



## FRANCHISE DISCLOSURE DOCUMENT

### Captain D's, LLC

a Delaware limited liability company  
624 Grassmere Park Drive, Suite 30  
Nashville, Tennessee 37211  
(615) 391-5461  
[www.captainds.com](http://www.captainds.com)

With this Franchise Disclosure Document (this "Disclosure Document"), Captain D's, LLC is offering the rights to develop and franchises to operate one or more Captain D's restaurants.

The total investment needed to begin operating a Captain D's franchise for each prototype restaurant offered ranges from \$1,159,500 to \$1,354,200 for the 44-seat restaurant (expandable to 62 seats), from \$1,037,300 to \$1,252,270 for the 22-seat restaurant, and \$898,600 to \$1,091,700 for the Express Captain D's restaurant. Those amounts include an initial franchise fee in the amount of \$35,000, the cost of your computer system ranging from \$25,000 to \$34,100, and any excess opening team travel and lodging expense ranging from \$5,000 to \$6,000 that you must pay to us. You must pay one-half of the initial franchise fee for each Captain D's restaurant you plan to develop as a non-refundable development fee when you sign a development agreement with us. Our development agreements require the development of at least one restaurant. The total investment for a development agreement ranges from \$17,500 to \$18,500 (if you retain an attorney to review the agreement) for one restaurant and an additional \$17,500 for each additional restaurant scheduled for development.

This Disclosure Document summarizes certain provisions of your development agreement, franchise agreement, and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar days before you sign a binding agreement with, or make any payment to, us or any of our affiliates in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this Disclosure Document.**

You may wish to receive this Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, please contact the Franchise Development Department at 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, 800-550-4877.

The terms of your contract will govern your franchise relationship. Don't rely on this Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission (the "FTC"). You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. You also can visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

Your state also may have other laws on franchising. Ask your state agencies about them.

The issue date of this Disclosure Document is May 1, 2023, as amended July 17, 2023.

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit J.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit B includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Captain D's business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Captain D's franchisee?</b>	Item 20 or Exhibit J lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## **What You Need To Know About Franchising *Generally***

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

## **Some States Require Registration**

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit A.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

### Special Risks to Consider About *This Franchise*

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement and development agreement require you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Tennessee. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Tennessee than in your own state.
2. **Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (See Item 21), calls into question the franchisor's financial ability to provide services and support to you.
3. **Termination of Franchise Agreement.** If we terminate your franchise agreement after you breach it, we may recover our future royalties for the lesser of three years or the remaining term of the agreement based on your average sales during the preceding three years.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

## TABLE OF CONTENTS

ITEM		PAGE
1	The Franchisor and any Parents, Predecessors and Affiliates .....	1
2	Business Experience .....	3
3	Litigation .....	4
4	Bankruptcy .....	4
5	Initial Fees .....	4
6	Other Fees .....	6
7	Estimated Initial Investment .....	9
8	Restrictions on Sources of Products and Services.....	12
9	Franchisee's Obligations .....	14
10	Financing .....	15
11	Franchisor's Assistance, Advertising, Computer Systems and Training .....	15
12	Territory .....	28
13	Trademarks .....	29
14	Patents, Copyrights and Proprietary Information .....	31
15	Obligation to Participate in the Actual Operation of the Franchise Business .....	31
16	Restrictions on What the Franchisee May Sell.....	31
17	Renewal, Termination, Transfer and Dispute Resolution .....	32
18	Public Figures .....	35
19	Financial Performance Representations .....	35
20	Outlets and Franchisee Information .....	40
21	Financial Statements.....	44
22	Contracts .....	45
23	Receipts .....	45

## EXHIBITS

A	State Agencies and Registered Agents
B	Financial Statements
C	Guaranty Agreement of Captain D's Enterprises, LLC
D	Development Agreement
E	Franchise Agreement
F	Guaranty Agreement
G	Addenda Required by Certain States
H	Computer Software and Hardware Agreement
I	Confidentiality and Indemnity Agreement
J	Franchisee Information (Including Supplemental Information)
K	Receipt

## **ITEM 1**

### **THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

#### **General**

To simplify the language in this Disclosure Document, we will use the words “we,” “us” and “our” when referring to Captain D’s, LLC and its subsidiaries. We will use the words “you” and “your” when referring to the individual or business entity which acquires a development agreement or franchise agreement to operate a Captain D’s restaurant. The words “you” and “your” do not include any individual or business entity which owns an interest in you. We require all individuals and business entities that own a 10% or more interest in you to guarantee your obligations to us.

Beginning in April of 2007, we changed the name of our License Agreement and License Fee to “Franchise Agreement” and “Franchise Fee,” respectively. The use of those terms and the word “franchise” in this Disclosure Document, when appropriate, will include those prior terms and the word “license,” as applicable.

We are a Delaware limited liability company and conduct business under the names Captain D’s, LLC, Captain D’s, Captain D’s Seafood Restaurants, and Captain D’s Seafood Kitchen. Our principal business address is 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37210. Our registered agents for service of process appear on Exhibit A to this Disclosure Document.

We have operated and franchised Captain D’s restaurants since August 31, 2000. We have not conducted business or offered franchises in any other line of business. As of January 1, 2023 (the end of our last fiscal year), we had a total of 312 company-owned and 225 franchised Captain D’s restaurants operating in 23 states.

We are offering franchises to operate Captain D’s restaurants. Captain D’s restaurants offer freshly-prepared, high-quality seafood in a fast casual service environment. The menu features our signature hand-battered, fried fish. Captain D’s restaurants also offer premium-quality grilled fish, as well as shrimp, chicken and home-style side dishes, including corn, baked potatoes, okra, green beans, coleslaw, hushpuppies, and selected desserts.

The Captain D’s restaurant prototypes provide in-door seating for 44 customers or 22 customers for the Captain D’s traditional restaurant prototypes or no in-door seating for the Captain D’s express restaurant prototype. A Captain D’s restaurant employs approximately 20 to 35 persons, depending on the size and sales volume of the restaurant. For the opening and initial period of operations of a new restaurant, we recommend the hiring of between 40 and 45 persons.

Under our Development Agreement (see Exhibit D to this Disclosure Document), you will receive the right to develop one or more Captain D’s restaurants within a specified geographic area. You must enter into a separate Franchise Agreement (see Exhibit E to this Disclosure Document) for each Captain D’s restaurant you open. For each restaurant developed under a Development Agreement, you must sign our then current form of Franchise Agreement, which may differ from the Franchise Agreement as currently described in this Disclosure Document.

You will have to compete with numerous national and local restaurants. You will compete with other fast-food and full-service restaurants that offer similar menus and similar type businesses. The market for fast-food restaurants is well developed.

You will have to comply with all federal, state and local laws applicable to you and your restaurant. Many laws and regulations apply to the restaurant industry specifically, in addition to those that apply to all businesses generally. Laws and regulations specific to the restaurant industry include federal and state food storage and handling regulations, state and county health and sanitation code regulations, state menu labeling laws applicable to the sale of foreign sourced fish (including catfish), and the federal menu labeling and nutritional information regulations.

## **Parents**

We are a wholly-owned subsidiary of Captain D's Intermediate Holding Corp., a Delaware corporation. On May 18, 2022, an affiliate of Centre Management Partners, LLC of New York City, New York, acquired us from Sentinel Capital Partners of New York City, New York.

Our ultimate parent is Centre Capital Investors VII, L.P., a Delaware limited partnership. It owns us through seven intermediary entities as follows: Centre Capital Investors VII, L.P. owns the controlling interests in Seafood Kitchen Holdings, LLC, a Delaware limited liability company. Seafood Kitchen Holdings, LLC owns Seafood Kitchen Acquisitions, Inc. Seafood Kitchen Acquisitions, Inc. owns Fish Parent Holdings LLC, a Delaware limited liability company. Fish Parent Holdings LLC owns Fish Intermediate Holdings LLC, a Delaware limited liability company. Fish Intermediate Holdings LLC owns PF Purchaser Corp., a Delaware corporation. PF Purchaser Corp. owns Captain D's Holding Corp., a Delaware corporation. Captain D's Holding Corp. owns Captain D's Intermediate Holding Corp. Each of those entities has its principal place of business at 601 Lexington Avenue, 55<sup>th</sup> Floor, New York City, New York 10022, except for Captain D's Holding Corp. and Captain D's Intermediate Holding Corp., each of which has its principal place of business at 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211.

## **Affiliates and Predecessors**

Captain D's Equipment, LLC ("Captain D's Equipment") has its principal place of business at 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, and is one of our wholly-owned subsidiaries. Captain D's Equipment sells equipment and supplies to our franchisees and to us. It does not offer franchises in any line of business.

Captain D's Enterprises, LLC ("Captain D's Enterprises") has its principal place of business at 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, and also is one of our wholly-owned subsidiaries. Captain D's Enterprises, LLC holds title to our trademarks and service marks and licenses them to us pursuant to a master license agreement, which allows us to license them to our franchisees pursuant to the terms of our Franchise Agreements. Captain D's Enterprises, LLC also serves as the issuer of our Captain D's gift cards and provides gift card services to our franchisees and to us. Finally, Captain D's Enterprises acts as the guarantor of our obligations under the Development Agreements, Franchise Agreements, and related agreements issued pursuant to this Disclosure Document. Captain D's Enterprises does not offer franchises in any line of business.

Grandy's, LLC ("Grandy's") has its principal place of business at 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, and shares a common control with us through PF Purchaser Corp. Grandy's has operated quick service restaurants since 1973 and has franchised quick service restaurants since 1977. As of the end of its last fiscal year (January 1, 2023, Grandy's had eight company-owned and a total of 15 franchised restaurants operating in six states and no foreign countries.

Other than Captain D's Equipment and Captain D's Enterprises, we do not have any affiliates that provide goods or services to our franchisees.

We have had no predecessors during the 10 years prior to the end of our last fiscal year.

## **ITEM 2 BUSINESS EXPERIENCE**

### **President, Chief Executive Officer, and Sole Manager: Philip M. Greifeld**

Mr. Greifeld has served as our Chairman, President and Chief Executive Officer since September of 2010. Mr. Greifeld has served as a member of our board of managers since September of 2010 and, since December 2, 2013, has served as its sole member. Mr. Greifeld also has served as President and Chief Executive Officer of Grandy's and a member of the board of directors of Grandy's Intermediate Holding Corp., the managing member of Grandy's, since November of 2011. He has served as the sole member of the board of directors of Grandy's Intermediate Holding Corp. since December of 2013.

### **Vice President and Chief Development Officer: Brad Reed**

Mr. Reed has served as our Vice President and Chief Development Officer since February of 2018. Prior that, he served as our Vice President of Franchise Operations from May of 2013 until February of 2018.

### **Vice President and Chief Financial Officer: Jeff Wilson**

Mr. Wilson has served as our Vice President and Chief Financial Officer since July of 2023. Prior to that, he served as Vice President of Finance & Operations Analysis and Chief Financial Officer of the Emerging Brands Group for Cracker Barrel Old Country Store, Inc. of Lebanon, Tennessee, from April of 2019 to April of 2022, and as Vice President, Corporate Controller, and Principal Accounting Officer for Cracker Barrel Old Country Store, Inc. from February of 2015 to April of 2022.

### **Vice President and Chief Marketing Officer: Bindi Menon**

Ms. Menon has served as our Vice President and Chief Marketing Officer since June of 2021. Before that, she served as our Vice President of Marketing Strategy and Insights from April of 2015 until June of 2021.

### **Vice President and Chief Operating Officer: Andy Castle**

Mr. Castle has served as our Vice President and Chief Operating Officer since October of 2019. He served as our Vice President of Company Operations from September of 2017 until October of 2019.

### **Vice President and Chief Supply Chain Officer: Brad Clark**

Mr. Clark has served as our Vice President and Chief Supply Chain Officer since March of 2020. Prior to joining us, he served as Vice President of Supply Chain for P.F. Chang's China Bistro,



LLC of Scottsdale, Arizona, from May of 2019 to February of 2020. From February of 2015 to May of 2019, Mr. Clark served as Vice President of Sourcing and Distribution for P.F. Chang's China Bistro, LLC.

**Senior Vice President, General Counsel, and Secretary: Michael T. Folks**

Mr. Folks has served as our Senior Vice President, General Counsel, and Secretary since December of 2006. He also has served as Vice President, General Counsel, and Secretary of Grandy's since November of 2011.

**Vice President of Franchise Operations: Robert Jones**

Mr. Jones has served as our Vice President of Franchise Operations since February of 2018.

**Vice President of Information Services: Sean McAnally**

Mr. McAnally has served as our Vice President of Information Services and Chief Information Officer since June of 2019. Prior to that, he served as Senior Director of Information Technology from August of 2000 until June of 2019.

**Vice President of Construction: Larry Jones**

Mr. Jones has served as our Vice President of Construction since April of 2018.

**Vice President of Real Estate: Phil Russo**

Mr. Russo has served as our Vice President of Real Estate since September of 2015.

**Vice President and Chief People Development Officer: Nancy Ward**

Ms. Ward has served as our Vice President and Chief People Development Officer since October of 2019. Prior to that, Ms. Ward served as our Vice President of Training from January of 2017 until October of 2019.

**ITEM 3  
LITIGATION**

We have no current or past litigation that we must disclose in this item.

**ITEM 4  
BANKRUPTCY**

We have no current or past bankruptcy proceedings that we must disclose in this item.

**ITEM 5  
INITIAL FEES**

The initial franchise fee for a location equals \$35,000. You must sign a Development Agreement to build one or more restaurants and will pay one-half of the initial franchise fee for each

restaurant scheduled for development when you sign the Development Agreement. You will pay the remaining one-half of the initial franchise fee when you sign a Franchise Agreement for each location. The fee paid under the Development Agreement is called the Development Fee and the fee paid under the Franchise Agreement is called the Franchise Fee. Both fees are non-refundable. The cost of your computer system that you will purchase from us ranges from \$25,000 to \$34,100, depending on the size of restaurant that you develop.

Because of the financial condition of our guarantor, Captain D's Enterprises, LLC, we will defer collection of any portion of the Development Fee, the Franchise Fee, and any other payments for goods and services received from us or to our affiliates until your restaurant opens for any Captain D's franchise subject to the franchise laws of Minnesota, South Dakota, or Washington. The California Department of Oversight, the Office of the Attorney General for the State of Illinois, and the Office of the Attorney General for the State of Maryland also have required us to defer the payment of all initial fees and other initial payments owed by a new franchisee to us or to our affiliates until after we have completed all of our pre-opening obligations under the Franchise Agreement and you have commenced doing business at your Captain D's restaurant.

### **Development Incentive Program**

We charge a Franchise Fee of \$35,000 and a royalty fee of 4.5% of gross sales for each Franchise Agreement. However, we currently offer the following incentives for new restaurants opened pursuant to a Development Agreement signed after the date of this Disclosure Document and before April 30, 2024:

Franchise Fee. Depending on the number of restaurants that the developer commits to develop, the Franchise Fee for each restaurant will equal the following amounts:

<u>Commitment</u>	<u>Franchise Fee</u>
1 to 2	\$35,000
3 to 5	\$25,000
6 to 10	\$21,000
11 to 15	\$19,000
16 to 20	\$17,500

Royalty Fee. Depending on the opening date of a restaurant, the royalty fee will equal the following amounts:

(1) For restaurants opened at least 60 days prior to the scheduled opening date, we will not charge a royalty fee for the first six months after the opening date of the restaurant.

(2) For restaurants opened at least 30 days prior to the scheduled opening date, we will not charge a royalty fee for the first five months after the opening date of the restaurant.

(3) For restaurants opened no more than 90 days after the scheduled opening date, we will not charge a royalty fee for the first four months after the opening date of the restaurant.

(4) For restaurants opened no more than 150 days after the scheduled opening date, we will not charge a royalty fee for the first three months after the opening date of the restaurant.

(5) For restaurants opened more than 150 days after the scheduled opening date, we will begin charging a royalty fee on the opening date of the restaurant.

During our last fiscal year, depending on the experience of the franchisee, its development commitment, and other factors, we agreed in many cases to reduce the initial franchisee fee by 50%.

### **Veterans Franchise Program**

We have a Veterans Franchise Program available to veterans of the United States armed forces, who own a controlling interest in any entity that desires to become a franchisee and who otherwise meet our minimum requirements (financial and otherwise) for the award of a franchise.

Upon approval, a veteran applicant will pay only one-half of our standard Franchise Fee, or \$17,500, for the applicant's first restaurant. Royalties for the first Captain D's restaurant opened by a franchisee under the program will equal 2.5% of gross sales for the first full year of operations and the current royalty rate provided for in the franchisee's Franchise Agreement thereafter. The Veterans Program applies only to the first restaurant opened by a veteran.

### **ITEM 6 OTHER FEES**

<b>Type of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty <sup>2</sup>	4.5% of gross sales	Payable on the third business day after each Sunday, based on gross sales made during the prior week	Gross sales include amounts received or receivable from all sales of every kind and nature. Gross sales exclude sales tax or use tax.
Advertising Fee <sup>3</sup>	1.1% of gross sales (subject to increase up to a maximum of 2%). As a result of the COVID-19 Pandemic, we have reduced the advertising fee to 1.0% of gross sales until further notice.	Payable at the same time as the payment of your royalty fees	

Local Restaurant Marketing Expenditures <sup>3</sup>	2% of gross sales, less any advertising cooperative contribution in excess of 2% of gross sales. As a result of the COVID-19 Pandemic, we have suspended the local marketing requirement until further notice.	Annually	We do not collect this amount from you. You must spend the minimum amount on approved local marketing activities for your restaurant, such as direct mail, billboards and other local advertising activities.
Advertising Marketing Contribution <sup>3</sup>	Maximum of 4% of gross sales. As a result of the COVID-19 Pandemic, we have reduced the advertising marketing contribution to either .50% or 1.0% of gross sales depending on the location of your restaurant until further notice.	Payable at the same time as the payment of your royalty fees	
Point-of-sale and Computer-based Training Systems Maintenance and Support	Up to \$236 per month, plus equipment repair and shipping costs	Payable on the first business day of each month or 28 days after billing	You must purchase and maintain the systems we require. The purchase price becomes due after you open.
Opening Team Travel and Lodging Expenses	Travel and lodging expenses exceeding \$8,000	Payable on the first business day of each month or 28 days after billing	We pay for your opening team's travel and lodging expenses up to \$8,000
Product or Supplier Approval	Will not exceed our actual out-of-pocket costs, estimated not to exceed \$1,000	Payable upon approval or disapproval of the product or supplier	Payable if you want to purchase a product from a supplier not currently approved. See Item 8.
Operating Personnel <sup>4</sup>	Costs incurred by us, estimated not to exceed \$2,500 per month	Payable 28 days after billing	Payable only if you fail to operate in accordance with our standards.
Enforcement Costs, Collections Costs and Attorney's Fees <sup>4</sup>	Will vary under the circumstances	Payable as incurred	Payable only if you fail to comply with the Franchise Agreement

Indemnification Costs	Will vary under the circumstances	Payable as incurred	You must reimburse us if we have claims made against us arising out of the operations of your Captain D's restaurant.
Interest	Highest rate permitted by state law up to a maximum of 18%	Payable 28 days after billing	Payable on all overdue amounts.
Audit Expenses	Will not exceed our actual out-of-pocket costs, estimated not to exceed \$3,500	Payable 28 days after billing	If you understate gross sales by 2% or more, you must pay our reasonable expenses incurred to perform the audit.
Transfer Fee	One-quarter of the then current initial franchise fee (currently \$8,750 per restaurant) plus other expenses incurred by us	Payable before consummation of the transfer	Payable when you transfer the Franchise Agreement or a controlling interest in you.
Renewal Fee	Our then current renewal fee (currently, \$8,750), but not to exceed 25% of the then current franchise fee	Payable upon signing the renewal Franchise Agreement	See Item 17.

1. Fees. You will pay all fees to us, none of which we have any obligation to refund. The Development Agreement and Franchise Agreement gives us the right to require that you make all payments owed us (other than the Development Fee and the Franchise Fee) via automatic bank draft. We uniformly impose the above fees, with the exception of the Development Incentive Programs and the Veterans Program described above, except when we grant the Franchise Agreement under an existing agreement that requires a different fee, and except as stated in these notes.

2. Royalty. We charge the same 4.5% royalty fee to all persons acquiring a Franchise Agreement, except when we grant the Franchise Agreement under an existing agreement that requires a different royalty fee. In addition, we currently are offering a Development Incentive Program, as described in Item 5 above, pursuant to which we will defer the royalty fee for certain new restaurants for up to six months depending on when the restaurant opens. Upon the termination of your Franchise Agreement for any of the reasons in Sections 19(a) or 19(b) of the agreement, we have the right to recover damages for our loss of royalty and advertising fees for the remaining term of the Franchise Agreement. Section 20(a) of the Franchise Agreement calculates those damages by multiplying the average monthly gross sales of the restaurant during the previous 36 months times the standard royalty fee rate of 4.5% times the lesser of 36 months or the number of months remaining in the term of the Franchise Agreement.

3. Advertising Fee, Local Marketing Expenditure, and Advertising Marketing Contribution. The advertising fee equals 1.1% of gross sales (which we may increase up to 2% of gross sales). As a result of the COVID-19 Pandemic, we have reduced the current advertising fee to 1.0% of gross sales and suspended the local restaurant marketing expenditure requirement until further notice. We also have reduced the advertising marketing contribution to .50% of gross sales, except for restaurants located in the Designated Market Areas listed in Item 11 under the heading “National Advertising Program.” Those restaurants will participate in Captain D's local television advertising program and will pay an advertising marketing contribution of 1.0% of gross sales.

4. Operating Personnel and Enforcement Costs. If you fail to operate in accordance with our general standards of quality, maintenance, repairs and sanitation, we may place the personnel we feel necessary in your restaurant for a period of time we feel necessary. We may require that you pay all costs of providing those persons, including costs of transportation, meals, lodging and compensation. In addition, we have the right to require that you reimburse us for our costs incurred in connection with the enforcement of your obligations under the Franchise Agreement, including our out-of-pocket costs and an allocable portion of our general and administrative overhead.

## ITEM 7 ESTIMATED INITIAL INVESTMENT

### YOUR ESTIMATED INITIAL INVESTMENT

Type of Expenditure	44-seat Prototype	22-seat Prototype	Express Prototype	Method of Payment	When Due	To Whom Payment Made
Franchise Fee and Development Fee <sup>1</sup>	\$ 35,000	\$ 35,000	\$ 35,000	Lump Sum	(Note 1)	Us
Real Estate	(Note 2)	(Note 2)	(Note 2)	As Agreed	As Agreed	Landowner
Building and Leasehold Improvements <sup>3, 5</sup>	\$ 750,000 to \$ 815,000	\$ 650,000 to \$ 735,000	\$ 550,000 to \$ 625,000	As Agreed	As Agreed	Landowner and Suppliers
Training Expenses <sup>4</sup>	\$ 25,000 to \$ 46,000	\$ 25,000 to \$ 46,000	\$ 25,000 to \$ 46,000	As Agreed	As Agreed	Employees, Suppliers, and Us
Equipment <sup>5</sup>	\$ 256,500 to \$ 292,100	\$ 237,300 to \$ 273,470	\$ 201,600 to \$ 226,200	As Agreed	As Agreed	Suppliers
Computer Systems <sup>6</sup>	\$ 31,000 to \$ 34,100	\$ 28,000 to \$ 30,800	\$ 25,000 to \$ 27,500	Lump Sum	After Opening	Us
Inventory	\$ 6,000 to \$ 8,000	\$ 6,000 to \$ 8,000	\$ 6,000 to \$ 8,000	Lump Sum	Before Opening	Suppliers
Miscellaneous Opening Expenses <sup>7</sup>	\$ 5,000 to \$ 9,000	\$ 5,000 to \$ 9,000	\$ 5,000 to \$ 9,000	As Agreed	As Incurred	Suppliers
Insurance <sup>8</sup>	\$ 11,000 to \$ 25,000	\$ 11,000 to \$ 25,000	\$ 11,000 to \$ 25,000	As Agreed	As Incurred	Insurance Company
Additional Funds - 3 Months <sup>9</sup>	\$ 40,000 to \$ 90,000	\$ 40,000 to \$ 90,000	\$ 40,000 to \$ 90,000	As Agreed	As Incurred	Employees and Suppliers
Total <sup>10</sup>	\$1,159,500 to \$1,354,200	\$1,037,300 to \$1,252,270	\$ 898,600 to \$1,091,700			

1. Franchise Fee and Development Fee. The Franchise Fee equals \$35,000. Under our Veterans Program, we also are offering a reduced initial franchise fee of \$17,500 for the veteran's first restaurant. You must pay one-half of the Franchise Fee as a non-refundable Development Fee when you sign a Development Agreement for each restaurant scheduled for development. You must pay the other half of the Franchise Fee when you sign the Franchise Agreement for each restaurant, after we have accepted the site you select for the restaurant and prior to the start of construction. We have no obligation to refund the Franchise Fee or the Development Fee.

2. Real Estate. The estimated initial investment amount does not include the costs of location selection, land acquisition (by purchase or lease), land preparation, landscaping and other land improvements, or any associated financing costs. You will have responsibility for buying or leasing the real estate on which you intend to locate your Captain D's restaurant. The cost of the real estate will vary greatly from location to location, and we have made no effort to state cost or average rental information because of the wide variances involved. The Captain D's restaurant prototypes require a lot containing at least .60 acre for the 44-seat prototype, at least .50 acre for the 22-seat prototype, and at least .35 acre for the express prototype.

3. Building and Leasehold Improvements. The 44-seat prototype contains approximately 1,970 square feet and 44 customer seats, which can expand to 2,400 square feet and 62 customer seats in appropriate circumstances. The 22-seat prototype contains approximately 1,600 square feet and 22 customer seats. The express prototype contains approximately 780 square feet with no dining room seating. If your location requires the use of union labor, your building costs will exceed the above amounts by a significant amount. If you convert an existing building, your building costs generally should fall below or in the lower range of the costs given.

4. Training Expenses. You must pay for the costs incurred during the training of your employees, including room and board and employee salaries, wages, and fringe benefits during training and pre-opening. The cost of those items will vary. We pay for the cost of our opening team for your restaurant but will charge you for any travel and lodging expenses of the team that exceed \$8,000.

5. Equipment. Prices for equipment will vary for each restaurant because of the various local building codes and health requirements. Equipment includes kitchen equipment, such as a broiler, fryers, refrigerators, freezers, and sinks; trade fixtures, booths, tables, and chairs; and other equipment used to operate a restaurant.

6. Computer Systems. The above amounts include the cost of the hardware and software for your required point-of-sale and computer systems. Those systems include a back-office computer, a training computer, up to three point-of-sale computers, and up to seven order monitors. Your costs will vary depending on the number of terminals and monitors you purchase for your restaurant. The costs for those systems do not become due until after you open your restaurant.

7. Miscellaneous Opening Expenses. You also must pay for incorporation fees, legal fees, business license fees, and utility deposits. The cost of those items will vary.

8. Insurance. See Item 8 of this Disclosure Document for information regarding our insurance requirements.

9. Additional Funds - Three Months. The above amounts represent an estimate of your initial start-up expenses (including staff payroll costs) during the first three months after the opening of your Captain D's restaurant. The estimate of additional funds does not include an owner's salary or draw. The figures represent estimates, and you may have additional expenses starting your business.

10. Totals. We relied on our experience in developing company-owned Captain D's restaurants during the past three years to compile the foregoing estimates. You should review the figures carefully with a business advisor before making any decision to purchase a Captain D's franchise. The various third parties with whom you do business will determine the method and timing of the payments to them and whether they will refund any of those payments. We do not finance any part of your initial investment.

### **Your Estimated Initial Investment - Renewal or Assignment of Existing Franchise Agreement**

As a condition to the renewal or assignment of a Franchise Agreement, we may require the remodeling of the Captain D's restaurant. The remodel costs range from \$110,000 to \$200,000 and may include the following requirements (if not already completed):

1. The purchase and installation of the current Captain D's logo exterior signage on the main sign, lobster loft, drive-through signs, entrance and exit signs, and wall signs;
2. The remodeling and repainting of the exterior of the building to the Captain D's color scheme and trade dress configuration;
3. The purchase and installation of the approved drive-through menu board;
4. The purchase and installation of the approved interior menu board, translights and marketing materials;
5. The remodeling of the dining room with the furniture, furnishings, paint and wallpaper required for the approved image;
6. The purchase and installation of the then approved broiler, related equipment, and equipment necessary to implement Captain D's approved freezer-to-fryer fish and grilled menu items; and
7. If needed, the sealing and striping of the parking lot and upgrading of the restaurant's landscaping.

You will negotiate and agree directly with the third-party provider of the above-described goods and services the actual amounts, methods of payments, due dates, and payees for the goods and services required to complete the remodel.

### **Your Estimated Initial Investment - Sale of Company-owned Restaurants**

From time to time, we may sell one or more existing company-owned restaurants to a franchisee. If you purchase an existing company-owned restaurant from us, your cost will depend on



a variety of factors, including (without limitation) the sales history and trend of the restaurant, the assets being purchased, and the nature of the restaurant's trade area. Generally, your cost (excluding the cost to purchase or lease the restaurant's real estate) should not exceed the range of total costs for the development of a new restaurant as shown above. You must pay the Franchise Fee of \$35,000 for each restaurant acquired.

## **ITEM 8**

### **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

You have no obligation to purchase or lease any goods or services from us or from others designated by us, except as stated below.

You must purchase or lease fixtures, equipment, furnishings, food products, and supplies that meet the standards and specifications we designate. From time to time, we may designate one or more approved suppliers (including us and our affiliates) whose designated goods or services we have deemed to meet our standards and specifications. In addition, if we require it, you must purchase or lease any goods or services (including beverages) we may designate exclusively from one or more approved suppliers or distributors (including us and our affiliates).

As a condition to our acceptance of a location for your Captain D's restaurant, we may require that you obtain a sales impact analysis from a company approved by us in order to estimate the effect that your proposed Captain D's restaurant may have on other Captain D's in the same market area.

If you decide to lease the land on which you operate your restaurant, you must include in the lease specific provisions relating to use, default, notice, lien waivers, length of term, quiet enjoyment, assignment, remodeling, personal property rights, your right to terminate, non-competition by the landlord and its affiliates, condemnation, and common area maintenance costs. We will give you a checklist of the provisions specifically required by us, but we make no representations or warranties as to the legal validity of any of those provisions. Before you begin construction of your restaurant, you must demonstrate to our reasonable satisfaction that your lease contains the required foregoing provisions lease, and you must deliver to us a definitive copy of your lease prior to its execution.

Before you begin construction of your restaurant, you also must obtain our approval of the general contractor selected to construct your restaurant.

All Captain D's franchisees must purchase virtually all of their food and supplies from McLane Corporation.

If we have designated an approved supplier or suppliers for a product or service as the exclusive supplier or suppliers for the product or service, you must purchase the product or service from the designated supplier or suppliers. With regard to products and services for which we have not designated an approved supplier or suppliers as the exclusive supplier or suppliers, you may use any supplier of those goods or services as long as the goods or services otherwise meet our criteria, standards and specifications. If you want to add a supplier to our list of exclusive approved suppliers, you must first submit information, specifications and/or samples sufficient for our determination whether the item complies with our system standards and the supplier meets our approved supplier criteria, including (without limitation) all required certifications, inspections and scanning requirements of the Global Food Safety Initiative. We establish and revise our system standards and approved supplier criteria from time to time as we deem appropriate and make them available to franchisees upon written request.

We have the right to charge you a reasonable fee to cover the costs we incur in making the determination and, within 120 days, will notify you of our decision. We may impose limits on the number of approved items and/or suppliers. We may condition our approval of a supplier on requirements relating to product quality, frequency of delivery, standards of service, and concentration of purchases. We may grant temporary approval, pending our further evaluation of the supplier. We may revoke approval of a supplier at any time for any reason.

We and our affiliate, Captain D's Equipment, LLC, currently serve as approved suppliers of restaurant equipment and software for Captain D's franchisees. All new Captain D's franchisees since February 1, 2004, must purchase their point-of-sale, back office, and computer-based training equipment and software from us pursuant to the terms of the Computer Software and Hardware Agreement attached as Exhibit H to this Disclosure Document.

You must carry all risk property and equipment breakdown insurance (including flood and/or earthquake, if appropriate) covering your restaurant building, equipment, and contents in the amount of the full insurable replacement cost value of the property. Additionally, the policy must include business interruption insurance and extra expense coverage for at least 12 months that covers your obligation to pay an amount equal to the royalty and advertising fees you otherwise would pay us during any covered interruption. You also must secure, at your own cost, a commercial general liability policy with limits we periodically may determine but with a minimum limit of \$1,000,000 for each occurrence (bodily injury and property damage) and an aggregate limit of at least \$2,000,000 per location, as well as automobile liability insurance for bodily injury and property damage covering all owned, non-owned, and hire vehicles with a combined single limit of not less than \$1,000,000. You also must carry products liability and personal and advertising injury insurance with limits we periodically may determine but with an aggregate limit of at least \$2,000,000. The general liability and products liability policy must specifically insure your obligation to indemnify us under the Development Agreement and the Franchise Agreement. The general liability and worker's compensation insurance policies also must contain a waiver of subrogation in favor of us and our affiliates. You must name us, our parents, and our affiliates as an additional insured under each general liability and products liability policy and you must provide us with certificates of insurance evidencing your insurance coverage. Coverage for each additional insured shall apply on a primary and non-contributory basis to any insurance we maintain, whether collectible or not. Your insurance policies may not provide for deductibles, retentions, or their equivalent in excess of \$10,000 in the aggregate, and you must obtain your insurance policies from insurance companies having a rating of "A" or better from A. M. Best Company (or an equivalent rating). All policies must contain endorsements requiring the insurance company to give us at least 30 days' written notice before terminating, canceling, or making any changes in any policy. You also must secure, at your own cost, workers' compensation insurance covering all of your employees as required by applicable state law. If you fail to comply with any of those requirements, we may, but have no obligation to, purchase that insurance and you must reimburse us for the cost of that insurance.

We regularly negotiate purchase arrangements with suppliers for the benefit of our franchisees and monitor those arrangements and the amount of any discounts made available to our franchisees.

We do not have any purchasing or distribution cooperatives.

We do not provide any material benefits (like additional renewal rights or additional franchises) to our franchisees based on a franchisee's purchase of a particular product or service or the use of a particular supplier.

The amount of your purchases from a designated supplier or in accordance with our specifications will represent approximately 35% to 45% of your total purchases in establishing your restaurant (depending on the size of restaurant you open) and approximately 35% of your total purchases in connection with the operation of your restaurant.

We serve as an approved supplier for your point-of-sale and back office computer software and equipment. During our last fiscal year, our subsidiary, Captain D's Equipment, LLC, served as an approved supplier for restaurant equipment. During our last fiscal year ended January 1, 2023, we received \$850,000 (0.3% of our total consolidated revenues of \$327.5 million) from the sale of equipment and related software licenses to our franchisees (directly from us and through our subsidiary, Captain D's Equipment, LLC). Except for those sales, neither we nor our affiliates received any payments from our franchisees as a result of any required purchases or leases covered by this Item 8. During our fiscal year ended January 1, 2023, we received payments (or the benefit of payments) from one supplier based on purchases by our franchisees equal to 4.8% of the purchases involved. We used those funds (directly or through the advertising fund) to help pay for market research, test marketing, and system-wide promotions.

None of our officers own any interest in any required or approved supplier. Some of our officers may hold insignificant interest (less than 1%) in one or more of our publicly-traded suppliers directly or through their investments in mutual funds.

## ITEM 9 FRANCHISEE'S OBLIGATIONS

**The following table lists your principal obligations under the Development Agreement and Franchise Agreement. It will help you find more detailed information about your obligations in those agreements and in other portions of this Disclosure Document.**

<b>Obligation</b>	<b>Sections in Agreement</b>	<b>Items in Disclosure Document</b>
a. Location selection and acquisition/lease	Sections 5, 6, 7 and 8 of Development Agreement	Items 6, 10 and 11
b. Pre-opening purchases/leases	Section 7 of Franchise Agreement	Item 8
c. Location development and other pre-opening requirements	Sections 9 and 12 of Development Agreement	Items 6, 7 and 11
d. Initial and ongoing training	Section 10 of Development Agreement and Sections 9, 10 and 11 of Franchise Agreement	Item 11
e. Opening	Section 10 of Franchise Agreement	Item 11
f. Fees	Section 3 of Development Agreement and Sections 4, 5 and 8 of Franchise Agreement	Items 5, 6 and 7
g. Compliance with standards, policies and operations manuals	Section 7 of Franchise Agreement	Item 11
h. Trademarks and proprietary information	Section 13 of Development Agreement and Sections 1 and 13 of Franchise Agreement	Items 13 and 14
i. Restrictions on products and services offered	Section 7 of Franchise Agreement	Items 11 and 16
j. Warranty and customer service requirements	Not Applicable	Not Applicable

<b>Obligation</b>	<b>Sections in Agreement</b>	<b>Items in Disclosure Document</b>
k. Territorial development and sales quotas	Section 4 of Development Agreement	Item 12
l. Ongoing product and service purchases	Section 7 of Franchise Agreement	Item 8
m. Maintenance, appearance and remodeling requirements	Sections 6 and 7 of Franchise Agreement	Item 11
n. Insurance	Section 10 of Development Agreement and Section 16 of Franchise Agreement	Items 7 and 8
o. Advertising	Section 8 of Franchise Agreement	Items 6, 7 and 11
p. Indemnification	Section 10 of Development Agreement and Section 16 of Franchise Agreement	Item 6
q. Owner's participation, management and staffing	Section 7 of Franchise Agreement	Items 11 and 15
r. Records and reports	Section 5 of Franchise Agreement	Not Applicable
s. Inspections and audits	Section 5 of Franchise Agreement	Item 6
t. Transfer	Section 17 of Development Agreement and Section 17 of Franchise Agreement	Item 17
u. Renewal	Section 2 of Franchise Agreement	Item 17
v. Post-termination obligations	Sections 18, 19, 20, 22 and 25 of Franchise Agreement	Item 17
w. Non-competition covenants	Sections 18 and 25 of Franchise Agreement	Item 17
x. Dispute resolution	Section 21 of Development Agreement and Section 32 of Franchise Agreement	Item 17
y. Other	None (not applicable)	None (not applicable)

## **ITEM 10 FINANCING**

Neither we nor any of our affiliates offer, directly or indirectly, any financing arrangements to our franchisees. We do not guarantee your notes, leases or other obligations.

## **ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING**

**Except as disclosed below, we need not provide any assistance to you.**

### **Pre-opening Obligations**

Before you open your business, we will do the following under the Development Agreement:

1. Designate a territory and the number of restaurants you must build within that territory (Development Agreement - Sections 1 and 4).
2. Following application by you to open any Captain D's restaurant within the territory encompassed by the Development Agreement, review the proposed location and your financial condition, and, if acceptable to us, authorize the development and construction of a Captain D's restaurant at the proposed location (Development Agreement - Section 6). Once you have submitted

all of the required information for a proposed location, we do not have a specific deadline to accept or reject the location but generally take no more than 30 days to do so.

3. Provide one set of architectural guidelines for the approved prototype of Captain D's restaurant upon our acceptance of a proposed location (Development Agreement - Section 9).

4. Furnish counseling and advisory services to you for the construction and pre-opening activities related to the operation of Captain D's restaurants, including consultation and advice regarding parking and building layouts, construction, equipment selection and layout, signs, fixtures, opening inventory and supplies, employee training, advertising and promotion (including digital, mobile, social media, and search engine marketing activities), and purchasing and inventory control (Development Agreement - Section 10).

5. Furnish you with our operations manual, as well as any other mandatory and suggested specifications for equipment, signs, fixtures, and opening inventory and supplies (Development Agreement - Section 10).

6. Execute and deliver to you our form of Franchise Agreement in effect at that time upon payment of all required fees and performance of all required obligations by you for the particular restaurant then being developed under the Development Agreement (Development Agreement - Section 12).

A Development Agreement does not impose upon us any obligations for any particular restaurant after a restaurant opens. Any obligations we may have after the execution of a Franchise Agreement and the opening of the franchised restaurant arise solely from the Franchise Agreement.

After you sign a Franchise Agreement, we will do the following under the Franchise Agreement:

1. Grant you the right to use the Captain D's System and to operate a Captain D's restaurant at the approved location (Franchise Agreement - Section 1).

2. Provide you with counseling and advisory services for the opening and operation of the Captain D's restaurant, including consultation and advice regarding equipment selection and layout; signs, fixtures, and opening inventory and supplies; employee training; advertising and promotion (including digital, mobile, social media, and internet search engine marketing activities); recipes and preparation procedures; purchasing and inventory control procedures; operational procedures; and new developments and improvements in the Captain D's System (Franchise Agreement - Section 9). We currently charge no additional fees for those services.

3. Furnish you with our operations manual, as well as any other mandatory specifications and approved suppliers for any goods or services necessary to open or operate your Captain D's restaurant (Franchise Agreement - Section 9).

4. Provide an opening team to assist in the opening of the restaurant and the training of your restaurant employees (Franchise Agreement - Section 10). We will pay all wage, meal, and fringe benefit expenses of our opening team and will pay up to \$8,000 of our opening team's travel and lodging expenses. The team will include the personnel we deem appropriate for the length of time we deem appropriate. If you need additional assistance, we may charge you for the costs and expenses of

any additional personnel, for as long as the additional personnel work in your restaurant. Those costs and expenses may include amounts for wages, salaries, transportation, meals, lodging and fringe benefits.

While not contractually required, we also provide you with assistance in location selection; assistance in ordering equipment, signs, fixtures, opening inventory, and supplies; and assistance in establishing local suppliers before you open your restaurant. Except for your point-of-sale and computer equipment and software as described below, we do not deliver any of the foregoing items to you or install them for you. Instead, we provide you with the names of the approved suppliers and the specifications for those items. We do not provide pre-opening local media advertising for new franchised restaurants, but we supply advertising materials for pre-opening advertising for new restaurants upon request and recommend that you take advantage of those materials. We do not have to provide local advertising under the Franchise Agreement.

### **Post-opening Obligations**

After you open your restaurant for business, we will do the following under the Franchise Agreement:

1. Renew the Franchise Agreement upon your satisfaction of the conditions described in the Franchise Agreement (Franchise Agreement - Section 2).
2. Use funds contributed by you to an advertising fund controlled by us to provide the advertising and advertising materials during the term of the Franchise Agreement we deem necessary on a national, regional or local basis, including digital, mobile, social media, and internet search engine marketing materials (Franchise Agreement - Section 8). We may require that you pay for some of the advertising materials we provide to you.
3. Upon your request, furnish counseling and advisory services to you on subjects including equipment selection and layout; employee training; advertising and promotion (including digital, mobile, social media, and internet search engine marketing activities); recipes and preparation procedures; purchasing and inventory control procedures; operational procedures; and new developments and improvements in the Captain D's System (Franchise Agreement - Section 9).
4. Review any proposed assignment of the Franchise Agreement and either approve or disapprove that proposed assignment (Franchise Agreement - Section 17(c)).

### **Location Selection and Opening**

You must find a location for your franchised restaurant. We grant each Franchise Agreement for a specific location only. Under the terms of a Development Agreement, we will designate a geographic area in which you may select one or more proposed locations for our acceptance. The Development Agreement provides that we must accept a proposed location based on our then current standards for acceptable locations. The time limit to obtain our acceptance of a location varies (from several months to as much as a year or more in some cases). Failure to obtain our acceptance of a location by the agreed deadlines will result in the termination of the Development Agreement. Our representatives will examine each proposed location and advise you, based upon our experience and the trade area analysis described below, and other relevant data. Although we offer counseling and advice in location selection and we have the right to accept any location on which you propose to

develop a restaurant, we do not guarantee the suitability or success of the accepted location (see Development Agreement - Section 7). See Item 7 of this Disclosure Document for size requirements. You must submit specific information concerning the proposed location, including a current scaled map of the city or town, traffic counts, a location description and plot plan, color photos, area competition information, and building and signage plans that we may consider in accepting or rejecting a proposed location. Once you have submitted all of the required information for a proposed location, we do not have a specific deadline to accept or reject the location but generally take no more than 30 days to do so. If we reject a proposed location, you must locate and propose an alternative location for acceptance. We generally do not own and lease the location to you. However, in circumstances in which we sell an existing company-owned restaurant, we may sublease the location to you.

As a condition to our acceptance of a location for your Captain D's restaurant, we may require that you obtain a sales impact analysis from a company approved by us in order to estimate the effect that your proposed Captain D's restaurant may have on other Captain D's in the same market area.

After we accept the proposed location, you must acquire the location, either by lease or purchase, after acceptance by us of the proposed lease or financing arrangements for the purchase. You also must obtain all necessary zoning and construction approvals and permits, architectural services and contracts for building construction or remodeling as required, and equipment in accordance with final building and equipment plans approved by us. We must accept the location before you sign the Franchise Agreement. As a condition to accepting a proposed location, we may require that you negotiate a lease or sales contract that includes certain items regarding duration or other specified matters, including an agreement by the landlord to allow us to access the location for the purpose of enforcing our rights under the Franchise Agreement and to remove from the location all materials associated with the Captain D's System after the termination or expiration of your Franchise Agreement. In addition, under the Franchise Agreement, we may access your property following a termination or expiration of that agreement for purposes of removing all materials associated with the Captain D's System.

You must open the franchised restaurant for business within 180 days after execution of the Franchise Agreement by us, except for any delay we acknowledge in writing as being beyond your control. We estimate that, to complete the process and open for business, the typical length of time between payment of the Development Fee for a single-unit Development Agreement and the opening of a franchised restaurant ranges between 180 and 365 days, depending on factors like location selection, lease negotiations, obtaining acceptable financing arrangements, necessary zoning and building permits, local ordinances and community requirements, weather conditions, shortages, slow deliveries, and other similar factors regarding completion of construction, remodeling, decorating, and purchasing and installing equipment, fixtures and signs.

### **Advertising Fund**

We maintain and administer an advertising fund (the "Advertising Fund") for certain advertising, marketing, market research, and public relations programs and materials we feel necessary or appropriate in our sole discretion. You must contribute to the Advertising Fund the amounts we require as adjusted periodically, currently 1.1% of gross sales. As a result of the COVID-19 Pandemic, we have reduced the advertising fee to 1.0% of gross sales until further notice. See Item 6, above. Captain D's restaurants owned and operated by us and our affiliates, although not obligated to do so,

also contribute to the Advertising Fund at the same rate. We have no obligation to spend any money in your area or territory.

We direct all programs financed by the Advertising Fund, with sole discretion over the creative concepts, materials and endorsements used. We may use the Advertising Fund to pay the costs of preparing and producing video, audio, digital and written advertising materials, as well as digital, mobile, social media, and internet search engine materials; administering regional and multi-regional advertising programs, including, among other things, promotion and marketing agencies to provide assistance; and supporting public relations, market research, and other advertising, promotion and marketing activities. If you request, the Advertising Fund will furnish you with samples of previously-prepared advertising, marketing and promotional formats and materials at no cost. We will furnish you with multiple copies of those materials at our cost, plus applicable sales tax, shipping costs, and a mark-up for our handling and storage.

Although we do not physically segregate the Advertising Fund from our other funds, we will account for the Advertising Fund separately from our other funds and we will not use the funds to defray any of our operating expenses, except for those reasonable salaries, administrative costs, travel expenses, and overhead we incur in activities related to the administration of the Advertising Fund and its programs, including conducting market research; preparing advertising, promotion and marketing materials; and collecting and accounting for contributions to the Advertising Fund. We may spend, for the benefit of the Advertising Fund, in any fiscal year an amount greater or less than the aggregate contribution of all Captain D's restaurants to the Advertising Fund in that year, and the Advertising Fund may borrow from us or others to cover deficits or invest any surplus for future use. If the Advertising Fund borrows money from us, we may charge interest on the borrowed funds at the prime rate of interest.

During our fiscal year ended January 1, 2023, we spent a total of \$4.8 million from the Advertising Fund, approximately 68.7% on production, 26.0% on administrative expenses (including amounts to reimburse us), and 5.2% on other items (public relations and research). The Advertising Fund spent no money on media placement, other than for certain product and marketing tests. The Advertising Fund spent no money to solicit new franchisees. We have the right to cause the Advertising Fund to incorporate or operate through a separate entity at any time and the successor entity will have all of the rights and duties described above. We do not have the Advertising Fund audited. Upon written request, we will provide you with semi-annual statements, in a format we determine, identifying the revenues and expenses of the Advertising Fund.

The purpose of the Advertising Fund is to maximize the Captain D's trademarks and service marks and to maximize patronage of Captain D's restaurants. We attempt to utilize the Advertising Fund to develop advertising and marketing materials and programs that will benefit all Captain D's restaurants, but we cannot ensure that any Captain D's restaurant will benefit directly or in proportion to its contribution to the Advertising Fund. We do not assume any direct or indirect liability or obligation to you to collect amounts owed to the Advertising Fund or to maintain, direct or administer the Advertising Fund.

We reserve the right to defer or reduce contributions of a franchisee and, upon 30 days' prior written notice to you, to reduce or suspend contributions to and operations of the Advertising Fund for one or more periods of any length of time and to terminate (and, if terminated, to reinstate) the Advertising Fund. If we terminate the Advertising Fund, we will distribute all unspent monies on the



date of termination to franchisees in proportion to their respective contributions to the Advertising Fund during the preceding 12-month period.

We reserve the right to review any advertising that you may develop for written approval before its use, including, without limitation, any website, home page, or other cyberspace content that you propose to place on the world wide web or other computer network, including, without limitation, the use of our trademark or trade names in any electronic media. Prior to using any advertising, you must submit the advertising to us for our approval. If you do not receive written approval within 15 days after we receive the materials, you must consider us to have disapproved the materials. You may not use any advertising or promotional materials that we have disapproved.

### **Captain D's Marketing Advisory Council**

We have established a Marketing Advisory Council comprised of five franchisee representatives. All franchisees in good standing select two members by a plurality vote, we select one member, and the President's Advisory Council appoints two members from that council. The President's Advisory Council itself consists of eight franchisee representatives. Franchisees in good standing select six members of that council by a plurality vote and we select two members.

The Marketing Advisory Council serves in an advisory capacity, and we have the right to change, dissolve and reform the council.

### **Local Marketing**

In addition to your required contributions to the Advertising Fund as described above, you must spend a reasonable amount for local marketing of your Captain D's restaurant each year, subject to a minimum expenditure of at least 2% of your restaurant's gross sales. As a result of the COVID-19 Pandemic, we have suspended the local marketing expenditure requirement until further notice. See Item 6, above.

We may require that you submit a report each year, along with your annual income statement, detailing your local marketing expenditures during the past year and your planned expenditures for the current year. We also may audit your books and records reflecting your expenditures for the local marketing of your restaurant. We will not credit the cost of any salaries or benefits for employees engaged in marketing activities or the cost of telephone directory advertising and on-location signs toward that advertising obligation, nor will the costs of products sold at reduced prices or given away count toward fulfillment of that obligation. However, any advertising cooperative payments (described below) that you make in excess of 2% of your gross sales will count toward the minimum amount you must spend on local advertising and promotion of your Captain D's restaurant.

You must make all of your advertising, promotion and marketing materials completely clear, factual, not misleading, and in compliance with the highest standards of ethical marketing, and you must submit for our approval any promotional and marketing materials we have not prepared or previously approved before you use them. If you do not receive written approval within 15 days after we receive the materials, you must consider us to have disapproved the materials. You may not use any advertising or promotional materials that we have disapproved.

## National Advertising Program

You must participate in any local, regional and national advertising cooperatives that we may establish from time to time and in the local, regional and national advertising programs that we may designate from time to time.

We currently require all franchisees to participate in the Captain D's National Advertising Program and contribute a minimum of 3% of the gross sales of their restaurants to help fund the national, regional and local advertising programs developed by Captain D's for all Captain D's restaurants as part of the National Advertising Program. The Franchise Agreement allows us to increase the minimum contribution up to a maximum of 4% of the gross sales of our franchisees' Captain D's restaurants. However, any contribution required by us in excess of 2% of gross sales will count toward your local marketing expenditure requirement. As a result of the COVID-19 Pandemic, we have reduced the current advertising marketing contribution to .50% of gross sales, except for restaurants located in the following Designated Market Areas listed below. Restaurants located in those market areas will participate in Captain D's local television advertising program and pay an advertising marketing contribution of 1.0% of gross sales.

Birmingham-Tuscaloosa-Anniston, Alabama	Jackson, Mississippi
Dothan, Alabama	Tupelo-Columbus-West Point, Mississippi
Huntsville-Decatur-Florence, Alabama	Charleston, South Carolina
Montgomery-Selma, Alabama	Columbia, South Carolina
Jacksonville, Florida	Chattanooga, Tennessee
Tallahassee-Thomasville, Florida	Knoxville, Tennessee
Albany, Georgia	Memphis, Tennessee
Atlanta, Georgia	Nashville, Tennessee
Augusta, Georgia	Tri-cities, Tennessee, Virginia, West Virginia
Columbus, Georgia	Richmond-Petersburg, Virginia
Macon, Georgia	Charleston-Huntington, West Virginia
Lexington, Kentucky	
Louisville, Kentucky	

Under the Franchise Agreement, we have responsibility for the development and the implementation of all advertising programs that we may designate for our franchisee's restaurants, whether local, regional, or national. We also have responsibility for the administration of the national advertising cooperative and advertising programs and have the right to determine whether the cooperative will adopt and follow a set of bylaws. We currently have not adopted a set of bylaws for the national advertising cooperative. We have the right (but not any obligation) to delegate to the members of the cooperative the discretion to determine, by a vote of the members, the required contribution rate for the cooperative (subject to our minimum requirements and the provisions of the bylaws adopted for the cooperative), as well as any other matters involving the advertising programs for the cooperative we may choose. Pursuant to your Franchise Agreement, you agree to support the adoption of the advertising cooperative bylaws we designate and to support the exclusive use of the marketing and advertising services of our approved advertising agency of record. We currently use the services of a national advertising agency to produce advertising for us and our franchisees.

Captain D's restaurants owned and operated by us and our affiliates, although not obligated to do so, also contribute to the national advertising program at the same rate. We attempt to utilize the contributions to the national advertising program in a manner that will benefit all Captain D's

restaurants, but we cannot ensure that any Captain D's restaurant will benefit directly or in proportion to its contribution to the national advertising program. We do not assume any direct or indirect liability or obligation to you to collect contributions to the national advertising program or to maintain, direct or administer the program.

The national advertising cooperative and program will continue in existence until we decide to terminate it. We have the power to form, change, dissolve and merge the cooperative.

Although we do not physically segregate the contributions to for the national advertising program, we do account for those contributions separately from our other funds. We use the contributions to the national advertising program primarily to fund the placement and airing of our television and radio advertisements, although we also may use the contributions for other marketing activities, including social media communications and placements. We currently do not prepare annual or periodic financial statements for the national advertising cooperative and advertising program. Upon written request, we will provide you with semi-annual statements, in a format we determine, identifying the contributions and expenses for the national advertising program.

A new restaurant currently will not have any obligation to contribute to the national advertising program for its first four weeks of operation.

## **Computer Systems**

New Captain D's franchisees since February 1, 2004, must purchase, install, maintain and use the point-of-sale and computer-based training systems that we require. See Items 7 and 8 of this Disclosure Document and the Computer Software and Hardware Agreement attached as Exhibit H to this Disclosure Document for more details. You must purchase those systems from us. Your estimated costs will range from \$25,000 to \$34,100. Item 7 of this Disclosure Document sets forth the estimated cost of the required software and hardware, which you must pay to us shortly after you open your restaurant.

The point-of-sale computer system consists of two or three cash registers and monitors, credit card processing equipment, and two or three kitchen display monitors connected to one computer. The computer-based training systems includes an additional computer and monitor, usually located in the manager's office for a restaurant. You will use the point-of-sale system and its software to collect, fill and account for your customer orders; collect and monitor a variety of sales data, including gross sales, discounts, ticket averages, traffic and other sales data; place electronic orders for your inventory and supply items; prepare and distribute your employee work schedules; collect and monitor your food costs, labor costs, and other expenses; and perform sales forecasting, food preparation projections, ideal food cost analyses, menu mix analyses, and cash management activities. You will use the computer-based training system to provide initial and on-going training for your employees and access current copies of our training and operations manuals.

You must implement all modifications, upgrades and updates that we require with regard to the foregoing equipment, software and systems at your sole cost and expense, including the cost of new equipment required by software upgrades and updates. The Franchise Agreement does not contain any contractual limitations on the frequency or cost of that obligation. You will not enter into any third-party maintenance, updating or support contracts (optional or required) and, therefore, will not incur any costs in that regard.

We will provide you with support services for both systems. The annual cost of our support services will equal approximately \$2,832. That amount includes all necessary maintenance, repairs, upgrades and updates to our proprietary software. You must pay the costs of maintaining, repairing and upgrading your computer equipment. Your annual equipment maintenance, repair and upgrading costs will vary depending on your specific needs. We currently do not expect that you will incur any additional costs with regard to the maintenance, repairs, upgrades or updates to the xpient Solutions, LLC point-of-sale software, the QSR Automations, Inc. Kitchen Display System software, or the Microsoft Corp. Windows operating system software.

We will have independent access to all of the data collected by your point-of-sale system and will have the right to access that data in order to monitor the operations and performance of your Captain D's restaurants. We will keep that data confidential and not disclose any of it to any person other than our employees, officers or directors (or equivalent), except (1) pursuant to your written consent, (2) to the extent necessary to comply with any applicable law, subpoena or other legal process, or (3) to the extent reasonably related to the promotion of our business and, then, only to persons with a need to receive the data and who agree to keep the data strictly confidential.

### **Captain D's Confidential Operations Manuals and Restaurant Operations Observation**

Upon request, we will permit you to view our confidential operations manuals and materials at our headquarters or elsewhere as mutually arranged before you purchase a Captain D's franchise. Upon request, we also will permit you to spend time in and observe the operations of a Captain D's restaurant as mutually arranged before you purchase a Captain D's franchise. In each case, we will ask that you sign the Confidentiality and Indemnity Agreement attached as Exhibit I to this Disclosure Document.

### **Training**

We conduct our computer-based back office, point-of-sale system, and all other training at our company-owned and franchised Captain D's restaurants approved to provide training as certified training restaurants. The training programs include computer-based and on-the-job training and run continuously. You must complete each task to our satisfaction during training and you must achieve a score of 85% or higher on all tests. The computer-based portion of the program addresses various areas of restaurant operations, including administrative responsibilities, food cost controls, labor control, ordering, scheduling, and other management duties. The on-the-job training portion of the program involves the application of that knowledge in an operating restaurant environment. We do not charge you anything to train your staff before and during the opening of your restaurant. You must pay for all travel and living expenses, meals, uniforms and other benefits (including salary and insurance) for your employees. The training staff consists of our staff training personnel and certified restaurant managers.

Training takes place between one to four months before the opening of your first restaurant, which must happen within 12 months after you sign your Franchise Agreement. You will work in a certified training restaurant already in operation. Training is mandatory for any new franchisee. We require that at all of your management personnel attend and complete our training program before your restaurant opens.

Our training program consists of four different programs as described below. Passive owners must complete a one-week program, which consists of a condensed version of our positional training, management training, and advanced management training. Multi-unit operators must complete a four-

week program, which covers our basic training, management training, and advanced management training. All general managers and owner operators must complete a minimum six-week program, which covers those same training modules. Finally, each assistant manager must complete a four-week program, which covers our basic training, positional training, and management training modules.

For our existing franchisees opening new restaurants, we may require less training.

### **TRAINING PROGRAMS**

<b>Subject Matter</b>	<b>Computer-based Training</b>	<b>On-the-job Training</b>	<b>Location</b>
Basic Training	3 Hours	13 Hours	Training Restaurant
Positional Training	5 Hours	59 Hours	Training Restaurant
Management Training	7 Hours	73 Hours	Training Restaurant
Advanced Management Training	6 Hours	74 Hours	Training Restaurant

The basic training module covers the following topics: personal and food safety, security, hospitality, fire safety, and an introduction to our positional training modules and our food preparation procedures.

The positional training module uses our Guest Specialist Training Program developed for our company-operated restaurants to provide training on 10 positions within a Captain D's restaurant and involves a computer-based introduction and hands-on training for each position. A trainee becomes certified when the trainee can demonstrate proficiency and pass a certification test for each position. The position consists of the following job functions: front counter, drive-through, off-premise runner, front of the house opening, product preparation, restaurant cleaning and maintenance, fish fryers and broilers, back line fryers and sandwiches, food order monitoring system (the "wheel position"), and closing.

The management training module topics include all management functions necessary to operate a Captain D's restaurant on a daily basis. Topics include point-of-sale and back office computer systems, food preparation tools, cash handling tools, dining room procedures, daily inventory procedures, product receiving and storage procedures, food cost control systems, shift management tools, guest complaint resolution tools, and drive-through optimization tools.

The advanced management training module topics include all management functions necessary to operate a Captain D's restaurant on a weekly, monthly, and quarterly basis. Topics include sales forecasting, scheduling, weekly inventory, period inventory, food cost and waste reporting (SWAT), approved vendors, labor control management tools, our back office employee on-boarding system, and our product ordering system.

During a series of pre-opening conference calls, we introduce the trainee to all of the departments that will support the franchisee's new operations. Topics include product quality assurance; vendor contacts, relationships and responsibilities; local store marketing and promotions; marketing and advertising cooperatives; equipment and small wares; franchise advertising fees; profit and loss statements; point-of-sale maintenance and support; and D's Net, our franchisee intranet system.

All training takes place at one of our Captain D's restaurants that has qualified as National Certified Training Restaurant ("NCTR") under the guidance of our training department and the direct

supervision of our training managers. All management personnel in the NCTR will assist with that training, and the restaurant will provide all of the tools required for the training.

We will select one of the NCTRs identified below based on the most convenient location:

Number	State	City
3273	Alabama	Huntsville
3327	Alabama	Montgomery
3503	Alabama	Fairfield
3505	Alabama	Birmingham
3512	Alabama	Vestavia
3515	Alabama	Birmingham
3527	Alabama	Gadsden
3536	Alabama	Jasper
3548	Alabama	Prattville
3554	Alabama	Muscle Shoals
3627	Alabama	Eufaula
3630	Alabama	Enterprise
3660	Alabama	Montgomery
3692	Alabama	Troy
3704	Alabama	Oneonta
3770	Alabama	Centre
3775	Alabama	Pell City
3776	Alabama	Calera
3781	Alabama	Hartselle
3838	Alabama	Mobile
3853	Alabama	Selma
3604	Arkansas	Little Rock
3669	Arkansas	Searcy
3372	Florida	Jacksonville
3378	Florida	Jacksonville
3399	Florida	DeLand
3778	Florida	Parker
3779	Florida	Marianna
3793	Florida	Lake City
3834	Florida	Tallahassee
3848	Florida	Dade City
3318	Georgia	Decatur
3577	Georgia	Dalton

3594	Georgia	Riverdale
3595	Georgia	Columbus
3621	Georgia	Valdosta
3634	Georgia	Smyrna
3699	Georgia	Conyers
3702	Georgia	Stockbridge
3707	Georgia	Lawrenceville
3733	Georgia	Monroe
3739	Georgia	Decatur
3754	Georgia	LaGrange
3797	Georgia	Augusta
3799	Georgia	Augusta
3801	Georgia	Ft. Valley
3847	Georgia	Moultrie
205915	Georgia	Cordele
331032	Georgia	Villa Rica
3335	Illinois	Alton
3646	Indiana	Vincennes
3731	Indiana	Evansville
3578	Kentucky	Glasgow
3581	Kentucky	Ashland
3755	Kentucky	Russellville
364752	Kentucky	Bardstown
3145	Mississippi	Columbus
3272	Mississippi	Oxford
3278	Mississippi	Starkville
3279	Mississippi	Tupelo
3455	Mississippi	New Albany
364781	Mississippi	Olive Branch
3324	Missouri	Lebanon
3337	Missouri	House Springs
3542	Missouri	Kansas City
3545	Missouri	Springfield
3821	Missouri	Cape Girardeau
3360	Ohio	Zanesville
3361	Ohio	Kettering
3599	Ohio	Gallipolis
3813	South Carolina	Sumter

3818	South Carolina	Lugoff
3819	South Carolina	Sumter
3146	Tennessee	Hixson
3202	Tennessee	Alcoa
3203	Tennessee	Knoxville
3501	Tennessee	Donelson
3514	Tennessee	Nashville
3550	Tennessee	Gallatin
3734	Tennessee	Crossville
3760	Tennessee	Clarksville
3766	Tennessee	Sparta
354878	Tennessee	Memphis
360047	Tennessee	Jonesborough
363998	Texas	Garland
3315	West Virginia	Bluefield
3521	West Virginia	Huntington
3531	West Virginia	Charleston
3551	West Virginia	Parkersburg

We will provide you, at our expense, with an opening team to assist in the opening of your restaurant and the initial training of your restaurant employees. The make-up of the opening team and the length of support and training we provide will depend on the number of Captain D's restaurants that you already own, your recent opening training experience, and other relevant factors. If you own only one existing Captain D's restaurant, we will provide an opening team consisting of up to five trainers for a period of up to 14 days. If you own two or more existing Captain D's restaurants, we will provide an opening team consisting of up to three trainers for a period of up to 10 days. For additional support and training beyond that, we may charge you for some or all of our costs for that training. In certain circumstances involving experienced franchisees, we may elect to provide fewer trainers for fewer days.

We also make additional training available and we encourage, but do not require, you to attend additional training.

At a minimum, each of our training managers must complete our new restaurant opening training program, must have experience and received training in all of the subject matters listed above, and must satisfy the following requirements: (1) a complete knowledge of the Food Preparation and Cooking Manual, (2) the ability to conduct a Guest Specialist Training Program, (3) the approval of an Area Director or Director of Operations, and (4) the completion of all knowledge assessment tests with at least a score of 85%. We do not require that a training manager have any minimum number of years of experience. Nancy Ward, our Vice President and Chief People Development Officer, has responsibility for and oversees our training programs. Her business history and experience appears in Item 2, above.



## **ITEM 12 TERRITORY**

### **Development Agreement**

You will not receive an exclusive territory under a Development Agreement. You may face competition from other franchisees, from restaurants that we own, or from other channels of distribution of or competitive brands that we control. Under the terms of the Development Agreement, we will designate a geographic area in which you may select one or more proposed locations for our acceptance, using our then current standards for determining the designated area. You will obtain the right to develop and operate a certain agreed upon number of Captain D's restaurants within that specified area. The minimum area covered by a Development Agreement will consist of at least one trade area for each restaurant scheduled for development, with each trade area to contain a minimum population of 8,000 within two miles. As long as the Development Agreement remains in effect, we may not establish another Captain D's restaurant, either company-owned or franchised, within the area covered by the Development Agreement, unless you agree otherwise. However, the Development Agreement does not prevent us or our affiliates from offering within your specified area other franchises or company-owned outlets selling similar products under a trade name, trademark or service mark other than "Captain D's," "Captain D's Seafood Restaurants," or "Captain D's Seafood Kitchen."

We and our affiliates (including those identified in Item 1) may operate or franchise any other restaurant, other than a Captain D's restaurant, within your specified area. The affiliated franchising companies identified in Item 1 will use their own trade names, service marks and trademarks to operate and franchise their restaurants. We do not control or have any involvement in the operations of any of those affiliates and do not provide any support for their franchisees. Therefore, we have no process to resolve any conflicts regarding territory, customers or franchisor support between our franchisees and the franchisees of those affiliated companies.

We and our affiliates also reserve the right to use any other alternative distribution methods (including the internet) to sell packaged foods bearing our or any other trade names, trademarks or service marks within your specified area and to operate a Captain D's branded food service facility within a travel plaza on a limited access highway, a shopping mall, a sports arena or stadium, a school building or cafeteria, an airport, or a military base within your specified area, for which you will receive no compensation.

We also may operate or franchise any co-branded or multi-branded restaurant within your specified area that uses our or any other trade name, trademarks, and service marks, together with the trade name, trademarks and service marks of one or more related or unrelated companies.

Neither we nor any of our affiliates operate or plan to operate or franchise businesses under a different trademark that will sell goods or services the same as or similar to those that you will sell in your Captain D's restaurant.

*As a result of the above-described limits on your territory rights, you may face competition from other Captain D's franchisees, from restaurants that we operate, and from other channels of distribution or competitive brands that we control.*

The continuation of your rights in the area encompassed by the Development Agreement does not depend on sales volume, market penetration (except developing the agreed upon number of

restaurants within the agreed upon period of time), or any other contingency. However, upon the occurrence of certain events (including the failure by you to open the restaurants required by the agreed upon schedule), we may terminate the Development Agreement. See Item 17, below. No other circumstances permit us to modify your territory rights. You will not have any right to relocate or otherwise modify your territory rights.

## **Franchise Agreement**

You will not receive an exclusive territory under a Franchise Agreement. You may face competition from other franchisees, from restaurants that we own, or from other channels of distribution or competitive brands that we control. We do grant a protected area to each franchisee. The protected area consists of a circle having a two-mile radius, with the front door of the Captain D's restaurant as the center. However, for restaurants located in downtown or urban areas, we reserve the right to designate a smaller protected area. You will not have any right to relocate your Captain D's restaurant once established or establish additional restaurants in your protected area.

We may not establish a company-owned or other franchised Captain D's restaurant within your protected area. However, the Franchise Agreement does not prevent us or our affiliates from offering within your protected area other franchises or company-owned outlets selling similar products under a trade name, trademark or service mark other than "Captain D's," "Captain D's Seafood Restaurants," or "Captain D's Seafood Kitchen." We and our affiliates (including those identified in Item 1) may operate or franchise any other restaurant, other than a Captain D's restaurant, within your protected area. We and our affiliates also reserve the right to use any other alternative distribution methods (including the internet) or to sell packaged foods bearing any of our trade names, trademarks or service marks within your protected area and to operate a Captain D's branded food service facility within a travel plaza on a limited access highway, a shopping mall, a sports arena or stadium, a school building or cafeteria, an airport, or a military base within your protected area, for which you will receive no compensation.

Neither we nor any of our affiliates operate or plan to operate or franchise businesses under a different trademark that will sell goods or services the same as or similar to those that you will sell in your Captain D's restaurant.

*As a result of the above-described limits on your territory rights, you may face competition from other Captain D's franchisees, from restaurants that we operate, and from other channels of distribution or competitive brands that we control.*

The continuation of your protected area will not depend on certain sales volume or any other definite criteria, but will continue as long as your Franchise Agreement remains in effect. No other circumstances permit us to modify your protected area. We do not restrict you from soliciting or accepting food or beverage orders from consumers outside your protected area, including internet, catalog sales, telemarketing or direct marketing.

## **ITEM 13 TRADEMARKS**

We will grant you, as a franchisee, the right to operate a restaurant under the "Captain D's" trade name and either the "Captain D's Seafood Restaurant" or "Captain D's Seafood Kitchen" service marks. You also may use other current or future trademarks or service marks we develop for use with

Captain D's restaurants. You may use them only in the manner authorized by us. Except as noted below, we have registered or applied to register the following trademarks and service marks for the Captain D's System on the Principal Register of the United States Patent and Trademark Office.

<b>Trademark or Service Mark</b>	<b>Status</b>	<b>Registry</b>	<b>Registration Number</b>	<b>Registration or Application Date</b>
Captain D's	Registered	Principal	1029629	1/6/1976
Captain D's Fish Design	Registered	Principal	3514336	10/7/2008
Captain D's Seafood Kitchen Est. 1969 & Design	Registered	Principal	3208169	2/13/2007
It's Gotta Be D's	Registered	Principal	4620875	10/14/2014

We have filed with the United States Patent and Trademark Office all affidavits required to maintain the registration of the marks listed above and have renewed all of the marks other than It's Gotta Be D's, which does not become due for renewal until October 14, 2024.

We acknowledge and warrant in the Franchise Agreement that you will have the right and license to use all of the foregoing trademarks, service marks, trade names, logotypes or other commercial symbols used with the franchised Captain D's restaurant. We do not have to protect you against claims of infringement or unfair competition for your use of those marks but, as a matter of corporate policy, will use our best efforts to protect you against those claims.

If anyone challenges your use of any of our names or marks or if you become aware of any infringement of our names or marks, you must notify us immediately and we will have sole discretion to take any action we consider appropriate.

If we decide, in our sole discretion, to modify or discontinue use of any name or mark and/or use one or more additional or substitute names or marks, you must do so and we do not have to reimburse you for any costs associated with complying with that obligation.

We do not have to indemnify you against, or reimburse you for, any damages that you suffer in any proceeding arising out of the use of any name or mark or for any costs incurred by you in the defense of any of those claims.

Under the Franchise Agreement, you acknowledge that we are the sole and exclusive owner of the marks and that you will not register or attempt to register the marks and will not use the marks as any part of your firm or corporate name or internet domain name. You agree to assign, transfer and convey to us by any writing we may request all additional rights, if any, which you may acquire by reason of the use of the marks. The license to use the marks is non-exclusive and the privileges granted by the Franchise Agreement with respect to the marks apply only to the franchised location.

We know of no effective determinations of the Patent and Trademark Office, Trademark Trial and Appeal Board, the trademark administrator of any state or any court; any pending infringement, opposition or cancellation proceedings; or any pending material litigation involving our principal trademarks, service marks, trade names, logotypes or other commercial symbols relevant to their use in any state. We have no agreements which significantly limit our rights to use or license the use of the our principal trademarks, service marks, trade names, logotypes or other commercial symbols. We

know of no prior rights or infringing uses that would have a material effect on your use of our principal trademarks, service marks, trade names, logos or other commercial symbols.

#### **ITEM 14**

### **PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

We hold no patents material to the Captain D's franchise and have no pending patent applications.

We claim copyright protection in our operations manuals and related materials, although we have not registered those copyrights with the United State Copyright Office. We consider the operations manuals and related materials confidential, proprietary and our property. You may use them only in the operation of your restaurant as provided in the Franchise Agreement. You may not use our confidential and proprietary information in any unauthorized manner and must take reasonable steps to prevent its disclosure to others. Your right to use those materials continues as long as the Franchise Agreement remains in effect.

Neither the Copyright Office (Library of Congress) nor any court has made any currently-effective determinations regarding any of our copyrighted materials. We have no agreements in effect that significantly limit our right to use or license the use of our copyrighted materials. Finally, we know of no infringing uses that could materially affect your use of our copyrighted materials in any state. We have no obligation to protect or defend our copyrights or confidential information, although we intend to do so when in the best interest of our system.

#### **ITEM 15**

### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

We require you to participate personally in the direct operation of the franchised restaurant. If you operate as a corporation or other business entity, you or a supervisory person with at least a 10% ownership interest (or an acceptable ownership vesting plan) and approved by us must participate personally in the operation of the franchised restaurant. You or your designated operator must attend and satisfactorily complete the initial training program conducted by us as described in Item 11.

We may require that you and each person actively involved in your restaurant, including the manager, execute an agreement in the form provided by us, under which each of you agree not to divulge any of our trade secrets or confidential or proprietary information, including the contents of any of our operations manuals, or to participate in or have any interest in any competitive business.

If you operate as a corporation or other business entity, we will require all individuals with a direct or indirect ownership interest of 10% or more to guarantee the performance of your obligations to us and our affiliates. A copy of our standard Guaranty Agreement appears as Exhibit F to this Disclosure Document.

#### **ITEM 16**

### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must offer for sale and sell only those products and services that we have approved, and you must offer for sale and sell all products and services that we have approved for your restaurant.

You may not offer for sale any products or perform any services that we have not authorized previously in writing. See Items 8 and 9, above. We have the right to change the types of authorized products and services, without limitation. We do not restrict whom you may serve.

## **ITEM 17**

### **RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

#### **Development Agreement**

The following table lists certain important provisions of the Development Agreement pertaining to renewals, terminations, transfers and dispute resolutions. You should read those provisions in the Development Agreement attached as Exhibit D to this Disclosure Document.

#### **THE FRANCHISE RELATIONSHIP**

<b>Provision</b>	<b>Section in Development Agreement</b>	<b>Summary</b>
a. Length of the franchise term	Section 2	Terminates at the earlier of the date of execution of the Franchise Agreement for the last scheduled restaurant or the stated expiration date.
b. Renewal or extension of the term	Not Applicable	Not Applicable
c. Requirements for you to renew or extend	Not Applicable	Not Applicable
d. Termination by you	Not Applicable	You may not terminate unless applicable law gives you that right.
e. Termination by us without cause	Not Applicable	Not Applicable
f. Termination by us with cause	Section 14	We can terminate only if you default. A default under the Development Agreement also constitutes a default under your Franchise Agreement, and a default under your Franchise Agreement also constitutes a default under your Development Agreement, giving us the right to terminate both agreements. However, we will not terminate an existing Franchise Agreement solely on the basis of your failure to meet the development schedule under your Development Agreement.
g. "Cause" defined - curable defaults	Section 14	Seven days for material violation, default under any other agreement with us, or failure to cure within the time specified in that agreement.
h. "Cause" defined - incurable defaults	Section 14	Subject to applicable state law, failure to open any restaurant within the time period specified; unapproved assignment of the agreement; material misrepresentation; unapproved transfers; bankruptcy; assignment for the benefit of creditors; and repeated defaults (even if cured). See Exhibit G.
i. Your obligations on termination or non-renewal	Sections 3 and 15	Fees paid under the Development Agreement are non-refundable; all rights granted under the agreement extinguish.
j. Assignment of contract by us	Not Applicable	No restriction on our right to assign.
k. "Transfer" by you – definition	Section 17	Restrictions on transfer of contract or assets and on ownership change.

<b>Provision</b>	<b>Section in Development Agreement</b>	<b>Summary</b>
l. Our approval of transfer by you	Section 17	We have the right to approve all transfers.
m. Conditions for our approval of transfer	Section 17(a)	No specific conditions stated for transfer during life. We may impose conditions on transfer.
n. Our right of first refusal to acquire your business	Not Applicable	Not Applicable
o. Our option to purchase your business	Not Applicable	Not Applicable
p. Your death or disability	Section 17(b)	No provision for disability; on death, we will not withhold our consent unreasonably to transfer to heirs capable of performing your obligations under the agreement.
q. Non-competition covenants during the term of the franchise	Not Applicable	Not Applicable
r. Non-competition covenants after the franchise terminates or expires	Not Applicable	Not Applicable
s. Modification of the agreement	Section 24	No modifications generally.
t. Integration or merger clause	Section 26	Only the terms of the Development Agreement are binding, subject to applicable state law. Representations and promises outside this Disclosure Document and the Development Agreement may not be enforceable.
u. Dispute resolution by arbitration or mediation	Section 21	You must arbitrate any dispute you may have with us, subject to applicable state law. See Exhibit G.
v. Choice of forum	Section 23	Arbitration or litigation must take place in Tennessee, subject to applicable state law. See Exhibit G.
w. Choice of law	Section 23	Tennessee law applies, subject to applicable state law. See Exhibit G.

## Franchise Agreement

The following table lists important provisions of the Franchise Agreement pertaining to renewals, terminations, transfers and dispute resolutions. You should read those provisions in the Franchise Agreement attached as Exhibit E to this Disclosure Document.

### THE FRANCHISE RELATIONSHIP

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
a. Length of the franchise term	Section 2	20 years.
b. Renewal or extension of the term	Section 2	If in good standing, you can renew for one additional period of 20 years.

c.	Requirements for you to renew or extend	Section 2	The term “renewal” means the renewal of the term of your franchise. To exercise your renewal right, no default may exist under your existing agreement. We will require that you sign a new Franchise Agreement (which may contain materially different terms and conditions and may increase the fees payable by you), pay a renewal fee, and (subject to applicable state law) sign a general release of claims. See Exhibit G. We also may require that you remodel your restaurant and complete additional training.
d.	Termination by you	Not Applicable	You may not terminate unless applicable law gives you that right.
e.	Termination by us without cause	Not Applicable	Not Applicable
f.	Termination by us with cause	Section 19	We can terminate only if you default. A default under the Franchise Agreement also constitutes a default under your Development Agreement and will give us the right to terminate that agreement.
g.	“Cause” defined - curable defaults	Section 19	365 days after loss of possession by condemnation or casualty; seven days for operational defaults; and five days for monetary defaults.
h.	“Cause” defined - incurable defaults	Section 19	Abandonment, unapproved transfers, bankruptcy, assignment for the benefit of creditors, fail on more than two occasions during any 12-month period to comply with one or more requirements of the agreement; repeated defaults (even if cured), and falsification of reports.
i.	Your obligations upon termination or non-renewal	Sections 20, 21, 22 and 25	Pay all amounts then due plus damages for the right to receive royalties for a period of 36 months (subject to applicable state law), return of confidential information, and de-identification. See Exhibit G. Also, see n, o, q and r, below.
j.	Assignment of contract by us	Not Applicable	No restriction on our right to assign.
k.	“Transfer” by you – definition	Section 17	Restrictions on transfer of contract or assets and on ownership change.
l.	Our approval of transfer by you	Section 17	We have the right to approve all transfers.
m.	Conditions for our approval of transfer	Section 17	No use of Captain D’s name in advertising unit for sale, new franchisee qualifies, all amounts due are paid in full, transfer fee paid, purchase agreement approved, release signed by you , and current agreement signed by new franchisee (also see n. below). We may condition our approval on, among other things, your guarantee of the obligations of the transferee. We also may impose other conditions.
n.	Our right of first refusal to acquire your business	Section 21	We can match any offer for your business.
o.	Our option to purchase your business	Section 22	We can buy the restaurant on termination for the price in Section 22. We have a right of first refusal if you sell the restaurant within one year following non-renewal.
p.	Your death or disability	Section 17(b)	No provision for disability; on death, we will not withhold our consent unreasonably to transfer to heirs capable of performing your obligations under the agreement.
q.	Non-competition covenants during the term of the franchise	Sections 18 and 25	You may not have any interest in any business that simulates the Captain D’s System; you also may not operate a restaurant similar to a Captain D’s restaurant anywhere within two miles of any Captain D’s restaurant.

r.	Non-competition covenants after the franchise terminates or expires	Section 18	No competing business for 24 months within 10 miles of any Captain D's restaurant.
s.	Modification of the agreement	Sections 7 and 36	No modifications generally, but operations manuals may change.
t.	Integration/merger clause	Section 36	Only the terms of the Franchise Agreement are binding, subject to applicable state law. Representations and promises outside this Disclosure Document or the Franchise Agreement may not be enforceable.
u.	Dispute resolution by arbitration or mediation	Section 32	You must arbitrate any dispute you may have with us, subject to applicable state law. See Exhibit G.
v.	Choice of forum	Sections 31 and 32	Arbitration or litigation must take place in Tennessee, subject to applicable state law. See Exhibit G.
w.	Choice of law	Sections 31 and 32	Tennessee law applies, subject to applicable state law. See Exhibit G.

For franchises subject to California law, please see the State Addenda for California attached as Exhibit G to this Disclosure Document.

## ITEM 18 PUBLIC FIGURES

We do not use any public figure to promote the Captain D's franchise.

## ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

The Federal Trade Commission's Franchise Rule permits us to provide information about the actual or potential financial performance of our franchised and/or company-owned restaurants, if a reasonable basis for the information exists and we include the information in this Disclosure Document. We may give financial performance information that differs from the information included in this Item 19 only if (1) we provide the actual records of an existing restaurant that you are buying or (2) we supplement the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

This Item 19 contains historical gross sales and expense information for certain franchised and company-owned Captain D's restaurants.

**Some restaurants have sold this amount. Your individual results may differ. There is no assurance you'll sell as much.**

The sales and expense information shown below reflects the operation of free-standing Captain D's restaurants open continuously for the past fiscal year ended January 1, 2023, our "Comparable Restaurants." Those restaurants feature various building prototypes used by Captain D's throughout the years.

You should conduct an independent investigation of the costs and expenses that you will incur in operating your Captain D's restaurant. Franchisees or former franchisees may serve as one source for that information.



## **Material Factors**

You should consider the following material factors in reviewing and determining whether to rely on this data:

1. The information provided for our Comparable Sales Restaurants covers our fiscal year ended January 1, 2023 (January 3, 2022, through January 1, 2023).

2. We based the gross sales information for franchised restaurants included in our Comparable Restaurants on a total of 213 franchised restaurants in operation continuously during our fiscal year ended January 1, 2023. We based the gross sales and expenses for company-owned restaurants included in our Comparable Restaurants on a total of 280 company-owned restaurants in operation continuously during our fiscal year ended January 1, 2023.

3. In selecting the Comparable Restaurants identified in Note 2, above, we excluded (a) 26 company-owned restaurants and 11 franchised restaurants not open for the full fiscal year, (b) five company-owned restaurants and 1 franchised restaurant closed for more than one week during the fiscal year, and (c) one company-owned non-traditional restaurant.

4. We based the gross sales amounts for our franchised restaurants on financial information provided to us by our franchisees with respect to their Captain D's restaurants. We do not audit the gross sales figures provided to us by our franchisees, but those gross sales represent amounts on which franchisees pay royalties to us. Therefore, we consider those amounts reliable. We based the gross sales and expense amounts for our company-owned Captain D's restaurants reported below on our financial statements.

5. For purposes of this Item 19, the term "gross sales" means the total revenues derived by a Captain D's restaurant from all sales of all services and merchandise made in, upon, or from the Captain D's restaurant, whether for cash, check, credit, barter, exchange, or otherwise, less (a) refunds, adjustments, or credits to customers; (b) sales taxes, excise taxes, or other taxes charged to customers in addition to the sales price of any food, beverages, or services; and (c) any unaffiliated third-party delivery fees charged to customers in addition to the sales price of any food, beverages, and services.

6. The expense information below relates only to Captain D's company-owned locations and does not include all expenses incurred by the Captain D's restaurants included. It specifically excludes occupancy expenses like rent, depreciation, and debt payments for land, buildings, and improvements. The amounts for labor include restaurant-level managers and employees and consist of salaries, wages (net of any job credits), vacation pay, sick pay, performance bonuses, and payroll taxes. Operating expenses include utilities, uniforms, laundry, maintenance and repair, property taxes, licenses, insurance, and other miscellaneous expenses.

7. The expense information also does not include expenses that you will or may incur as a franchisee of Captain D's but which our company-owned restaurants do not experience. Those expenses include the following items:

(a) **Royalty Payments.** Your royalty fees will equal 4.5% of your gross sales. See Item 6 of this Disclosure Document. Our company-owned restaurants do not pay royalties and, therefore, the expense information below does not contain any amounts for royalty payments.

(b) Advertising and Local Restaurant Marketing Fees and Expenses. Advertising and local restaurant marketing fees and expenses may equal up to 5.1% of gross sales. That amount consists of an advertising fee of 1.1% of gross sales (which we may increase to a maximum of 2%), national marketing expenses and advertising cooperative contributions of 3% of gross sales, and required local restaurant marketing expenditures of 1% of gross sales. See Item 6 of this Disclosure Document. As result of the on-going cost-saving actions taken in response to the COVID-19 Pandemic, Captain D's company-owned restaurants, on average, spent only 2.1% of gross sales on advertising and local restaurant marketing fees and expenses during our fiscal year ended January 1, 2023. Beginning with the second quarter of 2020 and continuing through the 2022 fiscal year, we stopped making and suspended our franchisees' obligations to make any advertising cooperative contributions or local restaurant marketing expenditures and reduced the Advertising Fee to 1.00% of gross sales. We also reduced the advertising cooperative marketing contribution to .50% of gross sales, except for restaurants located in certain Designated Market Areas listed Item 11, above. Restaurants located in those market areas participated in Captain D's local television advertising program and paid an advertising marketing contribution of 1.0% of gross sales.

(c) Legal, Accounting, and Other Administrative Expenses. You will incur legal, accounting, and other administrative expenses in connection with the operation of your business as a Captain D's franchisee. The expense information below does not contain any amounts for those types of expenditures.

8. You also may experience additional expenses in connection with the operation of your Captain D's restaurant.

**Total Comparable Restaurants for Fiscal Year Ended January 1, 2023**

Number of Restaurants Operating One Year or More	493
Number of Franchised Restaurants	213
Number of Company-owned Restaurants	280

**Franchised Comparable Restaurants for Fiscal Year Ended January 1, 2023**

	<u>Top Third</u>	<u>Middle Third</u>	<u>Bottom Third</u>	<u>Total</u>
Average Gross Sales	\$1,552,068	\$1,025,908	\$685,124	\$1,087,700
Number of Restaurants	71	71	71	213
Highest Gross Sales	\$2,741,845	\$1,192,090	\$858,135	\$2,741,845
Lowest Gross Sales	\$1,194,434	\$862,407	\$316,254	\$316,254
Number Above Average	31	38	42	91
Number Below Average	40	33	29	122
Median Gross Sales	\$1,500,613	\$1,029,340	\$714,170	\$1,029,340

**Franchised and Company-owned Comparable Restaurants**  
**for Fiscal Year Ended January 1, 2023**

For the fiscal year ended January 1, 2023, average gross sales for both franchised and company-owned Comparable Restaurants equaled \$1,075,164 and the median gross sales equaled \$1,006,303. As shown above, the annual gross sales for franchised Comparable Restaurants averaged \$1,146,872 and the median gross sales equaled \$1,091,730. Annual gross sales for company-owned Comparable Restaurants averaged \$994,335. Of those 277 company-owned restaurants, 124 restaurants exceeded the average and 153 restaurants had annual gross sales below the average. The median gross sales for the 277 company-owned restaurants equaled \$957,385.

The foregoing figures do not reflect the costs of sales, operating expenses, or other costs or expenses that you must deduct from the gross sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses that you will incur in operating your restaurant. Franchisees or former franchisees, listed in Exhibit J to this Franchise Disclosure Document, may serve as one source for that information.

### **Company-Owned Comparable Restaurants for Fiscal Year Ended January 1, 2023**

The following table provides the gross sales and selected expenses for three categories of Captain D's company-owned Comparable Restaurants based on the amount of annual gross sales experienced by the restaurants during the fiscal year ended January 1, 2023 (January 3, 2022, through January 1, 2023).

	<b>Top Third</b>		<b>Middle Third</b>		<b>Bottom Third</b>	
	<b>\$</b>	<b>%</b>	<b>\$</b>	<b>%</b>	<b>\$</b>	<b>%</b>
Sales Average	1,303,559	100.00%	955,318	100.00%	707,578	100.00%
Food	395,831	30.37%	297,636	31.16%	225,289	31.84%
Packaging	48,625	3.73%	37,316	3.91%	27,969	3.95%
Total Food & Packaging	444,456	34.10%	334,952	35.06%	253,258	35.79%
Labor, Benefits, & Related Expenses	291,754	22.38%	252,787	26.46%	222,177	31.40%
Total Food, Packaging, & Labor	736,210	56.48%	587,738	61.52%	475,435	67.19%
Operating Expenses*	166,592	12.78%	152,013	15.91%	136,892	19.35%
Advertising Expenses	27,479	2.11%	19,931	1.53%	14,507	1.11%
Proforma Restaurant Contribution Before Occupancy (EBITDAR)	372,153	28.55%	194,811	20.39%	80,133	11.33%
Sales Average	1,303,559		955,318		707,578	
Number of Restaurants	94		94		94	
Highest Gross Sales	2,181,309		1,089,269		847,849	
Lowest Gross Sales	1,092,186		848,727		254,632	
Number of Restaurants Above Average	33		45		53	
Number of Restaurants Below Average	61		49		41	
Sales Median	1,222,975		950,278		730,512	

\* Captain D's company-owned restaurants do not pay royalty fees (currently 4.5% of gross sales). Therefore, the amount for operating expenses shown above does not include those amounts. See "Material Factors," above.

**We will make written substantiation for the financial performance representations available to prospective franchisees upon reasonable request.**

**ITEM 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 1**  
**System-wide Outlet Summary**  
**For Fiscal Years 2020 through 2022**

Outlet Type	Year	Outlets at Start of Year	Outlets at End of Year	Net Change
Franchised	2020	250	248	-2
	2021	248	248	+0
	2022	248	225	-23
Company-Owned	2020	289	291	+2
	2021	291	290	-1
	2022	290	312	+22
Total Outlets	2020	539	539	+0
	2021	539	538	-1
	2022	538	537	-1

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners (other than Franchisor)**  
**For Fiscal Years 2020 through 2022**

State	Year	Number of Transfers
Alabama	2020	0
	2021	0
	2022	2
Georgia	2020	1
	2021	1
	2022	0
Kentucky	2020	0
	2021	0
	2022	2
Mississippi	2020	0
	2021	0
	2022	3
Tennessee	2020	0
	2021	1
	2022	0
Totals	2020	1
	2021	2
	2022	7

**Table No. 3**  
**Status of Franchised Outlets**  
**For Fiscal Years 2020 through 2022**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations for Other Reasons	Outlets at End of the Year
Alabama	2020	12	0	0	0	0	0	12
	2021	12	0	0	0	1	0	11
	2022	11	0	0	0	3	0	8
Arkansas	2020	8	0	0	0	5	0	3
	2021	3	0	1	0	0	0	2
	2022	2	0	0	0	0	0	2
Colorado	2020	5	0	0	0	0	0	5
	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
Florida	2020	5	1	0	0	0	0	6
	2021	6	1	0	0	0	0	7
	2022	7	0	0	0	0	1	6
Georgia	2020	46	0	0	0	0	0	46
	2021	46	0	0	0	0	0	46
	2022	46	3	0	0	11	0	38
Illinois	2020	0	1	0	0	0	0	1
	2021	1	1	0	0	0	0	2
	2022	2	0	0	0	0	0	2
Indiana	2020	4	0	0	0	0	0	4
	2021	4	0	0	0	0	1	3
	2022	3	0	0	0	0	1	2
Kentucky	2020	24	1	0	0	0	1	24
	2021	24	0	0	0	0	0	24
	2022	24	0	0	0	3	0	21
Louisiana	2020	7	1	0	0	0	0	8
	2021	8	0	0	0	0	0	8
	2022	8	0	0	0	0	0	8
Michigan	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Mississippi	2020	18	0	0	0	0	0	18
	2021	18	0	0	0	0	0	18
	2022	18	1	0	0	4	0	15
Missouri	2020	4	1	0	0	0	0	5
	2021	5	0	0	0	1	0	4
	2022	4	0	0	0	0	1	3
New Mexico	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
North Carolina	2020	24	0	0	0	0	0	24
	2021	24	0	1	0	0	0	23
	2022	23	0	0	0	0	1	22
Ohio	2020	8	0	0	0	0	0	8
	2021	8	0	0	0	0	0	8
	2022	8	0	0	0	0	0	8
Oklahoma	2020	2	0	0	0	2	0	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations for Other Reasons	Outlets at End of the Year
South Carolina	2020	7	1	2	0	1	0	5
	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	1	0	4
Tennessee	2020	35	0	0	0	0	0	35
	2021	35	2	0	0	0	0	37
	2022	37	1	0	0	0	0	38
Texas	2020	16	2	0	0	0	0	18
	2021	18	1	0	0	0	0	19
	2022	19	2	0	0	0	1	20
Virginia	2020	21	0	0	0	0	0	21
	2021	21	0	0	0	0	0	21
	2022	21	0	0	0	0	1	20
West Virginia	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Wisconsin	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	1	0	0	0	3	0
Totals	2020	250	9	2	0	8	1	248
	2021	248	5	2	0	2	1	248
	2022	248	8	0	0	22	9	225

**Table No. 4**  
**Status of Company-owned Outlets**  
**For Fiscal Years 2020 through 2022**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Alabama	2020	58	0	0	0	0	58
	2021	58	0	1	0	0	59
	2022	59	0	3	0	0	62
Arkansas	2020	0	0	5	0	0	5
	2021	5	0	0	0	0	5
	2022	5	0	0	0	0	5
Florida	2020	26	0	0	0	0	26
	2021	26	0	0	0	0	26
	2022	26	2	0	0	0	28
Georgia	2020	60	0	0	0	0	60
	2021	60	0	0	1	0	59
	2022	60	0	11	0	0	70
Illinois	2020	6	0	0	0	0	6
	2021	6	0	0	0	0	6
	2022	6	0	0	0	0	6
Indiana	2020	6	0	0	0	0	6
	2021	6	0	0	0	0	6
	2022	6	0	0	0	0	6

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Kansas	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Kentucky	2020	16	0	0	1	0	15
	2021	15	0	0	1	0	14
	2022	14	0	3	0	0	17
Louisiana	2020	2	0	0	2	0	0
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
Mississippi	2020	11	0	0	0	0	11
	2021	11	2	0	1	0	12
	2022	12	0	4	0	0	16
Missouri	2020	16	0	0	1	0	15
	2021	15	0	1	0	0	16
	2022	16	0	0	0	0	16
North Carolina	2020	2	0	0	0	0	2
	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
Ohio	2020	11	0	0	0	0	11
	2021	11	0	0	1	0	10
	2022	10	1	0	0	0	11
Oklahoma	2020	0	0	2	0	0	2
	2021	2	0	0	0	0	2
	2022	2	9	0	0	0	2
South Carolina	2020	20	0	1	1	0	20
	2021	20	0	0	0	0	20
	2022	20	0	1	0	0	21
Tennessee	2020	38	0	0	0	0	38
	2021	38	0	0	1	0	37
	2022	37	0	0	2	0	35
Virginia	2020	2	0	0	1	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
West Virginia	2020	14	0	0	0	0	14
	2021	14	0	0	0	0	14
	2022	14	0	0	1	0	13
Totals	2020	289	0	8	6	0	291
	2021	291	2	2	5	0	290
	2022	290	3	22	3	0	312



**Table No. 5**  
**Projected Openings as of January 1, 2023**

<b>State</b>	<b>Franchise Agreements Signed But Outlet Not Opened</b>	<b>Projected New Franchised Outlets in the Next Fiscal Year</b>	<b>Projected New Company-owned Outlets in Next Fiscal Year</b>
Alabama	1	1	0
Arkansas	0	1	0
Florida	0	0	2
Georgia	3	6	0
Illinois	1	1	0
Mississippi	0	0	1
Missouri	0	0	1
Ohio	0	0	1
Texas	2	3	0
<b>Totals</b>	<b>7</b>	<b>12</b>	<b>5</b>

Our fiscal year ends on the Sunday closest to December of each year. We have presented all of the foregoing numbers as of January 3, 2021, January 2, 2022, and January 1, 2023, respectively.

The name, business address, and business telephone number of each current franchisee as of January 1, 2023, and the name, last known home address, and telephone number of every franchisee who has had a Franchise Agreement terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during the most recently completed fiscal year or has not communicated with us within 10 weeks prior to the date of this Disclosure Statement, appears on Exhibit J to this Disclosure Document. If you buy a Captain D's franchise, we may disclose your contact information to other prospective franchisees or buyers.

During our last three fiscal years, we did not sign any confidentiality agreements with any current or former franchisee that would restrict their ability to speak openly about their experience with the Captain D's system. However, all Captain D's developers and Captain D's franchisees sign agreements to keep our trade secrets and proprietary information strictly confidential.

We know of no active franchisee organization associated with the Captain D's system.

## **ITEM 21**

### **FINANCIAL STATEMENTS**

Exhibit B to this Disclosure Document contains the audited consolidated balance sheets of Captain D's Enterprises, LLC as of January 1, 2023 (Successor), and January 2, 2022 (Predecessor), and the related statements of operations, changes in equity, and cash flows for the 32 weeks ended January 1, 2023 (Successor), 20 weeks ended May 18, 2022 (Predecessor), 52 weeks ended January 2, 2022 (Predecessor), and 53 weeks ended January 3, 2021 (Predecessor). Exhibit B to this Disclosure Document also contains the unaudited financial statements of Captain D's Enterprises, LLC for the 12 weeks ended March 26, 2023.

Captain D's Enterprises, LLC has guaranteed all of our obligations pursuant to the terms of any Development Agreement, Franchise Agreement, or related agreement issued pursuant to this Disclosure Document. A copy of the guaranty agreement appears as Exhibit C to this Disclosure Document.

Our fiscal year and the fiscal year of Captain D's, LLC ends on the Sunday closest to December 31<sup>st</sup> of each year.

We and our subsidiaries, including Captain D's Enterprises, LLC, have adopted the provisions of FASB ASC Topic 606 and uses the modified method in determining revenue recognition under the current standards.

## **ITEM 22 CONTRACTS**

The following agreements appear as exhibits to this Disclosure Document:

Development Agreement	Exhibit D
Franchise Agreement	Exhibit E
Captain D's Guaranty Agreement	Exhibit F
Addenda Required by Certain States	Exhibit G
Computer Software and Hardware Agreement	Exhibit H
Confidentiality and Indemnity Agreement	Exhibit I

## **ITEM 23 RECEIPT**

Two copies of a receipt for this Disclosure Document appear as the last two pages of this document. Please sign and return one copy to us and keep the other copy for your records.

## **Exhibit A**

### **State Agencies and Registered Agents**

#### **State Agencies**

<u>State</u>	<u>Agency</u>
California	Commissioner of Business Oversight California Department of Business Oversight 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (866) 275-2677
Hawaii	State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722
Illinois	Franchise Division Office of Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465
Indiana	Franchise Section Indiana Securities Division Secretary of State, Room E-111 302 West Washington Street Indianapolis, Indiana 46204 (317) 232-6681
Maryland	Office of Attorney General Division of Securities 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-7042
Minnesota	Minnesota Department of Commerce 85 7th Place East, Suite 280 St. Paul, Minnesota 55101 (651) 539-1500
New York	New York State Department of Law Investor Protection Bureau 28 Liberty Street, 21 <sup>st</sup> Floor New York, New York 10005 (212) 416-8222

North Dakota	North Dakota Securities Department State Capitol, Fifth Floor, Department 414 600 East Boulevard Avenue Bismarck, North Dakota 58505-0510 (701) 328-4712
Rhode Island	Division of Securities John O. Pastore Complex, Building 69-1 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9588
South Dakota	South Dakota Department of Labor and Regulation Division of Insurance Securities Regulation 124 South Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-3563
Virginia	State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051
Washington	Department of Financial Institutions Securities Division P. O. Box 9033 Olympia, Washington 98507-9033 (360) 902-8760
Wisconsin	Division of Securities Department of Financial Institutions 345 West Washington Avenue, Fourth Floor Madison, Wisconsin 53703 (608) 266-2801

**Registered Agents (Registration States)**

California	Commissioner of Business Oversight Department of Business Oversight 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344
Hawaii	Commissioner of Securities Department of Commerce and Consumer Affairs Business Registration Division, Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813

Illinois	Attorney General 500 South Second Street Springfield, Illinois 62706
Indiana	Secretary of State, Room E-111 302 West Washington Street Indianapolis, Indiana 46204
Maryland	Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020
Minnesota	Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, Minnesota 55101
New York	Secretary of State 99 Washington Avenue Albany, New York 12231
North Dakota	North Dakota Securities Department State Capitol, Fifth Floor, Department 414 600 East Boulevard Avenue Bismarck, North Dakota 58505-0510
Rhode Island	Department of Business Regulation John O. Pastore Complex, Building 69-1 1511 Pontiac Avenue Cranston, Rhode Island 02920
South Dakota	South Dakota Department of Labor and Regulation Division of Insurance Securities Regulation 124 South Euclid, Suite 104 Pierre, South Dakota 57501
Virginia	Clerk of the State Corporation Commission 1300 East Main Street, 1st Floor Richmond, Virginia 23219 (804) 371-9733
Washington	Securities Administrator Washington State Department of Financial Institutions 150 Israel Road, S.W. Tumwater, Washington 98501

Wisconsin                      Office of the Commissioner of Securities  
111 East Wilson Street  
Madison, Wisconsin 53702

**Registered Agents (Other States)**

Alabama                      CSC – Lawyers Incorporating Service Incorporated  
614 South Lawrence Street  
Montgomery, Alabama 36104

Arkansas                      Corporation Service Company  
300 Spring Building, Suite 900  
300 South Spring Street  
Little Rock, Arkansas 72201

Delaware                      Corporation Service Company  
251 Little Falls Drive  
Wilmington, Delaware 19808

Florida                        Corporation Service Company  
1201 Hays Street  
Tallahassee, Florida 32301

Georgia                        Corporation Service Company  
2 Sun Court, Suite 400  
Peachtree Corners, Georgia 30092

Kansas                        Corporation Service Company  
2900 S.W. Wanamaker Drive, Suite 204  
Topeka, Kansas 66614

Kentucky                      Corporation Service Company  
421 West Main Street  
Frankfort, Kentucky 40601

Mississippi                    Corporation Service Company  
109 Executive Drive, Suite 3  
Madison, Mississippi 39110

Missouri                      CSC – Lawyers Incorporating Service Company  
221 Bolivar Street  
Jefferson City, Missouri 65101

North Carolina              Corporation Service Company  
2626 Glenwood Avenue, Suite 550  
Raleigh, North Carolina 27608

Ohio	Corporation Service Company 3366 Riverside Drive, Suite 103 Upper Arlington, Ohio 43221
Oklahoma	Corporation Service Company 10300 Greenbriar Place Oklahoma City, Oklahoma 73159
South Carolina	Corporation Service Company 508 Meeting Street West Columbia, South Carolina 29169
Tennessee	Corporation Service Company 2908 Poston Avenue Nashville, Tennessee 37203
West Virginia	Corporation Service Company 209 West Washington Street Charleston, West Virginia 25302

## **Exhibit B**

### **Financial Statements**



Financial Statements and Report of  
Independent Certified Public  
Accountants

**Captain D's Enterprises, LLC**

January 1, 2023 and January 2, 2022

## Contents

## Page

Report of Independent Certified Public Accountants

3

### Financial Statements

Balance sheets

5

Statements of operations

6

Statements of changes in equity

7

Statements of cash flows

8

Notes to financial statements

9

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**GRANT THORNTON LLP**

1100 Peachtree St., NE, Suite 1400  
Atlanta, GA 30309

**D+** 1 404 330 2000

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**REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

Board of Members  
Captain D's Enterprises, LLC

**Opinion**

We have audited the financial statements of Captain D's Enterprises, LLC (a Delaware corporation) (the "Company"), which comprise the balance sheets as of January 1, 2023 (Successor) and January 2, 2022 (Predecessor), and the related statements of operations, changes in equity, and cash flows for the 32 weeks ended January 1, 2023 (Successor), 20 weeks ended May 18, 2022 (Predecessor), 52 weeks ended January 2, 2022 (Predecessor), and 53 weeks ended January 3, 2021 (Predecessor), and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of January 1, 2023 (Successor) and January 2, 2022 (Predecessor), and the results of its operations and its cash flows for the 32 weeks ended January 1, 2023 (Successor), 20 weeks ended May 18, 2022 (Predecessor), 52 weeks ended January 2, 2022 (Predecessor), and 53 weeks ended January 3, 2021 (Predecessor), in accordance with accounting principles generally accepted in the United States of America.

**Basis for opinion**

We conducted our audits of the financial statements in accordance with auditing standards generally accepted in the United States of America (US GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Responsibilities of management for the financial statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date the financial statements are issued.

**Auditor's responsibilities for the audit of the financial statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with US GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with US GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.



Atlanta, Georgia  
May 10, 2023

**Captain D's Enterprises, LLC**

**BALANCE SHEETS**

<b>ASSETS</b>	<b>Successor January 1, 2023</b>	<b>Predecessor January 2, 2022</b>
<b>CURRENT ASSETS:</b>		
Accounts receivable	\$ 22,541	\$ 122,904
Other current assets	-	10,821
Total current assets	<u>22,541</u>	<u>133,725</u>
<b>Tradenames</b>	232,900,000	179,900,000
<b>Note receivable from related parties</b>	<u>1,150,294</u>	<u>1,152,227</u>
 Total assets	 <u><u>\$ 234,072,835</u></u>	 <u><u>\$ 181,185,952</u></u>
 <b>LIABILITIES AND EQUITY</b>		
<b>Deferred income</b>	\$ 533,393	\$ 814,357
Total liabilities	<u>533,393</u>	<u>814,357</u>
 <b>Equity</b>	 233,539,442	 180,371,595
 Total liabilities and equity	 <u><u>\$ 234,072,835</u></u>	 <u><u>\$ 181,185,952</u></u>

The accompanying notes are an integral part of these financial statements.

**Captain D's Enterprises, LLC**

**STATEMENTS OF OPERATIONS**

	<b>Successor 32 weeks ended January 1, 2023</b>	<b>20 weeks ended May 18, 2022</b>	<b>Predecessor 52 weeks ended January 2, 2022</b>	<b>53 weeks ended January 3, 2021</b>
<b>Revenues:</b>				
Royalties - related parties	\$ 7,184,357	\$ 4,344,839	\$ 11,666,206	\$ 10,837,828
Total revenues	<u>7,184,357</u>	<u>4,344,839</u>	<u>11,666,206</u>	<u>10,837,828</u>
<b>Expenses:</b>				
General and administrative	<u>73,362</u>	<u>62,992</u>	<u>298,083</u>	<u>346,532</u>
Operating income	<u>7,110,995</u>	<u>4,281,847</u>	<u>11,368,123</u>	<u>10,491,296</u>
<b>Other income</b>	<u>49,460</u>	<u>39,201</u>	<u>122,444</u>	<u>115,280</u>
<b>Net income</b>	<u><u>\$ 7,160,455</u></u>	<u><u>\$ 4,321,048</u></u>	<u><u>\$ 11,490,567</u></u>	<u><u>\$ 10,606,576</u></u>

The accompanying notes are an integral part of these financial statements.

**Captain D's Enterprises, LLC**

**STATEMENTS OF CHANGES IN EQUITY**

	<b>Successor Equity</b>		
	<b>Receivable from Parent, net</b>	<b>Member's Equity</b>	<b>Total Equity</b>
<b>Balance May 18, 2022</b>	\$ -	\$ -	\$ -
Capitalization of Company	-	233,529,321	233,529,321
Deemed distribution	(7,150,334)	-	(7,150,334)
Net Income	-	7,160,455	7,160,455
<b>Balance January 1, 2023</b>	<u>\$ (7,150,334)</u>	<u>\$ 240,689,776</u>	<u>\$ 233,539,442</u>
	<b>Predecessor Equity</b>		
	<b>Receivable from Parent, net</b>	<b>Member's Equity</b>	<b>Total Equity</b>
<b>Balance December 29, 2019</b>	\$ (21,780,546)	\$ 202,203,202	\$ 180,422,656
Deemed distribution	(10,628,698)	-	(10,628,698)
Net Income	-	10,606,576	10,606,576
<b>Balance January 3, 2021</b>	(32,409,244)	212,809,778	180,400,534
Deemed distribution	(11,519,506)	-	(11,519,506)
Net Income	-	11,490,567	11,490,567
<b>Balance January 2, 2022</b>	(43,928,750)	224,300,345	180,371,595
Deemed distribution	(4,163,322)	-	(4,163,322)
Net Income	-	4,321,048	4,321,048
<b>Balance May 18, 2022</b>	<u>\$ (48,092,072)</u>	<u>\$ 228,621,393</u>	<u>\$ 180,529,321</u>

The accompanying notes are an integral part of these financial statements.

**Captain D's Enterprises, LLC**

**STATEMENTS OF CASH FLOWS**

	<b>Successor 32 weeks ended January 1, 2023</b>	<b>20 weeks ended May 18, 2022</b>	<b>Predecessor 52 weeks ended January 2, 2022</b>	<b>53 weeks ended January 3, 2021</b>
<b>Operating activities</b>				
Net income	\$ 7,160,455	\$ 4,321,048	\$ 11,490,567	\$ 10,606,576
Changes in operating assets and liabilities:				
Accounts receivable	(8,653)	109,016	75,511	25,211
Other current assets	6,196	4,625	6,824	5,942
Receivables from related parties, net	(7,150,334)	(4,163,322)	(11,519,506)	(10,628,698)
Deferred income	(24,943)	(256,021)	(51,380)	(9,004)
Net cash provided by (used in) operating activities	(17,279)	15,346	2,016	27
<b>Financing activities</b>				
Note receivable from related parties	17,279	(15,346)	(2,016)	(27)
Net cash (used in) provided by financing activities	17,279	(15,346)	(2,016)	(27)
<b>Change in cash and cash equivalents</b>	-	-	-	-
<b>Cash and cash equivalents at beginning of period</b>	-	-	-	-
<b>Cash and cash equivalents at end of period</b>	\$ -	\$ -	\$ -	\$ -
<b>Supplemental disclosure of non-cash transactions:</b>				
Deemed distribution included in receivables from related parties, net	\$ (7,150,334)	\$ (4,163,322)	\$ (11,519,506)	\$ (10,628,698)

The accompanying notes are an integral part of these financial statements.



## **Captain D's Enterprises, LLC**

### **NOTES TO FINANCIAL STATEMENTS**

**January 1, 2023 and January 2, 2022**

#### **NOTE 1 - ORGANIZATION AND NATURE OF BUSINESS**

The financial statements include the accounts of Captain D's Enterprises, LLC (the "Company"). The Company operates as a wholly-owned subsidiary of Captain D's, LLC ("Parent") and has no subsidiaries of its own as of January 1, 2023 (Successor) and January 2, 2022 (Predecessor). The Parent performs substantially all administrative functions for the Company, including treasury, accounting, billing, collection of accounts receivable, and risk management. The Parent charges the company a management fee for these services.

The Parent is a wholly owned subsidiary of Captain D's Intermediate Holding Corp, which is a wholly owned subsidiary of Captain D's Holding Corp, which is a wholly owned subsidiary of PF Purchaser Corp., which is a wholly owned subsidiary of Fish Intermediate Holdings LLC, which is a wholly owned subsidiary of Fish Parent Holdings LLC, which is a wholly owned subsidiary of Seafood Kitchen Acquisitions, Inc., which is a wholly owned subsidiary of Seafood Kitchen Holdings, Inc. (the "ultimate parent").

On May 18, 2022 (date of acquisition) the ultimate parent was acquired resulting in a push down of the purchase accounting to Captain D's Enterprises, LLC. As a result of the acquisition, the financial statements prior to the date of acquisition (predecessor period) may not be comparable to the financial statements subsequent to the date of acquisition (successor period).

The Company provides gift card services and holds the Captain D's tradename for the Captain D's seafood restaurants operated by Captain D's, LLC and its franchisees.

#### **NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### ***Fiscal Year***

The Company reports its operations on a 52 or 53 week fiscal year ending on the Sunday closest to December 31. The period May 18, 2022 (date of acquisition) through January 1, 2023 (Successor) contained 32 weeks. The period January 1, 2022 through May 18, 2022 (Predecessor) contained 20 weeks. The years ended January 2, 2022 and January 3, 2021 (Predecessor) contained 52 and 53 weeks, respectively.

##### ***Accounts Receivable***

Accounts receivable is comprised of receivables from gift card vendors.

##### ***Concentrations and Credit Risk***

The Company is materially sustained by transactions with the Parent. Currently, the Parent does not believe any conditions exist that would negatively impact the ongoing operations of the Company.

##### ***Tradenames***

The Company does not amortize the Captain D's tradenames as they are deemed to have indefinite lives. They are evaluated for impairment on an annual basis at year end, or more frequently when circumstances arise indicating that a particular asset may be impaired. The Company performs a qualitative assessment for the evaluation of indefinite lived tradenames and based upon that assessment, the Company believes it is more likely than not that the fair value of the tradenames exceed their carrying amount. The qualitative factors considered included, but were not limited to: changes in the macroeconomic conditions and changes in industry and market conditions, such as an increase in the competitive environment. There were no

## **Captain D's Enterprises, LLC**

### **NOTES TO FINANCIAL STATEMENTS – CONTINUED**

**January 1, 2023 and January 2, 2022**

impairment losses recorded for the periods ended January 1, 2023, May 18, 2022, January 2, 2022, and January 3, 2021.

The Company receives a royalty from its Parent consisting of 1.8% of sales from company-owned Captain D's restaurants and 60% of franchise royalty fees (see Note 4 – Transactions with Related Parties).

#### ***Income Taxes***

As a wholly owned subsidiary of Captain D's, LLC, the Company is disregarded for state and federal income tax filing purposes.

#### ***Gift Cards***

The Company's Parent and its franchisees sell gift cards which do not expire and from which non-usage fees are not deducted from outstanding gift card balances. Gift cards are redeemable at both the Parent's company-owned restaurants and franchise-operated restaurants. When gift cards are redeemed, the Company reduces the gift card liability. When we determine the likelihood of the gift card being redeemed by the customer is remote ("gift card breakage"), gift card breakage is recorded as other income in the accompanying statements of operations based upon our specific historical redemption patterns. There is no legal obligation to remit the unredeemed gift card balance in the relevant jurisdiction; however, such gift cards will continue to be honored. For the 32 week period ended January 1, 2023, the 20 week period ended May 18, 2022, the 52 week period ended January 2, 2022, and the 53 week period ended January 3, 2021 the Company recognized gift card breakage as other income of approximately \$24 thousand, \$24 thousand, \$82 thousand, and \$74 thousand respectively. The Company had outstanding gift card liabilities of approximately \$533 thousand and \$814 thousand as of January 1, 2023 and January 2, 2022, respectively, which were included in deferred income in the accompanying balance sheets.

#### ***Use of Estimates***

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Management believes that such estimates have been based on reasonable and supportable assumptions and the resulting estimates are reasonable for use in the preparation of the financial statements. Actual results could differ from these estimates.

### **NOTE 3 - ACQUISITION**

On May 18, 2022, the ultimate parent was acquired resulting in a push down of the purchase accounting to Captain D's Enterprises, LLC. The purchase price was approximately \$233.5 million.

The transaction has been accounted for under the purchase method as prescribed in ASC 805, *Business Combinations*. Under this method, the Company has allocated the purchase price to the assets acquired and liabilities assumed at estimated fair values.

**Captain D's Enterprises, LLC**

**NOTES TO FINANCIAL STATEMENTS – CONTINUED**

**January 1, 2023 and January 2, 2022**

The following table summarizes the Company's estimated fair values of the assets acquired and liabilities assumed at the date of acquisition, based on an independent valuation:

	<b>May 18, 2022</b>
Current Assets	\$ 20,084
Tradenames	232,900,000
Other assets	1,167,573
<b>Total assets</b>	<b>234,087,657</b>
Other liabilities	558,336
<b>Total liabilities</b>	<b>558,336</b>
<b>Net assets acquired</b>	<b>\$ 233,529,321</b>

All expenses were paid by the Parent. The allocation of the acquisition purchase price resulted in the Company's tradenames being assigned a value of \$232.9 million.

**NOTE 4 - TRANSACTIONS WITH RELATED PARTIES**

The Company's revenues consist of royalties from the Parent which are reflected in the accompanying statements of operations as Royalties - related parties. The Company recognizes revenue in accordance with ASC 606, *Revenue from Contracts with Customers*. All revenue is recognized over time.

Receivables from related parties represent amounts due from Captain D's, LLC offset by amounts paid by Captain D's, LLC on behalf of the Company. The related parties have no intention to settle the intercompany receivables and payables; thus, the Company has presented the change in related party receivables, net as a reduction in equity within the statements of changes in equity.

On October 3, 2016, the Company entered into a line of credit agreement with its Parent under which the Company made available to its Parent a line of credit up to a maximum amount of \$3 million. Interest is charged on the line of credit at a 3.5% annual interest rate, compounded semiannually. For the 32 week period ended January 1, 2023, the 20 week period ended May 18, 2022, the 52 week period ended January 2, 2022, and the 53 week period ended January 3, 2021, interest income was approximately \$26 thousand, \$15 thousand, \$41 thousand, and \$41 thousand and is included in other income in the statements of operations. For the fiscal years ended January 1, 2023 and January 2, 2022, the aggregate amount of borrowings on the line of credit was approximately \$1.2 million and is included in note receivable from related parties in the accompanying balance sheets.

The Company is a co-guarantor of the debt of the Parent. As of January 1, 2023, the aggregate amount of borrowings under the term loan facility and subordinate debt by the Parent was \$275.8 million. Scheduled quarterly principal payments are defined in the credit facility with certain excess cash payments payable on an annual basis. Substantially all assets of the Company are pledged as collateral for the term loan. As of January 1, 2023, the effective interest rate on the term loan was 8.23%.

**Captain D's Enterprises, LLC**

**NOTES TO FINANCIAL STATEMENTS – CONTINUED**

**January 1, 2023 and January 2, 2022**

**NOTE 5 - SUBSEQUENT EVENTS**

The Company discloses material events that occur after the balance sheet date but before financial statements are issued. In general, these events are recognized if the condition existed at the date of the balance sheet, but not recognized if the condition did not exist at the balance sheet date. The Company discloses non-recognized events if required to keep the financial statements from being misleading. Management evaluated events occurring subsequent to January 1, 2023 through May 10, 2023, the date the financial statements were available for issuance, and determined that no subsequent event disclosures were required.

**Unaudited Financial Statements  
for the 12 Weeks ended March 26, 2023**

THE FOLLOWING FINANCIAL STATEMENTS WERE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THOSE FIGURES OR EXPRESSED AN OPINION WITH REGARD TO THEIR CONTENT OR FORM.

Financial Statements (Unaudited)

**Captain D's Enterprises, LLC**

March 26, 2023 (Period 3 2023)

# Table of contents

Financial statements (Unaudited):

Balance sheet (Unaudited)	1
Statement of operations (Unaudited)	2
Statement of changes in equity (Unaudited)	3
Statement of cash flows (Unaudited)	4

# Balance sheet (Unaudited)

		March 26, 2023
<b>Assets</b>		
Current assets:		
Accounts and notes receivable	\$	67,680
Other current assets		62,996
Total current assets		130,676
Tradenames		232,900,000
Note receivable from related parties		1,159,638
Total assets	\$	234,190,314
<b>Liabilities and equity</b>		
Deferred income	\$	563,181
Total liabilities		563,181
Equity		233,627,133
Total liabilities and equity	\$	234,190,314



# Statement of operations (Unaudited)

	12 weeks ended March 26, 2023
Revenues:	
Royalties - related parties	\$ 2,808,687
Total revenues	2,808,687
Expenses:	
General and administrative	38,260
Operating income	2,770,427
Other income	14,088
Net income	\$ 2,784,515

## Statement of changes in equity (Unaudited)

		Receivable from Parent, net		Member's Equity		Total Equity
<b>Balance January 1, 2023</b>	\$	(7,150,334)	\$	240,689,776	\$	233,539,442
Deemed distribution		(2,696,824)		-		(2,696,824)
Net Income		-		2,784,515		2,784,515
<b>Balance at March 26, 2023</b>	\$	<b>(9,847,158)</b>	\$	<b>243,474,291</b>	\$	<b>233,627,133</b>

# Statement of cash flows (Unaudited)

	12 weeks ended March 26, 2023
<b>Operating activities</b>	
Net income	\$ 2,784,515
Changes in operating assets and liabilities:	
Accounts and notes receivable	(45,139)
Other current assets	(62,996)
Receivables from related parties, net	(2,696,824)
Note receivable from related parties	(9,344)
Deferred income	29,788
<b>Net cash provided by operating activities</b>	-
<b>Change in cash and cash equivalents</b>	-
<b>Cash and cash equivalents at beginning of period</b>	-
<b>Cash and cash equivalents at end of period</b>	\$ -
<b>Supplemental disclosure of non-cash transactions:</b>	
Deemed distribution included in receivables from related parties, net	(2,696,824)

**Exhibit C**

**Guaranty Agreement  
of  
Captain D's Enterprises, LLC**

## GUARANTY OF PERFORMANCE

For value received, Captain D's Enterprises, LLC ("Captain D's Enterprises"), located 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, absolutely and unconditionally guarantees the performance by its parent, Captain D's, LLC ("Captain D's"), also located at 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, of all of the obligations of Captain D's under the terms of each Development Agreement, Franchise Agreement, and Computer Software and Hardware Agreement, as amended, modified, renewed or extended from time to time (the "Agreement"), issued pursuant to the terms of Captain D's Franchise Disclosure Statement dated May 1, 2023, as amended from time to time. This Guaranty of Performance shall remain in force until the satisfaction or complete discharge of all obligations of Captain D's under the Agreements. Captain D's Enterprises shall not receive any discharge from liability under this Guaranty of Performance as long as any claim by the franchisee against Captain D's remains outstanding. Captain D's Enterprises waives notice of acceptance but does not waive notice of default on the part of Captain D's. This Guaranty of Performance shall bind Captain D's Enterprises and its successors and assigns.

Executed and delivered as of the 1<sup>st</sup> day of May, 2023.

Captain D's Enterprises, LLC

By: Michael T. Folks  
Michael T. Folks, Vice President

## **Exhibit D**

### **Development Agreement**

\_\_\_\_ Multiple  
\_\_\_\_ Single

### **DEVELOPMENT AGREEMENT**

Captain D's, LLC, a Delaware limited liability company (the "Franchisor"), and \_\_\_\_\_ (the "Developer") enter into this Development Agreement (this "Agreement") as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Whereas, the Franchisor, at a substantial expenditure of time, effort and money, has developed and perfected a system of opening and operating restaurants utilizing the "Captain D's" service mark ("Captain D's restaurants"); and

Whereas, Franchisor has acquired knowledge and experience in the composition, distribution, advertising and sale of food products by Captain D's restaurants and with respect to the style of the buildings and signs used by said restaurants and has successfully established a reputation, demand and goodwill for the products sold by such restaurants; and

Whereas, Developer recognizes the value of uniformity in a system of restaurants and Developer further recognizes the value of Franchisor's knowledge and experience gained through the operation of Captain D's restaurants, and the value of the trade names, trademarks, service marks and other distinctive features of Captain D's restaurants; and

Whereas, Developer acknowledges Franchisor's sole and exclusive ownership of any rights to Franchisor's current and future trade names, trademarks and service marks and to all current and future related practices, procedures, methods, devices, techniques, recipes and systems; and

Whereas, Developer desires to open and operate one or more Captain D's restaurants within the geographic area specified in this Agreement within the term of this Agreement; and

Whereas, Franchisor is willing to grant Developer such rights in accordance with the terms and conditions of this Agreement;

Now, therefore, it is mutually agreed as follows:

1. Grant. Franchisor hereby grants to Developer, during the term of this Agreement and subject to the conditions hereof, the right to open and operate the number of Captain D's restaurants specified in Exhibit A within the limited geographical area identified and set forth in Exhibit A to this Agreement; this geographical area being hereinafter referred to as the "Territory." The operation of any Captain D's restaurant developed pursuant to this Agreement will be governed by an individual Franchise Agreement issued by Franchisor in accordance with Section 12 below. During the term of this Agreement and except as otherwise permitted in this Agreement, the Franchisor shall not establish for itself or grant a license to any other party to establish a captain D's restaurant within the Territory. The Franchisor at any time may operate or grant a license to a third party to operate a Captain D's restaurant at any location outside of the Territory. In addition, the Franchisor at any time may conduct any activity or grant a license to a third party to conduct any activity other than the operation of a Captain D's restaurant within the Territory. Those permitted activities shall include (without limitation) the sale of packaged foods bearing any of the Franchisor's trade names, trademarks or service marks and the operation of a Captain D's restaurant or other food service facility within a travel plaza on a limited access highway, a shopping mall, a sports arena or stadium, a school building or cafeteria, an airport, or a military base.

2. Term.

(a) Single Unit Agreement. If this Agreement is for the development of only one Captain D's restaurant, unless earlier terminated pursuant to the provisions of Section 14, this Agreement shall terminate, without any action on the part of either of the parties being necessary, upon the earlier of (1) the date of execution by Franchisor of the Franchise Agreement for the Captain D's restaurant then required to be opened and operated pursuant to this Agreement or (2) the expiration date set forth on Exhibit B to this Agreement.

(b) Multiple Unit Agreement. If this Agreement is for the development of more than one Captain D's restaurant, unless earlier terminated pursuant to Section 14, this Agreement shall terminate, without any action on the part of either of the parties being necessary, upon the earlier of (1) the date of execution by Franchisor of the Franchise Agreement for the last of the Captain D's restaurants then required to be opened and operated pursuant to this Agreement or (2) the expiration date set forth on Exhibit B to this Agreement.

3. Development Fee. Upon execution of this Agreement, Developer shall pay to Franchisor the fee set forth in Exhibit B to this Agreement and designated as the development fee (the "Development Fee") via an electronic debit pursuant to the authorization agreement attached as Exhibit C to this Agreement. This Development Fee shall be fully earned by Franchisor in consideration of its execution of this Agreement and shall be non-refundable. However, Franchisor shall credit the Development Fee, pro rata, based upon the number of Captain D's restaurants to be built within the Territory, toward the Franchise Fees payable under any of the Franchise Agreements issued to Developer pursuant to this Agreement, provided that the applicable restaurants are constructed and opened in accordance with the schedule set forth in Exhibit B to this Agreement (the "Development Schedule").

4. Development Schedule. Developer shall build, open and operate properly licensed Captain D's restaurants in accordance with the Development Schedule. In the event that Developer opens and continuously operates a greater number of Captain D's restaurants than required during any interim period of the Development Schedule, the requirements of the succeeding periods shall be deemed satisfied to the extent of such excess number of restaurants, up to the total number of restaurants specified in the Development Schedule.

5. Location of Restaurants. Developer is responsible for locating proposed sites for any Captain D's restaurant contemplated within the Territory. During the term of this Agreement, Developer shall use its best efforts to locate suitable sites. Franchisor, in its discretion, may offer counseling and advice in site selection. In no event, however, shall Franchisor be obligated to loan money, guarantee leases, provide financing or otherwise become directly involved and/or obligated to Developer or to any third party in respect of such site selection or development; these activities and undertakings, financially and otherwise, shall be the exclusive responsibility of Developer.

6. Site Acceptance. Upon selection by the Developer of a proposed site for a Captain D's restaurant, the Developer promptly shall submit to the Franchisor the specific site data and demographic and other information concerning the site that the Franchisor reasonably may require, utilizing the forms required by the Franchisor. The Franchisor shall accept or reject the site in accordance with the Franchisor's then current site selection policies and procedures. To have effect, any acceptance must take place in writing. The Developer understands and acknowledges that the Franchisor may reject any proposed site; in which event, the Developer shall not proceed with the rejected site, but shall seek to locate an acceptable



site. The acquisition in any manner of any proposed site prior to acceptance by the Franchisor shall take place at the sole risk and responsibility of the Developer and shall not obligate the Franchisor in any way to accept the site or to issue a Franchise Agreement for the operation of a Captain D's restaurant at the site. The Franchisee shall follow the policies and procedures and shall complete and submit the forms developed by the Franchisor from time to time for the selection, development and construction of Captain D's restaurants. After the acceptance of the site by the Franchisor and after any required franchise disclosures and applicable waiting periods, the Franchisor shall deliver duplicate copies of the Franchise Agreement for the site to the Developer, together with any other required agreements and documents. The Developer shall sign, date and return the duplicate copies of the Franchise Agreement for the site to the Franchisor within 10 days after the Developer receives the duplicate copies of the Franchise Agreement, together with any other required agreements and documents and a check for the required Franchise Fee for the site.

7. Disclaimer. In executing this Agreement, accepting a proposed site, giving approvals or advice or providing services or assistance in connection with this Agreement, Franchisor does not guarantee the suitability of an accepted site or the success of any particular Captain D's restaurant established at any such site. Franchisor expressly disclaims any warranties, express or implied, with respect to the suitability of any site or the success of any restaurant. Developer understands and acknowledges that the suitability of a site and the success of any restaurant depend on many factors outside the control of either Franchisor or Developer (including, without limitation, such factors as interest rates, unemployment rates, demographic trends and the general economic climate), but principally depend on Developer's efforts in the operation of the restaurant.

8. Location Requirements. As a condition for accepting a proposed site, Franchisor may require Developer to negotiate a lease or sales contract that includes certain terms regarding duration or other specified matters. Developer understands and acknowledges that a site acceptance may be conditioned on such matters and that, if Developer does not wish to, or cannot, satisfy the pertinent conditions within a reasonable time, the site will be deemed rejected.

9. Construction.

(a) After the Franchisor accepts a proposed site, the Developer shall proceed promptly to secure control of the accepted site and obtain all necessary zoning and building approvals and permits.

(b) After the Franchisor accepts a proposed site and upon the Franchisor's receipt of a signed letter from the Developer's architect agreeing to the provisions of this Section 9(b), the Franchisor shall send the Developer or its architect a digital copy of the prototype building plans and specifications for the Captain D's restaurant proposed for the accepted site. If the Developer is converting an existing location, the Developer shall send the Franchisor a set of dimensioned or scaleable plans for the facility, including a floor plan. The plans and specifications prepared by the Franchisor shall include a preliminary list of the equipment and furniture layout based on the information provided by the Developer. The Developer and its architect may copy and revise the plans and specifications in order to ensure their compliance with all applicable local, state and federal code requirements. Otherwise, the Developer and its architect shall not reproduce the plans and specifications by whatever means, in whole or in part, without the Franchisor's prior written consent. The Developer and its architect shall accept delivery of the plans and specifications received from the Franchisor subject to the following additional terms:

(1) The Franchisor shall have no responsibility for the completeness or correctness of the data subsequent to its delivery to the Developer or its architect.

(2) The Franchisor makes no representation or warranty as to the compatibility of the data to any operating system or software other than those used by the Franchisor.

(3) The Franchisor makes no representation or warranty that the data reflects the actual “as-built” condition of the property or improvements, if any, at the accepted site.

(4) The Developer and its architect shall accept full risk and legal responsibility for the use of the plans and specifications.

(5) The Developer and its architect shall not use the plans and specifications for any purpose other than in connection with the construction of the Captain D’s restaurant proposed for the accepted site. While the Developer and its architect have custody of the plans and specifications, the Developer and its architect shall safeguard the plans and specifications to prevent them from being copied by unauthorized personnel. In addition, the Developer and its architect shall not loan the plans and specifications to anyone not under their employment or supervision. Upon the completion of the construction of the Captain D’s restaurant proposed for the accepted site, the Developer and its architect shall return all copies of the plans and specifications to the Franchisor, except for one hard copy set of the final plans and specifications, which they may keep for their permanent file set. If the Developer does not complete construction of the Captain D’s restaurant proposed for the accepted site within 270 days after its acceptance, the Franchisor reserves the right to require the Developer and its architect to return the plans and specifications to the Franchisor immediately upon request.

(6) If the Developer or its architect must file any set of the plans and specifications with any governmental office as a public record, the Developer or its architect (as applicable) shall notify the Franchisor in advance in writing of the name, address and telephone number of the government office involved and the set numbers of the plans and specifications filed with that office.

(7) The Franchisor may require the return of any plans and specifications previously furnished to the Developer or its architect and no longer needed in connection with the construction of the Captain D’s restaurant proposed for the accepted site before the Franchisor delivers any other plans to the Developer or its architect for any other Captain D’s restaurant.

(8) The Developer and its architect shall remain fully responsible for ensuring that the final, revised plans for the Captain D’s restaurant on the accepted site, as constructed, comply with all applicable local, state and federal building laws, regulations, codes and ordinances. The Franchisor makes no representation or warranty in that regard, and the Developer and its architect hereby release the Franchisor from any liability in that regard. The Developer and its architect hereby acknowledge the fact that, absent that understanding and release, the Franchisor would not provide the plans and specifications to the Developer or its architect.

(c) Before commencing construction of any Captain D’s restaurant contemplated by this Agreement, the Developer shall furnish the Franchisor with the following items for the Franchisor’s approval:

(1) One electronic copy of the final engineered plans for the Captain D's restaurant proposed for the accepted site, which plans shall not change without the Franchisor's prior written consent.

(2) Any additional information the Franchisor may request from time to time, which information may include (without limitation) copies of all commitments and plans for construction and permanent financing; the name, address and contact with respect to each lender; and the name, address and contact with respect to the contractor, together with a copy of the construction contract.

(d) Thereafter, the Developer shall break ground and commence construction of the particular Captain D's restaurant in accordance with the accepted plans and specifications as soon as possible and shall complete its construction, including the acquisition and installation of all equipment specified by the Franchisor, and have the restaurant ready to open for business within the time specified in this Agreement. The Franchisor and its agents shall have the right to inspect the construction at any reasonable time. The Developer shall give the Franchisor at least 10 days' notice prior to pouring the concrete slab for any Captain D's restaurant opened pursuant to this Agreement and shall give the Franchisor notice immediately after the completion of the electrical and mechanical rough-ins in sufficient time to allow the Franchisor to inspect the construction at those times. The Developer shall correct, upon request and at the Developer's expense, any deviation from any approved plans or specifications. The Franchisor assumes no responsibility for the quality of any construction because of any inspections made by it or any reports or recommendations made as a result of its inspections.

(e) If the Developer fails to meet the Development Schedule, except for any delay caused in material part by war, strikes, lock-outs, governmentally-imposed building moratoriums, or similar causes beyond the control of the Developer (which do not include general construction delays), or if the Developer commences construction of any Captain D's restaurant according to plans and specifications not accepted by the Franchisor or alters the accepted plans or specifications without the Franchisor's approval, Franchisor may elect to cancel and terminate this Agreement by written notice to Developer. In that event, the Franchisor shall retain any Development Fee paid to the Franchisor pursuant to Section 3 of this Agreement as liquidated damages and the Franchisor shall not issue any further Franchise Agreements to the Developer for any proposed Captain D's restaurants.

(f) The Developer shall defend, indemnify, and hold the Franchisor and its affiliates harmless from and against any claims or damages that the Franchisor may incur as a result of any violation of the provisions of this Section 9 by the Developer or its architect or its activities as the Developer under this Agreement, including (without limitation) all losses, liabilities, damages, costs, expenses (including, without limitation, any reasonable attorneys' fees incurred by the Franchisor or its affiliates) and claims arising from injury or damage to any person or property occasioned by any acts, omissions, or commissions of the Developer or of any of its agents, employees, or contractors with respect to, or arising out of, the Developer's activities as the Developer under this Agreement. The Developer's obligation to defend, indemnify, and hold the Franchisor and its affiliates harmless shall survive the expiration or termination of this Agreement. The Developer shall carry fire and extended insurance coverage on its restaurant buildings and equipment in the amount of the full insurable replacement value of the property. The Developer also shall carry, at its own cost, a comprehensive public liability policy with limits the Developer may designate from time to time, which limits shall not fall below \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage.

The policy shall insure the Developer's obligation to indemnify the Franchisor and its affiliates under this Agreement. The Developer shall name the Franchisor and its affiliates as an additional insured under its liability policies. Each policy shall provide for primary coverage, shall provide for deductibles and/or retentions in amounts acceptable to the Franchisor, and shall require the insurance company to give the Franchisor at least 30 days' written notice before terminating, canceling, or making any changes in the policy. The liability policies shall contain a waiver of the insurance company's right of subrogation to any insured liability claims against the Franchisor and its affiliates. The Developer also shall secure, at its own cost, worker's compensation insurance covering all of its employees as required by local law. If the Developer at any time fails or refuses to maintain any insurance coverage required by this Agreement or to furnish satisfactory evidence of that insurance to the Franchisor, the Franchisor, at its option and in addition to its other rights and remedies under this Agreement, may obtain (but shall not have any obligation to obtain) the insurance coverage on behalf of the Developer. The Developer shall pay the Franchisor on demand any costs and premiums incurred by the Franchisor in obtaining that insurance coverage. Notwithstanding the existence of that insurance, the Developer still shall have responsibility for all loss, damage or contractual liability to any third person arising from or relating to its activities as the Developer under this Agreement and for all claims or demands for damages to property or for injury, illness, or death of persons directly or indirectly arising from its activities as the Developer under this Agreement.

10. Advisory Services and Training.

(a) During the term of this Agreement, the Franchisor shall provide the Developer with at least one copy of Captain D's franchise operations manual in effect from time to time and, subject to the Developer's compliance with all of its obligations under this Agreement, the Franchisor (at reasonable times, upon the request of, and at no charge to Developer (except as otherwise expressly provided in this Section 10)), shall furnish counseling and advisory services to the Developer with respect to the construction and pre-opening activities related to the operation of Captain D's restaurants, including consultation and advice regarding the following matters:

- (1) Parking and building layouts;
- (2) Construction of the restaurant building and other improvements;
- (3) Equipment selection and layout;
- (4) Employee training;
- (5) Advertising and promotion of Captain D's approved menu items; and
- (6) Purchasing and inventory control procedures.

(b) Developer and its employees shall attend and successfully complete such training programs as Franchisor may reasonably require for the Developer's personnel properly to operate the Captain D's restaurants contemplated by this Agreement. No charge will be made by Franchisor for training programs conducted by it, but Developer shall be required to pay all expenses of Developer's personnel who take part in any such program or programs.

(c) Developer shall have responsibility for all loss or damage resulting from or arising out the activities of Developer or its employees while participating in the operation of any training restaurant owned and/or operated by Franchisor or another franchisee or licensee of Franchisor (a "Third Party Franchisee"). Developer shall defend, indemnify and hold Franchisor and any Third Party Franchisee harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses resulting from or arising out of any act or omission of Developer or any of its employees, agents or contractors while participating in the

operation of any training restaurant owned and/or operated by Franchisor or the Third Party Franchisee, including (without limitation) claims by Developer's employees for injuries, wages or benefits.

(d) While the Developer or its employees participate in the operation of any training restaurant, the Developer shall obtain, at its expense, a comprehensive public liability policy with limits determined by the Franchisor, which limits shall equal at least \$1 million for bodily injury to any one person, \$2 million for bodily injury for any one accident, and \$1 million for property damage and which shall insure the Developer's obligation to indemnify the Franchisor and any Third Party Franchisee under this Section 10. The Developer shall name The Franchisor and any Third Party Franchisee as an additional insured under each of those policies. Each policy shall provide for primary coverage, shall provide for deductibles and/or retentions in amounts acceptable to the Franchisor, and shall require the insurance company to give the Franchisor at least 30 days written notice before terminating, canceling or making any changes in the policy. The liability policies shall contain a waiver of the insurance company's right to subrogation to any insured liability claims against the Franchisor or any Third Party Franchisee. The Developer also shall obtain, at its expense, worker's compensation insurance covering the Developer's employees as required by applicable law. The Developer shall provide to the Franchisor, prior to the commencement of the training of the Developer or any of its employees pursuant to this Section 10, a certificate of insurance for the foregoing insurance. If the Developer at any time fails or refuses to obtain any insurance coverage required by this Section 10(d), the Franchisor may obtain (but shall not have any obligation to obtain) that insurance on behalf of the Developer. The Developer shall reimburse the Franchisor on demand for any costs and premiums incurred by the Franchisor in connection with obtaining that insurance.

(e) Developer shall have sole responsibility for obtaining and providing any and all employee benefits for Developer and its employees, including (without limitation) health and disability insurance, life insurance, and any other employee benefits. Neither Franchisor nor any Third Party Franchisee shall have any responsibility in that regard.

(f) Developer shall not employ or seek to employ any person who is at the time employed by Franchisor or by any other franchisee, licensee or optionee of Franchisor without first obtaining the consent of such person's employer and Developer will not, directly or indirectly, induce any such person to leave his or her employment.

11. Franchise Fee and Method of Payments to Franchisor. Upon execution by Franchisor of a Franchise Agreement for any Captain D's restaurant contemplated by this Agreement, the Developer shall pay to the Franchisor the required Franchise Fee for each Captain D's restaurant. The Franchisor fully earns the Franchise Fee upon the execution of the Franchise Agreement. The Franchisor shall not have any obligation to refund the Franchise Fee, in whole or in part. The Franchisor shall credit the appropriate portion of the Development Fee paid by Developer pursuant to the terms of this Agreement against the payment of the Franchise Fee in accordance with the terms of Section 3 of this Agreement. The Franchisor shall have the right to draft the Developer's account to pay all amounts owed the Franchisor under this Agreement or any other agreement with the Franchisor. The Developer shall execute, deliver and maintain in effect a properly-completed Authorization Agreement for Pre-authorized Payments in the form attached as Exhibit C to this Agreement (or its equivalent), if the Developer previously has not executed and delivered the form (or its equivalent) to the Franchisor.

12. Franchise Agreements.

(a) Upon the due performance by Developer, within the time periods set forth, of all of the requirements set forth above (including, without limitation, the payment of the Development Fee and



Franchise Fee) with respect to any Captain D's restaurant contemplated by this Agreement, the Franchisor, except as set forth below, shall execute, issue and deliver to the Developer the Franchisor's then-current form of Franchise Agreement to operate the Captain D's restaurant. The Developer shall execute and deliver a Franchise Agreement for a Captain D's restaurant developed under this Agreement no later than the date of commencement of construction of the Captain D's restaurant.

(b) As a condition of the Franchisor's execution of a Franchise Agreement, the Franchisor may require the Developer or its principals to provide a personal guarantee, letter of credit or corporate guarantee in a form acceptable to the Franchisor to secure payment of royalties and other fees required to be paid to the Franchisor or its affiliates under any such Franchise Agreement, or otherwise. The Developer shall comply with the Franchisor's then-current franchising policies and procedures for issuance of each Franchise Agreement. The Franchisor shall be under no obligation to execute and issue a Franchise Agreement unless the Developer has complied in a timely manner with all terms and conditions of this Agreement and has satisfied all requirements set forth herein. In addition, the Franchisor shall be under no obligation to execute and issue a Franchise Agreement if the Developer is in breach or default of any other Franchise Agreement, Development Agreement, or any other agreement between the Franchisor and the Developer, or if the Developer is not eligible for expansion pursuant to the Franchisor's then-current criteria for expansion. If and when any Franchise Agreement contemplated in this Agreement is executed by the Franchisor, it shall supersede this Agreement and govern the relations between the parties with respect to the particular restaurant.

13. No Right to Operate or Use Trademarks; Confidential Information. The Developer acknowledges that, until the Franchisor issues a Franchise Agreement for a specified site, the Developer shall not have or have the right to exercise any of the rights, powers and privileges granted by the Franchise Agreement, including, without limitation, the right to use the Franchisor's trademarks, service marks, and trade names; that the execution of this Agreement shall not constitute a grant of any of those rights, powers or privileges to the Developer; and that the Developer may not commence the operation of any Captain D's restaurant prior to the execution and delivery by the Franchisor of a Franchise Agreement for the particular location. The Developer further acknowledges that the Franchisor owns the Captain D's System, which constitutes and includes trade secrets of the Franchisor, and the Franchisor is disclosing all material or other information now or later provided or disclosed to the Developer regarding the Captain D's System in confidence. The Developer and, if a legal entity, the Developer's owners holding a 10% or greater interest in the Developer, directors, limited liability company managers, and officers, as individuals, have no right to and shall not disclose any part of it to anyone other than the Developer's employees or agents having a need to receive the material or information. The Developer shall take reasonable steps to ensure that its employees and other persons having access to the foregoing material and information will observe and perform the confidentiality provisions of this Section 13. The Developer understands and acknowledges the difficulty of ascertaining monetary damages and the irreparable harm that would result from breach of the foregoing covenants. The Franchisor shall have the right to obtain injunctive relief in addition to any other legal or equitable remedies it may have if the Developer fails to comply with the provisions contained in this section. The Franchisor may receive that injunctive relief without the necessity of posting bond or other security.

14. Termination.

(a) Automatic Termination. This Agreement shall terminate immediately and without notice to either party in the following events:

(1) If the Developer files a petition under any bankruptcy or reorganization law, becomes insolvent, or has a trustee or receiver appointed by a court of competent jurisdiction for all or any part of the Developer's property; or

(2) If the Developer seeks to effect a plan of liquidation, reorganization, composition or arrangement of the Developer's affairs, whether or not the same shall be subsequently approved by a court of competent jurisdiction, it being understood that in no event shall this Agreement or any right or interest hereunder be deemed an asset in any insolvency, receivership, bankruptcy, composition, liquidation, arrangement or reorganization proceeding; or

(3) If the Developer has an involuntary proceeding filed under any bankruptcy or reorganization laws or any other laws and does not have such proceeding dismissed within 90 days thereafter; or

(4) If the Developer makes a general assignment for the benefit of creditors; or

(5) If this Agreement is for the development of only one Captain D's restaurant within the Territory, upon execution by the Franchisor and the Developer of a Franchise Agreement for such Captain D's restaurant.

(b) By Franchisor. The Franchisor, at its option, may terminate this Agreement immediately upon notice to Developer, upon the occurrence of any of the following events:

(1) The Developer's failure to meet the Development Schedule;

(2) The Developer's assignment of this Agreement without the prior written approval of the Franchisor;

(3) If the Developer is a legal entity, the transfer of any ownership interest in the entity during the term of this Agreement without the prior written approval of the Franchisor; or, in the event that any owner of the Developer is a legal entity, the transfer of any ownership interest of the owner, during the term of this Agreement without the prior written approval of the Franchisor;

(4) The discovery by the Franchisor of any material misrepresentation in any of the information or documents submitted to the Franchisor by or on behalf of the Developer;

(5) Any material violation by the Developer of any of the provisions of this Agreement if the violation will continue for 30 days after the Franchisor gives written notice of the violation to the Developer or, if the Developer cannot cure the violation within the 30-day period, if the Developer fails to cure the violation within the additional time

required assuming that the Developer proceeds with reasonable diligence; provided, however, that Developer shall not have any obligation to give written notice and a reasonable time to correct material violations if the Developer repeatedly fails to perform in accordance with the terms and conditions contained in this Agreement; or

(6) Any default by the Developer under any other agreement with the Franchisor and the Developer's failure to cure the default within the time specified in the agreement, if any.

(c) Local Law. The provisions of any valid, applicable law or regulation prescribing permissible grounds, cure rights, or minimum periods of notice for the termination of this Agreement shall supersede any provision of this Agreement less favorable to the Developer than the law or regulation.

15. Effect of Expiration or Termination. Upon expiration of this Agreement, or upon its termination for any reason, any and all rights granted to Developer hereunder shall be extinguished immediately. Franchisor thereafter shall have the right to operate or license others to operate Captain D's restaurants within the Territory, except as limited by the provisions of any other then-effective agreements with Franchisor.

16. Restrictions. Franchisor is engaged in the business of developing and franchising Captain D's restaurants on a national basis. Developer acknowledges that the appropriation or duplication of Captain D's restaurants or any part thereof for a purpose other than to operate a Captain D's restaurant pursuant to a Franchise Agreement with Franchisor would damage the franchising business of Franchisor. Developer acknowledges that Franchisor owns trade secrets. Developer shall not disclose any material or other information now or later provided or disclosed to Developer regarding Captain D's restaurants to anyone other than Developer's employees or agents having a need to receive the material or information. Developer shall take all reasonable steps to ensure that its employees and other persons having access to the foregoing material and information will observe and perform the provisions of this Section 16. Franchisor shall be entitled to obtain injunctive relief in addition to any other legal or equitable remedies it may have if Developer fails to comply with the provisions contained herein.

17. Assignment.

(a) Developer shall not sell, assign, transfer, convey or encumber its rights and obligations hereunder or suffer or permit any such assignment, transfer or encumbrance to occur by operation of law without the prior express written consent of Franchisor. In the event Developer is a corporation, limited partnership, business trust, partnership or similar association, the shareholders, limited partners, beneficiaries, partners or investors, as the case may be, may not sell, assign, or otherwise transfer their shares or interests in such corporation, limited partnership, business trust, partnership or similar association, without the prior written consent of Franchisor. Furthermore, in the event that any shareholder of Developer (the "Shareholder") is a corporation, limited partnership, business trust, partnership or similar association, the interests of the shareholders, limited partners, trustees, beneficiaries, partners or investors, as the case may be, in such Shareholder, may not be sold, assigned or otherwise transferred, without the prior written consent of Franchisor.

(b) In the event of the death of the Developer or if the Developer is a corporation or similar entity, then in the event of the death of any stockholder, investor or similar person, Franchisor shall not unreasonably withhold its consent to a transfer or assignment of Developer's interest herein, or if Developer is a corporation, the transfer of the deceased stockholder's stock in such corporation to a descendant, heir



or legatee of the decedent, who shall in the sole judgment of Franchisor be capable of performing the duties and obligations of Developer hereunder and under any Franchise Agreement to be issued pursuant to this agreement, or to a responsible bona fide purchaser acceptable to Franchisor. Any approval by Franchisor of such transfer or assignment shall be subject to the assignee's agreement in writing to assume and perform all of Developer's duties and obligations hereunder and under any Franchise Agreement to be issued pursuant to this agreement.

18. Ownership of the Developer. Exhibit D contains a description of the legal organization of the Developer (whether a corporation, partnership or other), the names and addresses of each person owning a 10% or greater interest in the Developer and the percentage owned by each person. The Developer shall notify the Franchisor in writing whenever a change in that information occurs. At the Franchisor's option, all persons owning an interest in the Developer shall execute a guaranty agreement in form satisfactory to the Franchisor, covering all amounts due under this Agreement and all other amounts due the Franchisor or the Franchisor's affiliates.

19. Construction. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number and any other gender, as the context or sense of this Agreement or any provision hereof may require, as if such words had been fully and properly written in the appropriate number and gender. All covenants, agreements and obligations assumed herein by Developer shall be deemed to be joint and several covenants, agreements and obligations of each of the persons named as Developer, if more than one person is so named.

20. Headings. Captions and section headings are used herein for convenience only. They are not part of this Agreement and shall not be used in construing it.

21. Notices. Except as otherwise provided in this Agreement, when this Agreement makes provision for notice or concurrence of any kind, the sending party shall deliver or address the notice to the other party by hand delivery, certified mail, a nationally-recognized overnight delivery service, or e-mail to the following address, as applicable:

The Franchisor: 624 Grassmere Park Drive, Suite 30  
Nashville, Tennessee 37211  
E-mail Address: dsfranchise@captainds.com

The Developer: \_\_\_\_\_  
\_\_\_\_\_  
E-mail Address: \_\_\_\_\_

All notices pursuant to the provisions of this Agreement shall run from the earlier of the date that the other party receives the notice, receives a notice of the attempted delivery of the notice, or refuses delivery of the notice or three business days after the party places the notice in the United States mail. Each party may change the party's address by giving written notice to the other party.

22. Resolution of Disputes. Except as provided in paragraph (d) of this Section 22, the following provisions shall apply to all disputes between the Franchisor (including any affiliates, board of managers member, officers and/or employees of the Franchisor) and the Developer and arising out of or relating to (i) this Agreement (including any claim that any part of this Agreement is invalid, illegal or otherwise void or voidable) or (ii) the parties' business relationship that exists or activities conducted as a result of this Agreement:

(a) Negotiation. The parties first shall use their best efforts to discuss and negotiate a resolution of the dispute.

(b) Mediation. If the efforts to negotiate a resolution do not succeed within 10 business days after a written request for negotiation has been made, a party may submit the dispute to mediation by sending a letter to the other party requesting mediation. A mediator agreeable to the parties shall mediate the dispute or, if the parties cannot agree, a mediator selected by the American Arbitration Association. If the parties cannot agree to a mediator within 10 business days, a party may submit the case to the American Arbitration Association for the appointment of a mediator. Mediation shall commence within 20 business days after the naming of the mediator.

(c) Arbitration. If mediation does not succeed, the parties shall resolve the dispute pursuant to final and binding arbitration; provided, however, that no arbitration shall commence until the conclusion of mediation. The arbitration shall take place in accordance with the Rules for Commercial Arbitration (the "Rules") of the American Arbitration Association and pursuant to the following additional provisions:

(1) Applicable Law. The Federal Arbitration Act shall apply.

(2) Selection of Arbitrators. The arbitration shall take place before three arbitrators selected by the American Arbitration Association, one of whom shall constitute an attorney experienced in the field of franchising and another shall constitute a retired or former judge of a court of record. A decision or award by a majority of the arbitrators shall constitute the decision or award of the arbitrators.

(3) Location of Arbitration. The arbitration shall take place in the county where the Franchisor then has its principal executive offices.

(4) Discovery. Upon a reasonable showing of need, the parties shall have the right to obtain limited discovery prior to the hearing through depositions, requests for production of documents, and the issuance of subpoenas *duces tecum* from the arbitrators.

(5) Authority of Arbitrators. The arbitrators shall have no power (a) to alter, modify, amend, add to, or subtract from any term or provision of this Agreement; (b) to grant any extension, renewal or continuance of this Agreement; or (c) to award damages or other remedies expressly waived or prohibited by this Agreement.

(6) Scope of Proceeding. An arbitration pursuant to this Agreement shall not join or consolidate with any other arbitration, nor may it become a part of any class-action.

(7) Enforcement of Award. The prevailing party shall have the right to have a judgment entered upon the award of the arbitrators in any court having jurisdiction. The award of the arbitrators shall not have any

precedential or collateral estoppel effect on any other dispute involving the Franchisor (including any affiliate, board member, owner, officer and/or employee of the Franchisor).

(d) Excluded Controversies. The provisions of this Section 22 shall not apply to any disputes relating to the use and protection of the Franchisor's trade names, trademarks, service marks, trade secrets and/or confidential information, which the Franchisor may assert in a court of competent jurisdiction as provided in Section 24 of this Agreement. Furthermore, each party reserves the right to file in a court of competent jurisdiction as provided in Section 24 of this Agreement an application for temporary or preliminary injunctive relief on the grounds that the absence of that relief may render an arbitration award ineffectual.

(e) Arbitration Costs, Attorneys' Fees and Costs. Each party shall bear their share of the costs of the arbitration proceeding. The prevailing party to the arbitration shall have the right to an award of its reasonable attorneys' fees and costs incurred after the filing of the demand for arbitration.

23. Waiver of Punitive Damages and Other Damages Than Actual Damages. The Developer hereby waives any right to or claim for punitive or exemplary damages, multiple damages, or consequential damages (even if the Developer has advised the Franchisor of the possibility of those damages), or any other damages, whether based on contract, tort or otherwise, except for actual damages. The actual damages that the Developer may recover shall not exceed the aggregate amount of development fees paid by the Developer to the Franchisor since the occurrence of the act or omission giving rise to the claim for damages and shall remain subject to any applicable statute of limitations.

24. Applicable Law. The internal laws of Tennessee (without regard to any choice of law principles) shall govern this Agreement, its interpretation, its construction, and any disputes between the Franchisor and the Developer arising under it or otherwise. If the Franchisor institutes an action that in any way arises out of this Agreement or any alleged breach of this Agreement, the Franchisor, if it prevails, shall recover from the Developer, in addition to any other relief, its costs and reasonable attorneys' fees incurred in prosecuting the action. If the Developer institutes an action against the Franchisor or any of the Franchisor's agents or employees for any claim arising out of or related to this Agreement, the Franchisor (or its agents or employees), if it or they prevail, shall recover from the Developer its costs and reasonable attorneys' fees incurred in defending the action. Either party may institute any action relating to this Agreement either in the state or federal courts located in Davidson County, Tennessee. Each party waives any rights or objections to the jurisdiction or forum of any actions when filed in those courts.

25. Waiver. No waiver, delay, omission or forbearance on the part of the Franchisor to exercise any right, option, duty or power arising from any default or breach by Developer shall affect or impair the rights of Franchisor with respect to any subsequent default of the same or a different kind; nor shall any delay or omission of Franchisor to exercise any right arising from any such default affect or impair Franchisor's rights as to such default or any future default.

26. Severability. If any term, restriction or covenant of this Agreement is deemed invalid or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstance is deemed invalid or unenforceable, the application of such term, restriction or covenant to other persons and circumstances shall remain unaffected to the extent permitted by law.

27. Entire Agreement. This Agreement and any addendum to this Agreement contain the entire agreement between the parties to this Agreement relating to the subject matter of this Agreement. The Developer acknowledges that the Franchisor and its representatives have made no representations to the Developer and, further, that the Developer has not relied on any representations other than or inconsistent with the provisions of this Agreement and the information set forth in the most recent franchise disclosure document provided to the Developer. This Agreement and any addendum to this Agreement shall not operate to disclaim any representation made in the most recent franchise disclosure document provided to the Developer. No agreement of any kind relating to the matters covered by this Agreement shall bind either party unless in writing and executed by all interested parties.

28. Designated Persons. The Franchisor and the Developer certify to each other that (a) it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by an Executive Order or the United States Treasury Department as a terrorist, “Specifically Designated Nation and Blocked Person,” or other banned or blocked person, group, entity or nation pursuant to any law, order, rule or regulation enforced or administered by the Office of Foreign Assets control; and (b) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

29. Developer’s Acknowledgments. The Developer understands and acknowledges that any business venture involves significant risks and that the Developer’s own efforts will serve as the primary factor in the Developer’s success or failure under this Agreement. **In addition, the Developer acknowledges that Franchisor and its representatives have made no representations to the Developer and, further, that the Developer has not relied on any representations other than or inconsistent with the matters set forth in Franchisor’s most current Franchise Disclosure Document provided to the Developer and that the Developer has undertaken the transactions contemplated by this Agreement solely in reliance on the matters set forth in that Franchise Disclosure Document and the Developer’s own independent investigation of the merits of those transactions.**

**Signature Page**  
**to**  
**Development Agreement dated \_\_\_\_\_, 20\_\_**  
**with**  
\_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_

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

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

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

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

**FRANCHISOR:**

CAPTAIN D'S, LLC

By: \_\_\_\_\_  
(Vice) President

**Exhibit A**  
**to**  
**Development Agreement dated \_\_\_\_\_, 20\_\_**  
**with**  
\_\_\_\_\_

Number of Restaurants

The Developer shall develop \_\_\_\_\_ Captain D's restaurants.

Territory

The Territory shall consist of \_\_\_\_\_.

The Developer may develop a restaurant up to a boundary of the Territory described above and, if defined by a road, up to the side of the right-of-way for the road in the direction of the interior of the Territory. If the Franchisor accepts a location near the boundary of the Territory, the Territory also shall include all of the protected area of the Captain D's restaurant at that accepted location, including that portion of the protected area extending outside the Territory otherwise described above. Similarly, if an adjacent developer or franchisee receives the Franchisor's acceptance of a location near a boundary of the Territory, the territory for that adjacent developer or franchisee shall include all of the protected area of the Captain D's restaurant at that accepted location and the Developer's Territory shall not include that portion of the other developer's or franchisee's protected area extending into the Developer's Territory otherwise described above.

Notwithstanding the foregoing, the Franchisor shall have the right to operate, or license others to operate, any co-branded or multi-branded restaurant within the Territory that utilizes the Franchisor's trademarks and other intellectual property and sells the same or similar menu items as a Captain D's restaurant together with the trademarks, intellectual property, and menu items of one or more other related or unrelated companies.

ACKNOWLEDGED AND APPROVED

\_\_\_\_\_ (Franchisor)

\_\_\_\_\_ (Developer)

**Exhibit B**  
**to**  
**Development Agreement dated \_\_\_\_\_, 20\_\_**  
**with**  
\_\_\_\_\_

Development Fee

The Development Fee shall equal \$\_\_\_\_\_.

Franchise Fee

The Franchise Fee for each restaurant developed pursuant to this Agreement shall equal \$35,000.

Royalty Fee

The royalty fee for each restaurant developed pursuant to this Agreement shall equal 4.5% of gross sales, as defined in the Franchise Agreement.

Expiration Date

This Agreement shall expire upon the earlier of \_\_\_\_\_, \_\_\_\_\_, or the opening of the last restaurant scheduled for development.

Development Schedule

The Developer shall comply with the following development schedule:

<u>Restaurant</u>	<u>Site Accepted</u>	<u>Site Secured</u>	<u>Site Opened</u>
_____	_____	_____	_____
_____	_____	_____	_____

ACKNOWLEDGED AND APPROVED

\_\_\_\_\_ (Franchisor)

\_\_\_\_\_ (Developer)

Exhibit C  
to  
Development Agreement dated \_\_\_\_\_, 20\_\_  
with  
\_\_\_\_\_

**AUTHORIZATION AGREEMENT  
FOR PRE-AUTHORIZED PAYMENTS  
(DEBITS)**

**Captain D's, LLC**

**CAPTAIN D'S, LLC**  
COMPANY NAME

**#52-2262786**  
COMPANY ID NUMBER

**I (we) authorize the above named COMPANY to electronically debit my (our):**  
\_\_\_\_ Checking      \_\_\_\_\_ Savings accounts specified below

\_\_\_\_\_  
CUSTOMER'S BANK NAME

\_\_\_\_\_  
BRANCH LOCATION

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
CUSTOMER'S BANK TRANSIT/ABA NUMBER

\_\_\_\_\_  
ACCOUNT NUMBER

**This authority is to remain in full force and effect until CAPTAIN D'S, LLC and BANK have received written notification from me (or either of us) of its termination in such time and in such manner as to afford CAPTAIN D'S, LLC and BANK a reasonable opportunity to act on it. A copy of this Authorization Agreement must be given to the customers and will be provided by CAPTAIN D'S, LLC upon request, to the BANK.**

\_\_\_\_\_  
CUSTOMER NAME (S) – (Please Print)

\_\_\_\_\_  
CUSTOMER NUMBER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE



## Exhibit D

Form of the Developer: \_\_\_\_\_

In consideration of the execution by Captain D's, LLC of the accompanying Development Agreement and acknowledging that the undersigned will benefit directly or indirectly from its execution, the undersigned, being all of the owners of a 10% or more beneficial ownership interest in the Developer, do hereby execute this Development Agreement for the purpose of binding and obligating themselves to the terms and provisions of Sections 9, 11,12, 16, 17, 18, 22, and 23 the Development Agreement.

### Shareholders, Partners, or Members

### Percentage Ownership

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

**Exhibit E**

**Franchise Agreement**

## **FRANCHISE AGREEMENT**

Captain D's, LLC, a Delaware limited liability company (the "Franchisor"), and \_\_\_\_\_  
(the "Franchisee") enter into this Franchise Agreement (this "Agreement") as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

### **W I T N E S S E T H:**

Whereas, the Franchisor, at a substantial expenditure of time, effort and money, has developed a system of opening and operating Captain D's seafood restaurants (the "Captain D's System"); and

Whereas, the distinguishing features of the Captain D's System include (without limitation) the name "Captain D's"; specially designed fixtures, equipment, buildings, containers, and other items used in serving and dispensing food products; signs, emblems, insignia, logos, trade names, trademarks and service marks, products, methods, procedures, recipes, distinctive food products, formulae and quality standards; and instructional materials and training courses; all of which the Franchisor may change, improve and further develop from time to time; and

Whereas, the Franchisor has acquired knowledge and experience in the composition, distribution, advertising and sale of food products by restaurants using the Captain D's System and with respect to the style of the buildings and signs used by those restaurants and has established a successful reputation, demand and goodwill for the products sold by those restaurants; and

Whereas, Captain D's restaurants and the products sold in those restaurants have a reputation for excellence that Captain D's has acquired and maintains by continuing research and advertising programs and by requiring all parties licensed to use the Captain D's System to maintain high standards of quality and service; and

Whereas, the Franchisee recognizes the value of uniformity in a system of restaurants and the Franchisee further recognizes the value of the Franchisor's knowledge and experience gained through the operation of Captain D's restaurants, and the value of the trade names, trademarks, service marks and other distinctive features of the Captain D's System and now desires to obtain a license from the Franchisor to use the Captain D's System and operate a Captain D's restaurant at the Franchised Site as defined in this Agreement, subject to the terms and conditions set forth in this Agreement.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Agreement, the parties mutually understand, agree and covenant as follows:

1. License. The Franchisor hereby grants to the Franchisee during the term of this Agreement the right to use the Captain D's System and to operate a Captain D's restaurant in accordance with the terms of this Agreement at the Franchised Site, as defined in this Agreement.

2. Term. Unless terminated earlier in accordance with the terms set forth in this Agreement, this Agreement and the license granted under this Agreement shall have a term of 20 years from the opening date of the Captain D's restaurant located at the Franchised Site. At the expiration of that 20-year period, the Franchisee shall have the right to renew the license granted under this Agreement for an additional period of 20 years by giving written notice of renewal to the Franchisor not less than six months prior to the expiration of the initial term, subject to the satisfaction of the following conditions:

(a) The Franchisee shall not be in default of any provision of this Agreement, or any amendment or successor hereto, or any other agreement between the Franchisee and the Franchisor or its subsidiaries and affiliates, and the Franchisee shall have fully and faithfully performed all of its obligations throughout the term hereof; and

(b) The Franchisee shall execute, at the Franchisor's option, the Franchisor's then current form franchise agreement, which agreement shall supersede in all respects this Agreement, and which agreement may provide for an increase in royalty fees or advertising contributions and may also contain other material changes, provided, however, that the Franchisee shall not have any additional renewal rights; and

(c) The Franchisee shall pay a renewal fee equal to the then current renewal fee charged by the Franchisor, which fee shall not exceed 50% of the then current initial franchise fee being charged by the Franchisor; and

(d) The Franchisee will complete to the Franchisor's satisfaction all maintenance, refurbishing, renovation, modernizing and remodeling of the Captain D's restaurant at the Franchised Site as the Franchisor shall reasonably require so as to reflect the current image and standards of Captain D's restaurants; and

(e) The Franchisee shall be current in the payment of all obligations to the Franchisor and to any of its affiliates or subsidiaries; and

(f) Prior to renewal, the Franchisee or the Franchisee's manager(s) shall, at the Franchisee's expense, attend and successfully complete to the Franchisor's reasonable satisfaction any retraining program the Franchisor may require; and

(g) The Franchisor shall be reasonably satisfied as to the sales made from the restaurant at the Franchised Site and the operational and financial good standing, of the Franchisee and of any other restaurants operated by the Franchisee pursuant to a license from the Franchisor.

3. Franchised Site. The rights granted to the Franchisee under this Agreement are nonexclusive and restricted to the operation of a single Captain D's restaurant on the real property at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (the "Franchised Site"). During the term of this Agreement and except as otherwise permitted in this Agreement, the Franchisor shall not establish for itself or grant a license to any other party to establish a Captain D's restaurant within the "Protected Area," as defined below. The "Protected Area" shall consist of a circle having a two-mile radius, with the front door of the restaurant building on the Franchised Site serving as the center of the circle. For any Franchised Site located in a downtown or urban area, the Franchisor shall have the right to define a smaller area as the "Protected Area" upon the execution of this Agreement. The Franchisor at any time may operate or grant a license to a third party to operate a Captain D's restaurant at any location outside of the Protected Area. In addition, the Franchisor at any time may conduct any activity or grant a license to a third party to conduct any activity other than the operation of a Captain D's restaurant within the Franchisee's Protected Territory. Those permitted activities shall include (without limitation) the sale of packaged foods bearing any of the Franchisor's trade

names, trademarks or service marks and the operation of a Captain D's restaurant or other food service facility within a travel plaza on a limited access highway, a shopping mall, a sports arena or stadium, a school building or cafeteria, an airport, or a military base.

4. Franchise Fee. Upon the execution of this Agreement, the Franchisee shall pay the Franchisor a franchise fee of \$35,000 via an electronic debit pursuant to the authorization agreement attached as Exhibit B to this Agreement. The Franchisor shall credit toward that payment any development fee paid by the Franchisee under any agreement pursuant to which the Franchisee is developing the Captain D's restaurant at the Franchised Site. The Franchisee acknowledges that the franchise fee constitutes the legal consideration for this Agreement and that it becomes fully earned and non-refundable upon the execution and delivery of this Agreement by both parties.

5. Royalties.

(a) In addition to all other amounts the Franchisee must pay under this Agreement, the Franchisee shall pay the Franchisor for the rights granted under this Agreement a royalty fee equal to 4.5% of the Franchisee's gross sales, as defined in this Agreement, made at or from the Franchised Site during the entire term of this Agreement. For this and all other Captain D's restaurants operated by the Franchisee or any individual or entity controlled by the Franchisee, the Franchisee shall pay royalty fees on a weekly basis, as designated by the Franchisor, on the first business day after each week, based on the sales made during the week. The Franchisee also shall report, at the times and in the format the Franchisor may designate from time to time, the gross sales and other information that the Franchisor may require from time to time.

(b) The term "gross sales" as used in this Agreement shall be equal to the amount actually received or receivable from all sales of every kind and nature from the Franchised Site, including but not limited to, the sale of food, beverages and services, whether sold for consumption on or off the premises, and receipts from food catering, and any insurance proceeds and/or condemnation awards received for loss of sales or business, all whether on a cash or charge basis, paid or unpaid, collected or uncollected. During any period that the Franchisee cannot operate because of a casualty, condemnation or similar event, "gross sales" shall include the amount of lost sales based on the Franchisee's average gross sales during the preceding 12 full months. "Gross sales" shall not include: (i) the amount of any sales taxes, excise taxes, or other taxes charged to the purchaser in addition to the sales price of the food, beverages and services; (ii) customer refunds, adjustments or credits; (iii) free food and beverages provided at the Franchised Site; and (iv) unaffiliated third-party delivery fees charged to the purchaser in addition to the sales price of the food, beverages and services.

(c) The Franchisee agrees to keep full and complete records of its business operations, particularly sales. Every Monday morning, or at such other time as the Franchisor shall request, the Franchisee shall report the previous week's gross sales to the Franchisor and shall furnish to the Franchisor, at the Franchisor's request, profit and loss statements for the restaurant for each period, showing income and expenses for the preceding period, with particular emphasis on gross sales, and similar periodic profit and loss statements showing year-to-date income and expenses. The Franchisee agrees that the Franchisor may release the Franchisee's sales results from the restaurant at the Franchised Site or other restaurants operated under license from the Franchisor to other of the Franchisor's licensees. Such periodic statements shall be submitted to the attention of the Franchisor's franchise department no later than the 21st day of the next period. At the end of each fiscal year, the Franchisee shall submit to the Franchisor at the Franchisor's request, a balance sheet, statement of income, statement of changes in financial position and a statement of changes in equity or such

comparable statements as may then be appropriate. The Franchisee shall allow representatives of the Franchisor to inspect the Franchisee's books and records at all reasonable times in order to verify gross sales that the Franchisee reports as well as to verify the Franchisee's advertising expenditures required by Section 8. If an inspection reveals that gross sales, as herein defined, reported by the Franchisee to the Franchisor are less than actual gross sales, the Franchisee shall immediately pay to the Franchisor all royalty and advertising fees based on the correct gross sales. All inspections shall be at the expense of the Franchisor; provided, however, if the inspection results in a discovery of a discrepancy in the gross sales reported by the Franchisee of two percent or more, then the Franchisee shall pay or reimburse the Franchisor for any and all reasonable expenses incurred by the Franchisor in connection with the inspection including, but not limited to, legal and accounting fees, as well as interest on the amounts owed at the highest legal rates allowed from the date payment was due. Within 30 days after the opening of the restaurant at the Franchised Site, the Franchisee shall provide the Franchisor with the Franchisee's cost of developing the restaurant in sufficient detail to enable the Franchisor to compare the Franchisee's cost of developing the restaurant with the Franchisor's disclosures of a prospective franchisee's initial investment as set forth in the Franchisor's then current franchise disclosure document.

(d) All overdue payments owed by the Franchisee to the Franchisor shall bear interest from the date due at the rate specified by the Franchisor from time to time, up to the highest rate permitted by the law of the state in which the Franchised Site is located or the laws of the State of Tennessee, whichever is higher, but in no event to exceed 18% per annum. Overdue payments will be applied to the Franchisee's oldest obligation regardless of any designation by the Franchisee to the contrary. This interest shall accrue regardless of whether the Franchisor exercises its right to terminate this Agreement due to the Franchisee's default in royalty or other payments or for any other reason.

(e) The Franchisor shall have the right to draft the Franchisee's account to pay all amounts owed the Franchisor under this Agreement or any other agreement with the Franchisor. The Franchisee shall execute, deliver and maintain in effect a properly-completed Authorization Agreement for Pre-authorized Payments in the form attached as Exhibit B to this Agreement (or its equivalent), if the Franchisee previously has not executed and delivered the form (or its equivalent) to the Franchisor.

6. Modification in System. From time to time, the Franchisor may change or modify the Captain D's System, including (without limitation) the adoption and use of new or modified trade names, trademarks, service marks or copyrighted materials. The Franchisee shall accept, use and display any changes or modifications in the Captain D's System, including new or modified trade names, trademarks, service marks and copyrighted materials. Without limiting the foregoing provision, the Franchisor also may require the Franchisee to undertake substantial modifications to the improvements on the Franchised Site to have the Captain D's restaurant to conform to the Franchisor's then existing Captain D's System. The Franchisee shall make all expenditures that the changes or modifications in the Captain D's System or the adoption, use and display of the new or modified trade names, trademarks, service marks or copyrighted materials may require. The Franchisor may exercise the foregoing right at any time during the term of this Agreement but may not require substantial modifications of the improvements (a) within five years after the restaurant's opening date, (b) more than once every five years, or (c) costing more than 15% of the average annual gross sales made at or from the Franchised Site during the 60-month period preceding the notice of the requirement. Notwithstanding the foregoing, the Franchisor shall have the right to require the Franchisee to modify or replace the large Captain D's sign for the restaurant at any time during the term of this Agreement. In addition, a voluntary remodeling of the restaurant by the Franchisee or a remodeling of the restaurant recommended but not required by the Franchisor shall not count as a required remodeling of the restaurant under this provision.

If the Franchisor exercises its right to require the Franchisee to undertake a substantial modification within five years before the end of the term of this Agreement, the Franchisee may exercise any right to renew the term of this Agreement at that point in time in accordance with the applicable provisions of this Agreement, which renewal then shall take effect as of the expiration of the then current term of this Agreement. For the purposes of this Agreement, all references to the Captain D's System shall include any future changes and modifications.

7. Standards and Uniformity of Operation. The Franchisee recognizes the mutual benefit to the Franchisee, the Franchisor, and other licensees of the Franchisor of the uniformity of appearance, service, products, and advertising of the Captain D's System and understands that such uniformities are necessary for the successful operation of the Captain D's restaurants. The Franchisee also acknowledges that products sold under the Captain D's name and restaurants using the Captain D's System have a reputation for excellence. This reputation has been developed and maintained by the Franchisor, and the Franchisee acknowledges that it is of the utmost importance to the Franchisor and to all other licensees that such reputation be maintained. To this end, the Franchisee covenants and warrants with respect to the operation of the Captain D's restaurant at the Franchised Site that the Franchisee and its employees will comply with all of the requirements of the Captain D's System, the failure to comply with any one or more of the following or any other requirements of this Agreement being grounds for termination of this Agreement in accordance with its provisions, and will throughout the term of this Agreement comply with the following requirements:

(a) The Franchisee shall operate the restaurant and prepare and sell all products sold therein in accordance with the specifications, standards, business practices, and policies of the Franchisor now in effect or hereafter promulgated by the Franchisor for its franchisees and licensees, and the Franchisee shall comply with all requirements of the Captain D's System as they are now or hereafter established. The Franchisor and its duly authorized representatives shall have the right, if they so elect, to enter the facilities of the Franchisee and inspect the same at all reasonable times to ensure that the Franchisee is complying with such standards, and the Franchisor and its duly authorized representatives shall have the right to test all equipment, food products and food ingredients located thereon at all reasonable times. If the Franchisee in any way shall fail to maintain the standards of quality of food or service established by the Franchisor, the Franchisor shall notify the Franchisee in writing and give the Franchisee 30 days in which to cure any violations. If the Franchisee fails to cure any violation within such 30-day period, the Franchisor shall, in addition to any other remedy available to it, have the right to assign to the restaurant such persons as it deems necessary for the training of the Franchisee's employees to ensure that the standards of quality and service are maintained. The Franchisee shall pay the Franchisor all costs of providing such personnel, including costs of transportation, meals, lodging and their salaries, wages or other compensation, including the cost of any fringe benefits.

(b) The Franchisee shall maintain and operate the restaurant in good condition and repair and in a proper and businesslike manner and shall use the Franchisee's best efforts to maintain a clean, quiet, and respectable atmosphere and complete any redecoration, repairing and restoration required from time to time to meet the Franchisor's standards.

(c) The Franchisee shall comply with all applicable governmental laws, ordinances and regulations. Without limiting the foregoing, the Franchisee shall adopt



the Franchisor's policy, if any, in effect from time to time regarding customers that require the use of special service animals, and the Franchisee shall post the signs required by that policy in the Franchisee's restaurant on the Franchised Site.

(d) The Franchisee shall operate and shall maintain sufficient inventories and employ sufficient employees to operate the restaurant at its maximum capacity and efficiency from 10:45 a.m. till 10:00 p.m. (Sunday through Thursday) and from 10:45 a.m. till 11:00 p.m. (Friday and Saturday), seven days per week and 12 months a year or during such other hours or days as the Franchisor designates or approves.

(e) The Franchisee shall require all employees in the restaurant to wear uniforms conforming to such specifications as to color, design, etc., as the Franchisor may from time to time reasonably designate.

(f) The Franchisee shall require all employees to conduct themselves at all times in a competent and courteous manner and use the Franchisee's best efforts to ensure that the Franchisee's employees maintain a neat and clean appearance and render competent, sober, and courteous service to patrons of the restaurant. The Franchisor, however, shall have no control over employees of the Franchisee, including their hours of work, wages and the hiring and firing of the same.

(g) The Franchisee shall use only ingredients, supplies, furnishings, equipment and other goods and services that conform to the standards and specifications designated by the Franchisor. From time to time, the Franchisor may designate one or more approved suppliers and/or distributors, including the Franchisor or its affiliates, whose designated goods and/or services the Franchisor has deemed to conform to its standards and specifications. In addition, if required by the Franchisor, the Franchisee shall purchase or lease any designated goods and/or services exclusively from the Franchisor's approved suppliers and/or distributors, which may include or consist of the Franchisor or its affiliates and, without limiting the foregoing, may include the products and programs of the cola syrup supplier approved by the Franchisor, to the exclusion of any other supplier of cola syrup. The Franchisor may charge fees and negotiate direct payments from the above-referenced suppliers and distributors as a condition to designating them as an approved supplier or distributor. From time to time, the Franchisor may form purchasing cooperatives which may negotiate the price and other purchase terms of any designated goods or services with any approved suppliers or distributors and/or sell any designated goods or services. Those cooperatives may charge service fees, impose mark-ups, and provide for other means of funding the cost of their operations. The Franchisor may require the Franchisee to participate in any purchasing cooperatives for the Restaurant and all other Captain D's restaurants subsequently operated by the Franchisee if the Restaurant represents the Franchisee's first Captain D's restaurant.

(h) The Franchisee shall display prominently in and upon the land and buildings where the Captain D's System is used signs using the name "Captain D's," and/or other advertising signs, of such nature, form, color, number, location and size, and containing such material as the Franchisor may from time to time reasonably direct or approve in writing; and not to display in or upon such premises or elsewhere any sign or advertising media of any kind to which the Franchisor reasonably objects. The



Franchisor or its authorized agents may at any time enter upon the premises and remove any such objectionable signs or advertising media.

(i) The Franchisee shall use the Franchisee's personal, best and continuing efforts to fully promote and develop the restaurant using the unit only for the purposes designated in this Agreement and avoiding any activities that would conflict or interfere with or be detrimental to such purposes.

(j) The Franchisee shall not sell, display, or use on the Franchised Site vending machines, telephone booths, entertainment devices, products or services not included in the Captain D's System unless approved in writing by the Franchisor.

(k) The Franchisee shall maintain all machinery, equipment, signs and other personal property used in the operation of the Captain D's restaurant in excellent working condition and shall complete all repairs necessary to maintain maximum efficiency and productivity. The Franchisee shall replace those items as necessary with the types and kinds of machinery, equipment and signs currently being used in new Captain D's restaurants or with other comparable machinery, equipment and signs approved by the Franchisor.

(l) The Franchisee shall not deviate from the formulas, recipes or specifications of materials and ingredients of food as specified by the Franchisor, without the prior written consent of the Franchisor, and to adhere to the menu and all changes to the menu as specified by the Franchisor from time to time and follow all specifications of the Franchisor as to the uniformity of products and weight, quality and quantity of products served and sold, and to serve and sell only the menu items designated by the Franchisor. The Franchisee shall not sell any additional food and drink items or any other merchandise of any kind, without the prior written approval of the Franchisor.

(m) The Franchisee shall serve all Captain D's foods in such printed paper containers, including but not limited to, boxes, sandwich wrappers, French fry trays, soft drink cups and carry-out bags, as are available and specified by the Franchisor from time to time.

(n) The Franchisee shall make no physical changes from blueprint specifications or approved remodeling plans in connection with the buildings on the Franchised Site, or the design thereof, or any of the materials used therein, or their colors, without the express written consent of the Franchisor. The Franchisee, upon the request of the Franchisor, shall make all alterations to the restaurant or premises necessary to conform to the then current marketing and operating standards of the Franchisor. The Franchisee shall paint the restaurant building at such intervals as the Franchisor reasonably may determine, which determination shall in no event be more than once in any calendar year, using paints in accordance with specifications given by the Franchisor.

(o) The Franchisee shall acquire, maintain and use the point-of-sale and computer-based training equipment, software and systems that the Franchisor may require from time to time, including (without limitation) all modifications, updates and

upgrades to that equipment, software and/or systems. If the Franchisor allows the Franchisee to use different computer equipment, software and systems, the Franchisor shall have the right to charge the Franchisee for any support services that it provides the Franchisee for its equipment, software, and systems similar to the amounts that the Franchisor charges its other franchisees for similar services.

8. Advertising.

(a) The Franchisee agrees to pay to the Franchisor, or to any entity designated by the Franchisor, in addition to the royalties referred to above, an advertising fee designated by the Franchisor from time to time, which shall not exceed 2% of gross sales, for advertising. The Franchisor shall spend the advertising fees received from the Franchisee for the benefit of the Franchisor, the Franchisee, and all other franchisees, licensees, and users of the Captain D's System for the production and/or purchase of the radio, television, print and/or other advertising materials or services that the Franchisor deems necessary on a national, regional, or local basis. The expenditure of those funds for advertising is to be under the control of, and in the discretion of, the Franchisor at all times. For this and all other Captain D's restaurants operated by the Franchisee or any individual or entity controlled by the Franchisee, the Franchisee shall pay advertising fees on a weekly basis, as designated by the Franchisor, on the first business day after each week, based on the sales made during the week. Upon written request, the Franchisor shall provide to the Franchisee on a semi-annual basis a statement, in a format determined by the Franchisor, identifying the revenues and expenses of such advertising fund.

(b) The Franchisee agrees that, in addition to the amount paid to the Franchisor set forth in paragraph (a) above, it will spend each year for local market advertising, exclusive of on-site signs, a minimum (subject to paragraph (c) below) of 2% of gross sales per annum. The amount of advertising funds expended by the Franchisee for individual local market advertising shall be determined by the Franchisee, subject to the minimum requirement set forth herein. Costs of products sold at reduced price or given away shall not count toward fulfillment of this obligation.

(c) With regard to this and any other Captain D's restaurant operated by the Franchisee or any affiliate of the Franchisee, the Franchisee shall participate and shall have any such affiliate participate in any local, regional and national advertising cooperative which the Franchisor may establish, modify, terminate and reform from time to time for the Franchisee's or any such affiliate's Captain D's restaurants. The Franchisor shall have the right to require that the Franchisee and any such affiliate engage in the local, regional and national advertising programs designated by the Franchisor for each cooperative in which the Franchisee or any such affiliate must participate. The Franchisor shall have the right to require that the Franchisee and any such affiliate pay up to a combined total of 4% of gross sales per annum for each Captain D's restaurant operated by the Franchisor or any such affiliate regarding all advertising cooperatives in which the Franchisee or any such affiliate must participate. Any payments exceeding 2% of gross sales per annum for each Captain D's restaurant to one or more cooperatives shall count towards the minimum amount required by paragraph (b), above, but shall not count towards the minimum amount required by paragraph (a), above (or their equivalent provisions in any other applicable franchise agreement with the Franchisor). If the Franchisor establishes a minimum required contribution by the members of a cooperative of less than 4% of gross sales per annum or grants the members of a cooperative discretion in determining the approved advertising programs in which the members of the cooperative must participate or in determining any other matter, the members of the cooperative shall determine any required contribution amount in excess of the amount established by the Franchisor, such programs, and such other matters pursuant to the terms of the bylaws that the Franchisor establishes for the cooperative. Upon the Franchisor's

request, the Franchisee shall support and shall have its affiliates support the adoption of the advertising cooperative bylaws designated by the Franchisor and, without limiting the foregoing, the Franchisee shall support and shall have its affiliates support the exclusive use of the marketing and advertising services of the Franchisor's approved advertising agency of record for each cooperative. If the Franchisee fails to make any required payments to an advertising cooperative, the failure shall constitute a breach of this Agreement.

(d) In the event a dispute occurs within a local, regional, or national cooperative advertising group, the Franchisor shall give 30 days' notice in writing to the spokesman or chairman of the group, which notice shall demand resolution of the dispute. If the dispute has not been settled or resolved within the 30-day period, the Franchisor shall give notice of and conduct an informal hearing where the interested parties may express their views and attempt to resolve their differences. If the differences are not resolved at the hearing, then the Franchisor shall have the right and authority to approve and/or direct both the content and/or the mode of all local, regional, or national advertising which the Franchisee conducts hereunder.

(e) Neither the Franchisor nor any other entity administering advertising payments received hereunder shall be under any obligation to make expenditures which are equivalent or proportional to the amount contributed by each franchisee or ensure that any franchisee benefits directly or pro rata from such expenditures.

(f) The Franchisee further agrees to submit any advertising which the Franchisee may formulate or cause to be formulated hereunder to the Franchisor for written approval before its use, including, without limitation, any website, home page or other cyberspace content that the Franchisee proposes to place on the world wide web or other computer network.

9. Counseling and Advisory Services. During the term of this Agreement, the Franchisor shall provide the Franchisee with at least one copy of Captain D's franchise operations manual in effect from time to time and, subject to the Franchisee's compliance with all of its obligations under this Agreement, the Franchisor (at all reasonable times, upon the request of, and at no charge to the Franchisee), shall furnish counseling and advisory services to the Franchisee with respect to the opening and operation of the Captain D's restaurant located at the Franchised Site, including consultation and advice regarding the following:

- (a) Equipment selection and layout;
- (b) Employee training;
- (c) Advertising and promotion;
- (d) Recipes, food, formulas, specifications and approved suppliers;
- (e) Bookkeeping and accounting;
- (f) Purchasing and inventory control;
- (g) Operational problems and procedures;
- (h) Periodic inspections; and
- (i) New developments and improvements in the Captain D's System.

10. Assistance in Opening. The Franchisor shall provide the Franchisee with an opening team to assist in the opening of the restaurant and the training of the Franchisee's employees. The Franchisor shall pay all wage, meal, and fringe benefit expenses of its opening team and shall pay up to \$8,000 of its opening team's travel and lodging expenses. The opening team shall consist of the personnel that the Franchisor deems appropriate, in its sole discretion, and will remain at the restaurant

for the length of time that the Franchisor deems appropriate, in its sole discretion. If the Franchisee needs and requests additional assistance, and the Franchisor approves, the Franchisor may provide additional assistance, at the sole cost and expense of the Franchisee, for as long as the additional personnel work in the restaurant at the Franchisee's request. The Franchisor shall have the right to select and change all personnel provided under this provision in the Franchisor's sole discretion.

11. Training. At all times, the Franchisee must employ at least three managers at the franchised Captain D's restaurant who have completed satisfactorily the management training programs specified by the Franchisor or comparable training programs approved in advance by the Franchisor in its sole discretion. The Franchisee and its employees shall attend and conduct training programs as the Franchisor may require for the Franchisee's personnel to operate properly the facilities using the Captain D's System. The Franchisor may charge the Franchisee a fee for the foregoing training and may require the Franchisee to reimburse the Franchisor for its expenses incurred in connection with that training. The Franchisee shall pay all expenses of the Franchisee's personnel who take part in that training. The Franchisor may require the Franchisee to purchase training films or other instructional materials from the Franchisor or other third parties as specified by the Franchisor from time to time.

12. Restriction as to Employees. The Franchisee shall not employ or seek to employ any person who is at the time employed by the Franchisor or by any person licensed by the Franchisor to use the Captain D's System without first obtaining the consent of such person's employer and the Franchisee will not induce, directly or indirectly, any such person to leave his or her employment.

13. Trademarks, Trade Names and Service Marks.

(a) The Franchisee agrees that nothing herein contained shall give the Franchisee any right, title or interest in the trade names, trademarks or service marks used in connection with the Captain D's System, which terms shall include, but not be limited to, any words, symbols, designs, insignia, devices, distinctive building designs and signs or combinations thereof used to identify restaurants using the Captain D's System and the products or services sold therein (except the non-exclusive license to use such marks in accordance with the terms of this Agreement). The Franchisee agrees that it will not use any such trade names, trademarks, or service marks in any internet domain name. The Franchisee also agrees that such trade names, trademarks, and service marks are the sole property of the Franchisor, agrees not to raise or cause to be raised any questions concerning, or objections to, the validity of such marks on any grounds whatsoever. The Franchisee agrees not to permit the use of any other trade names, trademarks, or service marks at the Captain D's restaurant without first obtaining the written consent of the Franchisor, which may be granted or withheld at the Franchisor's sole discretion. If local laws or ordinances require that the Franchisee file an affidavit of doing business under an assumed name or otherwise file indicating that Captain D's or any similar name is being used as a fictitious or assumed name, the Franchisee will include in that filing or application an indication that the filing is made as a franchisee of Captain D's, LLC, a Delaware limited liability company, Nashville, Tennessee. The Franchisee shall have the symbol TM, an R enclosed in a circle or such other symbols or words as the Franchisor may designate to protect the trade names, trademarks and service marks placed on all surfaces where the marks appear.

(b) The Franchisee will not seek to register, re-register or assert claim to or ownership of, or otherwise appropriate to itself, any trade name, trademark or service mark or any mark or name confusingly similar thereto, or the goodwill symbolized by any of the foregoing except insofar as such action inures to the benefit of and has the prior written approval of the Franchisor. Upon termination

or cancellation of this Agreement, whether by lapse of time, default or otherwise, the Franchisee agrees immediately to discontinue all use of the trade names, trademarks and service marks and to remove all copies, replicas, reproductions or simulations thereof from the restaurant located on the Franchised Site and to take all necessary steps to assign, transfer or surrender to the Franchisor or otherwise place in the Franchisor or its designee title to all such marks which the Franchisee may have used during the term of this Agreement or any renewal or extension thereof.

(c) If the Franchisee is a corporation, limited partnership, business trust, partnership or similar association, it shall not use the name "Captain D's" in its corporate or other name without the prior express written consent of the Franchisor.

(d) The Franchisee shall inform the Franchisor promptly in writing of any infringement of any trade names, trademarks or service marks or any act of unfair competition against the Franchisor or the Franchisee as to which the Franchisee has knowledge. the Franchisee shall not make any demand or serve any notice, orally or in writing, or institute any legal action or negotiate, compromise, or settle any controversy with respect to any such infringement or unfair competition without first obtaining the Franchisor's written consent. the Franchisor shall have the right to institute, negotiate, compromise, settle, dismiss, appeal or otherwise handle any such action and take such steps as it may deem advisable to prevent any such action and to join the Franchisee and any other franchisees or licensees as a party to any such action to which the Franchisor may be a party and to which the Franchisee is or would be a necessary or proper party, but nothing herein shall be construed to obligate the Franchisor to seek recovery of costs or damages of any kind in any such litigation, the assertion or waiver of such claims being within the sole discretion of the Franchisor. The costs of any such action shall be paid by the Franchisor and any recovery obtained from such infringers shall be paid to the Franchisor.

14. Relationship of the Parties. It is the express intention of the parties hereto that the Franchisee is and shall be an independent contractor under this Agreement, and no partnership, joint venture or fiduciary relationship shall exist between the Franchisee and the Franchisor. This Agreement does not constitute the Franchisee as the agent, legal representative or employee of the Franchisor for any purpose whatsoever, and the Franchisee is not granted any right or authority to assume or create any obligation for or on behalf of, or in the name of, the Franchisor or in any way to bind the Franchisor. The Franchisee agrees not to incur or contract for any debt or obligation on behalf of the Franchisor, or commit any act, make any representation or advertise in any manner which may adversely affect any right of the Franchisor, or be detrimental to the good name and reputation of the Franchisor or any other franchisees or licensees of the Franchisor.

15. Maintenance of Credit Standing. The failure or repeated delay in making prompt payments in accordance with the terms of invoices and statements rendered to the Franchisee for purchases of supplies, equipment and other items, whether purchased from the Franchisor or others, or defaults in making payments due under any lease or franchise agreement, will result in a loss of credit rating and standing which will be detrimental to the Franchisor and other franchisees or licensees of the Franchisor. The Franchisee shall pay when due all amounts owed to anyone for supplies, equipment and other items used in the restaurant on the Franchised Site and all payments owed under related leases and agreements. The Franchisee shall notify the Franchisor immediately when and if the Franchisee becomes more than 90 days delinquent in the payment of the obligations mentioned above.

16. Indemnification and Insurance. The Franchisee shall have responsibility for all loss or damage arising from or relating to the operation of the Captain D's restaurant located on the Franchised Site and for all claims or demands for damages to property or for injury, illness or death of persons



directly or indirectly arising from or relating to the operation of the Captain D's restaurant located on the Franchised Site. The Franchisee shall defend, indemnify and hold the Franchisor and its affiliates harmless from and against any and all losses, liabilities, damages, costs, expenses (including, without limitation, any reasonable attorneys' fees incurred by the Franchisor or its affiliates) and claims arising from injury or damage to any person or property occasioned by any acts, omissions or commissions of the Franchisee or of any of its agents, employees or contractors with respect to, or arising out of, the use or occupancy of the Franchised Site or the operation of the business on the Franchised Site. The Franchisee's obligation to defend, indemnify and save the Franchisor and its affiliates harmless shall survive the expiration or termination of this Agreement. At all times, the Franchisee shall carry fire and extended insurance coverage on the restaurant building and equipment in the amount of the full insurable replacement value of the property and business interruption insurance that covers the Franchisee's obligation to pay an amount equal to the royalty and advertising fees the Franchisee otherwise would pay the Franchisor during any covered interruption for a period of not less than 12 months. The Franchisee also shall carry, at its own cost, a comprehensive public liability policy with limits the Franchisor may designate from time to time, which limits shall not fall below \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage. The policy shall insure the Franchisee's obligation to indemnify the Franchisor and its affiliates under this Agreement. The Franchisee shall carry products liability insurance with limits the Franchisor may determine from time to time, which limits shall not fall below \$2,000,000 for each occurrence and \$2,000,000 in the aggregate. The Franchisee shall name the Franchisor and its affiliates as an additional insured under each of its public liability and products liability policies. Each policy shall provide for primary coverage, shall provide for deductibles and/or retentions in amounts acceptable to the Franchisor, and shall require the insurance company to give the Franchisor at least 30 days written notice before terminating, canceling or making any changes in the policy. The liability policies shall contain a waiver of the insurance company's right of subrogation to any insured liability claims against the Franchisor and its affiliates. The Franchisee also shall secure, at its own cost, worker's compensation insurance covering all of its employees as required by local law. If the Franchisee at any time fails or refuses to maintain any insurance coverage required by this Agreement or to furnish satisfactory evidence of that insurance to the Franchisor, the Franchisor, at its option and in addition to its other rights and remedies under this Agreement, may obtain (but shall not have any obligation to obtain) the insurance coverage on behalf of the Franchisee. The Franchisee shall pay the Franchisor on demand any costs and premiums incurred by the Franchisor in obtaining that insurance coverage. Notwithstanding the existence of that insurance, the Franchisee still shall have responsibility for all loss, damage or contractual liability to any third person arising from or relating to the operation of the Captain D's restaurant located on the Franchised Site and for all claims or demands for damages to property or for injury, illness or death of persons directly or indirectly arising from or relating to the operation of the Captain D's restaurant located on the Franchised Site.

17. Assignment.

(a) The Franchisee shall not sublicense, sell, assign, transfer, convey or encumber its rights and obligations hereunder, or any portion thereof, or suffer or permit any such assignment, transfer or encumbrance to occur by operation of law without the prior express written consent of the Franchisor, which consent the Franchisor shall not withhold, delay or condition unreasonably. In the event the Franchisee is a corporation, limited partnership, business trust, partnership or similar association, the shareholders, limited partners, beneficiaries, partners or investors, as the case may be, may not sell, assign or otherwise transfer their shares or interests, or any portion thereof, in such corporation, limited partnership, business trust, partnership or similar association, without the prior written consent of the Franchisor, which consent the Franchisor shall not withhold, delay or condition unreasonably.

Furthermore, in the event that any shareholder or partner of the Franchisee (the "Shareholder") is a corporation, limited partnership, business trust, partnership or similar association, the interests of the shareholders, limited partners, trustees, beneficiaries, partners or investors, as the case may be, or any portion thereof, in such Shareholder, may not be sold, assigned or otherwise transferred, without the prior written consent of the Franchisor, which consent the Franchisor shall not withhold, delay or condition unreasonably. In the event the Franchisee (or a Shareholder) is a corporation, all stock certificates of the Franchisee or Shareholder, as the case may be, shall have conspicuously endorsed upon them a legend in substantially the following form:

"A transfer of this stock is subject to the terms and conditions of a Franchise Agreement with Captain D's, LLC dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(b) In the event of the death of the Franchisee or if the Franchisee is a corporation or similar entity, then in the event of the death of any stockholder, investor or similar person, the Franchisor shall not unreasonably withhold, delay or condition its consent to a transfer or assignment of the Franchisee's interest herein, or if the Franchisee is a corporation, the transfer of the deceased stockholder's stock in such corporation to a descendant, heir or legatee of the decedent, who shall in the sole judgment of the Franchisor be capable of performing the duties and obligations of the Franchisee hereunder, or to a responsible bona fide purchaser acceptable to the Franchisor. Any approval by the Franchisor of such transfer or assignment shall be subject to the assignee's agreement in writing to assume and perform all of the Franchisee's duties and obligations hereunder.

(c) The Franchisor's approval of any transfer or assignment pursuant to this Section 17 to a natural person or to any other entity is, in all cases contingent upon (1) the purchaser and/or the controlling persons of the purchaser having a satisfactory credit rating, being of good moral character, having business qualifications satisfactory to the Franchisor, being willing to comply with the Franchisor's training requirements and being willing to enter into an agreement in writing to assume and perform all of the Franchisee's duties and obligations hereunder, and agreeing to enter into any and all agreements with the Franchisor required of all new franchisees, including any guaranty agreement, which may require payment of different or increased fees from those paid under this Agreement; (2) the terms of the proposed transfer (including, without limitation, the price) being satisfactory to the Franchisor; (3) all monetary obligations of the Franchisee to the Franchisor or the Franchisor's affiliates being paid, the Franchisee's not being in default hereunder and the Franchisee's executing a general release of all claims against the Franchisor; (4) the Franchisee's paying to the Franchisor the then current transfer fee plus reimbursement for all legal, and other expenses incurred by the Franchisor in connection with the transfer; (5) the Franchisee's first offering to sell such interest to the Franchisor pursuant to Section 21 of this Agreement and the same having been declined in the manner therein set forth; and (6) the name Captain D's not being used in any advertising for the sale of the Franchisee's franchise or equipment.

18. Non-Competition. In addition to and not in limitation of any other restrictions on the Franchisee contained herein, the Franchisee and its restaurant managers, and if the Franchisee is a corporation or other similar entity, then the Franchisee and each of its officers, restaurant managers, directors and stockholders owning at least a 10% interest, agree that they will not during the term hereof and for a period of 36 months after the date this Agreement is terminated, directly or indirectly, for and on behalf of itself or himself or others, engage in any food service business similar to the food service business operated under the Captain D's System within the Protected Area (as defined in Section 3 of this Agreement) of the Franchised Site or within 10 miles of any other Captain D's restaurant owned and/or operated by the Franchisor or any other franchisee or licensee of the

Franchisor, without first obtaining the Franchisor's written consent. The parties acknowledge that the above-mentioned prohibition is based on the reason and understanding that the Franchisee and its officers, restaurant managers, directors and stockholders owning at least a 10% interest, if it is a corporation, will be possessed of knowledge of business and operating methods and trade secrets, disclosure of which would prejudice the interest of the Franchisor and its other franchisees. The Franchisee shall not use or allow any other person to use any Captain D's trademarked or proprietary product in any business other than a Captain D's restaurant. The Franchisee further understands and acknowledges the difficulty of ascertaining monetary damages and the irreparable harm that would result from breach of these covenants. If any part of this restriction is found to be unreasonable in time or distance, each month of time or mile of distance may be reduced by appropriate order of the court to that deemed reasonable. The Franchisor shall, as a matter of course, receive injunctive relief to enforce such non-competition in addition to any other relief to which it may be entitled at law or in equity. The Franchisor shall receive such injunctive relief without the necessity of posting bond or other security, such bond or other security being hereby waived.

19. Termination.

(a) Automatic Termination. This Agreement shall terminate immediately and without notice to either party if the Franchisee:

(1) Files a petition under any bankruptcy or reorganization law, becomes insolvent, or has a trustee or receiver appointed by a court of competent jurisdiction for all or any part of the Franchisee's property; or

(2) Seeks to effect a plan of liquidation, reorganization, composition or arrangement of the Franchisee's affairs, whether or not the same shall be subsequently approved by a court of competent jurisdiction, it being understood that in no event shall this Agreement or any right or interest under this Agreement shall constitute an asset in any insolvency, receivership, bankruptcy, composition, liquidation, arrangement or reorganization proceeding; or

(3) Has an involuntary proceeding filed under any bankruptcy or reorganization laws or any other laws against it and not have the proceeding dismissed within 90 days after being filed; or

(4) Makes a general assignment for the benefit of creditors.

(b) By the Franchisor. The Franchisor, at its option, may terminate this Agreement immediately upon notice to the Franchisee, if the Franchisee shall:

(1) Fail to perform any of the terms and conditions contained in this Agreement (except for the payment of any royalty or advertising fees) or any other agreement between the Franchisor and the Franchisee (including any lease relating to the Franchised Site) and such default shall continue for seven days after the Franchisor gives written notice of such default to the Franchisee or if the default cannot be reasonably corrected within that 7-day period, then if the default is not corrected within such additional time as may be required assuming the Franchisee proceeds with reasonable diligence; provided, however, that such written notice and a reasonable time



to correct defaults shall not be required if the Franchisee repeatedly fails to perform in accordance with the terms and conditions contained herein; or

(2) Operate the Restaurant in a manner that poses a threat or danger to public health or safety, including the construction and maintenance of the Restaurant; or

(3) Default in the payment of any indebtedness owed to the Franchisor or its affiliates when the same became due and payable, either under this Agreement, as royalty or advertising fees or otherwise, or under any other agreement (including any lease relating to the Franchised Site), or for any purchases made from the Franchisor or its affiliates, and shall fail to pay such amounts within five days after receiving notice of such default; or

(4) Fail to satisfy any judgment against the Franchisee within 30 days after the judgment is entered and becomes final; or

(5) Falsify any report required to be furnished to the Franchisor hereunder or have a discrepancy in gross sales as reported to the Franchisor of five percent or more; or

(6) Fail to commence operation of a Captain D's restaurant on the Franchised Site within 180 days after the Franchisee's execution of this Agreement, except for any delay acknowledged in writing by the Franchisor as beyond the control of the Franchisee; or

(7) Following commencement of operations, cease to operate a Captain D's restaurant on the Franchised Site; or

(8) Lose for any cause whatsoever right of possession as owner or lessee of the real property on which the restaurant is located. (However, if all or a substantial part of the real property on which the restaurant facility is located is taken by eminent domain proceedings so as to make the restaurant facility not in compliance with the Franchisor's construction specifications or so as to make the restaurant facility inoperable for the purpose of carrying out the requirements of this Agreement, then the Franchisor and the Franchisee will negotiate in good faith and attempt to agree upon a new location for the restaurant facility which shall be located within a two-mile radius of the Franchisee's location taken by eminent domain and, if such location can be agreed upon, the Franchisee will construct and equip the new restaurant facility in accordance with the then current construction specifications of the Franchisor within 365 days after the designation of such location. All terms of this Agreement not specifically modified herein shall apply to the construction, maintenance, and operation of such new restaurant facility. If no such location can be agreed upon within 90 days, then this Agreement shall terminate and the Franchisee shall comply with all post-termination obligations in Section 20 of this Agreement; provided, however, that the Franchisee shall not be required to make any payment of damages for royalties due during the remaining original term of this Agreement); or

(9) Fail to restore the restaurant facility to full operation within a reasonable period (not to exceed 365 days) after the restaurant facility is rendered inoperable by any casualty; or

(10) Repeatedly fail on more than two occasions during any 12-month period to comply with one or more requirements of this Agreement or any other agreement with Captain D's, whether corrected after notice or not.

(c) In addition to the Franchisor's right to terminate this Agreement, and not in lieu thereof, and before or after the termination of this Agreement, the Franchisor may enter the restaurant and exercise complete authority with respect to its operation until such time as the Franchisor shall determine that the Franchisee is complying with the requirements of this Agreement. The Franchisee specifically agrees that a designated representative of the Franchisor may take over control and operate the restaurant facility and that the Franchisee shall reimburse the Franchisor for the full compensation paid to such representative, including the cost of all fringe benefits plus any and all expenses reasonably incurred by such representative so long as such representative shall be necessary and in any event until the default has been cured and the Franchisee is complying with the terms of this Agreement.

(d) In addition to the Franchisor's rights set forth above, the Franchisor shall have the right to require that the Franchisee reimburse the Franchisor for all its costs incurred in connection with its enforcement of the provisions of this Agreement. Those costs shall include all the Franchisor's out-of-pocket costs and its general and administrative costs allocable to the Franchisor's employees and employee time spent in connection with the enforcement of the provisions of this Agreement.

(e) The provisions of any valid, applicable law or regulation prescribing permissible grounds, cure rights, or minimum periods of notice for the termination of this Agreement shall supersede any provision of this Agreement less favorable to the Franchisee than the law or regulation.

## 20. Effect of and Obligations Upon Termination.

(a) Upon termination of this Agreement for any of the reasons set forth in Sections 19(a) or 19(b), all rights of the Franchisee hereunder shall cease, and the Franchisee shall pay to the Franchisor all sums then due plus damages for the right to receive the royalty and advertising fees for each year or portion thereof remaining in the original term of this Agreement, together with any other damages suffered by the Franchisor as a result of such default, and the Franchisee shall have no further claim hereunder. The damages for royalty and advertising fees due during the remainder of the original term of this Agreement shall be calculated by multiplying the average monthly gross sales made at or from the Franchised Site during the three years immediately preceding the termination (or the shorter period since opening if less than 36 months) times 36 times the sum of (i) the standard royalty fee rate of 4.5% and (ii) the then current advertising rate for the Franchised Site. The Franchisee shall pay to the Franchisor in addition to any amounts found to be due and owing, all expenses incurred by the Franchisor resulting from any such default, including reasonable attorneys' fees. Such termination, however, shall not affect the obligation of the Franchisee hereunder to act or abstain from acting after the termination of this Agreement.

(b) On any termination of this Agreement, whether by reason of lapse of time, default in performance or other cause or contingency, the Franchisee shall (1) forthwith return to the Franchisor all material furnished by the Franchisor containing trade secrets, operating instructions or business practices, methods or procedures, (2) discontinue at the Franchised Site all use of the trade names,

trademarks and service marks which are connected with the Captain D's System, and the use of any and all signs and paper goods bearing such trade names, trademarks and service marks, or any reference whatever thereto, (3) not thereafter (i) operate or do business under any name or in any manner that might tend to give the general public the impression that this Agreement is still in force or that the Franchisee is connected in any way with the Franchisor, or has any right to use the Captain D's System or its trade names, trademarks or service marks; (ii) make use of or avail itself of any of the trade secrets of, or information received from, the Franchisor or disclose or reveal any such information or any portion thereof to anyone not employed by the Franchisor or its franchisees; or (iii) assist anyone not licensed to use the Captain D's System in the construction or equipping of any premises incorporating the distinctive features or equipment layout that the Franchisor has originated and developed and which are identifying characteristics of businesses using the Captain D's System; and (4) execute any and all documents required by the Franchisor which are necessary or appropriate to effectuate termination of the Franchisee's license and interest in and to the use of any and all trade names, trademarks or service marks connected with the Captain D's System. The Franchisee further agrees that, if the Franchisee fails to comply with its obligations set forth in this Section 20(b), the Franchisor shall, in addition to all other remedies available to it, have the right to enter the Franchised Site and remove, at the Franchisee's expense, any and all signs and goods bearing the trade names, trademarks and services marks connected with the Captain D's System and, if the Franchisee is not the owner of the real property on which the Franchised Site is located, the Franchisee shall obtain the written consent of such owner for the Franchisor to enter the Franchised Site for purposes of exercising its rights hereunder.

21. Sale, Lease, Etc., of this Agreement; Franchised Site. If, during the term of this Agreement, the Franchisee shall receive a bona fide offer from a buyer satisfactory to the Franchisor as set forth in Section 17 above and desires to sell, transfer, assign, lease or sublet any interest in this Agreement, the Franchised Site or any part thereof, or in the business thereon conducted, or in the equipment or furnishings located thereon, it shall offer the same to the Franchisor in writing at the same price and on the same terms or the monetary equivalent; which offer the Franchisor may accept at any time within 30 days after its receipt. The offer to the Franchisor shall not be considered properly extended unless and until such time as it includes, at a minimum, a fully executed copy of the entire proposed sale and purchase agreement or letter of intent between the Franchisee and the Franchisee's proposed buyer containing the purchase price, any lease terms, a description of all assets and liabilities to be acquired and obligations assumed, as well as a financial package consisting of: (a) the Franchisee's most recent year-to-date financial summary; (b) the Franchisee's previous two years' financial statements; and (c) a copy of any and all financial commitments being transferred (i.e., equipment loans, lease agreements, promissory notes, mortgages, billboard contracts, waste disposal agreements, etc.). Upon receipt of such offer with all requisite information, the Franchisor shall have 30 days to accept the offer. Nothing herein shall prohibit the Franchisor from requesting additional information on which to base its decision, which information shall be promptly provided by the Franchisee. If the Franchisor declines, or does not within the 30-day period accept such offer, then the Franchisee may sell, transfer, assign, lease or sublet such interest to such buyer (who must nevertheless be satisfactory to the Franchisor as set forth in Section 17), but not at a lower price nor on more favorable terms than have been offered to the Franchisor, and in no event shall the Franchisee offer any interest in this Agreement, or such premises or any interest therein, or any interest in the business conducted thereon, or in the equipment or furnishings located thereon, for sale or transfer at public auction, nor at any time shall an offer be made to the public to sell, transfer, assign, lease or sublet, through the medium of advertisement, either in the newspapers or otherwise, without having first obtained the written consent of the Franchisor to such advertisement or publication. If the Franchisee fails to complete such sale within 90 days following the refusal or failure to act by the Franchisor, then

the Franchisee may not complete such transaction without first offering the same to the Franchisor again as provided above. The parties recognize that the terms of this Section 21 do not apply to a sale and subsequent leaseback of the Franchised Site, or any furnishings or equipment used thereon, or any other sale or other transfer of the Franchised Site or the furnishings or equipment thereon in connection with any bona fide financing plan.

## 22. Sale in Event of Default

(a) Upon termination of this Agreement because of a default by the Franchisee or for any other reason other than (1) the expiration of the term of this Agreement or (2) the sale, transfer or lease to a third party as set forth in Section 21, above, the Franchisor shall have the option (but not the obligation), exercisable by giving written notice within 60 days after the date of termination, to acquire from the Franchisee the inventory, materials and supplies in good and saleable condition and not obsolete or discontinued (the "Inventory") and the equipment, furnishings, signs and other tangible assets of the restaurant at the Franchised Site (collectively, with the Inventory, the "Assets"). The Franchisor shall have the right to receive all of the customary warranties and representations in connection with its purchase, including, without limitation, representations and warranties as to ownership, condition of, and title to the Assets, absence of liens and encumbrances on the Assets, and validity of contracts, agreements and liabilities benefiting the Franchisor or affecting the Assets, contingent or otherwise. The Franchisor, in its discretion, may exclude from the Assets being purchased any Asset that does not meet the Franchisor's standards for a Captain D's restaurant or is not in a useable condition.

(b) The purchase price of the Assets shall equal the lower of the cost or the fair market value of each Asset. If the parties cannot agree on the fair market value of the Assets within 30 days after the exercise of the option, each party shall select an appraiser and the two appraisers shall determine the fair market of the Assets. The average of the appraisers' determinations shall bind the parties. In the event of an appraisal, each party shall bear its own legal and other costs and shall split the appraisal fees equally. If the Franchisor elects exercise the option under this Section 22, it shall have the right to set off (1) all amounts due the Franchisor or any of its affiliates and (2) any costs incurred in connection with any escrow arrangement (including reasonable legal fees).

(c) The Franchisor shall pay the purchase price in cash at the closing of the purchase, which shall take place no later than 90 days after the Franchisee's receipt of the notice of exercise of this option to purchase the Assets; at which time, the Franchisee shall deliver instruments transferring to the Franchisor good and merchantable title to the Assets purchased, free and clear of all liens and encumbrances, with all sales and other transfer taxes paid by the Franchisee, together with an assignment of all licenses and permits for the restaurant at the Franchised Site that the Franchisee can assign or transfer. If the closing of the purchase does not occur within the 90-day period because the Franchisee fails to act diligently in connection with the purchase, the purchase price will decrease by 10%. The purchase price will decrease further 10% per month for each subsequent month that the Franchisee fails to act diligently to consummate the purchase. Prior to closing, the Franchisee and the Franchisor shall will comply with any applicable bulk sales provisions of the Uniform Commercial Code in the state where the restaurant is located.

(d) In connection with the purchase of the foregoing Assets, the Franchisee also shall deliver to the Franchisor an assignment of the lease for the Franchised Site (or, if the Franchisee cannot assign the lease, a sublease for the full remaining term of the lease on the same terms and conditions as the lease). If the Franchisee owns the Franchised Site, the Franchisee shall lease the Franchised Site

to the Franchisor pursuant to the terms of the Franchisor's standard lease agreement, for a term of five years with three successive 5-year renewal options at a fair market rental during the initial and renewal terms.

(e) Upon the Franchisor's specific election as part of the exercise of its purchase option under this Section 22, title to all of the purchased Assets immediately shall vest in the Franchisor and the assignment or sublease of the Franchised Site immediately shall take place without the need for any instrument or conveyance, with the determination and payment of the purchase price for the Assets to take place in accordance with the provisions of this Section 22 and the execution and delivery of any necessary instruments to take place promptly thereafter. The Franchisee hereby grants the Franchisor a power of attorney to execute and deliver any and all instruments necessary or appropriate to effectuate the provisions of this Section 22, which power of attorney shall constitute an irrevocable power coupled with an interest.

(f) If, within one year following any termination of this Agreement or the cancellation of this Agreement by reason of the expiration of its term, the Franchisee shall receive a bona fide offer for and desires to sell the land, building, fixtures and or assets comprising and/or located on the Franchised Site (or the Franchisee's interest therein), the Franchisee shall offer the same in writing to the Franchisor at the same price and on the same terms or the monetary equivalent; which offer the Franchisor may accept at any time within 30 days after its receipt. The offer to the Franchisor shall not be considered properly extended unless and until such time as it includes, at a minimum, a fully executed copy of the entire proposed sale and purchase agreement or letter of intent between the Franchisee and the Franchisee's proposed buyer containing the purchase price, any lease terms, and a description of all assets and liabilities to be acquired and obligations assumed. Upon receipt of such offer with all requisite information, the Franchisor shall have 30 days to accept the offer. Nothing herein shall prohibit the Franchisor from requesting additional information on which to base its decision, which information shall be promptly provided by the Franchisee. If the Franchisor declines, or does not within the 30-day period accept such offer, then the Franchisee may sell, transfer, assign, lease or sublet such interest to such buyer, but not at a lower price nor on more favorable terms than have been offered to the Franchisor. If the Franchisee fails to complete such sale within 90 days following the refusal or failure to act by the Franchisor, the Franchisee may not complete such transaction without first offering the same to the Franchisor again as provided above.

23. Restaurant Classification. The Franchisee shall operate and maintain the restaurant in a manner which will ensure that such restaurant will obtain the highest classification possible for restaurants of like kind from the governmental authorities that inspect restaurants in the area where such restaurant is operated. If the Franchisee is not able to obtain such classification, or if the Franchisee fails to operate in accordance with the general standards of quality, maintenance, repairs and sanitation required by the Franchisor, then the Franchisor may, at its option, place such trained personnel in the restaurant as the Franchisor deems necessary to train the operating personnel until such restaurant can obtain the highest classification or meet such general standards. The personnel shall remain at the restaurant until the required classification is obtained or until the Franchisor, in its sole discretion, decides to remove them. The Franchisee shall pay all costs of providing such personnel, including costs of transportation, meals, lodging and their salary, wages or other compensation, including the cost of fringe benefits.

24. Other Business. The Franchisee agrees not to carry on or conduct or permit others to carry on or conduct any other business, activity or operation at the Captain D's restaurant pursuant to the terms of this Agreement without first obtaining the written consent of the Franchisor.



25. Restrictions. The Franchisor is engaged in the business of developing and franchising the Captain D's System on a national basis. The Franchisee acknowledges that the appropriation or duplication of the Captain D's System or any part thereof for a purpose other than to operate a restaurant using the Captain D's System pursuant to an agreement with the Franchisor would damage the franchising business of the Franchisor. Therefore, the Franchisee (and if a corporation or partnership, the Franchisee's shareholders owning a 10% or greater interest in the Franchisee, directors and officers or general partners, as individuals), either during the term of this Agreement or thereafter, without first obtaining the Franchisor's written consent, shall not directly or indirectly, engage in, or acquire any interest in, any business, including any interest in a corporation or other entity, that directly or indirectly uses or duplicates or simulates in any way the Captain D's System or any portion thereof. The Franchisee further acknowledges that the Franchisor owns the Captain D's System, which constitutes and includes trade secrets of the Franchisor, and all material or other information now or hereafter provided or disclosed to the Franchisee regarding the Captain D's System is disclosed to the Franchisee in confidence and the Franchisee (and if a corporation or partnership, the Franchisee's shareholders owning a 10% or greater interest in the Franchisee, directors and officers or general partners, as individuals) has no right to and shall not disclose any part of it to anyone other than the Franchisee's employees or agents having a need to receive the material or information. The Franchisee shall take reasonable steps to ensure that its employees and other persons having access to the foregoing material and information will observe and perform the confidentiality provisions of this Section 25. The Franchisee understands and acknowledges the difficulty of ascertaining monetary damages and the irreparable harm that would result from breach of these covenants. The Franchisor shall be entitled to obtain injunctive relief in addition to any other legal or equitable remedies they may have if the Franchisee fails to comply with the provisions contained herein. The Franchisor shall receive such injunctive relief without the necessity of posting bond or other security, such bond or other security being hereby waived.

26. Ownership of the Franchisee. Exhibit A contains a description of the legal organization of the Franchisee (whether a corporation, partnership or other), the names and addresses of each person owning a 10% or greater interest in the Franchisee and the percentage owned by each person. The Franchisee shall notify the Franchisor in writing whenever a change in that information occurs. At the Franchisor's option, the Franchisee and all persons owning an interest in the Franchisee shall execute a guaranty agreement in form satisfactory to the Franchisor, covering all amounts due under this Agreement and all other amounts due the Franchisor or the Franchisor's affiliates.

27. Security Interest. In order to secure the full and prompt payment of the fees and amounts due us and our affiliates pursuant to this Agreement, and to secure the performance of your other obligations and covenants under this Agreement, you hereby grant us a security interest in, lien upon, and right of set off against all of your interests in this Agreement, in the license and rights granted by this Agreement, and in the inventory, goods, appliances, equipment and other tangible personal property now or later owned and located at the Restaurant, including all proceeds (including insurance proceeds and claims against any third party for loss or damage to such property (collectively, the "Collateral"). You authorize us to file any and all required or appropriate financing statements and continuation statements to perfect the foregoing security interests. If you default under this Agreement, we will have all of the remedies and rights available as a secured party with respect to the Collateral under the Uniform Commercial Code as in effect in the state of your residence or principal place of business. The provisions of this Section 27 shall survive the expiration or termination of this Agreement.

28. Successors. This Agreement and the covenants, restrictions and limitations contained herein shall be binding upon and shall inure to the benefit of the Franchisor and its successors and assigns and shall be personally binding on and inure to the benefit of the Franchisee (including the individuals executing this Agreement on behalf of the corporation if the Franchisee is a corporation) and its or their respective heirs, executors, administrators, successors and assigns.

29. Construction. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, and any other gender, as the context or sense of this Agreement or any provision hereof may require, as if such words had been fully and properly written in the appropriate number and gender. All covenants, agreements and obligations assumed herein by the Franchisee shall be deemed to be joint and several covenants, agreements, and obligations of each of the persons named as the Franchisee, if more than one person is so named.

30. Headings. Captions and section headings are used herein for convenience only. They are not part of this Agreement and shall not be used in construing it.

31. Notices. Except as otherwise provided in this Agreement, when this Agreement makes provision for notice or concurrence of any kind, the sending party shall deliver or address the notice to the other party by hand delivery, certified mail, delivery via a nationally-recognized overnight delivery service, or e-mail to the following address, as applicable:

The Franchisor: 624 Grassmere Park Drive, Suite 30  
Nashville, Tennessee 37211  
E-mail Address: dsfranchise@captainds.com

The Franchisee: \_\_\_\_\_  
\_\_\_\_\_  
E-mail Address: \_\_\_\_\_

All notices pursuant to the provisions of this Agreement shall run from the date that the other party receives the notice, receives a notice of the attempted delivery of the notice, or refuses delivery of the notice or three business days after the party places the notice in the United States mail. Each party may change the party's address by giving written notice to the other party.

32. Applicable Law. The terms of this Agreement shall be interpreted and construed in accordance with, and any disputes between the Franchisor and the Franchisee arising hereunder or otherwise, shall be governed by, the laws of the State of Tennessee. Should the Franchisor institute an action that in any way arises out of this Agreement or any alleged breach thereof, the Franchisor, if it prevails, shall recover from the Franchisee, in addition to any other relief, its costs and reasonable attorneys' fees incurred in prosecuting such action. Should the Franchisee institute an action against the Franchisor or any of the Franchisor's agents or employees for any claim arising out of or related to this Agreement, the Franchisor (or its agents or employees), if it prevails, shall recover from the Franchisee its costs and reasonable attorneys' fees incurred in defending such action. The Franchisor and the Franchisee agree that any action relating to this Agreement that may be instituted in court in accordance with Section 33 of this Agreement may be instituted and prosecuted in either the state or federal courts located in Davidson County, Tennessee, and further agree to waive any rights or objections to the jurisdiction or forum of any such actions when filed in such courts.

33. Resolution of Disputes. Except as provided in paragraph (d) of this Section 33, the following provisions shall apply to disputes between the Franchisor (including any affiliates, board of managers member, officers and/or employees of the Franchisor) and the Franchisee and each signatory on Exhibit A to this Agreement and arising out of or relating to (i) this Agreement (including any claim that any part of this Agreement is invalid, illegal or otherwise void or voidable) or (ii) the parties' business relationship that exists or activities conducted as a result of this Agreement:

(a) Negotiation. The parties first shall use their best efforts to discuss and negotiate a resolution of the dispute.

(b) Mediation. If the efforts to negotiate a resolution do not succeed within 10 business days after a written request for negotiation has been made, a party may submit the dispute to mediation by sending a letter to the other party requesting mediation. The dispute will be mediated by a mediator agreeable to the parties or, if the parties cannot agree, by a mediator selected by the American Arbitration Association. If the parties cannot agree to a mediator within 10 business days, a party may submit the case to the American Arbitration Association for the appointment of a mediator. Mediation shall commence within 20 business days after the mediator has been named.

(c) Arbitration. If mediation is unsuccessful, the dispute shall be subject to final and binding resolution by arbitration; provided, however, that no arbitration shall be commenced until mediation has been concluded. The dispute shall be arbitrated in accordance with the Rules for Commercial Arbitration (the "Rules") of the American Arbitration Association and pursuant to the following additional provisions:

(1) Applicable Law. The Federal Arbitration Act shall be applicable.

(2) Selection of Arbitrators. The arbitration shall take place before three arbitrators selected by the American Arbitration Association, one of whom shall be an attorney experienced in the field of franchising and another shall be a retired or former judge of a court of record. A decision or award by a majority of the arbitrators shall constitute the decision or award of the arbitrators.

(3) Location of Arbitration. The arbitration shall take place in the county where the Franchisor then has its principal executive offices.

(4) Discovery. Upon a reasonable showing of need, the parties shall have the right to obtain limited discovery prior to the hearing through depositions, requests for production of documents, and the issuance of subpoenas *duces tecum* from the arbitrators.

(5) Authority of Arbitrators. The arbitrators shall have no power (a) to alter, modify, amend, add to, or subtract from any term or provision of this Agreement; (b) to grant any extension, renewal or continuance of this Agreement; or (c) to award damages or other remedies expressly waived or prohibited by this Agreement.



(6) Scope of Proceeding. An arbitration pursuant to this Agreement shall not be joined or consolidated with any other arbitration, nor may it be a part of any class-action.

(7) Enforcement of Award. The prevailing party shall have the right to have a judgment entered upon the award of the arbitrators in any court having jurisdiction. The award of the arbitrators shall not have any precedential or collateral estoppel effect on any other dispute involving the Franchisor (including any affiliate, board member, owner, officer and/or employee of the Franchisor).

(d) Excluded Controversies. The provisions of this Section 32 shall not apply to any disputes relating to the Franchisor's claim against the Franchisee for the payment of royalties or other fees due under this Agreement or relating to the use and protection of the Franchisor's trade names, trademarks, service marks, trade secrets and/or confidential information and enforcement of the non-competition covenants; those claims may be asserted by the Franchisor in a court of competent jurisdiction as provided in Section 32 of this Agreement. Furthermore, each party reserves the right to file in a court of competent jurisdiction as provided in Section 32 of this Agreement an application for temporary or preliminary injunctive relief on the grounds that the absence of that relief may render an arbitration award ineffectual.

(e) Arbitration Costs, Attorneys' Fees and Costs. Each party shall bear their share of the costs of the arbitration proceeding. The prevailing party to the arbitration shall have the right to an award of its reasonable attorneys' fees and costs incurred after the filing of the demand for arbitration.

34. Waiver of Punitive Damages and Other Damages Than Actual Damages. The Franchisee and the Franchisee's owners hereby waive any right to or claim for punitive or exemplary damages, multiple damages, or consequential damages (even if the Franchisee has advised the Franchisor of the possibility of those damages), or any other damages, whether based on contract, tort or otherwise, except for actual damages. The actual damages that the Franchisee may recover shall not exceed the aggregate amount of royalty fees paid by the Franchisee to the Franchisor since the occurrence of the act or omission giving rise to the claim for damages and shall remain subject to any applicable statute of limitations.

35. Waiver. No waiver, delay, omission or forbearance on the part of the Franchisor to exercise any right, option, duty or power arising from any default or breach by the Franchisee shall affect or impair the rights of the Franchisor with respect to any subsequent default of the same or a different kind; nor shall any delay or omission of the Franchisor to exercise any right arising from any such default affect or impair the Franchisor's rights as to such default or any future default.

36. Severability. If any term, restriction or covenant of this Agreement is deemed invalid or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstance is deemed invalid or unenforceable, the application of such terms, restriction or covenant to other persons and circumstances shall remain unaffected to the extent permitted by law.

37. Entire Agreement. This Agreement and any addendum to this Agreement contain the entire agreement between the parties to this Agreement relating to the subject matter of this Agreement. The Franchisee acknowledges that the Franchisor and its representatives have made no representations to the Franchisee and, further, that the Franchisee has not relied on any representations other than or inconsistent with the provisions of this Agreement and the information set forth in the most recent franchise disclosure document provided to the Franchisee. This Agreement and any addendum to this Agreement shall not operate to disclaim any representation made in the most recent franchise disclosure document provided to the Franchisee. No agreement of any kind relating to the matters covered by this Agreement shall bind either party unless in writing and executed by all interested parties.

38. Designated Persons. The Franchisor and the Franchisee certify to each other that (a) it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by an Executive Order or the United States Treasury Department as a terrorist, "Specifically Designated Nation and Blocked Person," or other banned or blocked person, group, entity or nation pursuant to any law, order, rule or regulation enforced or administered by the Office of Foreign Assets control; and (g) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

39. Affiliate. For the purposes of this Agreement, the term "affiliate" shall mean any person or legal entity that a specified person or legal entity controls, that controls a specified person or legal entity, or that shares a common control with a specified person or legal entity. The term "control" means the ability to direct the activities of a person or legal entity through direct or indirect ownership or by contract.

40. The Franchisee's Acknowledgments.

(a) The Franchisee assumes sole responsibility for the operation of the business franchised under this Agreement and acknowledges that, while the Franchisor may furnish advice and assistance to the Franchisee from time to time during the term of this Agreement, the Franchisor has no legal or other obligation to do that except as specifically set forth in this Agreement. In addition, the Franchisee acknowledges that the Franchisor does not guarantee the success or profitability of the business franchised under this Agreement in any manner whatsoever and shall not have any liability in that regard. In particular, the Franchisee understands and acknowledges that the success and profitability of the business franchised under this Agreement depend on many factors outside the control of either the Franchisor or the Franchisee (such as interest rates, unemployment rates, demographic trends, and the general economic climate), but principally depend on the Franchisee's efforts in the operation of the business.

(b) The Franchisee understands and acknowledges that any business venture involves significant risk and that the Franchisee's own efforts will constitute the primary factor in the Franchisee's success or failure in the business franchised under this Agreement. **The Franchisee acknowledges that the Franchisor and its representatives have made no representations to the Franchisee and, further, that the Franchisee has not relied on any representations other than or inconsistent with the information set forth in the most recent franchise disclosure document provided to the Franchisee and that the Franchisee has undertaken this venture solely in reliance on the matters set forth in that document and the Franchisee's own independent investigation of the merits of this venture.**

IN WITNESS WHEREOF, the undersigned have executed this Agreement all as of the day and date first above written.

Franchisor:

Captain D's, LLC

By: \_\_\_\_\_  
(Vice) President

Franchisee:

\_\_\_\_\_

(company)

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

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

(individual)

\_\_\_\_\_

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

## Exhibit A

Form of the Franchisee: \_\_\_\_\_

In consideration of the execution by Captain D's, LLC of the accompanying Franchise Agreement and acknowledging that the undersigned will benefit directly or indirectly from its execution, the undersigned, being all of the shareholders of the Franchisee (if the Franchisee is a corporation), all of the general partners of the Franchisee (if the Franchisee is a general or limited partnership), or all members of the Franchisee (if the Franchisee is a limited liability company), intending to become legally bound, do hereby execute this Franchise Agreement for the purpose of binding and obligating themselves to the terms and provisions of Sections 16, 17, 18, 20, 21, 22, 25, 26, 31, 32, 33 and 34 of the Franchise Agreement.

### Shareholders, Partners or Members

### Percentage Ownership

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT B**

**AUTHORIZATION AGREEMENT  
FOR PRE-AUTHORIZED PAYMENTS  
(DEBITS)**

**Captain D's, LLC**

**CAPTAIN D'S, LLC**  
COMPANY NAME

**#52-2262786**  
COMPANY ID NUMBER

**I (we) authorize the above named COMPANY to electronically debit my (our):**

☐ **Checking**      ☐ **Savings accounts specified below**

\_\_\_\_\_  
CUSTOMER'S BANK NAME

\_\_\_\_\_  
BRANCH LOCATION

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
CUSTOMER'S BANK TRANSIT/ABA NUMBER

\_\_\_\_\_  
ACCOUNT NUMBER

**This authority is to remain in full force and effect until CAPTAIN D'S, LLC and BANK have received written notification from me (or either of us) of its termination in such time and in such manner as to afford CAPTAIN D'S, LLC and BANK a reasonable opportunity to act on it. A copy of this Authorization Agreement must be given to the customers and will be provided by CAPTAIN D'S, LLC upon request, to the BANK.**

\_\_\_\_\_  
CUSTOMER NAME (S) – (Please Print)

\_\_\_\_\_  
CUSTOMER NUMBER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**Exhibit F**

**Captain D's Guaranty Agreement**

## **GUARANTY AGREEMENT**

\_\_\_\_\_ (the “Guarantor”) and Captain D’s, LLC (“Captain D’s”) enter into this Guaranty Agreement (this “Guaranty”) as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Whereas, Captain D’s has entered into or is about to enter into a franchise agreement (the “Franchise Agreement”) with \_\_\_\_\_ (the “Franchisee”), granting to the Franchisee the right to use certain trade names, trademarks, procedures, and know-how in the operation of a Captain D’s restaurant at \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ (the “Restaurant”); and

Whereas, pursuant to the terms of the Franchise Agreement, the Franchisee has the obligation to pay to Captain D’s franchise fees, royalty fees, advertising fees, and other amounts, all as more particularly set forth in the Franchise Agreement; and

Whereas, from time to time the Franchisee also may purchase certain food, goods and services from Captain D’s or its affiliates for use in connection with the Restaurant; and

Whereas, Captain D’s requires security for the performance of the obligations of the Franchisee to Captain D’s and Captain D’s affiliates under the Franchise Agreement and for the payment by the Franchisee for any food, goods and services purchased, and will enter into the Franchise Agreement with the Franchisee and will sell food, goods and services to the Franchisee only if the Guarantor guarantees the performance of the Franchisee under the Franchise Agreement and guarantees the payment of any amounts owed for food, goods and services purchased by the Franchisee from Captain D’s and Captain D’s affiliates; and

Whereas, the Guarantor is willing to give that security.

Now, therefore, for and in consideration of the execution by Captain D’s of the Franchise Agreement with the Franchisee, and the sale by Captain D’s or its affiliates of any food, goods or services to the Franchisee, the Guarantor hereby agrees as follows:

1. The Guarantor hereby guarantees the timely performance by the Franchisee of its obligations under the Franchise Agreement between Captain D’s and the Franchisee, including the prompt payment when due of all franchise fees, royalty fees, and advertising fees. The Guarantor also hereby guarantees the prompt payment to Captain D’s or Captain D’s affiliates of all other obligations, direct or indirect, owed by the Franchisee to Captain D’s and its affiliates, including the prompt payment for all food, goods and services purchased by the Franchisee from Captain D’s or its affiliates.

2. This Guaranty shall constitute a continuing, absolute and unconditional guaranty and shall remain in full force and effect as to the obligations under the Franchise Agreement until the satisfaction of all of those obligations and, as to all other obligations owed by the Franchisee to Captain D’s and its affiliates, this Guaranty shall remain in full force and effect until the obligations and any expenses in connection therewith shall be satisfied.

3. The death or dissolution of the Guarantor shall not terminate this Guaranty until notice of the death or dissolution shall actually be received by Captain D's and until all such indebtedness, or extensions or renewals thereof existing before receipt of such notice, shall be fully paid. In the event of any such death or dissolution and notice thereof to Captain D's, this Guaranty shall continue and remain in force against the survivor or survivors of the Guarantor.

4. Captain D's and its affiliates are hereby expressly authorized to make, from time to time and without notice to anyone, any extensions, renewals, compromises, settlements, releases, or dispositions of all or any part of said indebtedness, and the liability of the Guarantor shall not be in any manner affected, diminished, or impaired thereby, nor shall the liability of the Guarantor be affected, diminished or impaired by the failure, neglect or omission on the part of Captain D's or its affiliate to make any demand or protest or give any notice of dishonor or default. Captain D's and its affiliates shall be under no obligation at any time to first resort to, make demand on, or make claim against, or exhaust its remedies against the Franchisee, the Guarantor, or any other person or corporation, or to resort to, or exhaust its remedies against any collateral, security or other rights whatsoever.

5. It is expressly agreed that Captain D's and its affiliates may at any time make demand for payment on, or bring suit against the undersigned, jointly or severally, and may release such of the undersigned from all further liability to Captain D's hereunder, without impairing the rights of Captain D's in any respect to demand and collect the balance of the indebtedness from any of the other undersigned not so released.

6. In the event of the death, incompetency, dissolution, liquidation, insolvency of, or the institution of bankruptcy or receivership proceedings by or against the Franchisee, all the indebtedness of the Franchisee to Captain D's and its affiliates (including, without limitation, any indebtedness of the Franchisee that results from termination of the Franchise Agreement) then existing shall, for purposes of this Guaranty, and at the option of Captain D's or its affiliates, immediately become due and payable from the Guarantor. This Guaranty and every part thereof shall be binding upon the undersigned, jointly and severally, and upon their respective heirs, legal representatives, successors and assigns, as fully as though they were specifically mentioned.

7. The terms of this agreement shall be interpreted and construed in accordance with the laws of the State of Tennessee. Should Captain D's or its affiliate institute an action that in any way arises out of this agreement or any alleged breach thereof, Captain D's or its affiliate, if it prevails, shall recover from Guarantor, in addition to any other relief, its costs and reasonable attorney's fees incurred in prosecuting said action. The Guarantor agrees that any action relating to this agreement may be instituted and prosecuted in either the state or federal courts located in Davidson County, Tennessee, and further agrees to waive any rights or objections to the jurisdiction or venue of any such actions when filed in such courts.

8. The failure, omission, or delay by Captain D's or its affiliates in exercising their rights hereunder in the event of default by Franchisee shall not constitute the waiver of any such default, or of any of the rights or remedies to which Captain D's or its affiliates are entitled under the Franchise Agreement, this Guaranty, or any other instrument.



Executed as of the day first set forth above.

Captain D's:

Captain D's, LLC

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

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

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

Guarantor:

\_\_\_\_\_

\_\_\_\_\_

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

## **Exhibit G**

### **Addenda Required by Certain States**

Exhibit "G-1"

**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT – CALIFORNIA**

a. The California Franchise Investment Law requires that the Franchisor deliver a copy of all proposed agreements relating to the sale of a franchise with this Franchise Disclosure Document.

b. Neither the Franchisor nor any person or franchise broker listed in Item 2 of the Franchise Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, as amended, suspending or expelling the person from membership in the association or exchange.

c. The California Business and Professions Code (the "Code"), in Sections 20000 through 20043 of the Code, provides rights to the franchisee concerning termination or non-renewal of a franchise. If a franchise agreement subject to California law contains a provision inconsistent with those sections of the Code, those sections will control.

d. The Captain D's Franchise Agreement provides for termination upon the franchisee's bankruptcy. The Federal Bankruptcy Law (11 U.S.C. Section 101 et seq.) may not allow the enforcement of that provision.

e. The Captain D's Franchise Agreement provides for a covenant not compete, which extends beyond the termination of the agreement. California law may not allow the enforcement of that provision.

f. The Captain D's Franchise Agreement contains a liquidated damages provision. Section 1671 of the California Civil Code may not allow the enforcement of that provision.

g. The franchise agreement requires binding arbitration. The arbitration will occur at Nashville, Tennessee with the costs being borne by the parties. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

h. The Caption D's Franchise Agreement requires the application of Tennessee law. California law may not allow the enforcement of that provision.

i. Section 31125 of the California Franchise Investment Law requires us to give to you a disclosure document approved by the California Department of Business Oversight before we ask you to consider a material modification of your Franchise Agreement, if we do not qualify for and comply with an exemption from that provision.

j. You must sign a general release of claims if you decide to renew your Franchise Agreement or obtain our approval to transfer your Franchise Agreement. Section 31512 of the

California Corporations Code prohibits and voids any prospective waiver of your rights or claims under the California Franchise Investment Law. In addition, Section 20010 of the California Business and Professions Code prohibits and voids any prospective waiver of your rights or claims under the California Franchise Relations Act.

k. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT [www.dbo.ca.gov](http://www.dbo.ca.gov).

## **ADDENDUM TO DEVELOPMENT AGREEMENT - CALIFORNIA**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Developer") enter into this Addendum to that certain Development Agreement dated \_\_\_\_\_, \_\_\_\_, \_\_\_\_, between the Franchisor and the Developer.

### **WITNESSETH:**

Whereas, the Franchisor and the Developer wish to enter into a Development Agreement for the development of one or more Captain D's franchised restaurants subject to the laws of the state of California; and

Whereas, the California Department of Commerce has required the Franchisor to modify certain provisions of the Development Agreement as a condition to the registration of the Franchisor's franchise.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Development Agreement, the parties hereby agree as follows:

1. Development Fee. Notwithstanding the provisions of Section 3 of the Development Agreement to the contrary, the development fee shall become due, on a pro rata basis based on the number of Captain D's restaurants scheduled for development within the Territory, only after the opening of each licensed Captain D's restaurant built within the Territory and the completion of the Franchisor's pre-opening obligations for the restaurant.

2. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Development Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**DEVELOPER:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

## **ADDENDUM TO FRANCHISE AGREEMENT - CALIFORNIA**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Franchisee") enter into this Addendum to that certain Franchise Agreement dated \_\_\_\_\_, \_\_\_\_, \_\_\_\_, between the Franchisor and the Franchisee.

### **WITNESSETH:**

Whereas, the Franchisor and the Franchisee wish to enter into a Franchise Agreement for the operation of a Captain D's franchised restaurant subject to the laws of the state of California; and

Whereas, the California Department of Corporations has required the Franchisor to disclose certain matters to certain prospective franchisees as a condition to registration of the Franchisor's franchise.

Now, therefore, the undersigned hereby acknowledges the receipt of this addendum and the following disclosures required by the California Department of Corporations:

1. Payments. Notwithstanding the provisions of Section 4 of the Franchise Agreement to the contrary, the franchise fee shall become due only after the opening of the Franchisee's restaurant and the completion of the Franchisor's pre-opening obligations for the restaurant.

2. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Development Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

Exhibit “G-2”

**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT – ILLINOIS**

For franchises offered and sold in Illinois, Captain D’s hereby supplements this Disclosure Document as follows:

1. Payment of Initial Franchise Fees and Development Fees will be deferred until Captain D’s has met its obligations to the franchisee and the franchisee has commenced doing business. This financial assurance requirement was imposed by the Office of the Illinois Attorney General based on the financial condition of Captain D’s Enterprises, LLC, the guarantor of the Franchisor’s franchise being registered.

2. Illinois law governs the relationship between the parties to the Captain D’s Development Agreement, Franchise Agreement, and Computer Hardware and Software Agreement.

3. Section 4 of the Illinois Franchise Disclosure Act provides that any provision in the franchise agreement that designates a jurisdiction or venue outside the State of Illinois is void. However, a franchise agreement may provide for arbitration in a venue outside of Illinois.

4. Section 41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

## **ADDENDUM TO CAPTAIN D'S DEVELOPMENT AGREEMENT - ILLINOIS**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Developer") enter into this Addendum to that certain Development Agreement dated \_\_\_\_\_, \_\_\_\_\_, between the Franchisor and the Developer.

### **WITNESSETH:**

Whereas, the Franchisor and the Developer wish to enter into a Development Agreement for the development of one or more Captain D's franchised restaurants subject to the laws of the state of Illinois; and

Whereas, the Illinois Attorney General has required the Franchisor to modify certain provisions of the Development Agreement as a condition to the registration of the Franchisor's franchise.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Development Agreement, the parties hereby agree as follows:

1. **Development Fee.** Notwithstanding the provisions of Section 3 of the Development Agreement to the contrary, the development fee shall become due, on a pro rata basis based on the number of Captain D's restaurants scheduled for development within the Territory, only after we have completed all of our initial obligations to you and you have commenced doing business at your Captain D's restaurant. The Illinois Attorney General imposed this fee deferral provision based on the financial condition of Captain D's Enterprises, LLC, the guarantor of the Franchisor's franchise being registered.

2. **Sections 23 and 26.** Notwithstanding any provision in the Development Agreement to the contrary, to the extent the terms of the Development Agreement, including Sections 23 and 26 of the Development Agreement, differ from or conflict with the Illinois Franchise Disclosure Act or any regulations (collectively, the "Illinois Laws"), the Illinois Laws shall apply.

3. **Jurisdiction and Venue.** Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement that designates a jurisdiction or venue outside the State of Illinois is void. However, a franchise agreement may provide for arbitration in a venue outside of Illinois.

4. **Waivers.** Section 41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

5. **Other Provisions.** Except as expressly modified by this Addendum, all of the other provisions of the Development Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**DEVELOPER:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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



**ADDENDUM TO CAPTAIN D'S FRANCHISE  
AGREEMENT - ILLINOIS**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Franchisee") enter into this Addendum to that certain Franchise Agreement dated \_\_\_\_\_, \_\_\_\_\_, between the Franchisor and the Franchisee.

**WITNESSETH:**

Whereas, the Franchisor and the Franchisee wish to enter into a Franchise Agreement and a Computer Software and Hardware Agreement for the operation of a Captain D's franchised restaurant subject to the laws of the state of Illinois; and

Whereas, the Illinois Office of the Attorney General has required the Franchisor to modify certain provisions of the Franchise Agreement and Computer Software and Hardware Agreement as a condition to the registration of the Franchisor's franchise.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum, the Franchise Agreement, and the Computer Software and Hardware Agreement, the parties hereby agree as follows:

1. **Payments.** Notwithstanding the provisions of Section 4 of the Franchise Agreement to the contrary, the franchise fee shall become due only after we have completed all of our initial obligations to you and you have commenced doing business at your Captain D's restaurant. This fee deferral has been imposed upon the Franchisor by the Illinois Attorney General based on the financial condition of Captain D's Enterprises, LLC, the guarantor of the Franchisor's franchise being registered.

2. **Governing Law.** Notwithstanding any provision in the Franchise Agreement or the Computer Software and Hardware Agreement to the contrary, to the extent the terms of the Franchise Agreement or Computer Software and Hardware Agreement differ from the Illinois Franchise Disclosure Act or any regulations (collectively, the "Illinois Laws"), the Illinois Laws shall apply.

3. **Jurisdiction and Venue.** Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement that designates a jurisdiction or venue outside of Illinois is void. However, a franchise agreement may provide for arbitration in a venue outside of Illinois.

4. **Waiver.** Section 41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

5. **Other Provisions.** Except as expressly modified by this Addendum, all of the other provisions of the Franchise Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

Exhibit "G-3"

**ADDENDUM TO CAPTAIN D'S DEVELOPMENT AGREEMENT - MARYLAND**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Developer") enter into this Addendum to that certain Development Agreement dated \_\_\_\_\_, \_\_\_\_\_, between the Franchisor and the Developer.

WITNESSETH:

Whereas, the Franchisor and the Developer wish to enter into a Development Agreement for the development of one or more Captain D's franchised restaurants subject to the laws of the state of Maryland; and

Whereas, the Maryland Securities Commission has required the Franchisor to modify certain provisions of the Development Agreement as a condition to registration of the Franchisor's franchise;

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Development Agreement, the parties hereby agree as follows:

1. Development Fee. Notwithstanding the provisions of the Development Agreement to the contrary, all development fees and initial payments of the Developer shall be deferred until the first franchised restaurant under the Development Agreement opens.
2. Effect of Bankruptcy. With regard to Section 14 of the Development Agreement, the parties acknowledge that federal bankruptcy laws may not allow the enforcement of the provisions for termination upon bankruptcy of the Franchisee.
3. Choice of Forum. The parties amend Section 23 of the Development Agreement by adding the following sentence: "This section shall not abrogate or reduce any rights of the Developer as provided for under the Maryland Franchise Registration and Disclosure Law, including the right to submit matters to the jurisdiction of the courts of Maryland." Any risk factor warnings included on the cover page of the Franchisor's Franchise Disclosure Document inconsistent with the Maryland Franchise Registration and Disclosure Law shall not apply to Maryland franchisees.
4. Disclaimers. Pursuant to Section 14-226 of the Maryland Franchise Registration and Disclosure Law, no acknowledgement provision or disclaimer shall constitute a release, assignment, novation, waiver or estoppel that would relieve a person from liability under the Maryland Franchise Registration and Disclosure Law.
5. Statute of Limitations. The Developer may bring claims arising under the Maryland Franchise Registration and Disclosure Law within three years after the grant of the franchise.

6. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Development Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**DEVELOPER:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

## **ADDENDUM TO CAPTAIN D'S FRANCHISE AGREEMENT - MARYLAND**

Captain D's, LLC (the "Franchisor") and \_\_\_\_\_ (the "Franchisee") enter into this Addendum to that certain Franchise Agreement dated \_\_\_\_\_ (the "Franchise Agreement"), by and between the Franchisor and the Franchisee in connection with a Captain D's restaurant at \_\_\_\_\_.

### **WITNESSETH:**

Whereas, the Franchisor and the Franchisee wish to enter into the Franchise Agreement for operation of a Captain D's restaurant in Maryland or subject to the laws of Maryland; and

Whereas, the Maryland Securities Commission has required the Franchisor to modify certain provisions of the Franchise Agreement as a condition to registration of the Franchisor's franchise;

Now, therefore, for and in consideration of the covenants and agreements as set forth in this Addendum and in the Franchise Agreement, the parties agree as follows:

1. Payments. Notwithstanding the provisions of the Franchise Agreement to the contrary, all franchise and initial payments by the Franchisee shall be deferred until the opening of the franchised restaurant.

2. Release Requirement. The parties amend Section 17(c) of the Franchise Agreement to provide that any release required or contemplated by that section shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

3. Effect of Bankruptcy. With regard to Section 19(a) of the Franchise Agreement, the parties acknowledge that federal bankruptcy laws may not allow the enforcement of the provisions for termination upon bankruptcy of the Franchisee.

4. Choice of Forum. The parties amend Section 31 of the Franchise Agreement by adding the following sentence: "This section shall not abrogate or reduce any rights of the Franchisee as provided for under the Maryland Franchise Registration and Disclosure Law, including the right to submit matters to the jurisdiction of the courts of Maryland." Any risk factor warnings included on the cover page of the Franchisor's franchise disclosure document inconsistent with the Maryland Franchise Registration and Disclosure Law shall not apply to Maryland franchisees.

5. Disclaimers. Pursuant to Section 14-226 of the Maryland Franchise Registration and Disclosure Law, no acknowledgement provision or disclaimer shall constitute a release, assignment, novation, waiver or estoppel that would relieve a person from liability under the Maryland Franchise Registration and Disclosure Law.

6. Statute of Limitations. The Franchisee may bring claims arising under the Maryland Franchise Registration and Disclosure Law within three years after the grant of the franchise.

7. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Franchise Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the Franchise Agreement.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

Exhibit "G-4"

**ADDENDUM TO CAPTAIN D'S DEVELOPMENT AGREEMENT,  
FRANCHISE AGREEMENT AND  
DISCLOSURE DOCUMENT FOR THE STATE OF MINNESOTA**

THIS AGREEMENT is an addendum to the Franchise Disclosure Document (the "Disclosure Document") and that certain Development Agreement dated \_\_\_\_\_, \_\_\_\_\_, and Franchise Agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "Franchise Agreement") by and between Captain D's, LLC (hereinafter referred to as the "Franchisor") and \_\_\_\_\_ (hereinafter referred to as the "Franchisee") in connection with a Captain D's Restaurant to be located at \_\_\_\_\_.

WITNESSETH:

WHEREAS, Franchisor and Franchisee wish to enter into the Franchise Agreement for operation of a Captain D's Restaurant to be located within the State of Minnesota; and

WHEREAS, the Department of Commerce has required Franchisor to modify certain provisions of the Disclosure Document and Franchise Agreement as a condition to registration of Franchisor's franchises;

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein and in the Franchise Agreement, it is mutually agreed as follows:

1. Notwithstanding the provisions of Section 3 of the Development Agreement to the contrary, the development fee shall become due, on a pro rata basis based on the number of Captain D's restaurants scheduled for development within the Territory, only after we have completed all of our initial obligations to you and you have commenced doing business at your Captain D's restaurant. Notwithstanding the provisions of Section 4 of the Franchise Agreement to the contrary, the franchise fee shall become due only after we have completed all of our initial obligations to you and you have commenced doing business at your Captain D's restaurant.

2. Minnesota Statutes Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the Franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the Franchisee to consent to liquidated damages, termination penalties, or judgment notes. In addition, nothing in the Disclosure Document or agreements can abrogate or reduce (a) any of the Franchisee's rights as provided for in Minnesota Statutes Chapter 80C or (b) the Franchisee's rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

3. With respect to franchisees governed by Minnesota law, the Franchisor will comply with Minnesota Statutes Chapter 80C.14, Subdivisions 3 through 5, which require the following (except in certain specified cases):

(a) The Franchisee must receive at least 90 days' notice of termination (with 60 days to cure) and at least 180 days' notice for non-renewal of the Franchise Agreement; and

(b) The Franchisor may not unreasonably withhold its consent to the transfer of the Franchise Agreement.

4. Minnesota considers it unfair to not protect the Franchisee's right to use the trademarks. Refer to Minnesota Statutes Section 80C.12, Subdivision 1(G). The Franchisor will protect the Franchisee's rights to use the trademarks, service marks, trade names, logotypes and other commercial symbols or indemnify the Franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.

5. Minnesota Rule 2860.4400(D) prohibits the Franchisor from requiring the Franchisee to assent to a general release.

6. The Franchisee cannot consent to the Franchisor obtaining injunctive relief. The Franchisor may seek injunctive relief. See Minnesota Rule 2860.4400(J). Also, a court will determine if a bond is required.

7. Any limitations of claims in the Franchise Agreement must comply with Minnesota Statutes Section 80C.17, Subdivision 5.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the Franchise Agreement.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

Exhibit "G-5"

**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT – NEW YORK**

For franchises offered and sold in New York, Captain D's hereby supplements this Disclosure Document as follows:

1. The following information is added to the cover page of the Franchise Disclosure Document:

**THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public



agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the “Summary” sections of Item 17(c), titled “Requirements for franchisee to renew or extend,” and Item 17(m), entitled “Conditions for franchisor approval of transfer”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”:

You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the “Summary” sections of Item 17(v), titled “Choice of forum”, and Item 17(w), titled “Choice of law”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

Exhibit "G-6"

**ADDENDUM TO FRANCHISE AGREEMENT AND  
DISCLOSURE DOCUMENT FOR NORTH DAKOTA**

Captain D's, LLC (the "Franchisor") and \_\_\_\_\_ (the "Franchisee") enter into this Addendum to the Franchise Agreement dated \_\_\_\_\_, \_\_\_\_\_, and the Franchise Disclosure Document dated \_\_\_\_\_, \_\_\_\_\_, in connection with a Captain D's Restaurant proposed for development at \_\_\_\_\_.

WITNESSETH:

Whereas, the Franchisor and the Franchisee wish to enter into the Franchise Agreement for the operation of a Captain D's restaurant subject to the North Dakota Franchise Investment Law; and

Whereas, the North Dakota Securities Commissioner has required the Franchisor to modify certain provisions of the Franchise Agreement and Franchise Disclosure Document as a condition to the registration of the Franchisor's franchises;

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Franchise Agreement, the parties agree as follows:

1. Conditions to Renewal of Franchise Agreement. Notwithstanding the provisions of Section 2 of the Franchise Agreement, the Franchisor shall not require, as a condition to the renewal of the Franchise Agreement, any release of claims not allowed by the North Dakota Franchise Investment Law.

2. Liquidated Damages. The parties hereby amend Section 20(a) of the Franchise Agreement to read, in its entirety, as follows:

Upon termination of this Agreement for any of the reasons set forth in Sections 19(a) or 19(b), all rights of the Franchisee under this Agreement shall cease, and the Franchisee shall pay to the Franchisor all sums then due plus damages suffered by the Franchisor as a result of the default, and the Franchisee shall have no further claim under this Agreement. The Franchisee shall pay to the Franchisor, in addition to any amounts found due and owing, all expenses incurred by the Franchisor as a result of any default, including reasonable attorneys' fees. The termination, however, shall not affect the obligation of the Franchisee under this Agreement to take action or abstain from taking action after the termination of this Agreement.

3. Governing Law. The parties amend the first sentence of Section 31 to substitute North Dakota for Tennessee.

4. Venue for Resolution of Disputes. The parties hereby delete the last sentence of Section 31 and Section 32(c)(3) of the Franchise Agreement.

5. Exemplary and Punitive Damages. The parties hereby delete Section 33 of the Franchise Agreement.

6. Restrictive Covenants. Item 17(r) of the Disclosure Document and Section 18 of the Franchise Agreement disclose and provide for certain covenants restricting competition. The North Dakota Securities Commissioner generally considers those covenants unenforceable in the North Dakota.

7. Mediation and Arbitration of Disputes. The Franchisor amends Item 17(u) of the Disclosure Document and Section 32 of the Franchise Agreement to provide that the location of any mediation or arbitration take place at a location agreeable to the parties or, in the absence of that agreement, at a location designed by the arbitrator not remote from the Franchisee's place of business.

Executed as of the date of the Franchise Agreement.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

**ADDENDUM TO CAPTAIN D'S DEVELOPMENT AGREEMENT – NORTH DAKOTA**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Developer") enter into this Addendum to that certain Development Agreement dated \_\_\_\_\_, \_\_\_\_\_, between the Franchisor and the Developer.

**WITNESSETH:**

Whereas, the Franchisor and the Developer wish to enter into a Development Agreement for the development of one or more Captain D's franchised restaurants subject to the laws of the state of North Dakota; and

Whereas, the North Dakota Securities Department has required the Franchisor to modify certain provisions of the Development Agreement as a condition to the registration of the Franchisor's franchise.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Development Agreement, the parties hereby agree as follows:

1. Governing Law. The parties amend the first sentence of Section 23 to substitute North Dakota for Tennessee.

2. Venue for Resolution of Disputes. The parties hereby delete Section 21(c)(3) and the last two sentences of Section 23 of the Development Agreement.

3. Exemplary and Punitive Damages. The parties hereby delete Section 22 of the Development Agreement.

4. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Development Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**DEVELOPER:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

Exhibit "G-7"

**ADDENDUM TO FRANCHISE AGREEMENT – SOUTH DAKOTA**

Captain D's, LLC (the "Franchisor") and \_\_\_\_\_ (the "Franchisee") enter into this Addendum to the Franchise Agreement dated \_\_\_\_\_, \_\_\_, and the Franchise Disclosure Document dated \_\_\_\_\_, \_\_\_, in connection with a Captain D's Restaurant proposed for development at \_\_\_\_\_.

**WITNESSETH:**

Whereas, the Franchisor and the Franchisee wish to enter into the Franchise Agreement for the operation of a Captain D's restaurant subject to the South Dakota Franchise Investment Law; and

Whereas, the South Dakota Securities Regulation Office has required the Franchisor to modify certain provisions of the Franchise Agreement and Franchise Disclosure Document as a condition to the registration of the Franchisor's franchises;

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Franchise Agreement, the parties agree as follows:

1. Payments. Notwithstanding the provisions of Section 4 of the Franchise Agreement to the contrary, the franchise fee shall become due only after the opening of the Franchisee's restaurant and the completion of the Franchisor's pre-opening obligations for the restaurant.

2. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Franchise Agreement shall remain in full force and effect.

Executed as of the date of the Franchise Agreement.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

**ADDENDUM TO CAPTAIN D'S DEVELOPMENT AGREEMENT – SOUTH DAKOTA**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Developer") enter into this Addendum to that certain Development Agreement dated \_\_\_\_\_, \_\_\_\_\_, between the Franchisor and the Developer.

**WITNESSETH:**

Whereas, the Franchisor and the Developer wish to enter into a Development Agreement for the development of one or more Captain D's franchised restaurants subject to the laws of the state of South Dakota; and

Whereas, the South Dakota Securities Regulation Office has required the Franchisor to modify certain provisions of the Development Agreement as a condition to the registration of the Franchisor's franchise.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Development Agreement, the parties hereby agree as follows:

1. Development Fee. Notwithstanding the provisions of Section 3 of the Development Agreement to the contrary, the development fee shall become due, on a pro rata basis based on the number of Captain D's restaurants scheduled for development within the Territory, only after we have completed all of our initial obligations to you and you have commenced doing business at your Captain D's restaurant.

2. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Development Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**DEVELOPER:**

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

Exhibit "G-8"

**ADDENDUM TO FRANCHISE AGREEMENT AND  
DISCLOSURE DOCUMENT FOR VIRGINIA**

Captain D's, LLC (the "Franchisor") and \_\_\_\_\_ (the "Franchisee") enter into this Addendum to the Franchise Agreement dated \_\_\_\_\_, \_\_\_, and the Franchise Disclosure Document dated \_\_\_\_\_, \_\_\_, in connection with a Captain D's Restaurant proposed for development at \_\_\_\_\_.

**WITNESSETH:**

Whereas, the Franchisor and the Franchisee wish to enter into the Franchise Agreement for the operation of a Captain D's restaurant subject to the Virginia Retail Franchising Act; and

Whereas, the Virginia State Corporation Commission's Division of Securities and Retail Franchising has required the Franchisor to modify certain provisions of the Franchise Agreement and Franchise Disclosure Document as a condition to the registration of the Franchisor's franchises;

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Franchise Agreement, the parties agree as follows:

1. The Franchisor hereby adds the following statement to Item 17.h of the Franchise Disclosure Statement:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the franchise agreement or development agreement do not constitute "reasonable cause," as defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

Executed as of the date of the Franchise Agreement.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

Exhibit "G-9"

**ADDENDUM TO CAPTAIN D'S DEVELOPMENT AGREEMENT - WASHINGTON**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Developer") enter into this Addendum to that certain Development Agreement dated \_\_\_\_\_, \_\_\_\_\_, between the Franchisor and the Developer.

WITNESSETH:

Whereas, the Franchisor and the Developer wish to enter into a Development Agreement for the development of one or more Captain D's franchised restaurants subject to the laws of the state of Washington; and

Whereas, the Washington Department of Financial Institutions has required the Franchisor to modify certain provisions of the Development Agreement as a condition to the registration of the Franchisor's franchise.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Development Agreement, the parties hereby agree as follows:

1. Development Fee. Because the Franchisor has material pre-opening obligations with respect to each franchised business the Franchisee opens under the Development Agreement, payment of the development fee will be released proportionally with respect to each franchise outlet opened and is deferred until the Franchisor has met all of its pre-opening obligations under the agreement and the Franchisee is open for business with respect to each such location.

2. Miscellaneous Provisions. The following provisions shall apply:

(a) The state of Washington has a statute, RCW 19.100.180 which may supersede the Development Agreement in the Developer's relationship with the Franchisor, including the areas of termination and renewal of the Development Agreement. Court decisions may exist which also may supersede the Development Agreement in the Developer's relationship with the Franchisor, including the areas of termination and renewal of the Development Agreement.

(b) In any arbitration involving the Development Agreement, the arbitration site shall be either in the State of Washington, in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

(c) In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

(d) A release or waiver of rights executed by the Developer shall not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the Development Agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims



under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

(e) Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

3. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Development Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**DEVELOPER:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

## **ADDENDUM TO CAPTAIN D'S FRANCHISE AGREEMENT - WASHINGTON**

Captain D's, LLC (the "Franchisor") and the undersigned (the "Franchisee") enter into this Addendum to that certain Franchise Agreement dated \_\_\_\_\_, \_\_\_\_\_, between the Franchisor and the Franchisee.

### **WITNESSETH:**

Whereas, the Franchisor and the Franchisee wish to enter into a Franchise Agreement for the operation of a Captain D's franchised restaurant subject to the laws of the state of Washington; and

Whereas, the Washington Department of Financial Institutions has required the Franchisor to modify certain provisions of the Franchise Agreement as a condition to an exemption from registration of the Franchisor's franchise.

Now, therefore, for and in consideration of the covenants and agreements set forth in this Addendum and in the Franchise Agreement, the parties hereby agree as follows:

1. Payments. In lieu of an impound of franchise fees, the Franchisor will not require or accept the payment of any initial franchisee fees until the Franchisee has (a) received all pre-opening and initial training obligations that it is entitled to under the Franchise Agreement or Franchise Disclosure Document and (b) is open for business.

2. Miscellaneous Provisions. The following provisions shall apply:

(a) The state of Washington has a statute, RCW 19.100.180 which may supersede the Franchise Agreement in the Franchisee's relationship with the Franchisor, including the areas of termination and renewal of the Franchise Agreement. Court decisions may exist which also may supersede the Franchise Agreement in the Franchisee's relationship with the Franchisor, including the areas of termination and renewal of the Franchisor Agreement.

(b) In any arbitration involving the Franchise Agreement, the arbitration site shall be either in the State of Washington, in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

(c) In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

(d) A release or waiver of rights executed by the Franchisee shall not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the Franchise Agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

(e) Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

32. Other Provisions. Except as expressly modified by this Addendum, all of the other provisions of the Franchise Agreement shall remain in full force and effect.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**FRANCHISEE:**

\_\_\_\_\_

**FRANCHISOR:**

CAPTAIN D'S, LLC

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

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

## **Exhibit H**

### **Computer Software and Hardware Agreement**

## **COMPUTER SOFTWARE AND HARDWARE AGREEMENT**

Captain D's, LLC (the "Company") and the undersigned (the "Customer") enter into this Computer Software and Hardware Agreement (this "Agreement") as of the Effective Date for the locations listed on Exhibit A to this Agreement.

1. Definitions. Unless the context of their use in this Agreement clearly indicates otherwise, all terms used in initially-capitalized form shall have the following definitions:

(a) "Computer Software" shall mean the software programs identified on Exhibit B to this Agreement, including all modifications and updates to the programs designated or approved by the Company.

(b) "Computer Hardware" shall mean the computer equipment and devices identified on Exhibit C to this Agreement, including all upgrades, replacements, additions and accessories designated or approved by the Company.

(c) "Delivery Date" shall mean the dates listed on Exhibit A to this Agreement as when the Customer intends to have the Captain D's restaurants at the locations listed on Exhibit A to this Agreement ready to accept the installation of the Computer Software and Computer Hardware.

(d) "Effective Date" shall mean the date set forth immediately below the signature block on this Agreement for the Company.

(e) "Hardware Maintenance Services" shall mean the hardware maintenance services performed by the Company under the terms of this Agreement.

(f) "Software Maintenance Services" shall mean the software maintenance and related services performed by the Company under the terms of this Agreement.

(g) "IS Services" shall mean collectively the Hardware Maintenance Services and the Software Maintenance Services.

2. Computer Hardware and Computer Software. The Customer hereby agrees to purchase the Computer Hardware and Computer Software listed on Exhibit C to this Agreement for the amount set forth on that exhibit. On or before each applicable Delivery Date, the Company shall install the Computer Hardware at the specified location covered by this Agreement. The Customer shall pay the specified amount for the Computer Hardware, plus any additional equipment received from the Company during the installation of the Computer Hardware, after the opening of the Customer's restaurant within five business days after receipt of a written invoice for the specified amount for the Computer Hardware and additional equipment, if any.

3. Telecommunications Equipment and Software. On or before the Delivery Date, the Customer shall have purchased and installed, in the Captain D's seafood restaurant at each location covered by this Agreement, communication equipment and software that allows remote access to the Computer Software and Computer Hardware acceptable to the Company for polling, diagnostic services, file transfers, and other remote activities reasonably necessary for the Company to perform its obligations under this Agreement. In that regard, the Customer shall use the communications equipment and services as indicated on Exhibit C to this Agreement. The Company shall arrange for the installation of the communications equipment (if not already installed) and the provision of communication services at the same time it installs the Computer Hardware and the Computer

Software. The Company shall provide the foregoing telecommunication services itself or through arrangements with a third party service provider (the "Service Provider").

4. License of Computer Software. Subject to the terms and conditions of this Agreement, the Company hereby grants or assigns, as applicable, to the Customer a non-exclusive, non-transferable license to use each component part of the Computer Software at the locations covered by this Agreement. The Company may modify and update the Computer Software in its sole discretion. The Company shall not charge the Customer for the initial license of the Computer Software nor for any fixes, modifications or updates that the Company makes to the Computer Software, except as set forth on Exhibit B to this Agreement. All right, title and interest (including all copyrights and other intellectual property and proprietary rights) in the Computer Software proprietary to the Company (in both print and machine-readable form) shall belong to the Company. The Customer shall not acquire any proprietary interest in the Computer Software and shall not take any action that might jeopardize the Company's proprietary rights or might result in the Customer's acquisition of any rights in the Computer Software beyond the license granted by this Agreement. The Customer shall not install any software or hardware in the Computer Software and/or the Computer Hardware without the prior written approval of the Company. The Customer shall not apply any process or technique to the Computer Software for the purposes of ascertaining the object code or source code for the Computer Software. The Customer hereby accepts the assignment of the license to use the software licensed to the Company by xpient Solutions, Inc. ("Xpient"), subject to all of the terms and conditions of the Software License Agreement attached as Exhibit D to this Agreement (the "Xpient Agreement"). The Customer shall perform all of the licensee's obligations set forth in the Xpient Agreement that apply to the Customer's specific license assigned to it and otherwise shall comply with all of the terms of the Xpient Agreement that apply to the Customer's specific license assigned to it.

5. IS Services. During the term of this Agreement, the Company will provide the Customer with telephone support troubleshooting the Computer Software and the Computer Hardware for the Customer's point-of-sale system and/or computer-based training system at the locations listed on Exhibit A to this Agreement, including the following services:

(a) The Company shall provide full-time telephone support except on Thanksgiving Day and Christmas Day. The Customer's qualified representative shall notify the Company immediately of any problems or errors and provide the Company with all information reasonably required for the Company to provide the requested support.

(b) The Company shall provide the Customer with fixes, modifications and updates to the Computer Software which the Company approves for distribution to its franchisees.

(c) The Company shall provide polling services each night.

(d) The Company shall provide the Customer with tax table changes, as necessary, upon the Customer's request.

(e) The Company shall pull purchasing orders from the Customer's approved distribution company if and as long as the Customer is a member of Captain D's Purchasing Cooperative, Inc. or its successor.

(f) The Company shall perform credit and debit card processing services for the Customer if the Customer sets up its credit and debit card acceptance processing through the Company's point-of-sale system. The Customer authorizes the transmission of information

and correspondence by and between the Company and the Company's credit and debit card processing companies and authorizes the Company's credit and debit card processing companies to rely on the information submitted by the Company on the Customer's behalf for the processing, authorization and settlement of the Customer's credit and debit card transactions.

(g) The Company shall provide the Customer with connectivity support services.

6. Hardware Maintenance Services. Upon the Company's determination that any Computer Hardware requires Hardware Maintenance Services, the Company shall send replacement Computer Hardware to the Customer that is substantially similar or performs substantially the same function via next business day overnight delivery. If the Company instructs the Customer to send the replaced Computer Hardware to the Company, the Customer shall send the replaced Computer Hardware to the Company within 30 days. If the Customer receives new Computer Hardware, the Company shall charge the customer for the replacement cost of new Computer Hardware, as well as the Company's shipping costs. If the Customer receives refurbished Computer Hardware, the Company shall charge the Customer for the repair costs of the Computer Hardware (if the Company receives the replaced Computer Hardware as requested), as well as the Company's shipping costs. If the Company does not receive the replaced Computer Hardware as requested, the Company shall charge the Customer for the replacement cost of the Computer Hardware and its shipping costs. The Customer shall have responsibility for all network and telephone cabling repairs and replacements and for all communications equipment service calls that the Customer orders or asks that the Company order from the Service Provider.

7. Rates, Invoices and Payments. The Company shall charge the Customer for the IS Services provided the Customer under this Agreement pursuant to the rates set forth on Exhibit E to this Agreement. The Company shall debit the Customer's account for IS Services monthly for each restaurant location covered by this Agreement on the first business day of each calendar month. The parties shall prorate the rates for any partial month during the term of this Agreement. The Company shall render invoices for Hardware Maintenance Services on a weekly basis. The Company shall debit the Customer's account for Hardware Maintenance Services on a business day not less than 48 hours after the Company gives the Customer written notice of the amount and scheduled date for the debit (which notice the Company may transmit to the Customer's telecopy number specified in Section 29 of this Agreement). The Customer shall execute, deliver and maintain in effect a properly-completed Authorization Agreement for Pre-authorized Payments in the form attached as Exhibit F to this Agreement for the foregoing payments. The Company shall render invoices for any other goods and services provided to the Customer, and the Customer shall pay those invoices within 30 days after the date of the invoice or, if earlier, the due date set forth on the invoice. The Company shall have the right to increase the monthly service fees payable under this Agreement upon at least 60 days' prior written notice to the Customer. In addition, the Company shall have the right to charge the Customer, without mark-up, for the amount of any increase in the fees or charges imposed on the Company by the Service Provider and reasonably allocable to the communication services provided to the Customer pursuant to the terms of this Agreement.

8. Term and Termination. The term of this Agreement shall commence on the Effective Date, shall remain in effect for an initial period ending on the first June 30th after the Effective Date and, thereafter, shall renew on a year-to-year basis unless either party gives written notice of its termination to the other party at least 60 days prior to the end of the then current term. Either party may terminate this Agreement at any time during its then current term if the other party breaches any term or condition of this Agreement and fails to cure the breach within 30 days after receipt of written notice of the breach. In addition, the Customer may terminate this Agreement as set forth in Section 7, above, and the Company may terminate this Agreement as it relates to any specific location upon the expiration or termination of the Captain D's License Agreement or Franchise Agreement for that location.

9. Exclusions from IS Services. Notwithstanding anything in this Agreement to the contrary, the IS Services provided to Customer by the Company shall not include the following services:

(a) Electrical work external to the Computer Hardware, including network cabling, telephone equipment, and connectivity equipment;

(b) Menu support beyond adding chain-wide promotion items, company-approved test menu items, and a reasonable number of requests for price changes;

(c) Repair of damage caused by (1) any cause external to the Computer Hardware adversely affecting its operability or serviceability, including (without limitation) fire, flood, water, wind, lightning and transportation; (2) the neglect or misuse of the Computer Hardware; (3) the failure to provide a suitable installation and operating environment, including (without limitation) the failure to provide adequate electrical power, air conditioning, or humidity control; (4) the improper use of the Computer Hardware; or (5) the use of the Computer Hardware for a purpose other than its designed purpose;

(d) Physical or specification changes, relocations, or additions or removals of accessories, attachments or other devices;

(e) Maintenance services to the extent impractical to render because of alterations in the Computer Hardware or its connection to another device;

(f) System engineering services, programming, or operations procedures of any type;

(g) Furnishing supplies or accessories, painting or refurbishing the Computer Hardware, furnishing material that would result in a specification change, performing services connected with the relocation of Computer Hardware, or adding or removing approved accessories, attachments or other devices except as set forth in this Agreement;

(h) Program changes, program modifications, new system designs, or estimates for any of those items;

(i) Replacement of files or repairs necessitated by use of unapproved products, accident, abuse or services not provided by the Company;

(j) Hardware Maintenance Services necessitated by someone other than an authorized Company representative modifying or tampering with the Computer Hardware, the Computer Software, data files, text files, or operating system;

(k) Maintenance Services necessitated by acts of nature or any other event or circumstance beyond the Company's reasonable control;

(l) Verification or validation of the accuracy of any data appearing in the system or as a by-product of the system (even if converted by the Company);

(m) Problems which the Customer could have prevented by implementing a distributed fix or update; and



(n) Problems resulting from the Customer's failure to meet its responsibilities for maintaining the Computer Software and/or the Computer Hardware.

If the Company agrees to provide any of the foregoing excluded services, the Company will charge the Customer for those services at its time and expense rates in effect at the time it renders the services. The Company will render invoices and debit the Customer's account for those services in the same manner as provided in Section 7 of this Agreement for Hardware Maintenance Services.

10. Conditions of Service. The Company shall not have any obligation to furnish IS Services under this Agreement unless (a) the Customer is using the most recent version of the Computer Software released to the Customer, including all fixes, updates and modifications approved and required by the Company; (b) the Customer is using communications equipment and software that allows remote access to the Computer Software and Computer Hardware acceptable to the Company for polling, diagnostic services, file transfers, and other remote activities reasonably necessary for the Company to perform its obligations under this Agreement; (c) the Customer has not made any modifications, updates or changes in the configuration of any of the Computer Software and/or Computer Hardware not approved in writing by the Company; and (d) the Customer has paid all amounts owed the Company under this Agreement.

11. Limitation of Warranty and Liability. The Company represents and warrants that it has the right and authority to sell the Computer Hardware sold to the Customer by the Company, to allow the Customer to use the communications equipment, and to license or assign each component part of the Computer Software to the Customer in accordance with the terms of this Agreement. The Company disclaims all other warranties, whether express or implied, including any warranty of merchantability or fitness for a particular purpose. To the extent assignable, the Company hereby assigns to the Customer all manufacturer's warranties relating to the Computer Hardware sold to the Customer by the Company. The Company shall not have any liability for any loss, injury, claim, liability or damage of any kind whatsoever resulting in any way from (a) any defects or malfunctions in the Computer Hardware; (b) the content of, errors in, or omissions from the Computer Software; (c) the unavailability or interruption in availability of any component part of the Computer Hardware or Computer Software; (d) the Customer's use of the Computer Hardware or Computer Software; or (e) or any delay or failure in performance beyond the Company's reasonable control. Without limiting the foregoing, the Company shall not have any liability for any loss of profits or for special, indirect, incidental, consequential or punitive damages of any kind whatsoever (including, without limitation, attorneys' fees and costs) in any way caused by, resulting from, or arising out of the Computer Hardware or the Computer Software. The Company's liability to the Customer under this Agreement, if any, shall not exceed the total amount paid to the Company by the Customer under this Agreement during the last three months in which the Customer made payments to the Company under this Agreement.

12. Indemnification. The Customer shall indemnify and hold the Company and its members, managers, officers, employees and agents harmless from and against any and all claims, causes of action, and damages arising out of any breach by the Customer of this Agreement or the negligent, reckless or willful misconduct of the Customer or its employee or agents. If the Customer sets up its credit and debit card acceptance processing through the Company's point-of-sale system, the Customer waives and releases the Company's credit and debit card processing companies from all claims, causes of action and damages which the Customer may have against them related to the use of the information or correspondence transmitted by and between the Company and them. In addition, the Customer shall indemnify and hold the Company's credit and debit card processing companies harmless from and against any and all claims, causes of action, and damages the Customer may have against them related to the use of the information or correspondence transmitted by and between the Company or any breach of confidentiality or information security by the Company related to information supplied by the Customer for its credit or debit card transactions, whether asserted or unasserted.

13. Confidentiality Agreement. The Customer shall maintain the Computer Software, all information related to the Computer Software, and any other information provided to the Customer designated by the Company as confidential (the "Confidential Information") in strict confidence and shall not disclose any of that Confidential Information to any person other than employees or agents of the Customer with a need to know and who agree to the terms of this Section 13. If any person serves a subpoena or other legal process concerning the Confidential Information while in the Customer's possession, the Customer shall give the Company written notice of that fact and shall cooperate with the Company, at the Company's expense, in any lawful effort by the Company to contest the legal validity of the subpoena or other legal process. The Customer shall use its reasonable efforts to give the Company written notice of any circumstances in which it has actual notice of any access, possession or use of the Confidential Information not authorized by this Agreement. The Customer shall not use the Confidential Information for any purpose other than in order to operate the restaurants at the locations covered by this Agreement. The Customer shall pay to the Company any compensation realized by it resulting from its breach of this Section 13.

14. Customer Data. The Company shall maintain all data relating to the Customer's Captain D's seafood restaurants which the Company receives or to which it has access solely as a result of this Agreement in strict confidence and shall not disclose any of that data to any person other than the Company's employees, officers or directors (or equivalent), except (a) to the extent reasonably related to the performance of its obligations under this Agreement, (b) pursuant to the Customer's written consent, (c) to the extent necessary to comply with any applicable law, subpoena or other legal process, or (d) to the extent reasonably related to the promotion of the Company's business and, then, only to persons with a need to receive the data and who agree to keep the data strictly confidential in accordance with the terms of this Section 14. The Customer specifically acknowledges and agrees that the Company shall have the right to access and use the foregoing data in order to monitor the operations and performance of the Customer's Captain D's seafood restaurants.

15. Compliance with Laws. Any use, duplication or disclosure by or to the United States Government of the Computer Software shall take place subject to the terms of this Agreement and as unpublished, copyrighted, trade secret, proprietary data with restricted rights pursuant to applicable law. The Customer shall comply with all applicable laws, rules and regulations relating to computer software, including the export regulations of the United States Department of Commerce, Bureau of Export Administration. The Customer shall not export the Computer Software and shall not permit any other party to export the Computer Software, whether in whole or in part, directly or indirectly, to any foreign country or foreign national (wherever located).

16. Taxes. The Customer shall pay all taxes of every kind and nature, other than income taxes, levied or imposed by reason of either party's performance under this Agreement. If the Company pays any of the foregoing taxes on behalf of the Customer, the Customer shall reimburse the Company. If the law requires the Customer to deduct any of the foregoing taxes from amounts payable to the Company under this Agreement, the Customer shall pay the additional amounts necessary to have the Company receive the net amount it otherwise would receive under this Agreement.

17. Nature of Relationship. The Customer constitutes and shall constitute an independent contractor and this Agreement shall not create any partnership or other type of business relationship between the Customer and the Company.

18. Waiver. The failure of a party to insist in any one or more instances on the performance of any term or condition of this Agreement shall not operate as a waiver of any future performance of that term or condition.

19. Governing Law. Notwithstanding the place where the parties execute this Agreement, the internal laws of Tennessee shall govern the construction of the terms and the application of the provisions of this Agreement. The federal and state courts in the county in which the Company then has its principal executive offices shall constitute the proper, sole and exclusive venue and forum for any action arising out of or in any way related to this

Agreement. Each party to this Agreement hereby consents to any of those court's exercise of personal jurisdiction over the party in that type of action and expressly waives all objections the party otherwise might have to that exercise of personal jurisdiction.

20. Construction. The parties acknowledge that each party and/or its legal counsel have reviewed this Agreement. The rule of construction requiring the resolution of any ambiguities in this Agreement against the drafting party shall not apply to the construction of this Agreement.

21. Third Party Rights. This Agreement shall not create any rights in any third parties unless otherwise expressly stated in this Agreement as intended to create those rights.

22. Resolution of Disputes. The Customer and the Company shall resolve any controversy between the Customer and the Company (including any affiliate of the Company and any director, limited liability company manager, officer, employee or agent of the Company or any affiliate of the Company) and relating to or arising out of this Agreement (including any claim that any part of this Agreement is invalid, illegal or otherwise void or voidable) pursuant to the arbitration provisions set forth in the most recent Captain D's License Agreement or Franchise Agreement between the Customer and the Company.

23. Entire Agreement. This Agreement constitutes the entire agreement of the parties with regard to the subject matter of this Agreement and replaces and supersedes all other written and oral agreements and statements of the parties relating to the subject matter of this Agreement.

24. Headings. The headings used in this Agreement appear strictly for the parties' convenience in identifying the provisions of this Agreement and shall not affect the construction or interpretation of the provisions of this Agreement.

25. Binding Effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors, legal representatives, heirs and permitted assigns.

26. Severability. If a court of competent jurisdiction holds any provision of this Agreement invalid or ineffective with respect to any person or circumstance, the holding shall not affect the remainder of this Agreement or the application of this Agreement to any other person or circumstance. If a court of competent jurisdiction holds any provision of this Agreement too broad to allow enforcement of the provision to its full extent, the court shall have the power and authority to enforce the provision to the maximum extent permitted by law and may modify the scope of the provision accordingly pursuant to an order of the court.

27. Amendments. No amendments to this Agreement shall become effective or binding on the parties, unless agreed to in writing by all of the parties.

28. Time. Time constitutes an essential part of each and every part of this Agreement.

29. Notice. Except as otherwise provided in this Agreement, when this Agreement makes provision for notice or concurrence of any kind, the sending party shall deliver or address the notice to the other party by hand delivery, certified mail, or delivery via a nationally-recognized overnight delivery service, charges prepaid and properly addressed, to the following address or by telecopy to the following telecopy number:

The Company:

Help Desk Service Center  
Captain D's, LLC  
624 Grassmere Park Drive, Suite 30  
Nashville, Tennessee 37211  
Telecopy Number: (615) 231-2798

The Customer:

To the address or telecopy number  
set forth below.

All notices pursuant to the provisions of this Agreement shall run from the date that the other party receives or refuses delivery of the notice or three business days after the party places the notice in the United States mail. Each party may change the party's address by giving written notice to the other parties.

30. Assignment. The Customer shall not have the right to assign this Agreement or any of its rights under this Agreement to any other person without the prior, written consent of the Company.

31. Survival. The provisions of Sections 11, 12, 13, 14 and 22 shall survive the termination of this Agreement for any reason.

32. Injunctive Relief. The Customer acknowledges that the Company's remedy at law for any breach of any of the Customer's covenants under Sections 4 and 13 of this Agreement would not constitute an adequate remedy at law and, therefore, the Company shall have the right to obtain temporary and permanent injunctive relief in any proceeding brought to enforce any of those provisions, without the necessity of proof of actual damages. However, nothing in this Section 32 shall prevent the Company from pursuing separately or concurrently one or more of any other remedies available at law.

33. Legal Fees. The prevailing party to any legal action to enforce the provisions of this Agreement shall have the right to an award of its reasonable attorneys' fees and costs incurred in connection with the action.

34. Counterparts. The parties may execute this Agreement in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

Executed as of the day and year first set forth above.

**THE CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO ITS TERMS AND CONDITIONS. THE CUSTOMER ALSO AGREES THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.**

The Company:

Captain D's, LLC

By: \_\_\_\_\_  
(Vice) President

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

The Customer:

\_\_\_\_\_

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

Street Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Telecopy: \_\_\_\_\_

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

Contract Number: \_\_\_\_\_

**EXHIBIT A**

**Locations**

**Store Number**

**Address**

**City**

**State**

**Delivery Date**

## **EXHIBIT B**

### **Computer Software**

#### **Point-of-sale and Computer-based Training Software**

Xpient Software License  
QSR Software License  
Captain D's Back Office Software

#### **Operating System Software**

The Customer shall pay or reimburse the Company for the cost of all required copies of Windows XP.

## EXHIBIT C

### Computer Hardware

## POS Equipment Quote

Prepared by D's Information Services for New Restaurants (Updated 03.01.2019)



Number of POS Registers: 4

Number of KDS displays: 4

Date Prepared:

Prepared by: Brandon Parrish

Data Administrator

(615) 231-2489

### Overview

This quote is divided into 3 sections: base system, secured connectivity, and the kitchen display system. Note that further expenses may be incurred with miscellaneous needs at the time of installation such as cable ties, tubing, etc. As additional parts are needed, we will inform you before proceeding.

### Base POS System

Item	Qty	Price	Ext. Price
<b>POS Station (total 4)</b>			
1042 Cash drawer and Till w/pop cable	4	\$ 160	\$ 640
1133 Magnetic card reader (ELO USB)	4	\$ 60	\$ 240
1024 Touchscreen monitor	4	\$ 555	\$ 2,220
1134 Receipt printer (Cognitive)	4	\$ 216	\$ 864
1083 Bar code scanners	4	\$ 245	\$ 980
1111 Cable - Bar Code Scanner (USB)	4	\$ 28	\$ 112
1113 Register CPU (Logic)	4	\$ 570	\$ 2,280
1062 Swipe card bundle - 10 red	5	\$ 12	\$ 60
1063 Swipe card bundle - 25 white	5	\$ 30	\$ 150
		\$	<b>7,546</b>
<b>Back Of House</b>			
1143 17" monitor - office and tpc	2	\$ 150	\$ 300
1158 Flatbed document scanner (300 series)	1	\$ 120	\$ 120
1044 Keyboards	2	\$ 25	\$ 50
1045 Mouse	2	\$ 25	\$ 50
1144 Back Office Brother Laser	1	\$ 210	\$ 210
1153 Training PC (Logic)	1	\$ 1,300	\$ 1,300
1152 Back Office (Logic)	1	\$ 1,300	\$ 1,300
		\$	<b>3,330</b>
<b>Misc</b>			
1151 Network switch/Hub 16-port (Cisco Managed Switch)	1	\$ 175	\$ 175
1149 UPS (Managed APC)	1	\$ 320	\$ 320
1150 Power - 6 outlet surge protector for the UPS (APC) uni	2	\$ 22	\$ 44
1002 Xpient Software License	1	\$ 2,000	\$ 2,000
1155 Adapter - HDMI to VGA (M to F)	1	\$ 10	\$ 10
		\$	<b>2,549</b>
<b>Total POS Hardware w/o KDS</b>			<b>\$ 13,425</b>



## Secured Connectivity

Item	Qty	Price	Ext. Price
DSL provisioning by Cybera	0	\$ 950	\$ -
(Internet connectivity is provided by customer. Captain D's supplies the secure connection to run credit and gift ca			
DSL SecureLink only (Owner provides DSL/Cable)	1	\$ 425	\$ 425
Embedded Wireless Module and On-Box Antenna Kit	1	\$ 175	\$ 175
			<b>\$ 600</b>

## Kitchen Display System

Item	Qty	Price	Ext. Price
1101 Mount - Qbracket kit for KDS (With bump)	5	\$ 190	\$ 950
1025 KDS Bump Bar	4	\$ 201	\$ 804
1026 KDS EPIC controller	4	\$ 403	\$ 1,612
1102 KDS xCeed Controller	1	\$ 495	\$ 495
1143 17" display for KDS	4	\$ 150	\$ 600
1143 17" display for KDS (extra - will be sent back if not used)	1	\$ 150	\$ 150
1143 17" Quarterback Display	1	\$ 150	\$ 150
1016 VGA Splitter for Quarterback	1	\$ 20	\$ 20
1104 Display - Summary Screen 32"	1	\$ 204	\$ 204
1134 Receipt printers	2	\$ 216	\$ 432
1031 Display Mount - Swing Arm	5	\$ 90	\$ 450
1138 Cable - 10" 3m serial Cable - M/F	2	\$ 12	\$ 24
1136 Display Mount - Wheel Summary	1	\$ 55	\$ 55
1001 QSR Software License	1	\$ 560	\$ 560
<i>Total KDS Hardware</i>			<b>\$ 6,506</b>

## Order Confirmation System

Item	Qty	Price	Ext. Price
Hyperview Display Kit	1	\$ 3,600	\$ 3,600
Hyperview Hardware Kit	1	\$ 700	\$ 700
Hyperview Outside Pedestal (If no DT canopy ordered only)	1	\$ 775	\$ 775
1143 17" monitor for inside display	1	\$ 150	\$ 150
<i>Total Order Display Hardware</i>			<b>\$ 5,225</b>

## Total Package

Item	Qty	Price	Ext. Price
Base system	1	\$ 13,425	\$ 13,425
Secured Connectivity	1	\$ 600	\$ 600
Kitchen Display System	1	\$ 6,506	\$ 6,506
Order Confirmation System	1	\$ 5,225	\$ 5,225
<b>Total Hardware Package</b>			<b>\$ 25,756</b>

\*\* Customer may opt to find a better deal for the wheel summary display. The larger the display the better. VGA only.

\*\*\* Pricing may vary depending on the best solution for mounting the Wheel Summary and KDS monitors for best viewing on the cook's line

\* Out-of-pocket expenses include food, gas, and lodging for installer.

\*\* Labor includes the trip, installation, and training time for the installer only.

The foregoing amounts may change as a result of agreed additions and deletions in accordance with Section 2 of the Agreement.

### Other Provisions

The Customer shall complete all electrical work and network cabling prior to the Delivery Date. The Customer shall contact the Help Desk for the required specifications for that work and cabling.

Warranty for the hardware is for 90 days.

## **EXHIBIT D**

### **SOFTWARE LICENSE AGREEMENT**

This Software License Agreement (this "License Agreement") between Captain D's, LLC ("Customer") and xpiet Solutions, LLC ("XPIENT") sets forth the additional terms and conditions applicable to the software license to use XPIENT Software granted to Customer by XPIENT. Unless otherwise defined herein, all capitalized terms shall have the meanings assigned to them in the Master Customer Agreement which includes the general terms and conditions applicable to this License Agreement and is incorporated by reference herein.

This Agreement shall be effective as of date accepted by XPIENT below. XPIENT and Customer agree to the terms and conditions set forth herein and have caused this Agreement to be executed by their duly authorized representatives.

ACCEPTED by xpiet Solutions, LLC

ACCEPTED by Captain D's, LLC:

xpiet Solutions, LLC

Captain D's, LLC

By: /s/ Christopher Sebes

By: /s/ Matthew G. Gloster

Title: Chief Executive Officer

Title: Vice President of Administration

Effective Date: December 16, 2004

Date: December 14, 2004

**1. LICENSE GRANT.** Subject to the terms and conditions of this License Agreement, XPIENT hereby grants to Customer and Customer hereby accepts from XPIENT, a non-transferable, non-exclusive license to use the Software identified on Schedule 1, attached hereto and incorporated by reference herein, and related user documentation at the locations specified in Schedule 1 (the "Licensed Site(s)"). The License granted herein shall be effective as of the date of the installation of the XPIENT Software at the Licensed Site (the "Effective Date"). The Third Party Software is licensed to Customer only pursuant to: (a) shrink wrapped or other agreements between the third party vendor and Customer and/or XPIENT, and (b) the specifically indicated terms and conditions in this License Agreement.

### **2. RESTRICTIONS ON USE.**

(a) Customer's rights to the XPIENT Software are expressly limited to the use of the XPIENT Software at the Licensed Site(s). Customer shall be exclusively responsible for the supervision, management, operation and control of its use of the XPIENT Software and Customer shall be exclusively responsible for its selection of the XPIENT Software to achieve Customer's intended results and for the results obtained there from. Unless otherwise approved by XPIENT in writing, Customer shall only permit its employees and authorized third party consultants to use the XPIENT Software at the Licensed Site(s) and such use shall be subject to the restrictions and requirements of Section 5 herein.

(b) Customer agrees not to reverse engineer, reverse compile, decode, de-compile or disassemble the XPIENT Software in any manner or form and will not itself, or permit others to, create or attempt to create, by reverse engineering, reverse compiling, decoding, de-compiling, disassembling or otherwise, the source programs or any other part therefrom from the object programs or from other information made available from XPIENT to Customer under this Agreement or otherwise (whether oral, written, tangible or intangible). Customer shall not modify, alter, adapt or translate the XPIENT Software, or any portion thereof, in any manner or form without the prior written consent of XPIENT. Customer acknowledges that the XPIENT Software is protected under copyright and contains proprietary information that is protected by copyright laws, intellectual property laws, international treaty provisions and other applicable laws.

(c) Customer may not copy, reproduce or duplicate the XPIENT Software, any tangible media containing the XPIENT Software, the XPIENT Software specifications and/or any supporting documentation thereof, in any manner or form, in whole or in part, except to make a reasonable number of back-up copies of the XPIENT Software for archival purposes only. Customer acknowledges and understands that it may not and will not operate any additional copies of the XPIENT Software without the prior written approval of XPIENT. Customer shall prevent, and not permit, any third parties from copying, reproducing or duplicating the XPIENT Software, specifications and supporting documentation. Customer's violation of any provisions of this Section 2 shall constitute a material breach of this Agreement, misappropriation of XPIENT's intellectual property rights and copyright infringement.

**3. LICENSE FEES.** Customer shall pay to XPIENT the license fees set forth in Schedule 1 attached hereto in accordance with the terms set forth therein.

4. **TRANSFER FEE.** In the event that Customer sells any of its Licensed Sites, the License may be assignable and/or transferable, at XPIENT's sole discretion, and provided that the assignee or transferee agrees to execute a new Master Customer Agreement and License Agreement and pays a contract services fee of five hundred dollars (\$500.00) per Licensed Site to XPIENT.

5. **CONFIDENTIALITY.** Customer acknowledges that the XPIENT Software is a confidential and proprietary product and process, that it embodies valuable trade secrets of XPIENT and that XPIENT has certain intellectual property rights in and to the XPIENT Software including, but not limited to, patents, copyrights, trade secrets, trademarks and service marks. Customer agrees to retain and treat the XPIENT Software, XPIENT Software specifications and all supporting documentation in confidence, and shall not provide, disclose or otherwise make available the XPIENT Software, or any part thereof, in any form to any person or entity, other than its employees or authorized third party consultants, without the prior written consent of XPIENT. Customer shall prevent and not allow any of such information or materials to be disclosed, used, sold, assigned, leased, sub-licensed, commercially exploited or marketed in any way or matter by Customer or its employees, agents or representatives to any third parties. Customer shall use its best efforts to safeguard the confidentiality of the XPIENT Software, shall take steps to advise its employees of the confidential nature of the XPIENT Software and will ensure that they abide by the restrictions and requirements of this Section 5. Notwithstanding the foregoing, Customer, when it utilizes third party consultants in connection with Customer's use of the XPIENT Software, agrees that (i) any such consultant will sign and agree to be bound by a non-disclosure agreement in a form of Schedule 2 attached hereto, and (ii) consultants shall utilize the XPIENT Software at the Licensed Site and shall utilize the XPIENT Software on Customer's equipment. Customer agrees to ensure that any third party consultants which are provided with confidential information under the terms of this Agreement abide by and conform to both the terms of this Agreement and of any non-disclosure agreements executed by such third parties. Further, Customer shall immediately advise XPIENT of any suspected breaches by such third parties.

6. **WARRANTIES**

(a) XPIENT warrants that the XPIENT Software will perform substantially in accordance with XPIENT's then current published specifications for a period of ninety (90) days after proper installation at a Licensed Site in an environment which conforms with XPIENT's then-current published specifications. XPIENT also warrants that any updates, enhancements or future versions provided to Customer under this License Agreement shall substantially conform to XPIENT's then current published specifications. XPIENT does NOT warrant any XPIENT Software used inconsistently with the purpose originally intended and does not warrant that the operation of the XPIENT Software will be uninterrupted or error free.

(b) In the event Customer advises XPIENT in writing within said ninety (90) day period of any breach of the software warranties set forth in this License Agreement, Customer's exclusive remedy shall be for XPIENT to repair or replace, at no additional charge to Customer, any portion of the XPIENT Software found to be defective; provided, however, that if within a commercially reasonable period XPIENT neither corrects or replaces the defective portion of the XPIENT Software, then Customer's exclusive remedy shall be to receive direct damages not to exceed the license fees paid to XPIENT for use of the defective portion of the XPIENT Software.

(c) XPIENT shall bear no responsibility for correcting, curing, replacing or otherwise remedying any nonconformity or defect in the XPIENT Software (or any other breach with respect to the condition or operation of the XPIENT Software) if (1) the XPIENT Software is not properly installed (unless installed by XPIENT); (2) the XPIENT Software is not maintained and operated under normal conditions by trained or skilled personnel; (3) the XPIENT recommended or certified Hardware incorporates spare or replacement parts other than those purchased from XPIENT (unless the parts are identical replacements or spares of the original equipment or those installed by XPIENT); (4) the XPIENT Software and/or XPIENT provided or, recommended or certified Hardware has been subjected to disassembly, modification, enhancement, (other than by skilled personnel authorized by the manufacturer or XPIENT), abuse, or misuse; (5) the nonconformity or defect (or other breach with respect to the condition or operation of the XPIENT Software) has not been reported to XPIENT; (6) the nonconformity or defect (or other breach with respect to the condition or operation of the XPIENT Software) has arisen as a result of damage to the XPIENT Software and/or Hardware occurring subsequent to delivery thereof to the Licensed Site, unless, in any such case, such event or condition directly results from the fault or negligence of XPIENT; (7) non-XPIENT certified third party software or hardware is added to or operated in conjunction with the XPIENT Software; or (8) the XPIENT Software or any portion of the System is damaged or rendered unserviceable by acts or omissions of non-XPIENT personnel or moving or relocation not authorized by XPIENT. Customer shall fully reimburse XPIENT, on a time and materials basis, for time XPIENT spends investigating alleged problems which are determined by XPIENT, in XPIENT's sole discretion. not be to covered by the warranty set forth herein.

## **7. PROPRIETARY PROTECTION OF SOFTWARE**

(a) This License Agreement does not effect any transfer of title in the Software (or any materials furnished or produced in connection with the Software), including drawings, diagrams, specifications, input formats, source code, and user manuals. Customer acknowledges that (1) the XPIENT Software, and all materials furnished or produced in connection therewith, including but not limited to, the design, programming techniques, flow charts, source code, and input data formats, contains trade secrets of XPIENT, entrusted by XPIENT to Customer under the Master Customer Agreement and this License Agreement for use only in the manner expressly permitted hereby and (2) XPIENT holds all right, title and interest in and to all tangible and intangible intellectual property contained in the XPIENT Software, including all trade secrets, copyrights and other intellectual property rights pertaining thereto and Customer shall have only the limited, revocable right to use the XPIENT Software as set forth in this License Agreement. All modifications, adaptations, revisions, changes, enhancements, translations, abridgements, condensations, expansions, conversions, upgrades or additions made to the XPIENT Software and provided to Customer shall be the sole and exclusive property of XPIENT and shall be considered a part of the XPIENT Software, including all applicable rights to patents, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto. The XPIENT Software is protected by copyright and contains proprietary information protected by copyright laws, intellectual property laws, international treaty provisions and other applicable laws. Customer acknowledges that XPIENT owns all United States and international copyrights in the XPIENT Software and any portions thereof. Customer shall not do anything to infringe upon, harm or contest the validity of any intellectual property rights of XPIENT. Customer shall not remove, alter or obscure any proprietary or other legend or restrictive notice contained in or affixed to the Software or fail to reproduce them on all copies of the Software in any form. Any backup copy of the Software shall include all copyright and other intellectual property protection notices. The copyright and all other right, title and interest in and to the Software, shall at all times remain with XPIENT and its licensors.

(b) Customer shall protect the XPIENT Software, the User Materials and all other materials furnished or produced in connection with the XPIENT Software, as trade secrets of XPIENT, and Customer shall ensure that all Customer's personnel protect the XPIENT Software as trade secrets of XPIENT. Customer shall not, at any time, disclose such trade secrets to any other person, firm, organization, or employee that does not need (consistent with Customer's right of use hereunder) to obtain access to the XPIENT Software and the materials provided to Customer in connection with the XPIENT Software.

(c) The duties and obligations of Customer hereunder shall remain in full force and effect for so long as Customer continues to control, possess, or use the Software. Customer shall promptly return or provide proof of destruction of the Software, together with all materials furnished or produced in connection with the XPIENT Software, upon (1) termination for any reason of the Master Customer Agreement or Customer's License of the XPIENT Software or (2) abandonment or other termination of Customer's control, possession, or use of the Software. This provision shall not apply to pre-loaded Operating Software when provided with the Hardware by the Hardware manufacturer unless a sublicense is required by law or the Operating Software licensor.

## **8. DEFENSE OF CLAIMS/INFRINGEMENT.**

(a) XPIENT will defend any claim, suit or proceeding brought against Customer insofar as any such claim is based solely upon a claim that Customer's use of the XPIENT Software infringes a valid United States patent or copyright, provided that (i) Customer immediately provides XPIENT with written notice of any such claim and all matters relating to such a claim including, but not limited to, all documents and things associated with any such claim, (ii) Customer provides XPIENT with the full opportunity to control any response and defense to such a claim, (iii) Customer cooperates with all reasonable requests of XPIENT and provides XPIENT with complete assistance in defending any such claim including, but not limited to, the testimony of Customer's employees, if necessary, and (iv) Customer provides XPIENT with the sole and complete authority and discretion to defend, settle or compromise any such claim. XPIENT will not be responsible for any costs, expenses or compromises incurred by Customer without XPIENT's prior written consent and approval.

(b) If, in XPIENT's sole opinion, the XPIENT Software is likely to or does become the subject of claim for infringement of a United States patent or copyright, XPIENT at its option and expense may (i) elect to modify or replace the XPIENT Software, (ii) require Customer to return the XPIENT Software to XPIENT and provide Customer with a limited credit for Customer's use and termination of use of the XPIENT Software or (iii) procure from such third party an agreement to permit Customer to continue to use the XPIENT Software.

(c) XPIENT will not and shall not be liable to, and/or required to, indemnify Customer for any claim or action whatsoever based on: (a) any alleged or actual infringement of any intellectual property rights, if Customer modifies, alters, amends or otherwise changes the XPIENT Software in any way or manner or if any third party modifies, alters,



amends or otherwise changes the XPIENT Software at the direction or request of Customer; (b) use of the XPIENT Software in a manner not expressly authorized by this License Agreement or the Master Customer Agreement; (c) combining the XPIENT Software with other products (hardware or software), processes or materials where the alleged infringement would not exist but for such combination; or (d) where Customer continues the allegedly infringing activity after being notified thereof.

- (d) The remedies set forth in this Section 8 shall be Customer's sole and exclusive remedies for claims of infringement.

## **9. SOFTWARE MAINTENANCE**

(a) XPIENT shall provide Customer with Software Maintenance Service (as defined below) for the fee set forth in Schedule 1, which shall be prorated, as applicable, based on a full 12 month year. Software Maintenance Service begins immediately after the installation of the software at the customer's Licensed Site. Annually thereafter, Software Maintenance Service will be provided at XPIENT's standard prevailing rate or as otherwise set forth in Schedule 1 attached hereto.

(b) The Software Maintenance Service shall be defined to include (i) correction of out-of-warranty Software Defects, as determined by XPIENT and (ii) all Revisions and Updates (as such terms are defined below) to the XPIENT Software, on an as released basis and revised XPIENT Software documentation, if any, that corresponds to such Revisions or Updates. The words "Revisions" or "Updates" shall be defined as error corrections, modifications and all changes and/or improvements to the XPIENT Software relating to operating performance but do not alter the basic function of the XPIENT Software as determined by XPIENT. The Software Maintenance Service shall be provided for only the current version of the XPIENT Software and one prior version of the XPIENT Software for a period of up to eighteen (18) months following notification to Customer of withdrawal from marketing. Further, XPIENT shall have no obligation to provide Software Maintenance Service to Customer if the XPIENT Software: (i) is modified without XPIENT's written consent or (ii) used other than in accordance with the License Agreement or the Master Customer Agreement.

(c) Should XPIENT supply a New Version Upgrade (as defined below) or new module of the XPIENT Software, Customer shall have the option to upgrade to the New Version Upgrade at XPIENT's standard prevailing rate or as otherwise set forth in Schedule 1 attached hereto. The words "New Version Upgrade" shall be defined to mean software that incorporates a significant change in functionality, as determined by XPIENT.

(d) Following the Initial Software Maintenance Period, Software Maintenance Service shall automatically be renewed for successive additional periods of one (1) Contract Year (each a "Renewal Term"). In the event XPIENT elects to discontinue maintaining and supporting one or more version(s) of the XPIENT Software, XPIENT reserves the right to terminate the Software Maintenance Service for such discontinued version(s) upon one hundred twenty (120) days notice to Customer. Upon termination of the Software Maintenance Service, XPIENT shall have no further obligations to maintain or support the XPIENT Software.

(e) If Customer fails to pay the annual Software Maintenance fee, Customer shall not receive the Software Maintenance Service provided hereunder, and if Customer desires to reinstate such service in a subsequent year, Customer shall notify XPIENT in writing of its desire to reinstate such services and shall pay the previous yearly charge for each year not paid, plus any penalty charges as determined by XPIENT, as well as the current yearly charge.

(f) Additional support, including integration, installation, training, help desk support, consulting and professional services will be made available to Customer, upon Customer request and as agreed upon by XPIENT pursuant to the Services Agreement.

## **10. TERMINATION.**

(a) XPIENT may terminate this Agreement and License upon: (i) Customer's failure to pay XPIENT any charge, cost or other payment accruing hereunder, if such delinquency has not been corrected within 30 days after such payment is due; (ii) Customer's failure to perform any other term, condition or covenant in the Agreement, if such failure has not been corrected within 30 days after XPIENT has given Customer notice of such failure; (iii) notification by Customer or discovery by XPIENT that Customer has ceased using the XPIENT Software; and (iv) any act or event whereby Customer (1) is or becomes insolvent, (2) is or becomes a party to any bankruptcy or receivership proceeding or any similar action

affecting the financial condition or property of Customer, if such proceeding (if not filed or initiated by Customer) has not been dismissed within 30 days, or (3) makes a general assignment for the benefit of creditors.

(b) Upon termination of this Agreement, XPIENT may, in addition to other remedies which it may have, immediately take possession of the XPIENT Software and if any monetary obligation of Customer under this Agreement is outstanding, accelerate and declare all obligations of Customer to be immediately due and payable by Customer. If XPIENT elects to terminate this Agreement pursuant to this section, Customer agrees that within ten (10) days of the date of termination, it will certify in writing to XPIENT that it has taken all actions necessary to ensure that the original, and all copies of the XPIENT Software, in whole or in part, and all other documentation or materials relating to the XPIENT Software have been destroyed or returned to Progressive.

(c) XPIENT may terminate this License Agreement immediately, with no refunds of any kind or nature being owed or due to Customer, if Customer makes any successful or unsuccessful attempts (i) to copy, reproduce or duplicate the XPIENT Software, except as permitted herein, (ii) to use the XPIENT Software on systems or at locations not permitted under the terms of this License Agreement and/or the Master Customer Agreement, (iii) to reverse engineer, reverse compile, de-compile, or disassemble the XPIENT Software or (iv) to directly or indirectly alienate, assign, sublicense, or otherwise transfer this License or License Agreement or all or any part of the rights granted to Licensee hereunder without XPIENT's prior written consent.

(d) In the event the Master Customer Agreement is terminated, this License Agreement shall terminate immediately. Upon the termination of this License Agreement, Customer shall immediately return to XPIENT or destroy all existing copies of the XPIENT Software, tangible media on which such computer programs are recorded, specifications and supporting documentation thereof, all backup or archival copies and shall deliver a certificate by an officer of Customer confirming that such items which have been returned or destroyed constitute all of the existing copies or counterparts (whole or partial) of the XPIENT Software, tangible media on which such computer programs are recorded, back-up and archival copies, specifications and supporting documentation and that Customer has not retained any copies or counterparts thereof.

**11. THIRD PARTY SOFTWARE/HARDWARE.** Customer shall have the sole responsibility to obtain and pay for any third party software or hardware which may become necessary or desirable to operate the XPIENT Software and XPIENT shall bear no responsibility or liability for such third party software or hardware.

## **SCHEDULE 1**

### **DESCRIPTION OF XPIENT SOFTWARE**

Attachment 1-1 sets forth a description of the XPIENT Software.

### **LICENSED SITES**

Attachment 1-2 sets forth a list of the licensed sites as of the date of this License Agreement.

Customer shall have the right to add additional sites to this License Agreement by written notice to XPIENT, which shall become an addendum to Attachment 1-2 of this Schedule 1.

Customer shall have the right to acquire and assign the license rights provided by this License Agreement to Customer's franchisees for their franchised sites subject only to the franchisee's acceptance and agreement to the terms of this License Agreement relative to the franchisee's use of the license rights at its franchised site.

Attachment 1-3 sets forth a list of the franchised sites for which Customer has acquired and assigned licensed rights to its franchisees as of the date of this License Agreement. Customer shall give XPIENT written notice of additional franchised sites for which its franchisees receive the license rights provided by this License Agreement, which shall become an addendum to Attachment 1-3 of this Schedule 1.

### **LICENSE FEE**

Customer has paid the license fee for the sites listed on Attachment 1-1. For additional sites added to this Agreement, Customer shall obtain licenses to the XPIENT Software and related user documentation for a license fee of \$2,000 per Licensed Site.

## **SCHEDULE 2**

### **NON-DISCLOSURE AGREEMENT**

This Agreement is made and entered into as of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date"), by and between Xpient Solutions, LLC (hereinafter referred to as "XPIENT"), \_\_\_\_\_ (hereinafter referred to as "XPIENT Customer"), and \_\_\_\_\_ (hereinafter referred to as "Consultant").

**WHEREAS**, XPIENT and XPIENT Customer have entered the Software License Agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "License Agreement") for the license of certain proprietary software owned by XPIENT (the "XPIENT Software") and XPIENT Customer is under obligation to maintain the confidentiality of the XPIENT Software, XPIENT Software specifications and all supporting documents;

**WHEREAS**, Consultant desires to provide certain services to XPIENT Customer relating to the XPIENT Software (the "Work") and Company desires to have Consultant perform the Work; and

**WHEREAS**, in connection with the Work, Consultant's employees, agents or subcontractors will have access to information belonging to XPIENT or in its possession or custody and may have an opportunity to develop, compile, prepare or use such information in the course of or in connection with the Work.

**NOW, THEREFORE**, in consideration of XPIENT Customer granting Consultant's employees, agents, or subcontractors access to such information or granting them such opportunity, Consultant hereby warrants to and agrees as follows:

1. Consultant (a) shall treat and maintain, as XPIENT's confidential property, (b) shall not use (except in the course of the Work), in any form or manner, and (c) shall not disclose, in whole or in part, to any third party: the XPIENT SOLUTIONS, XPIENT Software specifications and all supporting documents, or any information or experience regarding any of XPIENT's plans, programs, software, systems, drawings, specifications, marketing, distribution, products, processes, methods, technology, materials, equipment, costs, prices, finances, customers or personnel, which information or experience comes within Consultant's custody, possession or knowledge or is developed, compiled, prepared or used by Consultant in the course of or in connection with the Work and is or becomes property of Consultant during the course of the Work (hereinafter referred to as "Information").

2. Provisions of Paragraph 1 hereof, however, shall not apply to any Information which Consultant can prove (a) has been published in writing and has become, prior to the time of use or disclosure by Consultant, a part of public domain, other than by reason of any of Consultant's acts or omissions, (b) has been put in Consultant's possession or knowledge prior to the time of its disclosure by Consultant, by any third party (except for any third party including, without limitation, Consultant's employees, agents or subcontractors, acting directly or indirectly for or on behalf of Consultant in connection with the Work) as a matter of right and without restriction on use or disclosure, or (c) was in Consultant's possession or knowledge prior to commencement of the Work, as a matter of right and without restriction on use or disclosure, and was not acquired by Consultant directly or indirectly from the XPIENT Customer.

For purposes of this paragraph 2, no Information shall be deemed to be in the public domain or in Consultant's possession or knowledge merely because such Information is embraced by more general information in the public domain or in Consultant's possession of knowledge.

3. With regard to any access by Consultant to XPIENT Customer's premises, Consultant shall comply with all XPIENT Customer's rules and regulations pertaining to security and safety.

4. Consultant shall restrict the custody, possession, knowledge, development, compilation, preparation and use of the Information to Consultant's employees, agents and subcontractors who are directly involved in the Work to the extent that they have need of such custody, possession, knowledge, development, compilation, preparation or use in order to perform the Work and then only on a confidential basis satisfactory to the XPIENT Customer. Each of Consultant's employees, agents or subcontractors assigned to or otherwise involved in the Work shall be individually subject to, and shall comply with, obligations coextensive with the obligations set forth in Paragraphs 1, 2, and 3 hereof.



5. This Agreement and Consultant's obligations hereunder shall be deemed to cover both any Work occurring prior, current and future to the date of Consultant's execution of this Agreement and any Information which came into Consultant's custody, possession or knowledge or was developed, compiled, prepared or used by Consultant in the course of or in connection with any Work occurring prior, current and future to such date.

6. The parties agree that this Agreement will be construed in accordance with the laws of North Carolina and that any dispute arising hereunder shall be submitted only to a state or federal court of competent jurisdiction in North Carolina to whose jurisdiction both parties consent.

7. In the event of a breach or threatened breach of the Agreement, the XPIENT Customer and XPIENT shall be entitled to preliminary and permanent injunctive relief to enforce the provisions of the Agreement but nothing herein shall preclude XPIENT Customer or XPIENT from pursuing any action or other remedy for any breach or threatened breach of this Agreement.

8. The provisions of this Agreement are to be construed separately and if any one or more of the provisions hereof are not given legal effect by a court of competent jurisdiction, such provision(s) shall drop out of the Agreement and the Agreement shall be construed and enforced as it is written without such provision(s).

9. It is expressly understood that this Agreement embodies the entire contractual agreement of the parties in relation to the subject matter hereof, and that no other agreement or understanding, verbal or otherwise, exists between the parties except as expressly set forth herein. No waiver, modification or alteration of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives effective upon the Effective Date.

**CONSULTANT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**XPIENT CUSTOMER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**XPIENT SOLUTIONS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT E**

Store  
Number

Address

City and State

Total Monthly Fee

\$236.00

**TOTAL MONTHLY FEE: \$ 236.00**

**EXHIBIT F**

**AUTHORIZATION AGREEMENT  
FOR PRE-AUTHORIZED PAYMENTS  
(DEBITS)**

**Captain D's, LLC**

**CAPTAIN D'S, LLC**  
COMPANY NAME

**#52-2262786**  
COMPANY ID NUMBER

**I (we) authorize the above named COMPANY to electronically debit my (our):**  
**\_\_\_\_\_ Checking \_\_\_\_\_ Savings accounts specified below**

\_\_\_\_\_  
CUSTOMER'S BANK NAME

\_\_\_\_\_  
BRANCH LOCATION

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
CUSTOMER'S BANK TRANSIT/ABA NUMBER

\_\_\_\_\_  
ACCOUNT NUMBER

**This authority is to remain in full force and effect until CAPTAIN D'S, LLC and BANK have received written notification from me (or either of us) of its termination in such time and in such manner as to afford CAPTAIN D'S, LLC and BANK a reasonable opportunity to act on it. A copy of this Authorization Agreement must be given to the customers and will be provided by CAPTAIN D'S, LLC upon request, to the BANK.**

\_\_\_\_\_  
CUSTOMER NAME (S) – (Please Print)

\_\_\_\_\_  
CUSTOMER NUMBER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

## **Exhibit I**

### **Confidentiality and Indemnity Agreement**

## CONFIDENTIALITY AND INDEMNITY AGREEMENT

In consideration for Captain D's, LLC ("Captain D's") providing the undersigned with access to Captain D's operations manuals and materials and/or the opportunity to observe the operations of a Captain D's restaurant, the undersigned hereby agrees as follows:

1. The undersigned shall keep the contents of the operations manuals and materials and the details of the operations of the Captain D's restaurant not otherwise in the public realm (the "Confidential Information") strictly confidential and shall not disclose that information to any person or entity without the prior written consent of Captain D's.

2. The undersigned shall use the Confidential Information only for the purpose of evaluating the potential purchase of a Captain D's franchise and shall make no other use of it. Captain D's, by disclosing the Confidential Information, does not grant any license to the undersigned. Except as set forth in this Confidentiality and Indemnity Agreement (this "Agreement"), all right, title and interest in the Confidential Information shall remain the property of Captain D's.

3. Upon the completion of the undersigned's review of the Confidential Information, the undersigned immediately shall return and deliver to Captain D's all written materials, notes, and/or recordings obtained or prepared by the undersigned in connection with the Confidential Information.

4. The Undersigned shall not solicit or have any other person solicit the employment of any existing employee of Captain D's or its franchisees for a period of two years after the date of this Agreement.

5. The undersigned acknowledges that any breach of this Agreement shall result in irreparable injury to Captain D's. Accordingly, in addition to any other remedy available at law, Captain D's shall have the right to obtain injunctive relief, without the necessity of posting any surety bond.

6. With regard to the undersigned's observation of the operations of a Captain D's restaurant, the undersigned shall defend, indemnify and hold harmless Captain D's and its franchisees (if applicable), as well as their respective owners, officers, employees and agents, from and against any and all claims, damages, losses and expenses of every kind resulting from work or observation performed in a Captain D's restaurant by the undersigned, provided that the claims, damages, losses or expenses (a) relate to bodily injury, sickness, disease or death or to injury to or the destruction of tangible property, including loss of use of property, and (b) relate to or arise out of the negligent act or omission of the undersigned or the undersigned's agents.

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

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Signature

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Printed Name

## **Exhibit J**

### **Franchisee Information (Including Supplemental Information)**

Captain D's Franchised Restaurants  
(As of January 1, 2023)

Operator (Company or Franchisee)	State	City	Street Address	Telephone
CD of Auburn, LLC	Alabama	Auburn	1800 Opelika Road	(334) 821-3507
CD of Auburn, LLC	Alabama	Opelika	810 Columbus Parkway	(334) 737-3877
CD of Auburn, LLC	Alabama	Valley	2922 20th Avenue	(334) 768-3388
Crimson Enterprises	Alabama	Fort Payne	1104 Glenn Boulevard, S.W.	(256) 845-5551
Crimson Enterprises	Alabama	Scottsboro	2308 South Broad Street	(256) 259-5350
Trident Holdings LLC	Alabama	Athens	102 Highway 31 South	(256) 232-7581
Trident Holdings LLC	Alabama	Monroeville	1591 South Alabama Avenue	(251) 575-9965
Trident Holdings LLC	Alabama	Montgomery	10640 Chantilly Parkway	(334) 239-9684
Nufish, LLC	Arkansas	West Memphis	265 West Broadway	(870) 735-0525
Sunflower Restaurant Group, LLC	Arkansas	Jonesboro	2629 Red Wolf Boulevard	(501) 972-6100
LMP Enterprises, Inc.	Colorado	Colorado Springs	1107 North Academy Boulevard	(719) 591-6320
LMP Enterprises, Inc.	Colorado	Colorado Springs	1234 East Fillmore Street	(719) 473-8268
LMP Enterprises, Inc.	Colorado	Colorado Springs	4441 Integrity Center Point	(719) 666-7836
LMP Enterprises, Inc.	Colorado	Pueblo	3630 North Freeway	(719) 543-4402
Nowell, Lester H.	Colorado	Colorado Springs	2495 South Academy Boulevard	(719) 574-0993
CrossRoads Portfolio Inc.	Florida	Palatka	200 South State Road 19	(386) 530-2036
Gulamali, Amin	Florida	Orlando	5850 South Orange Blossom Road	(407) 855-0470
Trident Holdings LLC	Florida	Milton	6519 Highway 90	(850) 626-9865
Trident Holdings LLC	Florida	Pensacola	4373 West Fairfield Drive	(850) 456-4178
Trident Holdings LLC	Florida	Pensacola	6387 Pensacola Boulevard	(850) 332-2407
Trident Holdings LLC	Florida	Pensacola	8090 North Davis Highway	(850) 478-7157
AAV LLC	Georgia	Cochran	179 East Dykes Street	(478) 271-0110
Albany's Great Seafood, Inc.	Georgia	Albany	1902 East Oglethorpe Boulevard	(229) 439-7762
Best Catch, Inc.	Georgia	Chatsworth	1125 North Third Avenue	(706) 695-8665
Captain SS1 LLC	Georgia	Acworth	3462 Baker Road	(770) 485-1729
Captain SS2 LLC	Georgia	Norcross	6859 Jimmy Carter Boulevard	(470) 342-6008
Captain SS3 LLC	Georgia	South Fulton	5343 Old National Highway	(404) 343-0319
Cordele's Great Seafood, Inc.	Georgia	Cordele	1710 East 16th Avenue	(229) 273-6550
Fitzgerald's Great Seafood, Inc.	Georgia	Fitzgerald	255 Ocilla Road	(229) 423-0334
JB Fast Food, LLC	Georgia	Warner Robins	3004 Russell Parkway	(478) 953-9412
Jariwala, Asif and Momin, Zaheera	Georgia	Rockmart	1300 Chattahoochee Drive	(678) 685-4589
Madison Seafood, LLC	Georgia	Madison	1910 Eatonton Road	(706) 438-1325
Momin, Abrarali; Momin, Ali; Momin, Yasmina; and Patel, Minaxiben	Georgia	Lovejoy	11465 Tara Boulevard	(470) 317-5041
Rocket Enterprises Ltd.	Georgia	Hazlehurst	5 West Coffee Street	(912) 551-9227
Sea Horse Group, LLC	Georgia	Villa Rica	203 Cooley Drive	(678) 840-8000
Sumter Seafood, Inc.	Georgia	Americus	1305 East Lamar Boulevard	(229) 924-3069
The Anchor Group, LLC	Georgia	Hinesville	107 W. General Screven Way	(912) 876-7995
The Anchor Group, LLC	Georgia	Statesboro	304 South Main Street	(912) 764-3636
The Anchor Group, LLC	Georgia	Waycross	1845 Memorial Drive	(912) 287-1364
Tifton's Great Seafood, Inc.	Georgia	Tifton	1309 Highway 82 West	(229) 386-0770
Trident Holdings LLC	Georgia	Bremen	1641 Alabama Avenue	(770) 537-7005
Trident Holdings LLC	Georgia	Commerce	30817 U.S. Highway 441 South	(706) 335-2049
Trident Holdings LLC	Georgia	Cumming	597 Atlanta Road	(770) 889-3985
Trident Holdings LLC	Georgia	Dawsonville	45 Nordson Overlook	(706) 216-5246
Trident Holdings LLC	Georgia	East Ellijay	253 Highland Crossing	(706) 515-2200
Trident Holdings LLC	Georgia	Elberton	123 Elbert Street	(706) 522-7662
Trident Holdings LLC	Georgia	Griffin	1441 North Expressway	(770) 228-4194
Trident Holdings LLC	Georgia	Jasper	77 Interstate Drive	(706) 253-0606
Trident Holdings LLC	Georgia	Pooler	161 Tanger Outlets Boulevard	(912) 450-0037
Trident Holdings LLC	Georgia	Roswell	705 Holcomb Bridge Road	(770) 992-7934
Trident Holdings LLC	Georgia	Woodstock	9805 Highway 92	(770) 591-7375
VJM Seafood, Inc.	Georgia	Cleveland	1650 Highway 129 South	(706) 348-6968
VJM Seafood, Inc.	Georgia	Cornelia	120 Furniture Plaza	(706) 348-6960
VJM Seafood, Inc.	Georgia	Dahlonega	145 Memorial Drive	(706) 867-1928
VJM Seafood, Inc.	Georgia	Eastanollee	25 Walmart Way	(706) 886-1606
VJM Seafood, Inc.	Georgia	Hartwell	249 Frontage Road	(706) 376-4406
VJM Seafood, Inc.	Georgia	Oakwood	3522 Thurmon Tanner Parkway	(770) 538-7600
Williams Investment Company	Georgia	Adel	1201-4 West 4th Street	(229) 896-4427
Zehra-Ali Inc.	Georgia	McDonough	530 Highway 81 East	(678) 782-3567
H & R Food, Inc.	Illinois	Champaign	1409 North Prospect Avenue	(217) 954-0015
NEST II LLC	Illinois	Posen	3021 West 147th Street	(708) 897-0119
Knight Enterprises, Inc.	Indiana	Anderson	2701 Broadway Street	(765) 649-7505
Nautical Restaurants, Inc.	Indiana	Columbus	2220 National Road	(812) 379-9559
Benes of Mt. Sterling, Inc.	Kentucky	Mt. Sterling	488 Indian Mound Drive	(859) 498-7147
Benes, Inc.	Kentucky	Richmond	1059 Berea Rd./U.S. Highway 25	(859) 623-9580
Benes, Inc.	Kentucky	Winchester	900 Winchester Bypass	(859) 745-1616
Higdon, James C. and Ralph	Kentucky	Leitchfield	719 South Main	(502) 259-5513
Lawson, James Randall	Kentucky	Lebanon	790 West Main Street	(270) 699-2222
Nautical Restaurants, Inc.	Kentucky	Elizabethtown	1613 North Dixie Highway	(270) 769-3349
Nautical Restaurants, Inc.	Kentucky	Frankfort	15 Carson Place	(502) 223-3474
Nautical Restaurants, Inc.	Kentucky	Frankfort	615 Versailles Road	(502) 695-7323
Nautical Restaurants, Inc.	Kentucky	Radcliff	511 South Dixie Highway	(270) 351-8041
Poseidon Investments, LLC	Kentucky	Danville	3491 South Danville Bypass	(859) 209-2240
SPFS, Inc.	Kentucky	Mayfield	1108 Paris Road	(270) 247-0747
SPFS, Inc.	Kentucky	Murray	700 Chestnut Hill Shopping Plaza	(270) 753-9383
SPFS, Inc.	Kentucky	Paducah	5152 Hinkleville Road	(270) 442-9750
Terranova Partners, LLC	Kentucky	Florence	7912 Dream Street	(859) 371-4991
Trident Holdings LLC	Kentucky	Hazard	149 Village Lane	(606) 439-3510
Trident Holdings LLC	Kentucky	Lexington	125 North Mount Tabor Road	(859) 268-8818
Trident Holdings LLC	Kentucky	Lexington	167 East Reynolds Road	(859) 273-3313
Trident Holdings LLC	Kentucky	Lexington	245 Northwest New Circle Road	(859) 299-0614
Trident Holdings LLC	Kentucky	London	1702 West Highway 192	(606) 877-2001

Captain D's Franchised Restaurants  
(As of January 1, 2023)

Operator (Company or Franchisee)	State	City	Street Address	Telephone
Trident Holdings LLC	Kentucky	Nicholasville	189 Imperial Way	(859) 885-1688
Trident Holdings LLC	Kentucky	Oak Grove	211 Claire Avenue	(270) 560-4330
Trident Holdings LLC	Kentucky	Pikeville	466 South Mayo Trail	(606) 437-1992
Trident Holdings LLC	Kentucky	Somerset	571 South Highway 27	(606) 679-6754
Triton Investments LLC	Kentucky	Bardstown	726 North Third Street	(502) 331-6295
C & H - D's, Inc.	Louisiana	Bossier City	2227 Airline Drive	(318) 747-7139
Delta Enterprises	Louisiana	Monroe	1800 North 18th Street	(318) 325-6391
Delta Enterprises	Louisiana	Monroe	1806 US Hwy 165 South	(318) 322-0832
Delta Enterprises	Louisiana	Ruston	1324 North Vienna Street	(318) 251-1482
Delta Enterprises	Louisiana	West Monroe	107 Thomas Road	(318) 387-8120
Trident Holdings LLC	Louisiana	Alexandria	2405 South MacArthur Drive	(318) 487-1010
Trident Holdings LLC	Louisiana	Leesville	1640 South 5th Street	(337) 238-0253
Trident Holdings LLC	Louisiana	Shreveport	7798 Youree Drive	(338) 656-5540
J&D Restaurant Group, LLC	Michigan	Clinton Township	35134 Groesbeck Highway	(586) 580-8222
Nufish, LLC	Mississippi	Horn Lake	4320 Goodman Road West	(662) 393-0090
Nufish, LLC	Mississippi	Olive Branch	6111 Goodman Road East	(662) 890-5537
Nufish, LLC	Mississippi	South Haven	1168 Stateline Road	(662) 342-1816
Trident Holdings LLC	Mississippi	Byram	5579 I-55 South Frontage Road	(601) 371-8938
Trident Holdings LLC	Mississippi	Clinton	131 Highway 80 East	(601) 925-4609
Trident Holdings LLC	Mississippi	Grenada	1208 Sunset Drive	(662) 307-2429
Trident Holdings LLC	Mississippi	Gulfport	11487 U.S. Highway 49	(228) 678-2430
Trident Holdings LLC	Mississippi	Jackson	235 Woodrow Wilson Boulevard	(601) 366-8559
Trident Holdings LLC	Mississippi	Jackson	2631 Highway 80 West	(601) 352-9324
Trident Holdings LLC	Mississippi	Jackson	5365 I-55 North	(601) 982-4286
Trident Holdings LLC	Mississippi	Pearl	2950 Highway 80 East	(601) 932-3019
Trident Holdings LLC	Mississippi	Senatobia	701 Robinson Street	(662) 560-9396
Trident Holdings LLC	Mississippi	Vicksburg	3310 Pemberton Square Boulevard	(601) 636-2686
Trident Holdings LLC	Mississippi	West Point	5810 Highway 45 ALT South	(662) 494-6002
Reel 'Em In, LLC	Missouri	Independence	1321 South Noland Road	(816) 252-6288
Ronbeck, Inc.	Missouri	West Plains	1402 Preacher Roe Boulevard	(417) 257-2090
ROPE, LLC	Missouri	Doniphan	120 Leroux Street	(573) 351-1498
Zabel, Rod	New Mexico	Farmington	1735 East Main Street	(505) 327-4931
Ashleigh Foods, Inc.	North Carolina	Durham	2307 NC Highway 54	(919) 361-2110
Dickey, Stephen B.	North Carolina	Murphy	580 Highway US 64 West	(828) 837-9388
Dor Foods, Inc.	North Carolina	Charlotte	101 East Woodlawn Road	(704) 525-6770
Dor Foods, Inc.	North Carolina	Charlotte	3623 North Sharon Amity Road	(704) 535-7310
Dor Foods, Inc.	North Carolina	Laurinburg	1696 South Main Street	(910) 276-2600
Dor Foods, Inc.	North Carolina	Lumberton	2191 Roberts Avenue	(910) 671-8930
Dor Foods, Inc.	North Carolina	Matthews	9715 East Independence Boulevard	(704) 847-0033
Dor Foods, Inc.	North Carolina	Monroe	1301 West Roosevelt Boulevard	(704) 283-1300
Dor Foods, Inc.	North Carolina	Rockingham	1246 East Broad Street	(910) 895-2600
Dor Foods, Inc.	North Carolina	Wadesboro	126 West Caswell Street	(704) 694-2424
Flo Foods, Inc.	North Carolina	Charlotte	123 Eastway Drive	(704) 598-7555
Flo Foods, Inc.	North Carolina	Charlotte	2838 Freedom Drive	(704) 392-0351
Flo Foods, Inc.	North Carolina	Charlotte	5316 Sunset Road	(704) 596-6444
Flo Foods, Inc.	North Carolina	Gastonia	360 North New Hope Road	(704) 866-0200
Flo Foods, Inc.	North Carolina	Hickory	1231 Highway 70 Southwest	(828) 328-8005
Flo Foods, Inc.	North Carolina	Morganton	2117 South Sterling Street	(828) 438-4332
Flo Foods, Inc.	North Carolina	Pineville	10601 Centrum Parkway	(704) 542-3011
Harris, Phillip T. and Lyn Annette	North Carolina	Durham	4300 North Roxboro Road	(919) 477-0402
Harris, Phillip T. and Lyn Annette	North Carolina	Greensboro	2008 East Cone Boulevard	(336) 621-2280
Tidewater Restaurants, Inc.	North Carolina	Elizabeth City	1237 North Road Street	(252) 338-1026
Two Beacons, LLC	North Carolina	Hudson	2804 Hickory Boulevard	(828) 728-4840
VJM Seafood, Inc.	North Carolina	Franklin	28 Berry Boulevard	(828) 369-1900
D's of Ohio, Inc.	Ohio	Defiance	08923 State Road 66 North	(419) 784-2004
D's of Ohio, Inc.	Ohio	Findlay	1231 Fostoria Avenue	(419) 423-1882
D's of Ohio, Inc.	Ohio	Lima	2020 Harding Highway	(419) 223-8899
D's of Ohio, Inc.	Ohio	Lima	2575 Elida Road	(419) 331-8888
D's of Ohio, Inc.	Ohio	Wapakoneta	1315 Bellefontaine Street	(419) 738-8899
K & R Associates, Inc.	Ohio	Chillicothe	1344 Western Avenue	(740) 775-4098
T*Map, Inc.	Ohio	Circleville	25050 U.S. Route 23 South	(740) 474-5052
Terranova Partners, LLC	Ohio	Fairfield	490 Nilles Road	(513) 829-7087
Dor Foods, Inc.	South Carolina	Florence	201 Second Loop Road	(843) 669-9290
Dor Foods, Inc.	South Carolina	Lake City	120 North Ron McNair Boulevard	(843) 394-3597
Wiggins, Marvin L.	South Carolina	Moncks Corner	112 South Highway 52	(843) 899-7300
Data Enterprises Hospitality Group, Inc.	Tennessee	McMinnville	824 Smithville Highway	(931) 473-7789
Moore, Harold L.	Tennessee	Greeneville	245 East Andrew Johnson Highway	(423) 639-6311
Moore, Harold L.	Tennessee	Jonesborough	1531 East Jackson Boulevard	(423) 913-1331
Moore, Harold L.	Tennessee	Morristown	1843 West Andrew Johnson Highway	(423) 587-0252
Nufish, LLC	Tennessee	Bartlett	7112 Highway 64	(901) 384-6499
Nufish, LLC	Tennessee	Collierville	784 West Poplar Avenue	(901) 861-0353
Nufish, LLC	Tennessee	Cordova	1438 North Germantown Parkway	(301) 758-5959
Nufish, LLC	Tennessee	Covington	875 Highway 51 North	(901) 476-1370
Nufish, LLC	Tennessee	Memphis	1665 Sycamore View	(901) 380-4355
Nufish, LLC	Tennessee	Memphis	1690 Union Avenue	(901) 274-8979
Nufish, LLC	Tennessee	Memphis	179 E. H. Crump Boulevard	(901) 774-5660
Nufish, LLC	Tennessee	Memphis	2238 Frayser Boulevard	(901) 358-8776
Nufish, LLC	Tennessee	Memphis	2815 South Perkins Road	(901) 794-0599
Nufish, LLC	Tennessee	Memphis	3057 Covington Pike	(901) 384-6966
Nufish, LLC	Tennessee	Memphis	4209 Hacks Cross Road	(901) 757-2366
Nufish, LLC	Tennessee	Memphis	4404 Elvis Presley Boulevard	(901) 332-3095
Nufish, LLC	Tennessee	Memphis	4735 Getwell Road	(901) 356-9063



Captain D's Franchised Restaurants  
(As of January 1, 2023)

Operator (Company or Franchisee)	State	City	Street Address	Telephone
Nufish, LLC	Tennessee	Memphis	9607 U.S. Highway 64	(901) 386-4411
Nufish, LLC	Tennessee	Millington	8342 U. S. Highway 51 North	(901) 873-3500
Nufish, LLC	Tennessee	Paris	1303 East Wood Street	(731) 407-4072
Pinnacle Hospitality Partners LLC	Tennessee	White House	631 Tennessee Highway 76 East	(615) 581-0326
Townsend Foods, Inc.	Tennessee	Manchester	2166 Hillsboro Boulevard	(931) 728-1130
Townsend Foods, Inc.	Tennessee	Murfreesboro	239 Cason Lane	(615) 907-0727
Townsend Foods, Inc.	Tennessee	Smyrna	1878 Almadale Road	(615) 462-5189
Trident Holdings LLC	Tennessee	Bristol	2815 West State Street	(423) 968-7878
Trident Holdings LLC	Tennessee	Elizabethton	1002 Overmountain Drive	(423) 543-1111
Trident Holdings LLC	Tennessee	Johnson City	2424 North Roan Street	(423) 631-0172
Trident Holdings LLC	Tennessee	Kingsport	1656 East Stone Drive	(423) 245-9471
Trident Holdings LLC	Tennessee	Lewisburg	1200 North Ellington Parkway	(931) 422-1059
Trident Holdings LLC	Tennessee	Murfreesboro	3114 South Church Street	(615) 785-7747
Trident Holdings LLC	Tennessee	Spring Hill	2096 Wall Street	(615) 302-4045
Trident Holdings LLC	Tennessee	Springfield	2123 Memorial Boulevard	(615) 384-8710
Tri-Star Hospitality, LLC	Tennessee	Jackson	1761 South Highland Avenue	(731) 736-2333
Two Beacons, LLC	Tennessee	Athens	1805 Decatur Pike	(423) 745-6151
Two Beacons, LLC	Tennessee	Cleveland	3030 APD 40 Southeast	(423) 476-7087
Two Beacons, LLC	Tennessee	Cleveland	4620 North Lee Highway	(423) 476-6760
Two Beacons, LLC	Tennessee	Dayton	4049 Rhea County Highway	(423) 775-4408
Two Beacons, LLC	Tennessee	Madisonville	110 Kefauver Lane	(423) 420-9455
Alaskan Ventures LLC	Texas	Stephenville	3015 West Washington Lane	(254) 918-5005
AmeriFish, Inc.	Texas	Ft. Worth	8525 South Hulen Street	(817) 744-7276
AM. Cheema Investments, LLC	Texas	Rosenberg	3714 Avenue H	(281) 342-1284
AM. Cheema, LLC	Texas	Alvin	1800 South Loop 35 West Bypass	(281) 331-3474
AM. Cheema, LLC	Texas	Porter	23811 Highway 59 North	(281) 354-7100
Bonham Foods, LLC	Texas	Bonham	2160 State Highway 121 North	(903) 224-1400
DSN Corporation	Texas	Plano	603 East 15th Street	(972) 424-1113
GBC Company, LLC	Texas	Gun Barrel City	1380 West Main Street	(903) 887-1207
Happy Saturday, Inc.	Texas	Garland	6327 Broadway Boulevard	(469) 914-6968
Ocean Food Enterprise Inc.	Texas	Baytown	4910 Garth Road	(281) 837-5806
Quick Service Brands LLC	Texas	Humble	8408 FM 1960 Bypass Road West	(346) 522-2783
Sovereign Capital Ventures LLC	Texas	Burnet	1404 South Water Street	(512) 712-0500
Starnes, Lisa	Texas	Burleson	680 S.W. Wilshire	(817) 295-9345
VSGH Partners #1, Ltd.	Texas	Dallas	5514 Jim Miller Road	(214) 381-7795
VSGH Partners #3, Ltd.	Texas	Duncanville	419 East Camp Wisdom Road	(972) 298-0586
VSGH Partners #4, Ltd.	Texas	Grand Prairie	2515 South Great Southwest Parkway	(972) 660-6557
VSGH Partners #6, Ltd.	Texas	Ft. Worth	8514 Highway 80 West	(817) 244-1665
VSGH Partners #8, Ltd.	Texas	Ft. Worth	6554 Forest Hill Drive	(817) 551-7069
VSGH Partners #9, Ltd.	Texas	Mesquite	12135 Elam Road	(972) 557-2140
CD Restaurants, Inc.	Virginia	Ashland	205 South Washington Highway	(804) 798-9076
CD Restaurants, Inc.	Virginia	Chester	12541 Jefferson Davis Highway	(804) 748-4595
CD Restaurants, Inc.	Virginia	Fredericksburg	2626 Princess Anne Street	(540) 371-7722
CD Restaurants, Inc.	Virginia	Hopewell	3911 Oaklawn Boulevard	(804) 446-3859
CD Restaurants, Inc.	Virginia	Petersburg	3330 South Crater Road	(804) 862-8520
CD Restaurants, Inc.	Virginia	Richmond	10013 Hull Street	(804) 276-0880
CD Restaurants, Inc.	Virginia	Richmond	2701 Chamberlayne Avenue	(804) 321-8204
CD Restaurants, Inc.	Virginia	Richmond	4617 Jefferson Davis Highway	(804) 271-5530
CD Restaurants, Inc.	Virginia	Richmond	4800 Williamsburg Road	(804) 222-0250
CD Restaurants, Inc.	Virginia	Richmond	50 Turner Road	(804) 726-6509
CD Restaurants, Inc.	Virginia	Richmond	7607 Staples Mill Road	(804) 262-4008
Tidewater Restaurants, Inc.	Virginia	Chesapeake	3313 Western Branch Boulevard	(757) 484-6400
Tidewater Restaurants, Inc.	Virginia	Newport News	10159 Jefferson Avenue	(757) 596-1027
Tidewater Restaurants, Inc.	Virginia	Norfolk	116 East 21st Street	(757) 625-6074
Tidewater Restaurants, Inc.	Virginia	Norfolk	6667 Virginia Beach Boulevard	(757) 461-6030
Tidewater Restaurants, Inc.	Virginia	Norfolk	831 East Little Creek Road	(757) 583-0141
Tidewater Restaurants, Inc.	Virginia	Portsmouth	3911 Victory Boulevard	(757) 405-9450
Trident Holdings LLC	Virginia	Abingdon	555 Cummings Street	(276) 739-2380
Trident Holdings LLC	Virginia	Norton	1480 Park Avenue	(276) 679-0508
Trident Holdings LLC	Virginia	Wytheville	215 East Commonwealth Drive	(276) 335-0988
Khosla, Inderjit	West Virginia	Logan	109 Nick Savas Avenue	(304) 752-8600

**Captain D's Developers and Franchisees**  
(As of January 1, 2023)

Entity Name	First	Last	Address	State	City	Zip Code	Office
GSA Food Group, Inc.* #	Ismael	Abusaleem	512 Gooch Lane	Alabama	Madison	35758	(256) 318-1142
Crimson Enterprises	Robbie	Copenhaver	58 Floyd Circle	Alabama	Scottsboro	35769	(256) 259-3524
Delta Enterprises	Robbie	Copenhaver	58 Floyd Circle	Alabama	Scottsboro	35769	(256) 259-3524
Yousaf, Jahangir* #	Jahangir	Yousaf	1690 Poteete Street	Arkansas	Conway	72034	(903) 908-1731
Sunflower Restaurant Group, LLC	Ray	Gall	11980 Red Hill Avenue	California	Santa Ana	92705	(714) 838-5332
LMP Enterprises, Inc.	Lester	Nowell	4421 Integrity Center Point, Suite 120	Colorado	Colorado Springs	80917	(719) 632-7502
Nowell, Lester H.	Lester	Nowell	4421 Integrity Center Point, Suite 120	Colorado	Colorado Springs	80917	(719) 632-7502
PD Business Group, LLC* #	Miral	Patel	2277 Hannah Way South	Florida	Dunedin	34698	(727) 793-7672
Gaskins, Jr., John W.* #	John	Gaskins	7586 Pleasant Drive	Florida	Haines City	33844	(321) 458-2500
Gulamali, Amin	Amin	Gulamali	8908 Grey Hawk Point	Florida	Orlando	32836	(321) 231-4580
Williams Investment Company	Mike	Williams	1221 W 4th Street, Suite 11	Georgia	Adel	31620	(229) 896-4511
Rocket Enterprises Ltd.*	Robert	Wiggins, Jr.	671 South Main Street, Suite B	Georgia	Baxley	31513	(912) 367-9424
Sea Horse Group, LLC	Zach	Steed	110 Hunters Way	Georgia	Carrollton	30117	(770) 258-7273
Patel, Visvesh* #	Visvesh	Patel	108 8th Street Crescent	Georgia	Cochran	31014	(478) 271-9500
AAV LLC	Ali	Momin	132 South Second Street	Georgia	Cochran	31014	(478) 298-2879
Momin, Abrarali; Momin, Ali; Momin, Yasmin; and Patel, Minaxiben	Ali	Momin	132 South Second Street	Georgia	Cochran	31014	(478) 298-2879
Pinnacle Hospitality Partners LLC	Arman	Virani	1790 Sugarloaf Club Drive	Georgia	Duluth	30097	(404) 883-4246
Captain SS1 LLC*	Tajuddin	Dossani	3263 Bagley Passage	Georgia	Duluth	30097	(678) 697-6234
Captain SS2 LLC	Tajuddin	Dossani	3263 Bagley Passage	Georgia	Duluth	30097	(678) 697-6234
Captain SS3 LLC	Tajuddin	Dossani	3263 Bagley Passage	Georgia	Duluth	30097	(678) 697-6234
Best Catch, Inc.	Danny	Ashe	P.O. Box 378	Georgia	Eton	30724	(706) 264-3066
Bakhtiyar, Inc.* #	Zuber	Malek	413 North Caswell Street	Georgia	Glennville	30427	(912) 237-4131
Zehra-Ali, Inc.	Sajid	Patharwala	159 Crystal Lake Boulevard	Georgia	Hampton	30228	(770) 477-6201
CrossRoads Portfolio Inc.*	Wanda	Davis	4178 Crowder Drive NW	Georgia	Kennesaw	30152	(828) 922-1070
ZHR, Inc.	Tanveera	Ajmerimomin	222 Snow Owl Way	Georgia	Lawrenceville	30044	(678) 622-5091
Tattnall Investments, Inc.	Zamena	Momin	401 Preserve Trail	Georgia	Martinez	30907	(912) 253-4131
VJM Seafood, Inc.	James	McClure	2538 Cleveland Highway	Georgia	Murrayville	30564	(706) 864-8443
Jariwala, Asif and Momin, Zaheera	Asif	Jariwala	651 Forrest Avenue	Georgia	Rockmart	30153	(770) 547-1641
Cordele's Great Seafood, Inc.	Dallas	Hunt	1002 2nd Street West	Georgia	Tifton	31793	(229) 382-6021
Fitzgerald's Great Seafood, Inc.	Dallas	Hunt	1002 2nd Street West	Georgia	Tifton	31793	(229) 382-6021
Sumter Seafood, Inc.	Dallas	Hunt	1002 2nd Street West	Georgia	Tifton	31793	(229) 382-6021
Tifton's Great Seafood, Inc.	Dallas	Hunt	1002 2nd Street West	Georgia	Tifton	31793	(229) 382-6021
Albany's Great Seafood, Inc.*	Dallas	Hunt	P.O. Box 1005	Georgia	Tifton	31794	(229) 382-6021
Zahra, LLC* #	Sofiya	Momin	405 Angelina Grace Drive	Georgia	Warner Robins	31088	(478) 287-6668
Captains of Chicagoland LLC* #	Vishal	Shah	7949 West 79th Street, Unit 2	Illinois	Bridgeview	60455	(773) 498-9100
H & R Food, Inc.*	Sunil	Modi	4507 Crossgate Drive	Illinois	Champaign	37091	(217) 419-5424
NEST II LLC	Pravina	Patel	645 Leamington Avenue	Illinois	Wilmette	60091	(773) 484-7295
Shieva 11, Inc.*	Pravina	Patel	645 Leamington Avenue	Illinois	Wilmette	60091	(773) 484-7295
Knight Enterprises, Inc.	Troy	Knight	5030 Timber Wood Drive	Indiana	Anderson	46012	(765) 621-0054
Reel 'Em In, LLC	Brian	Studdard	16012 Metcalf Avenue, Suite 1	Kansas	Overland Park	66085	(913) 940-1168
Poseidon Investments, LLC	Kelly	Boernsen	113 Laurel Drive	Kentucky	Bardstown	40004	(502) 593-8988
Triton Investments, LLC	Kelly	Boernsen	113 Laurel Drive	Kentucky	Bardstown	40004	(502) 593-8988
Terranova Partners, LLC	Erkin	Karimi	7912 Dream Street	Kentucky	Florence	41042	(713) 534-6701
Lawson, James Randall	Randall	Lawson	846 West Main Street	Kentucky	Lebanon	40033	(270) 692-2169
Higdon, James C. Higdon and Ralph	James	Higdon	P.O. Box 229	Kentucky	Leitchfield	42755	(270) 259-5513
Nautical Restaurants, Inc.	Marty	Johnson	130 St. Matthews Avenue, Suite 301	Kentucky	Louisville	40207	(502) 896-2777
Benes, Inc.	Elfrieda	Benes	1059 Berea Road	Kentucky	Richmond	40475	(859) 624-1706
Benes of Mt. Sterling, Inc.	Jarka	Wells	312 Jason Drive, Suite 10	Kentucky	Richmond	40475	(859) 623-9491
Khan, Faisal and Khan, Nadia* #	Faisal	Khan	3689 Darcy Drive	Michigan	Bloomfield Hills	48301	(586) 838-0982
J&D Restaurant Group, LLC*	Patel	Kirit	43122 Crissman Court	Michigan	Sterling Heights	48314	(586) 604-0219
ROPE, LLC	Shirley	Hunt	601 Walnut Street	Missouri	Doniphan	63935	(573) 996-7802
Ronbeck, Inc.	Zach	Stokes	1402 Preacher Row	Missouri	West Plains	65775	(417) 257-2090
Zabel, Rod	Rod	Zabel	P.O. Box 11515	New Mexico	Albuquerque	87192	(505) 266-3043
Dor Foods, Inc.	Charles	Graham	722 Pressley Road, Suite 100	North Carolina	Charlotte	28217	(704) 527-7996
Flo Foods, Inc.	Tracy	Faust	P.O. Box 240525	North Carolina	Charlotte	28224	(704) 527-1745
Ashleigh Foods, Inc.	Charles	Brown	1 Chintelly Court	North Carolina	Durham	27703	(919) 598-4144
Harris, Phillip T. and Lyn Annette	Phillip	Harris	407 Dairy Farm Drive	North Carolina	Hillsborough	27278	(919) 698-3325
Dickey, Stephen B.	Steve	Dickey	P. O. Box 1099	North Carolina	Murphy	28906	(828) 837-0287
Patel, Saurabh and Patel, Hemali* #	Saurabh	Patel	10343 Zona Lane	Ohio	Cambridge	43725	(740) 538-2800
T*Map, Inc.	James	LaFontaine	6510 Hitler Road	Ohio	Circleville	43113	(740) 474-7647
K & R Associates, Inc.	Subhash	Khosla	185 Chris Lane	Ohio	Gallipolis	45631	(740) 446-7511
Khosla, Inderjit	Subhash	Khosla	185 Chris Lane	Ohio	Gallipolis	45631	(740) 446-7511
D's of Ohio, Inc.	Tom	Sims	2530 Balyeat Drive	Ohio	Lima	45805	(419) 999-3333
Wee, Alvin	Alvin	Wee	64100 Park Pointe Court	Ohio	Pepper Park	44124	(216) 312-5408
Yummy Chicken LLC* #	Aamir	Nawaz	8514 South Pennsylvania Avenue	Oklahoma	Oklahoma City	73159	(405) 834-7565
The Anchor Group, LLC	James	Saba	5846 Guilford Place	South Carolina	Bluffton	29910	(843) 815-6536
Wiggins, Marvin L.	Michael	Wiggins	1518 Pinopolis Road	South Carolina	Moncks Corner	29461	(843) 899-5510
Two Beacons, LLC	J.R.	Fulbright	P.O. Box 4378	Tennessee	Cleveland	37320	(423) 476-7823
Moore, Harold L.	Harold	Moore	286 Myers Acres Lane	Tennessee	Greeneville	37743	(423) 639-5440

\* Developers as of January 1, 2023.

# Developers and Franchisees who have signed an agreement but not yet opened a restaurant as of January 1, 2023

**Captain D's Developers and Franchisees**  
(As of January 1, 2023)

Entity Name	First	Last	Address	State	City	Zip Code	Office
Tri-Star Hospitality, LLC	Chad	Vaughn	3438 Ogden Road	Tennessee	McEwen	37101	(615) 604-0343
Nufish, LLC*	Oscar	Seelbinder, Jr.	5858 Ridgeway Center Parkway	Tennessee	Memphis	38120	(901) 454-7000
Trident Holdings, LLC*	Chris	Benner	3017 Beaufort Street	Tennessee	Murfreesboro	37127	(615) 438-8829
Townsend Foods, Inc.	W.R.	Townsend	P.O. Box 1253	Tennessee	Murfreesboro	37133	(615) 714-1410
Data Enterprises Hospitality Group, Inc.	Cody	Blackwell	942 Woodland St	Tennessee	Nashville	37206	(615) 227-6978
C & H - D's, Inc.	Karl	Haury, Jr.	Post Office Box 121700	Tennessee	Nashville	37212	(615) 327-8175
CD of Auburn, LLC	Bobby	Garrison	541 Robards Circle	Tennessee	Old Hickory	37138	(615) 367-9092
DSN Corporation	Mohammad	Alalimi	200 Tatum Drive	Texas	Allen	75013	(469) 394-1500
ISOSA Incorporated* #	Joseph	Omobogie	440 Trinity Drive	Texas	Allen	75002	(214) 730-0888
AmeriFish, Inc.	Mamun	Mehdi	8224 Ithaca Drive	Texas	Arlington	76002	(817) 300-7407
Mehdi, Mamun*	Mamun	Mehdi	8224 Ithaca Drive	Texas	Arlington	75035	(214) 274-9418
Chowdhury, Jewel* #	Jewel	Chowdhury	13499 Marmolada Drive	Texas	Frisco	75035	(214) 274-9418
Quick Service Brands LLC*	Irfan	Ibrahim	9894 Bissonnet Street, Suite 650	Texas	Houston	77036	(713) 271-1851
Starnes, Lisa*	Lisa	Starnes	900 N. Walnut Creek Dr., St. 100, PMB 319	Texas	Mansfield	76063	(817) 880-7788
VSGH Partners #1, Ltd.	Lisa	Starnes	900 N. Walnut Creek Dr., St. 100, PMB 319	Texas	Mansfield	76063	(817) 880-7788
VSGH Partners #3, Ltd.	Lisa	Starnes	900 N. Walnut Creek Dr., St. 100, PMB 319	Texas	Mansfield	76063	(817) 880-7788
VSGH Partners #4, Ltd.	Lisa	Starnes	900 N. Walnut Creek Dr., St. 100, PMB 319	Texas	Mansfield	76063	(817) 880-7788
VSGH Partners #6, Ltd.	Lisa	Starnes	900 N. Walnut Creek Dr., St. 100, PMB 319	Texas	Mansfield	76063	(817) 880-7788
VSGH Partners #8, Ltd.	Lisa	Starnes	900 N. Walnut Creek Dr., St. 100, PMB 319	Texas	Mansfield	76063	(817) 880-7788
VSGH Partners #9, Ltd.	Lisa	Starnes	900 N. Walnut Creek Dr., St. 100, PMB 319	Texas	Mansfield	76063	(817) 880-7788
AM. Cheema Investments, LLC	Ahsen	Cheema	11314 Windy Creek Drive	Texas	Pearland	77584	(832) 746-1286
AM. Cheema, LLC	Ahsen	Cheema	11314 Windy Creek Drive	Texas	Pearland	77584	(832) 746-1286
Ocean Food Enterprise Inc.	Moosa	Bhayani	1601 Spring Glen Lane	Texas	Pearland	77581	(832) 561-4457
Happy Saturday, Inc.*	Eric	Kim	9201 Blue Water Drive	Texas	Plano	75025	(469) 358-9800
Bonham Foods, LLC*	Sajib	Singha	121 Chapel Hill Drive	Texas	Prosper	75078	(214) 934-6251
GBC Company, LLC	Sajib	Singha	121 Chapel Hill Drive	Texas	Prosper	75078	(214) 934-6251
Alaskan Ventures LLC*	Mohammad	Jamshed	1725 Weeping Willow Way	Texas	Southlake	76092	(817) 297-3772
Sovereign Capital Ventures LLC	Mohammad	Jamshed	1725 Weeping Willow Way	Texas	Southlake	76092	(817) 297-3772
Erkin, Nooralam* #	Nooralam	Erkin	4583 Cascades Shoreline Drive	Texas	Tyler	75709	(903) 581-1956
M H & Sons Enterprises, Inc.* #	Maqsood	Merchant	11113 South Cadbury Drive	Utah	South Jordan	84095	(801) 548-4292
CD Restaurants, Inc.	Mark	Sweeney	7202 Glen Forest Drive, Suite 106	Virginia	Richmond	23226	(804) 346-3414
Tidewater Restaurants, Inc.	Mark	Sweeney	7202 Glen Forest Drive, Suite 106	Virginia	Richmond	23226	(804) 346-3414

\* Developers as of January 1, 2023.

# Developers and Franchisees who have signed an agreement but not yet opened a restaurant as of January 1, 2023

Supplemental Information  
As of May 1, 2023

The information set forth below provides the name, city, state and last known telephone number for developers and franchisees that had a Franchise Agreement or Development Agreement terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement or Development Agreement during the most recently completed fiscal year. No developer or franchisee has failed to communicate with us within 10 weeks prior to the issuance date of this Disclosure Document.

<u>Franchisee</u>	<u>City</u>	<u>State</u>	<u>Telephone Number</u>
Double Pleasant Investments, LP	Mt. Pleasant	Texas	(903) 224-1400
GOALZ Restaurant Group, LLC	Lincolnton	North Carolina	(980) 429-2159
Harborside Holdings Corporation	Belle Glade	Florida	(561) 983-8378
Knight Enterprises, Inc.	Muncie	Indiana	(765) 289-1991
Tidewater Restaurants, Inc.	Chesapeake	Virginia	(757) 547-7146
Tommy D's, Inc.	Wentzville	Missouri	(636) 327-9200

<u>Developer</u>	<u>City</u>	<u>State</u>	<u>Telephone Number</u>
Gulamali, Amin	Orlando	Florida	(407) 851-0504
Harborside Holdings Corporation	Belle Glade	Florida	(561) 996-6581
HD Hospitality LLC	Pooler	Georgia	(843) 379-9405
MAC-3 Incorporated	West Point	Mississippi	(662) 312-1271
Seafood Spice, Inc.	Swansea	Illinois	(859) 393-6203
Townsend Foods, Inc.	Murfreesboro	Tennessee	(615) 714-1410

During the last fiscal year, the following franchisees transferred their franchise agreements for the following restaurants to another Captain D's franchisee:

B. J. Moore transferred his franchise agreement for the Captain D's restaurant located at 149 Village Lane in Hazard, Kentucky, to Trident Holdings LLC.

C. D's Seafood of Monroeville L.L.C. transferred its franchise agreement for the Captain D's restaurant located at 1591 South Alabama Avenue in Monroeville, Alabama, to Trident Holdings LLC.

C. D's Seafood of Monroeville, L.L.C. transferred its franchise agreement for the Captain D's restaurant located at 10640 Chantilly Parkway in Montgomery, Alabama, to Trident Holdings LLC.

Mac-3 Incorporated transferred its franchise agreement for the Captain D's restaurant located at 5810 Highway 45 ALT South in West Point, Mississippi, to Trident Holdings LLC.

Mac-3 Incorporated transferred its franchise agreement for the Captain D's restaurant located at 1208 Sunset Drive in Grenada, Mississippi, to Trident Holdings LLC.

Senatobia Food Services, LLC transferred its franchise agreement for the Captain D's restaurant located at 701 Robinson Street in Senatobia, Mississippi, to Trident Holdings LLC.

### **State Effective Dates**

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<b>State</b>	<b>Effective Date</b>
Illinois	June 26, 2023
Indiana	June 1, 2023
Maryland	Pending
Michigan	October 21, 2023
Minnesota	July 7, 2023
New York	June 20, 2023
North Dakota	June 23, 2023
Rhode Island	May 17, 2023
South Dakota	May 17, 2023
Virginia	June 23, 2023
Wisconsin	May 16, 2023

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

## **Exhibit K**

### **Receipts**

## RECEIPT

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully. If Captain D's, LLC ("Captain D's") offers you a franchise, it must provide this Disclosure Document to you at least 14 calendar days (or sooner, if required by applicable state law) before you sign a binding agreement with, or make a payment to, Captain D's, or any affiliate of Captain D's in connection with the proposed franchise sale.

New York and Rhode Island require that we give you this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Captain D's does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the applicable state agency listed on Exhibit A to this Disclosure Document.

Only the following individuals have the authority to offer and sell Captain D's franchises.

Brad Reed, 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, (800) 314-4819;  
Robert Jones, 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, (800) 314-4819;  
Steve Bailey, 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, (800) 314-4819;  
Steve Bielewicz, 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, (800) 314-4819;  
Phil Russo, 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, (800) 314-4819;

We have authorized the respective state agencies identified on Exhibit A to this Disclosure Document to receive service of process for us in the listed states.

The date of issuance of this Disclosure Document is May 1, 2023, as amended July 17, 2023, or the effective date set forth above, and includes the following exhibits:

- A State Agencies and Registered Agents
- B Financial Statements
- C Guaranty Agreement of Captain D's Enterprises, LLC
- D Development Agreement
- E Franchise Agreement
- F Guaranty Agreement
- G Addenda Required by Certain States
- H Computer Software and Hardware Agreement
- I Confidentiality and Indemnity Agreement
- J Franchisee Information (Including Supplemental Information)

Date of Receipt

Signature of Prospective Franchisee (on behalf of the prospective franchisee and any corporation, limited liability company, or other business entity having or proposed to have an interest in the franchise or any proposed franchised location)

Print Name

## RECEIPT

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully. If Captain D's, LLC ("Captain D's") offers you a franchise, it must provide this Disclosure Document to you at least 14 calendar days (or sooner, if required by applicable state law) before you sign a binding agreement with, or make a payment to, Captain D's, or any affiliate of Captain D's in connection with the proposed franchise sale.

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Date of Receipt

Signature of Prospective Franchisee (on behalf of the prospective franchisee and any corporation, limited liability company, or other business entity having or proposed to have an interest in the franchise or any proposed franchised location)

Print Name