Site which might be deemed substantially similar to that of LICENSOR or any other licensee of LICENSOR; provided, however, that LICENSOR may waive this provision in the case where LICENSOR exercises its option to obtain an assignment of the lease or otherwise takes over the Restaurant Site. In the event DEVELOPER fails or refuses to comply with the requirements of this Section, LICENSOR shall have the right, without affecting its other rights at law or in equity (and is hereby authorized by DEVELOPER), to enter upon DEVELOPER's business premises in such a way so as to not constitute a breach of the peace, without being guilty of or liable for trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, all at the expense of DEVELOPER;

(5) DEVELOPER shall turn over to LICENSOR the Manuals and all copies of all forms, records, files, instructions, correspondence, agreements and any and all other materials relating to the JOHNNY ROCKETS Restaurant operated hereunder in DEVELOPER's possession and all copies thereof (all of which are hereby acknowledged to be LICENSOR's sole property);

(6) DEVELOPER shall transfer to LICENSOR all telephone numbers utilized by DEVELOPER in the operation of its JOHNNY ROCKETS Restaurant;

(7) DEVELOPER and all persons and entities subject to the covenants contained in Section 17 of this Agreement shall continue to abide by those covenants and shall not, directly or indirectly, take any action that violates those covenants; and

(8) DEVELOPER shall not, except with respect to a restaurant franchised by LICENSOR or its affiliates which is then open and operating pursuant to an effective license agreement: (a) operate or do business under any name or in any manner that might tend to give the public the impression that DEVELOPER is connected in any way with LICENSOR or its affiliates or has any right to use the System or the Marks; (b) make, use or avail itself of any of the materials or information furnished or disclosed by LICENSOR or its affiliates under this Agreement or disclose or reveal any such materials or information or any portion thereof to anyone else; or (c) assist anyone not licensed by LICENSOR or its affiliates to construct or equip a foodservice outlet substantially similar to a JOHNNY ROCKETS Restaurant.

#### **E. Monetary Obligations**

(1) Except as provided in Section 19.E.(2), in the event of termination, LICENSOR may retain all fees paid pursuant to this Agreement. In addition, all obligations of LICENSOR to DEVELOPER and all rights of DEVELOPER under this Agreement shall automatically terminate. However, any obligations of DEVELOPER to take, or abstain from taking, any action upon termination pursuant to this Agreement shall not be affected by such termination, including the payment to LICENSOR of all sums due from DEVELOPER at the time of termination.

(2) If LICENSOR terminates this Agreement on account of the reasons described in Section 19.A.(1) of this Agreement and no extension was granted by LICENSOR pursuant to Section 5.B. of this Agreement, LICENSOR shall refund to DEVELOPER all but Ten Thousand Dollars (\$10,000) of the initial license fee received by LICENSOR from DEVELOPER. However, if LICENSOR terminates this Agreement on account of the reasons described in Section 19.A.(1) of this Agreement after having granted the extension described in Section 5.B. of this Agreement, LICENSOR shall refund to DEVELOPER all but Fifteen Thousand Dollars (\$15,000) of the initial license fee received by LICENSOR from DEVELOPER.

#### **F. LICENSOR's Assumption of Restaurant Site**

(1) Upon termination, expiration or refusal to renew or extend the term of this Agreement, whether by LICENSOR or DEVELOPER, LICENSOR will be entitled, at its sole option, to elect to continue to operate the JOHNNY ROCKETS Restaurant for a temporary period selected by LICENSOR, not to exceed six (6) months ("Temporary Operating Period"). During the Temporary Operating Period, LICENSOR shall pay all of DEVELOPER'S normal operating expenses, including the payment of current rent and other charges due under the lease for the JOHNNY ROCKETS Restaurant arising during the Temporary Operating Period, and salaries of employees working in the JOHNNY ROCKETS Restaurant which accrued while LICENSOR operates the JOHNNY ROCKETS Restaurant.

(2) If LICENSOR elects to temporarily operate the JOHNNY ROCKETS Restaurant pursuant to Section 19.F.(1) above, on or prior to the expiration of the Temporary Operating Period LICENSOR will be further entitled, at its sole option, to assume DEVELOPER'S executory obligations under the real estate and equipment leases applicable to the JOHNNY ROCKETS Restaurant and to exercise the purchase option described in Section 19.G. below. Upon LICENSOR exercising the option to permanently operate the



JOHNNY ROCKETS Restaurant, LICENSOR shall use reasonable efforts to secure the release and discharge of DEVELOPER from any executory obligations under the real estate and equipment leases for the JOHNNY ROCKETS Restaurant or shall hold DEVELOPER harmless from future rents, future lease charges and all other future liabilities under the applicable leases.

(3) LICENSOR may exercise either the option described in Section 19.F.(1) or (2), if at all, by delivering written notice to DEVELOPER. Nothing in this Section 19.F. shall obligate LICENSOR to assume or be responsible for any indebtedness, liability or obligation due or accrued prior to the time LICENSOR assumed direct control over the operation of the JOHNNY ROCKETS Restaurant, whether related to the real estate or equipment leases, for salaries, taxes, goods or services or otherwise.

(4) If the Restaurant Site is owned by DEVELOPER and LICENSOR shall exercise either the option described in Section 19.F.(1) or (2) above, DEVELOPER shall lease the Restaurant Site to LICENSOR upon the same terms and conditions that like properties for like uses are then being leased in the vicinity of the Restaurant Site for a term selected by LICENSOR during the Temporary Operating Period and, if LICENSOR exercises the option to continue operating the JOHNNY ROCKETS Restaurant after the end of the Temporary Operating Period, for a term designated by LICENSOR not to exceed the lesser of ten (10) years or the then unexpired portion of the term and all renewals of the License Agreement (as if it was not terminated early).

#### **G. Right to Purchase**

(1) LICENSOR shall, within thirty (30) days following the expiration or termination of this Agreement for any reason, have the option to purchase all or any portion of the assets of DEVELOPER's JOHNNY ROCKETS Restaurant and any other materials, equipment or supplies bearing LICENSOR's Marks. LICENSOR's purchase price for the portion of DEVELOPER's inventory or supplies purchased directly from LICENSOR shall be at DEVELOPER's cost. LICENSOR's purchase price for all of the remaining inventory, equipment, parts, fixtures and furnishings utilized by DEVELOPER in the operation of its JOHNNY ROCKETS Restaurant shall be the fair wholesale market value thereof. In addition, LICENSOR shall be permitted to deduct and withdraw from the purchase price to be paid to DEVELOPER for any such items all sums due and owing LICENSOR. In determining the fair market value of such items, the parties shall exclude any factor or increment for goodwill or going-concern value. Except as provided below, the purchase price will be paid in cash at the closing of any such purchase which will occur no less than thirty (30) days from the date of exercise of the option.

(2) If the parties are unable to reach agreement as to the fair market value of the assets of DEVELOPER's JOHNNY ROCKETS Restaurant to be purchased by LICENSOR, the parties hereby agree to appoint an appraiser to make such determination, whose determination will be binding upon the parties. The fees and expenses of such appraisal shall be paid in equal proportions by the parties. If the parties are unable to decide upon an appraiser, the matter is to be submitted to arbitration in the manner prescribed in Section 20.B.

### **20. ENFORCEMENT**

#### **A. Injunction**

LICENSOR shall be entitled, without bond, to the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement relating to (1) DEVELOPER's use of the Marks; (2) DEVELOPER's preparation and distribution of products at its JOHNNY ROCKETS Restaurant; (3) the construction and equipping of the JOHNNY ROCKETS Restaurant; (4) the obligations of DEVELOPER upon termination or expiration of this Agreement; (5) a Transfer of this Agreement, any ownership interest therein or in the lease for the Restaurant Site; (6) as necessary to prohibit any act or omission by DEVELOPER or its employees that would constitute a violation of any applicable law, ordinance,

or regulation, or which is dishonest or misleading to LICENSOR and/or LICENSOR's other licensees; and (7) enforcement of the provisions of Section 16.E.

## B. Arbitration

Except as otherwise provided in this Agreement, and except for claims of promissory fraud, DEVELOPER and LICENSOR agree that any claim, controversy or dispute arising out of or relating to this Agreement (and exhibits) including those occurring subsequent to the termination or expiration of this Agreement shall, except as specifically set forth herein and in Section 20.A above, be referred to arbitration in accordance with the rules of arbitration of the American Arbitration Association (or any successor thereto), as amended and The Federal Arbitration Act, 9 U.S.C.A. Section 1 – 14 shall apply. If such rules are in any way contrary to or in conflict with this Agreement, the terms of this Agreement shall control.

(1) **Selection of Panel.** Each party shall select one (1) qualified arbitrator and the two (2) arbitrators shall select a third qualified arbitrator. Failing selection of an arbitrator by either party, or by the two (2) selected by the parties, the additional arbitrator(s) who have not yet been selected shall be selected by the American Arbitration Association or any successor thereof.

(2) **Qualifications of Arbitrators.** Each arbitrator must meet or exceed each of the following criteria, or in the event no such arbitrator is available, the parties shall select an arbitrator that meets or exceeds as many of the following criteria as possible:

(a) (i) forty (40) years of age; (ii) five (5) years experience as corporate officer or area supervisor (or similar position) for a multi-unit restaurant or chain having annual system wide gross sales in excess of One Hundred Million Dollars (\$100,000,000) for its past two (2) fiscal years, ("Qualified JOHNNY ROCKETS Restaurant Position"); and (iii) employed in a Qualified JOHNNY ROCKETS Restaurant Position within last twenty-four (24) months, or [Is this too restrictive to find a qualified Arbitrator?]

(b) fifteen (15) years of legal practice in franchise law.

(3) **Rules.** The arbitration proceeding shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association where such rules are not inconsistent with the provisions of this Section and the following supplemental rules:

(a) **Location of Arbitration:** The arbitration shall be administered by the American Arbitration Association office nearest to LICENSOR's principal offices at the time the demand for arbitration is filed and all hearings shall take place in the county in which LICENSOR's principal offices are located at that time.

(b) **Time Periods:**

1. Appointment Of Arbitrators By Parties: Thirty (30) days from Notice of Arbitration.
2. Appointment Of Third Arbitrator: Thirty (30) days from appointment of first two (2) arbitrators by the parties.
3. Initial Hearing: Thirty (30) days from appointment of third arbitrator.
4. Deadline For Decision Of Arbitrators: Thirty (30) days from conclusion of hearing.

(c) **Discovery.** There shall be no discovery except as follows. Each side may take five (5) depositions. At least thirty (30) days before the arbitration, the parties must exchange lists of witnesses, including any expert witnesses, and copies of all exhibits intended to be used at the arbitration. Each party is responsible for the expenses of any witnesses that it calls. Each party shall have the right to subpoena witnesses and documents for the arbitration.

(d) **Expenses.** The expenses of the arbitration proceeding shall be borne by the losing party.

(e) **Binding Effect of Award.** The arbitration shall be final and binding upon the parties and judgment upon an award rendered by the Arbitrator may be entered in any court of competent jurisdiction.

(f) **Prosecution of Claims:** All arbitration proceedings and claims shall be filed and prosecuted separately and individually in the name of DEVELOPER and LICENSOR, and not in any representative capacity, and shall not be consolidated with claims asserted by or against any other developer.

(g) **Limitation on Damages:** The arbitrators shall have no power or authority to grant punitive or exemplary damages as part of its award.

## 21. NOTICES

No notice, demand, request or other communication to the parties shall be binding upon the parties unless the notice is in writing, refers specifically to this Agreement and is addressed to:

LICENSOR: ^JOHNNY ROCKETS LICENSING CORPORATION  
25550 Commercentre Drive, Suite 200  
Lake Forest, California 92630-8855  
Attn: Vice President, Franchise Operations  
Facsimile Number: (949) 643-6200

DEVELOPER:            ENTITY NAME  
                          Address  
                          City, ST Zip  
                          Attn: Name  
                          Facsimile Number: (XXX) XXX-XXXX

Any party may designate a new address for notices by giving written notice of the new address pursuant to this Section. Notices shall be effective upon receipt or first rejection and may be: (1) delivered personally; (2) transmitted by facsimile to the number(s) set forth above with electronic confirmation of receipt; (3) mailed in the United States mail postage prepaid, certified mail, return receipt requested; ^ (4) mailed via overnight courier; or (5) sent electronically via email, provided an original hardcopy is promptly delivered in a manner described in Sub-sections (1), (3) or (4) above.

## 22. MISCELLANEOUS

### A. Further Acts

The parties agree to execute such other documents and perform such further acts as may be necessary or desirable to carry out the purposes of this Agreement.

**B. Heirs and Successors**

This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

**C. Entire Agreement**

DEVELOPER and LICENSOR acknowledge that each element of this Agreement is essential and material and that, except as otherwise provided in this Agreement, the parties shall deal with each other in good faith. This Agreement represents the entire understanding between the parties and supersedes any and all other prior or contemporaneous negotiations, agreements, representations and covenants, oral or written, other than information contained in LICENSOR's Offering Circular, the Manuals and any other agreements executed by LICENSOR, its parent or affiliates, and DEVELOPER in connection herewith. This Agreement may not be modified except by a written instrument signed by the parties to this Agreement. DEVELOPER acknowledges and agrees that LICENSOR has made no promises or warranties to DEVELOPER concerning the profitability or likelihood of success of the JOHNNY ROCKETS Restaurant other than as may be set forth herein, that it has been informed by LICENSOR that there can be no guarantee of success in the JOHNNY ROCKETS Restaurant and that DEVELOPER's business ability and aptitude is primary in determining his success. The parties intend this Agreement to be the entire integration of all of their agreements of any nature but shall in no way affect DEVELOPER's obligations to comply with specifications of the LICENSOR as determined from time to time. No other agreements, representations, promises, commitments or the like, of any nature exist between the parties, except as set forth or otherwise referenced herein.

**D. Waiver**

Failure by either party to enforce any rights under this Agreement shall not be construed as waiver of such rights. Any waiver, including waiver of default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance. Any acceptance of money or other performance by LICENSOR from DEVELOPER shall not constitute a waiver of any default except as to the payment of the particular payment or performance so received.

**E. Headings and Table of Contents**

The headings and table of contents used herein are for purposes of convenience only and shall not be used in construing the provisions of this Agreement.

**F. Effectiveness**

The submission of this Agreement does not constitute an offer of a franchise and this Agreement shall become effective only upon execution thereof by LICENSOR and DEVELOPER. Each of the parties hereto represents to the other that it has the power and authority to enter into this Agreement and perform its obligations hereunder.

**G. Third Parties**

The parties intend to confer no benefit or right on any person or entity not a party to this Agreement and no third party shall have the right to claim the benefit of any provision of this Agreement as a third party beneficiary of any such provision.

**H. Attorneys' Fees, Costs and Expenses**

If either party commences any legal action or arbitration against the other party arising out of or in connection with this Agreement, the prevailing party, as determined by the court or arbitrator(s) having jurisdiction over such action or arbitration, shall be entitled to have and recover from the other party its costs

and expenses, including, but not limited to reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, the cost of investigation and proof of facts, court and arbitration costs, litigation and arbitration expenses, and travel and living expenses, whether incurred prior to, in preparation for, or in contemplation of the filing of the proceeding. If LICENSOR utilizes legal counsel (including in-house counsel employed by LICENSOR) in connection with any failure by DEVELOPER to comply with this Agreement, DEVELOPER shall reimburse LICENSOR for any of the above-listed costs and expenses incurred by LICENSOR. In any judicial proceeding, the amount of these costs and expenses will be determined by the court and not by a jury.

#### **I. Governing Law**

Except to the extent governed by the U.S. Trademark Act of 1946, this Agreement shall be governed by and construed in accordance with the internal laws of the State of California without regard to conflicts of laws principles; provided, however, that the provisions of Section 17 shall be interpreted and construed under the laws of the jurisdiction in which DEVELOPER's JOHNNY ROCKETS Restaurant is located. Nothing in this section is intended, or shall be deemed, to make any California law regulating the offer or sale of franchises or the franchise relationship applicable to this Agreement if such law would not otherwise be applicable. Any provision of this Agreement that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions of this Agreement. Any invalidity of any portion of this Agreement shall not affect the validity of the remaining portion and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in effect. Any prohibition against or unenforceability of any provision of this Agreement in any jurisdiction, including the state whose law governs this Agreement, shall not invalidate the provision or render it unenforceable in any other jurisdiction. To the extent permitted by applicable law, DEVELOPER waives any provision of law that renders any provision of this Agreement prohibited or unenforceable in any respect.

#### **J. Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **K. Severability**

In the event that any term or provision in this Agreement is held to be invalid, void, illegal or unenforceable in any respect, the Agreement shall not fail, but shall be deemed amended to delete the void or unenforceable term or provision and the remainder of this Agreement shall be enforced in accordance with its terms and shall not in any way be affected or impaired thereby. In the event that any term or provision of this Agreement is held to be unreasonable, the same shall not fail, but shall be deemed amended only to the extent necessary to render it reasonable and the parties agree to be bound by the same as thus amended.

#### **L. Force Majeure**

Provided that the parties hereto are making reasonable efforts in good faith to comply with the terms of this Agreement, each party hereby agrees to excuse the other's performance hereunder upon the occurrence of an act of God, accident, fire, labor controversy, riot or civil commotion, act of public enemy, law, enactment, rule, order, act of government or governmental instrumentality, failure of technical facilities, failure or delay of transportation facilities or other cause of a similar or dissimilar nature not within such party's control or which such party cannot be reasonable diligence avoid (collectively, a "Force Majeure"). Upon the occurrence of a Force Majeure, the party so affected shall continue to make all reasonable efforts in good faith to comply with the terms of this Agreement and shall be in full compliance hereof as soon as is reasonably practicable.

### **M. Approvals and Interpretation**

Whenever in this Agreement a right of approval, an option or any other discretionary right is reserved to LICENSOR, and any consent, approval or authorization of LICENSOR which DEVELOPER may be required to obtain hereunder, LICENSOR may exercise such right or grant or withhold its approval in its sole and absolute discretion, and on any occasion where LICENSOR is required or permitted hereunder to make any judgment or determination, including any decision as to whether any condition or circumstance meets LICENSOR's standards or satisfaction, LICENSOR may do so in its sole subjective judgment, unless its right is expressly circumscribed by a contrary provision in the text applicable thereto. All terms used in any one number or gender shall extend to mean and include any other number and gender as the facts, context, or sense of this Agreement or any article or Section of this Agreement may require. As used in this Agreement, the words "include," "includes" or "including" are used in a non-exclusive sense and without limitation.

### **N. Time**

Whenever a time is given in this Agreement for the performance of an act, such time is of the essence of this Agreement and may not be extended without the written agreement of the party who is entitled to receive the performance specified, which extension it may grant or withhold in its sole and absolute discretion.

### **O. Control During Crisis Situation**

If an event occurs at DEVELOPER's JOHNNY ROCKETS Restaurant that has or reasonably may cause harm or injury to customers, guests or employees (*i.e.*, food spoilage/poisoning, food tampering/sabotage, slip and fall injuries, natural disasters, robberies, shootings, etc.) or may damage the Marks, the Johnny Rockets System or the reputation of LICENSOR (collectively "Crisis Situation"), DEVELOPER shall: (1) immediately contact appropriate emergency care providers to assist it in curing the harm or injury; and (2) immediately inform LICENSOR by telephone of the Crisis Situation. DEVELOPER shall refrain from making any internal or external announcements (*i.e.*, no communication with the news media) regarding the Crisis Situation (unless otherwise directed by LICENSOR or public health officials).

To the extent LICENSOR deems appropriate, in its sole and absolute discretion, LICENSOR or its designee may control the manner in which the Crisis Situation is handled by the parties, including, without limitation, conducting all communication with the news media, providing care for injured persons and/or temporarily closing the JOHNNY ROCKETS Restaurant. The parties acknowledge that, in directing the management of any Crisis Situation, LICENSOR or its designee may engage the services of attorneys, experts, doctors, testing laboratories, public relations firms and those other professionals as it deems appropriate. DEVELOPER and its employees shall cooperate fully with LICENSOR or its designee in its efforts and activities in this regard and shall be bound by all further Crisis Situation procedures developed by LICENSOR from time to time hereafter. The indemnification under Section 11 shall include all losses and expenses that may result from the exercise by LICENSOR or its designee of the management rights granted in this Section 22.O.

IN WITNESS WHEREOF, the parties shall be deemed to have executed this Agreement as of the Effective Date first set forth on Page 1 of this Agreement.

**LICENSOR:**

JOHNNY ROCKETS LICENSING  
CORPORATION, a California  
corporation

By: \_\_\_\_\_  
Name: Michael R. Shumsky  
Its: Chief Executive Officer

By: \_\_\_\_\_  
Name: Steven J. Devine  
Its: Vice President, Franchise Operations

**DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "A"**  
Restaurant Site

To Be Determined



## EXHIBIT "B"

### GUARANTY AND SUBORDINATION AGREEMENT

In order to induce **JOHNNY ROCKETS LICENSING CORPORATION** ("Licensor") to enter into a License Agreement ("License Agreement"), dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the "Effective Date") with \_\_\_\_\_ (**ENTITY NAME**) ("Developer"), the undersigned ("Guarantors"), each of whom is a direct or indirect shareholder, member, partner, or trustee of Developer ("Owner") hereby personally and unconditionally: (1) guarantee to Licensor and its successors and assigns, for the term of the License Agreement and thereafter as provided in the License Agreement, that Developer shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the License Agreement and any other agreement (whether or not in effect on the date of this Guaranty and Subordination Agreement) between Developer and Licensor, or any of its affiliates, including but not limited to any area development agreement, license agreement, security agreement, purchase agreement, sublease or promissory note, and all extensions or renewals thereof (collectively, "Agreements"); (2) agree personally to be bound by each and every provision in the Agreements, including, without limitation, the provisions of Sections 11 and 17 of the License Agreement; and (3) agree personally to be liable for the breach of each and every provision in the Agreements, including, without limitation, Section 17 of the License Agreement.

Each of the undersigned waives: (a) acceptance and notice of acceptance by Licensor of the foregoing undertakings; (b) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (d) any right he may have to require that an action be brought against Developer or any other person as a condition of liability; (e) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Developer arising as a result of the execution of and performance under this Guaranty by the undersigned; (f) any law or statute which requires that Licensor make demand upon, assert claims against or collect from Developer or any others, foreclose any security interest, sell collateral, exhaust any remedies or take any other action against Developer or any others prior to making any demand upon, collecting from or taking any action against the undersigned with respect to this Guaranty; (g) any and all other notices and legal or equitable defenses to which he may be entitled; and (h) any and all right to have any legal action under this Guaranty decided by a jury.

Each of the undersigned consents and agrees that: (i) his direct and immediate liability under this Guaranty shall be joint and several; (ii) he shall render any payment or performance required under the Agreements upon demand if Developer fails or refuses punctually to do so; (iii) such liability shall not be contingent or conditioned upon pursuit by Licensor of any remedies against Developer or any other person; (iv) such liability shall not be diminished, relieved or otherwise affected by any amendment of the Agreements, any extension of time, credit or other indulgence which Licensor may from time to time grant to Developer or to any other person including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Agreements and for so long thereafter as there are monies or obligations owing from Developer to Licensor or its affiliates under the Agreements; (v) any indebtedness by Developer to the undersigned, for any reason, currently existing, or which might hereafter arise, shall at all times be inferior and subordinate to any indebtedness owed by Developer to Licensor; (vi) as long as Developer owes any monies to Licensor (other than royalty and advertising and payments that are not past due) Developer will not pay and the undersigned will not accept payment of any part of any indebtedness owed by Developer to any one of the undersigned, either directly or indirectly, without the consent of Licensor; and (vii) monies received from any source by Licensor for application toward payment of the obligations under the Agreements and under this Guaranty may be applied in any manner or order deemed appropriate by

Licensor. In addition, if any of the undersigned ceases to own any interest in Developer prior to termination or expiration of the Agreements, that person agrees that his obligations under this Guaranty shall continue to remain in force and effect unless Licensor in its sole discretion, in writing, releases that person from this Guaranty. Notwithstanding the provisions of the previous sentence, unless prohibited by applicable law, the obligations contained in Section 17.B. of the License Agreement shall remain in force and effect for a period of 2 years after any such release by Licensor. A release by Licensor of any of the undersigned shall not affect the obligations of any other Guarantor.

If Licensor brings an action to enforce this Guaranty in a judicial or arbitration proceeding, the prevailing party in such proceeding shall be entitled to reimbursement of its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. In any judicial proceeding, these costs and expenses shall be determined by the court and not by a jury.

If Licensor utilizes legal counsel (including in-house counsel employed by Licensor or its affiliates) in connection with any failure by the undersigned to comply with this Guaranty, the undersigned shall reimburse Licensor for any of the above-listed costs and expenses incurred by it.

This Guaranty shall not be affected by the modification, amendment, extension, release or renewal of any agreement between Licensor and Developer, the taking of a note or other obligation from Developer or others, the taking of security for payment, the granting of extension of time for payment, the filing by or against Developer of bankruptcy, insolvency, reorganization of other debtor's relief afforded by the Federal Bankruptcy Act or any other state or federal statute or by the decision of any court, or any other matter, whether similar or dissimilar to any of the foregoing; and this Guaranty shall cover the terms and obligations of any such modifications, notes, security agreements, extensions, or renewals. The obligations of the undersigned shall be unconditional notwithstanding any defect in the genuineness, validity, regularity, or enforceability of Developer's obligations or liability to Licensor, or any other circumstances whether or not referred to herein which might otherwise constitute a legal or equitable discharge of a surety or guarantor.

This Guaranty shall remain in full force and effect until all obligations arising out of and pursuant to the Agreements including all renewals, modifications, amendments and extensions thereof, are fully paid and satisfied, provided that this Guaranty shall automatically terminate on the second anniversary of the effective date of any Transfer of the License Agreement (as defined in the License Agreement) and provided further that neither the License Agreement nor any other agreement between Licensor and the transferee of such Transfer shall be in default on such effective date nor has been in default (whether or not cured) during such two year period.

If any of the following events occur, a default ("Default") under this Guaranty shall exist: **(a)** failure of timely payment or performance of the obligations under this Guaranty; **(b)** breach of any agreement or representation contained or referred to in this Guaranty; **(c)** the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against, any of the undersigned; and/or **(d)** the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due any of the undersigned. If a Default occurs, the obligations of the undersigned shall be due immediately and payable without notice.

Section 20 of the License Agreement is incorporated by reference into this Guaranty and all capitalized terms that are not defined in this Guaranty shall have the meaning given them in the License Agreement.

IN WITNESS THEREOF, the undersigned have constituted this Agreement on the Effective Date first set forth on Page 1 of this Agreement.

^  
^

\_\_\_\_\_, Guarantor  
Name: \_\_\_\_\_

\_\_\_\_\_, Guarantor  
Name: \_\_\_\_\_