

**EXHIBIT D TO THE  
SANSAL USA, INC.  
OFFERING CIRCULAR**

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**AREA DEVELOPMENT AGREEMENT**

**SANSAI USA, INC.**  
**AREA DEVELOPMENT AGREEMENT**

THIS AREA DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, (the "Effective Date") by and between SanSai USA, Inc. ("Franchisor", "we" or "us") and \_\_\_\_\_, ("Area Developer", or "you"), with reference to the following facts:

A. SanSai USA, Inc. is in the business of franchising "fast casual" Japanese grill restaurants. We refer to these businesses as "SanSai<sup>TM</sup> Units" or "Traditional SanSai<sup>TM</sup> Units." We award franchises for qualified persons to own and operate Traditional SanSai Units using the SanSai<sup>TM</sup> System and the SanSai<sup>TM</sup> brand name and trademarks.

B. You desire to have the right and obligation to open a specified number of SanSai Units in a designated territory on or before certain dates. We desire to grant to you such right and obligation, subject to the terms and upon the conditions contained in this Agreement.

You and we agree to the following provisions.

**1.1 Area Territory and Development**

A. We will not award a SanSai Franchise for the operation of a Traditional SanSai Unit to anyone other than you, or open a SanSai Unit owned by us or our Affiliate ("Company Owned Unit"), in the area designated on the attached Exhibit 1.1 (the "Area Territory") for the term of this Agreement, subject to all of the conditions and provisions of this Agreement.

B. You commit to sign the then current version of the SanSai Franchise Agreement (and all related documents then customarily in use by us), and pay the full Initial Franchise Fees, and to open and operate the number of SanSai Units (the "Development Units") in the Area Territory, in each case by no later than the dates provided on Exhibit 1.2 (the "Development Schedule"). You understand that the then-current form of SanSai Franchise Agreement may differ in material respects from our present Franchise Agreement. Our current form of SanSai Franchise Agreement has been fully reviewed and approved by you. Terms not defined in this Agreement have the same meanings as in the Franchise Agreement.

C. Only SanSai Units newly established by you in the Area Territory will count to satisfy the requirements of this Agreement and the Development Schedule. Any franchises acquired by transfer or to be located outside the Area Territory will not satisfy such requirements.

D. Your rights in the Area Territory are only as expressly stated in 1.1 A, above, and are subject to certain rights reserved by us. You understand and agree that Section 2.2 of the Franchise Agreement, captioned "Territory", expresses our respective rights in the Area Territory during the term of this Agreement. You expressly acknowledge reading and understanding Section 2.2 of the Franchise Agreement.

E. We are not awarding you with this Agreement the right to sell or to solicit offers to buy SanSai Franchises. You represent that all SanSai Franchises to be obtained by you are for your sole ownership, use and operation. You will not have the right to "sublet" any area within the Area Territory or to sub-franchise or assign any rights under this Agreement.

**2.1 Term**

Unless earlier terminated in accordance with its provisions, this Agreement shall commence on the Effective Date indicated on Page One and automatically expire upon the earlier of: i) the latest Required Date for Opening of a Development Unit provided on Exhibit 2.1; or ii) the actual Opening Date for the last scheduled SanSai Unit.

### **3.1 Renewal**

Area Developer shall have no right to a renewal or successor agreement.

### **4.1 Development Conditions and Procedures**

A. You are solely responsible for locating, securing and developing the site for each Development Unit according to any then applicable SanSai standards, guidelines and/or specifications.

B. You shall submit to us such information regarding a proposed site as we require, in the form and manner requested by us, together with the terms of any proposed lease. We may seek such additional information that we consider necessary, but our approval will not be unreasonably withheld. The terms of any such lease shall comply with the provisions of the Franchise Agreement applicable to such proposed site. Our consent to any site shall not be construed as a recommendation or warranty as to suitability or the success of the Development Unit to be located there. We make no such assurances of any kind.

C. Upon our written consent to any approved site, and subject to the conditions to the offer of a franchise provided in 4.1 D., below, you will pay to us the Initial Franchise Fee for each approved Development Unit and sign the then current form of Franchise Agreement along with any related documents then customarily used by us, including any appropriate receipts for disclosure documents. We may in connection with our evaluation of the proposed site require and consider financial statements or similar information satisfactory to us demonstrating financial capability and compliance with Section 6.1 C of this Agreement.

D. Regardless of any other provision of this Agreement, you understand that we have the right to deny you a Franchise and/or not permit you to open a Development Unit if any of the following conditions are not met:

i) you are not in compliance with any Performance Standards under any Franchise Agreement and/or are in default under this Agreement, any Franchise Agreement, the Manuals, or any other agreement with us and/or any Franchisor Related Person/Entity between you and any other party if related to your Franchise Brokers;

ii) you have not delivered all completed and signed documents currently required by us;

iii) you have not appointed a manager for the Development Unit who meets our then current training and other standards.

E. You and we acknowledge and agree that the deadlines set forth in the Development Schedule (Exhibit 1.2) are the essence of this Agreement. No modification or amendment to the Development Schedule or any consent to or waiver of any deadline or other obligation of this Agreement will either (i) create any obligation to grant additional modifications, amendments, consents or waivers or (ii) be effective unless made by mutual written agreement. Any modification or amendment to the Development Schedule or otherwise will be in our Business Judgment, as that term is defined in the Franchise Agreement, and may be subject to conditions, including (but not limited to) a General Release.

### **5.1 Fees**

A. In consideration of our awarding you the Development rights for the Territory defined under this Agreement, you agree to pay to us on signing this Agreement, (a) the full Thirty Five Thousand Dollars (\$35,000) Initial Franchise Fee for the first Development Unit and (b) a "Development Fee" of Seven Thousand Five Hundred Dollars (\$7,500), calculated as Seven Thousand Five Hundred Dollars (\$7,500) multiplied by the number of subsequent Development Units. The Initial Franchise Fee for the

first Development Unit, and the Development Fee, are each entirely non-refundable and are fully earned by us upon our signing of this Agreement.

B. The Initial Franchise Fee for the second and each subsequent SanSai Development Unit will be equal to the Initial Franchise Fee as listed in our then-current Franchise Agreement. With each additional Franchise Agreement that you and we enter into pursuant to this Agreement, Seven Thousand Five Hundred Dollars (\$7,500) will be applied as a credit against the Initial Franchise Fee. The Initial Franchise Fee is payable to us when you sign the Franchise Agreement and any related documents for each such Development Unit. You understand that any award of a Franchise Agreement by us will depend upon your compliance with the terms of this Agreement. We will keep the Development Fee if you do not meet such requirements and are not offered a subsequent Franchise Agreement, or if this Agreement is terminated. As a condition to the award of any Franchise, you will be required to sign our then current form of General Release. The current form of Releasing Language is attached to the Franchise Agreement as Exhibit 1.2.

## **6.1 Operations**

A. We require the Chief Executive Officer or another officer/owner for or of the Area Developer to attend and successfully complete such initial and/or on-going training as we designate and/or to meet with us from time-to-time to review Area Developer operations.

B. We require that you employ a manager for each Development Unit who will meet such standards (including training requirements) as are set forth in the then-current Franchise Agreement and/or Manuals issued by us, to supervise and coordinate the operation of each Unit.

C. We require that you to maintain positive working capital and a minimum net worth of \$250,000 multiplied by the number of Development Units.

## **7.1 Defaults and Termination**

A. This Agreement may be terminated by us upon your receipt of written notice and without opportunity to cure, except as may be required by law, if:

- 1) You attempt to sell, assign, Transfer or encumber in whole or in part any or all rights and obligations under this Agreement in conflict with Article 8.1, below;
- 2) You fail to meet on a timely basis any of the provisions of the Development Schedule, including without limitation, any Development Unit Opening Date or Fee Payment;
- 3) You commit to a lease unapproved by us, or begin the development and/or operation of a Development Unit, without having complied with the terms of this Agreement, including without limitation Article 4.1, above;
- 4) You or any of your owners is judged bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay his or her debts as they become due, or a petition under any bankruptcy law is filed against you or any of your owners or a receiver or other custodian is appointed for a substantial part of your assets;
- 5) You or any of your owners is convicted of, or pleads no contest to, a felony, or to any crime or offense that may adversely affect the good will associated with the Marks;
- 6) You commit any other breach of this Agreement.

B. Any default by you under this Agreement may be regarded by us as a default by you under the Franchise Agreement. Any default under any Franchise or other agreement with us or with any

Franchisor Related Person/Entity may be considered by us to be a default under this Agreement. Any default by you under any agreement, lease or other obligation relating to the Franchise Business may be regarded as a default under this Agreement, regardless of whether or not any such agreements are between you and us. In all instances we shall be entitled to all rights and remedies available to us under the respective agreements, at law and in equity. If you default under any Franchise or other agreement, we may require you to stop all development activities/store openings under this Agreement unless and until you are permitted by us in writing to continue.

C. Upon a termination/expiration of this Agreement you have no rights under this Agreement, including without limitation, no right to the award of any further franchises or any refunds of any amounts paid. We shall be free to develop the Territory in any manner we choose, including establishing Company Owned Units and franchised units in the Territory, subject only to the terms of any applicable unit franchise agreements.

D. Notwithstanding the provisions of Section 7.1 A (2), above, if the opening of a Development Unit is physically prevented by circumstances beyond human control, such as fire, flood, earthquake, riot, war, or other similar circumstance, then you will be allowed such additional time as is reasonably necessary to open such Development Unit, but not longer than six months. Such an extension shall be available exclusively to the Unit subject to the interrupted development and shall not apply to any subsequent unit development deadlines or requirement dates.

## **8.1 Transfers**

A. This Agreement is personal to you and based upon individual skills, resources, special qualities and characteristics and is not assignable, whether voluntarily or by operation of law, without our express written consent, which we may grant, condition or withhold in our Business Judgment. We may choose among other things to apply the provisions applicable to transfers as contained in the most current unit Franchise Agreement between us, including those regarding Rights of First Refusal, to any transfer of this Agreement. Any assignment by you must be accompanied by a concurrent assignment to the same assignee of all of your interests in each Development Unit and each related Franchise Agreement. Any consent to transfer by us will be conditioned upon our receipt of a nonrefundable transfer fee of \$5,000, in addition to any such fees due under the applicable unit Franchise Agreements. This area development transfer fee may be reduced or waived in our Business Judgment.

B. This Agreement is assignable by us, in whole or in part, without your consent and shall inure to the benefit of our successors and assigns. We have no liability to you upon such an assignment.

C. This Agreement shall not be deemed to diminish in any way any rights of first refusal and/or rights of repurchase held by us under any SanSai Franchise Agreement with you, whether effective now or in the future. If we purchase from you substantially all of the operating assets of the Development Units, or all of their franchises are terminated or repurchased, you will have no rights, and we will have no obligations, under this Area Development Agreement.

## **9.1 Relationship of the Parties**

You and we are independent contractors. Nothing in this Agreement is intended to make either you or us a general or special agent, joint venturer, partner, or employee of the other for any purpose. There is no fiduciary, trust or other special relationship between us. Expenses, obligations, taxes and other liabilities incurred by you in connection with your performance of the services contemplated by this Agreement shall be your sole responsibility. Neither you nor we shall act as the agent of the other, nor guarantee or become in any way responsible for the obligations, debts or expenses of the other.

## **10.1 Personal Guarantees**

Each of the owners signing this Agreement hereby personally guarantees, jointly and severally,

the full payment and performance of each and all of the Area Developer's obligations under this Agreement.

### **11.1 Payments and Legal Compliance**

A. You will promptly pay when due any and all taxes, accounts, liabilities and other indebtedness of every kind incurred by you as a result of your acts or omissions under or associated with this Agreement, any Franchise Agreement, the operation of any SanSai Unit or otherwise and will hold harmless and indemnify us and each of the Franchisor-Related Persons/Entities from such taxes, accounts, liabilities and other indebtedness.

B. You will comply with all federal, state and local laws and regulations and shall timely obtain any and all permits, certificates or licenses necessary for the activities contemplated under this Agreement and/or any Franchise Agreement.

### **12.1 Incorporated Provisions of Franchise Agreement**

As provided in Article 1.1 and Exhibit 1.2, you are, or shall become, concurrent with the signing of this Agreement, a SanSai Franchisee under the terms of a SanSai Unit Franchise Agreement substantially similar to the Franchise Agreement. The following provisions of the Franchise Agreement shall apply to this Agreement in the following manner:

A. Licensed Marks. The provisions of Article 6 of the Franchise Agreement shall apply to the use of the Marks under this Agreement and are incorporated herein.

B. Relationship and Indemnification. You and we are independent contractors, as provided in Article 9.1, above. Therefore, the provisions of Sections 7.1 through 7.5 of the Franchise Agreement shall apply in the same manner to you in your Area Development activities as they do to your SanSai Unit Franchise Business and are incorporated herein. References made in such Sections to your SanSai Unit Franchise and Franchise Business operations shall be deemed to include your operations under this Agreement, including without limitation the indemnification obligations of Section 7.4.

C. Confidential Information; Exclusive Relationship. The provisions of Article 8 of the Franchise Agreement shall apply in the same manner to you in your Area Development activities as they do to your SanSai Unit Franchise Business and are incorporated herein. References made in Article 8 to your SanSai Unit Franchise and Franchise Business operations shall be deemed to include your operations under this Agreement.

D. Records and Reports. The provisions of Section 12.2 of the Franchise Agreement and the reporting and record requirements described therein shall apply in the same manner to your Area Development activities as they do to your SanSai Unit Franchise Business and are incorporated herein.

E. Dispute Avoidance and Resolution, Notice and Acknowledgments. The provisions of Articles 19, 20 and 21 of the Franchise Agreement shall apply to this Agreement and are incorporated herein, including without limitation those providing for mediation and mandatory binding arbitration, waiver of jury trial, limitations on damages and venue. THE PARTIES (AND EACH OF THEIR OWNERS) WAIVE ALL RIGHTS TO JURY TRIAL.

F. Rights on Termination, Expiration, Transfer, and/or Repurchase. The provisions of Article 17 shall apply to this Agreement and are incorporated herein.

### **13.1 Miscellaneous Provisions**

A. Whole Agreement; Amendment. This Agreement contains the final, complete and exclusive expression of the terms of your and our agreement with respect to the subject matter, and

supersedes and replaces any and all prior and/or concurrent understandings, agreements, representations or otherwise (whether oral or written) between you and us; provided that this Agreement is not intended to amend or supersede any SanSai Franchise Agreement and/or related documents to which you are a party. This Agreement cannot be modified or changed except by written document signed by all parties.

B. Severability. Whenever there is any conflict between any provisions of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but in such event the provisions of this Agreement thus affected shall be limited only to the extent necessary to bring them within the requirements of the law. In the event that any part, article, paragraph, sentence or clause of this Agreement shall be held to be indefinite, invalid or otherwise unenforceable, the indefinite, invalid or unenforceable provision shall be deemed deleted, and the remaining part of this Agreement shall continue in full force and effect.

C. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Franchisor, and shall be binding upon and inure to the benefit of you and your respective heirs, executors, administrators, successors and assigns, subject to the prohibitions against assignment contained herein.

D. Joint and Several Liability. If "you" consist of more than one person or entity, or a combination thereof, the obligations and liabilities of each such person or entity to us are joint and several.

E. No Waiver. No waiver by any party of any breach or series of breaches or defaults in performance, shall be deemed to be a waiver of any other breach or default; and no failure, refusal or neglect of ours to exercise any right, power or option given to us under this Agreement shall be deemed to be a waiver of any right, power or option.

F. Acknowledgments. In addition to those acknowledgments contained in the Franchise Agreement and incorporated by reference pursuant to Section 12.1 E, above, Area Developer and each of its owners expressly acknowledge that:

1) Neither the Area Developer, any of the owners nor anyone else have received or relied on (nor have we or anyone else provided) any oral or written: sales, income or other projections of any kind or nature or any statements, representations, or otherwise which stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to any SanSai Unit or Area Development rights. We cannot reliably predict, forecast or project future performance, revenues, profits or otherwise of any SanSai Unit or with respect to any Area Development rights. If any such information, promises, representations and/or warranties has been provided to Area Developer, any of the owners or anyone else, they haven't been authorized and may not be relied on; and

2) A complete ready-to-sign copy of this agreement as signed by Area Developer was received by Area Developer (and each of the owners, as applicable) at least five business days prior to the earlier of its execution, or the payment of any amounts; and

(3) A complete copy of SanSai franchise offering circular, together with all exhibits, was received at least ten business days prior to the earlier of Area Developer (and each of the owners, as applicable) signing this agreement or the paying of any amounts.

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

G. Notices. All written notices and reports permitted or required to be delivered by the provisions of this Agreement will be deemed so delivered at the time delivered by hand, immediately on transmission by facsimile transmission or other electronic system, including e-mail or any similar means,

one (1) business day after being placed in the hands of a commercial courier service for overnight delivery, or three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to us at SanSai USA, 615 S. Central, Los Angeles, California 90021, (or our then-current headquarters), to the attention of the Chief Executive Officer, and to you at the following address:

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

All parties have obtained the advice of counsel in connection with entering into this Agreement, understand the nature of this Agreement, and intend to be bound by its terms.

**FRANCHISOR:**

SanSai USA, Inc.  
a \_\_\_\_\_ corporation

By: \_\_\_\_\_  
Daniel A. Burns, President

**Area Developer (Individual)**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

**Area Developer (Corp., LLC or Partnership) must be accompanied by appropriate personal guarantee(s).**

\_\_\_\_\_  
Legal Name of Franchisee Entity

a \_\_\_\_\_  
Jurisdiction of Formation Corporation, LLC or Partnership

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



\_\_\_\_\_  
Signature

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

**Owners**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Exhibit 1.1**  
**Area Territory**

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**The State of \_\_\_\_\_, United States of America**

Note: Boundary lines include only the area within the boundary line and extend only to the middle of the boundary demarcation (for example, only to the middle of a street or highway.) You have no rights under this Agreement or otherwise with respect to a facility on the other side of the boundary line, street or highway or otherwise, and no matter how close to such boundary a facility may be, regardless of the distance from, impact on, or vicinity of, your SanSai Development Unit or the number of SanSai Units, other outlets or otherwise in any area or market.

Initials

\_\_\_\_\_

\_\_\_\_\_

**Exhibit 1.2**

**DEVELOPMENT SCHEDULE**  
**Traditional SanSai Units Only**

<u>Development Units</u>	<u>Required Dates for Signing of Separate Franchise Agreements and Related Documents and Payment of Initial Franchise Fees in Full</u>	<u>Required Date for Opening of Unit</u>
1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____

The units in the foregoing list are the SanSai "Development Units."

Initials \_\_\_\_\_  
\_\_\_\_\_

**OWNER'S GUARANTY AND ASSUMPTION OF  
BUSINESS ENTITY FRANCHISEE'S OBLIGATIONS**

In consideration of, and as an inducement to, the execution by SanSai USA, a \_\_\_\_\_ corporation, ("Franchisor") of the Area Development agreement of even date herewith (the "Agreement") between Franchisor and \_\_\_\_\_, a (n) \_\_\_\_\_ (the "Area Developer"), each of the undersigned hereby personally and unconditionally, jointly and severally: (1) guarantees to Franchisor, its affiliates, the Franchisor-Related Persons/Entities (as defined in the Agreement) and each of their successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that the undersigned will be bound by, and punctually pay and perform, each and every undertaking, agreement and covenant set forth in the Agreement; (2) agrees to be personally bound by, and personally liable for, the breach of, each and every provision in the Agreement; and (3) agrees to be personally bound by, and personally liable for, each obligation of the Area Developer to Franchisor and/or any company affiliated or related in any way with or to Franchisor, including all past, current and/or future obligations of the Area Developer, the undersigned intending that this guarantee be unqualifiedly general and without limitation in scope, nature and/or effect. Franchisor (and/or its affiliates) need not bring suit first against the undersigned in order to enforce this guarantee and may enforce this guarantee against any or all of the undersigned as it chooses in its Business Judgment.

Each of the undersigned waives:

- (1) acceptance and notice of acceptance by Franchisor, of the foregoing undertakings;
- (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
- (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed;
- (4) any right the undersigned may have to require that an action be brought against Franchisor, Area Developer or any other person as a condition of liability; and
- (5) any and all other notices and legal or equitable defenses to which he or she may be entitled.

Each of the undersigned consents and agrees that:

- (1) his or her direct and immediate liability under this guaranty will be joint and several;
- (2) he and/or she will render any payment or performance required under the Agreement on demand if the Area Developer fails or refuses to do so punctually;
- (3) such liability will not be contingent or conditioned on pursuit by Franchisor of any remedies against the Area Developer or any other person;
- (4) such liability will not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time-to-time grant to the Area 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 will in any way modify or amend this guaranty, which will be continuing and irrevocable during the term of the Agreement;
- (5) the liabilities and obligations of the undersigned, whether under this document or otherwise, will not be diminished or otherwise affected by the termination, rescission, expiration or otherwise of the Agreement; and

(6) the provisions of Articles 19, 20 and 21 of the Agreement are incorporated in and will apply to this document as if fully set forth herein and shall apply to any dispute involving the Franchisor and any of the undersigned.

In connection with such guarantee and the Franchisor (a) not requiring that the Franchise be initially awarded in the name of one or more of the Guarantors and/or (b) not requiring the payment of a full transfer fee in connection with any related transfer from the undersigned to the Area Developer, each of the undersigned hereby grants a General Release of any and all claims, liabilities and/or obligations, of any nature whatsoever, however arising, known or unknown, against the Franchisor and/or any or all of the Franchisor-Related Persons/Entities.

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

GUARANTOR(S)

PERCENTAGE OF OWNERSHIP  
OF Area Developer

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

\_\_\_\_\_%  
\_\_\_\_\_%  
\_\_\_\_\_%  
\_\_\_\_\_%

Area Developer:

\_\_\_\_\_, a \_\_\_\_\_.

By \_\_\_\_\_

Its \_\_\_\_\_

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