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U.S. Department of Commerce  
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TRADEMARK

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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

New

Resubmission (Non-Recordation)  
Document ID#

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

#### Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment

Merger  Change of Name

Other

Effective Date  
Month Day Year

#### Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

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**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="SEE ATTACHED"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Alexander M. Kim

11/8/00

Name of Person Signing

Signature

Date Signed

SCHEDULE II  
to  
Intellectual Property Security Agreement  
Trademark Registrations and Applications

A. United States Registrations

	<u>Mark</u>	<u>Registration Date</u>	<u>Registration Number</u>	<u>Expiration Date</u>
(1)	Miscellaneous Design (captain)	01/06/76	1,029,628	01/06/2006
(2)	Captain D's	01/06/76	1,029,629	01/06/2006
(3)	Miscellaneous Design (captain's head)	01/29/80	1,130,154	01/29/2000
(4)	Captain D's Seafood (and building design)	02/03/81	1,146,718	02/03/2001
(5)	A Great Little Seafood Place	04/14/81	1,151,309	04/14/2001
(6)	Lighten Up	06/11/85	1,341,166	06/11/2005
(7)	Little Mate's Meal	06/14/88	1,492,731	06/14/2008
(8)	Miscellaneous Design (building design)	01/02/90	1,575,841	01/02/2000
(9)	Miscellaneous Design (building design)	06/25/91	1,649,084	06/25/2001
(10)	The Great			

	Little Seafood Place	08/20/91	1,654,602	08/20/2001
(11)	Captain D's (oval design)	10/15/91	1,661,241	10/15/2001
(12)	The Captain's Grille (and design)	06/23/92	1,696,289	06/23/2002
(13)	Tag-A-Longs	09/07/93	1,791,768	09/07/2003
(14)	The Great Little Seafood House	03/29/94	1,828,688	03/29/2004
(15)	Captain's Class	09/07/93	1,792,066	09/07/2003
(16)	Real Seafood Real Quick	09/07/93	1,792,057	09/07/2003
(17)	Willy Walrus	02/11/92	1,675,568	02/11/2002
(18)	Miscellaneous Design (building)	02/08/99	2,223,344	

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement"), dated as of September 6, 2000, is made by Captain D's, Inc., a Delaware corporation (herein referred to as the "Borrower" or the "Grantor"), and Bank of America, N.A. ("Bank of America"), as administrative agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined in the Credit Agreement referred to below).

## PRELIMINARY STATEMENT

(1) The Borrower has entered into a Credit Agreement dated as of September 6, 2000 (said Credit Agreement, as it may be hereafter amended, amended and restated, supplemented or otherwise modified from time to time, being the "Credit Agreement", the terms defined therein and not otherwise defined herein being used herein as therein defined) with the banks, financial institutions and other institutional lenders party thereto (collectively, the "Lenders"), Bank of America, as Initial Issuing Bank, as Administrative Agent, as Collateral Agent and as Swing Line Bank and Banc of America Securities LLC ("BAS"), as Lead Arranger and Sole Book Manager for the Lender Parties.

(2) It is a condition precedent to the making of Advances by the Lenders and to the issuance of Letters of Credit by the Issuing Bank under the Credit Agreement from time to time, and the entry by the Hedge Banks into the Bank Hedge Agreements with the Borrower from time to time, that the Grantor shall have granted the assignment and security interest contemplated by this Agreement. Further unless otherwise defined in this Agreement or in the Credit Agreement, terms defined in Article 8 or 9 of the Uniform Commercial Code in effect in the State of New York ("N.Y. Uniform Commercial Code") and/or in the Federal Book Entry Regulations (as defined below) are used in this Agreement as such terms are defined in such Article 8 or 9 and/or the Federal Book Entry Regulations. The term "Federal Book Entry Regulations" means (a) the federal regulations contained in Subpart B ("Treasury Reserve Automated Debt Entry System (TRADES)") governing book-entry securities consisting of U.S. Treasury bonds, notes and bills and Subpart D ("Additional Provisions") of 31 C.F.R. Part 357, 31 C.F.R. § 357.2, § 357.10 through § 357.14 and § 357.41 through § 357.44 and (b) to the extent substantially identical to the federal regulations referred to in clause (a) above (as in effect from time to time), the federal regulations governing other book-entry securities.

NOW, THEREFORE, in consideration of the premises and in order to induce the Lenders to make Advances under the Credit Agreement and the Issuing Bank to issue Letters of Credit under the Credit Agreement from time to time, and the Hedge Banks to enter into Bank Hedge Agreements with the Borrower, the Grantor hereby agrees with the Collateral Agent for its benefit and the ratable benefit of the Secured Parties as follows:

SECTION 1. Grant of Security. The Grantor hereby assigns to the Collateral Agent for its benefit and the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent for its benefit and the ratable benefit of the Secured Parties a security interest in all of such Grantor's right, title and interest in and to the following, whether now owned or

hereafter acquired by such Grantor, wherever located and whether now or hereafter existing (collectively, the "Intellectual Property Collateral"):

(a) all patents, patent applications and patentable inventions, including, without limitation, each patent and patent application, if any, identified in Schedule I attached hereto and made a part hereof, and including, without limitation, (i) all inventions and improvements described and claimed therein, (ii) the right to sue or otherwise recover for any infringements or misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past and future infringements thereof), and (iv) all rights corresponding thereto throughout the world and all reissues, divisions, continuations, continuations-in-part, provisionals, substitutes, renewals, re-issues and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "Patents");

(b) all trademarks, service marks, trade names, trade dress or other indicia of source and/or goodwill, domain name registrations, trademark and service mark registrations, and applications for trademark or service mark registrations and any renewals thereof, including without limitation, each trademark or service mark registration and application and domain name registration identified in Schedule II attached hereto and made a part hereof, and including without limitation (i) the right to sue or otherwise recover for any and all past, present and future infringements, dilutions, violations and misappropriations thereof, (ii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements and dilutions thereof), and (iii) all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized, by each such trademark, service mark, trade name, trade dress or other indicia of trade origin (collectively, the "Trademarks"); provided, however, that the parties expressly agree that pending intent-to-use trademark or service mark applications of the Grantors and any future intent-to-use trademark or service mark applications filed by any Grantor are expressly excluded from the scope of this Agreement and from the Intellectual Property Collateral until such time as an amendment to allege use or a verified statement of use for such trademark or service mark application is filed with and accepted by the United States Patent and Trademark Office pursuant to the applicable provisions of the Lanham Act (collectively, the "Excluded Applications");

(c) all design rights and copyrights, whether statutory or common law, and whether or not the underlying works of authorship have been published, and all works of authorship and other intellectual or industrial property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, all right, title and interest in and to Internet websites and the content therein and all copyright registrations and copyright

applications, and any renewals or extensions thereof, including, without limitation, each copyright registration and copyright application, if any, identified in Schedule III attached hereto and made a part hereof, and including, without limitation, (i) the right to print, publish and distribute any of the foregoing, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof), (iv) such Grantor's rights to hyperlinks and data originating or relating to the foregoing Internet websites and (v) all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "Copyrights");

(d) all license agreements with any other person in connection with any of the Patents, Trademarks or Copyrights, or such other person's patents, trade names, trademarks, service marks or copyrights, whether such Grantor is a licensor or licensee under any such license agreement, including, without limitation, the license agreements listed on Schedule IV attached hereto and made a part hereof, and also including, without limitation, franchise agreements (the "Franchise Agreements"), subject, in each case, to the terms of such license agreements, including, without limitation, terms requiring consent to an assignment or a grant of a security interest, and any right to prepare for sale, sell and advertise for sale, any inventory now or hereafter owned by such Grantor and now or hereafter covered by such licenses (collectively, the "Licenses"); and

(e) all proceeds of any and all of the foregoing Intellectual Property Collateral (including, without limitation proceeds that constitute property of the types described in clauses (a)-(d) of this Section 1 and this clause (e)) and, to the extent not otherwise included, all (i) payments under insurance (whether or not the Collateral Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Intellectual Property Collateral and (ii) cash.

SECTION 2. Security for Obligations. This Agreement secures the payment of all Obligations of the Grantor now or hereafter existing under the Loan Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract courses of action, costs, expenses or otherwise, and in the case of each Grantor, the payment of all Obligations of such Grantor owed in connection with Treasury Management Services whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract causes of action, costs, expenses or otherwise (all such Obligations being the "Secured Obligations"). Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts that constitute part of the Secured Obligations and would be owed by such Grantor to the Collateral Agent or any Secured Party under the Loan Documents but for the fact that they are unenforceable or not allowable due to the exercise of a bankruptcy, reorganization or similar proceeding involving a Loan Party.

SECTION 3. Grantor Remain Liabie. Anything herein to the contrary notwithstanding, (a) the Grantor shall remain liable under the contracts and agreements included in the Intellectual Property Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Collateral Agent of any of the rights hereunder shall not release the Grantor from any of its duties or obligations under the contracts and agreements included in the Intellectual Property Collateral, and (c) neither the Collateral Agent nor any Secured Party shall have any obligation or liability under the contracts and agreements included in the Intellectual Property Collateral by reason of this Agreement or any other Loan Document, nor shall the Collateral Agent or any Secured Party be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 4. Representation and Warranties. The Grantor represents and warrants as to itself and its Intellectual Property Collateral as follows:

(a) Such Grantor is the legal and beneficial owner of the entire right, title and interest in and to all of the United States Intellectual Property Collateral pledged by such Grantor hereunder free and clear of any Lien, claim, option or right of others, except for the security interest created by this Agreement or the other Loan Documents, Permitted Liens and Liens permitted by Section 5.02(a)(iii), (vii), (viii) or (x) of the Credit Agreement. Except for the Intellectual Property Security Agreement dated as of November 28, 1997 by the Grantors (as defined therein) in favor of Bank of America, N.A. (as modified, supplemented or amended from time to time) (the "Bank of America Security Agreement"), which has been partially terminated and released as of the date hereof, no effective financing statement or other instrument similar in effect covering all or any part of such Intellectual Property Collateral is on file in any recording office (including, without limitation, the United States Patent and Trademark Office and the United States Copyright Office), except such as may have been filed in favor of the Collateral Agent relating to this Agreement.

(b) Set forth in Schedule I below the name of such Grantor is a complete and accurate list of all patents and all patent applications owned by such Grantor. Set forth in Schedule II below the name of such Grantor is a complete and accurate list of all trademark and service mark registrations, trademark and service mark applications and domain name registrations owned by such Grantor, with the exception of the Excluded Applications as defined herein. Set forth in Schedule III below the name of such Grantor is a complete and accurate list of all copyright registrations and copyright applications owned by such Grantor. With the exception of any Franchise Agreements in which such Grantor is a licensor of any of the Patents, Trademarks or Copyrights, and of any shrink wrap or click wrap licenses granted in connection with the purchase commercially available software, set forth in Schedule IV below the name of such Grantor is a complete and accurate list of all Licenses owned by such Grantor in which such Grantor is (i) a licensor with respect to any of the Patents, Trademarks or Copyrights, or (ii) a licensee of any other person's patents, trade names, trademarks, service marks or copyrights. Such Grantor has made all necessary filings and recordings to protect, perfect and maintain its interest in the United States patents, United States patent applications, United States



trademark and service mark registrations, United States trademark and service applications, domain name registrations, United States copyright registrations and United States copyright applications set forth in Schedules I, II and III.

(c) Each United States patent, United States trademark or service mark registration, domain name registration and United States copyright registration of such Grantor set forth in Schedules I, II, III is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and is valid, registrable and enforceable. Each United States patent application, United States trademark or service mark application and United States copyright application is subsisting and has not been issued a final refusal. Each domain name registration is not subject to any proceedings anywhere challenging any Grantors' ownership rights therein or rights to use the foregoing. Such Grantor is not aware of any uses of any item of United States Intellectual Property Collateral which could be expected to lead to such item becoming invalid or unenforceable, including unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such United States Intellectual Property Collateral.

(d) Except for the Bank of America Security Agreement, which has been partially terminated and released as of the date hereof, and except for the Licenses, such Grantor has not made a previous assignment, transfer or agreement constituting a present or future assignment, transfer or encumbrance of any of the United States Intellectual Property Collateral. Except with respect to Franchise Agreements and as may be set forth in Schedule V hereto, such Grantor has not granted any license (other than those listed on Schedule IV hereto), release covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Intellectual Property Collateral.

(e) Such Grantor has used proper statutory notice in connection with its use of each patent, each registered trademark and service mark and each copyright contained in Schedules I, II and III, to the extent deemed necessary in the reasonable business judgment of such Grantor to protect the rights in each such patent, registered trademark and service mark and copyright.

(f) This Agreement executed by the Grantor is effective to create, in favor of the Lenders, legal, valid and enforceable security interests in all right, title and interest of the Grantors in any and all of the United States Intellectual Property Collateral, securing the Notes and all other Obligations from time to time outstanding under the Loan Documents. This Agreement, upon the due filing of UCC-1 Financing Statements and the due filing of a copy of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, shall create a fully perfected security interest in all right, title and interest of the Grantor in such United States Intellectual Property Collateral, superior in right to any liens, existing or future, which the Grantors or any creditors of or purchasers from, or any other Person, may have against such United States Intellectual Property Collateral or interests therein, except to the extent otherwise provided in the Credit Agreement. Upon the due filing of UCC-1 Financing Statements and the due filing of a copy of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, all filings and other actions

necessary or desirable to perfect and protect such security interests will have been duly taken.

(g) No consent of any other Person and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other third party is required (i) for the grant by such Grantor of the assignment and security interest in the United States Intellectual Property Collateral granted hereby or for the execution, delivery or performance of this Agreement by such Grantor, (ii) for the perfection or maintenance of the assignment and security interest created hereby (including the first priority nature of such assignment or security interest) in the United States Intellectual Property Collateral, except for the filing of financing and continuation statements under the Uniform Commercial Code, which financing statements will be duly filed pursuant to the terms of Section 3.01(g)(viii)(B) or Section 5.01(n) of the Credit Agreement, and the filing and recordation of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, which shall be duly filed promptly following the execution of this Agreement, or (iii) for the exercise by the Collateral Agent of its rights provided for in this Agreement or the remedies in respect of the Intellectual Property Collateral pursuant to this Agreement.

(h) To the best of such Grantor's knowledge, except as set forth in Schedule V hereto, there are no unresolved claims that have been asserted, pending, threatened or are likely to be made by (A) any third party against such Grantor relating to any item of United States Intellectual Property Collateral or the use thereof by such Grantor, or (b) such Grantor against any third party relating to any item of United States Intellectual Property Collateral.

(i) With the exception of any non-final office actions issued by the appropriate trademark administrative office with respect to any pending trademark or service mark applications of such Grantor, no claim has been made and is continuing or threatened that any item of United States Intellectual Property Collateral is invalid or unenforceable or that the use by such Grantor of any United States Intellectual Property Collateral does or may violate the rights of any Person.

(j) Such Grantor has taken all reasonably necessary steps to use consistent standards of quality in the manufacture, distribution and sale of all products sold and the provision of all services provided under or in connection with any of the Trademarks and has taken all reasonably necessary steps to ensure that all licensed users of any of the Trademarks use such consistent standards of quality.

(k) With respect to each License, (i) to such Grantor's knowledge, such License is valid and binding and in full force and effect and represents the entire agreement between the respective licensor and licensee with respect to the subject matter of such License; (ii) such License will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interest granted herein, nor will the grant of such rights and interest constitute a breach or default under such License or otherwise give the licensor or licensee a right to terminate such License; (iii) such Grantor has not received any notice of termination or cancellation

under such License; (iv) such Grantor has not received any notice of a breach or default under such License, which breach or default has not been cured; (v) such Grantor has not granted to any other third party any rights, adverse or otherwise, under such License; and (vi) neither such Grantor nor to such Grantor's knowledge any other party to such License is in breach or default in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such License.

SECTION 5. Further Assurances. (a) The Grantor agrees that from time to time, at its own expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may request, in order to perfect and protect any pledge, assignment or security interest granted or to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any part of the Intellectual Property Collateral. Without limiting the generality of the foregoing, the Grantor will execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Collateral Agent may request, in order to perfect and preserve the pledge, assignment and security interest granted or to be granted hereby.

(b) The Grantor hereby authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, relating to all or any part of the Intellectual Property Collateral pledged by such Grantor hereunder without the signature of such Grantor where permitted by law. A photocopy or other reproduction of this Agreement or any financing statement covering the Intellectual Property Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(c) The Grantor will furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Intellectual Property Collateral of such Grantor and such other reports in connection with the Intellectual Property Collateral of such Grantor as the Collateral Agent may reasonably request, all in reasonable detail.

(d) The Grantor agrees that, should it obtain an ownership interest in any patent, patent application, patentable invention, trademark, service mark, trade name, trade dress, other indicia of trade origin, domain name registration, trademark or service mark registration, trademark or service mark application (other than an Excluded Application), copyright, work of authorship, copyright registration, copyright application or license, which is not now a part of the Intellectual Property Collateral, (i) the provisions of Section 1 herein shall automatically apply thereto, (ii) any such patent, patent application, patentable invention, trademark, service mark, trade name, trade dress, indicia of trade origin, domain name registration, trademark or service mark registration or trademark or service mark application (together with the goodwill of the business connected with the use of same and symbolized by same), copyright, work of authorship, copyright registration, copyright application or license shall automatically become part of the Intellectual Property Collateral, and (iii) with respect to any ownership interest in any patent, patent application, domain name registration, trademark or service mark registration, trademark or service mark application, copyright registration, copyright application or license, (other than Franchise Agreements, shrink wrap or click wrap licenses) that such Grantor should obtain, the Grantor shall provide to the Collateral Agent on a semi-annual basis a written report

of all such filings and acquisitions. The parties expressly agree that the foregoing provisions of this Section 5(d) shall not apply to any Excluded Applications until such time as an amendment to allege use or a verified statement of use for such Excluded Application is filed with and accepted by the United States Patent and Trademark Office pursuant to the applicable provisions of the Lanham Act. The Grantor authorizes the Collateral Agent to modify this Agreement by amending Schedules I, II, III and IV (and will cooperate with the Collateral Agent in effecting any such amendment) to include any patent, patent application, domain name registration, trademark or service mark registration, trademark or service mark application, copyright registration, copyright application or license which becomes part of the Intellectual Property Collateral under this Section.

(e) Except as provided below, with respect to each United States patent, United States patent application, United States trademark or service mark registration, domain name registrations, United States trademark or service mark application, United States copyright registration, United States copyright application and license, such Grantor agrees to take all necessary steps, including, without limitation, in the United States Patent and Trademark Office, the United States Copyright Office, with any authority authorized to issue domain name registrations, including, without limitation, Network Solutions, Inc. or in any court, to (i) maintain each such patent, domain name registration, trademark or service mark registration, copyright registration and License of such Grantor (but, as to licenses, only to the extent deemed appropriate in the reasonable business judgment of such Grantor), and (ii) pursue, to the extent deemed appropriate in the reasonable business judgment of such Grantor, each such patent application, trademark or service mark application, and copyright application now or hereafter included in the Intellectual Property Collateral of such Grantor, including, without limitation, the filing of responses to office actions issued by the United States Patent and Trademark Office and the United States Copyright Office, the filing of applications for renewal or extension, the filing of affidavits under Sections 8 and 15 of the United States Trademark Act, the filing of divisional, continuation, continuation-in-part and substitute applications, the filing of applications for reissue, renewal or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings. Each Grantor agrees to take corresponding steps with respect to each new or acquired United States patent, United States patent application, domain name registration, United States trademark or service mark registration, United States trademark or service mark application, United States copyright registration, United States copyright application or License to which it is now or later becomes entitled. Any expenses incurred in connection with such activities shall be borne by such Grantor. No Grantor shall, without the written consent of the Collateral Agent, discontinue use of or otherwise abandon any patent or patentable invention, domain name registration, trademark or service mark, or copyright identified in Schedules I, II and III, or abandon any right to file an application for letters patent, trademark or service mark, or copyright, or abandon any pending application for a letters patent, trademark or service mark, or copyright identified in Schedules I, II and III, unless such Grantor shall have previously determined that the use or the pursuit or maintenance thereof is no longer desirable in the conduct of such Grantor's business and that the loss thereof will not have a Material Adverse Effect, in which case such Grantor will give notice to the Collateral Agent in writing on a semi-annual basis of the abandonment of any such item of Intellectual Property Collateral determined by such Grantor to be no longer desirable in the conduct of such Grantor's business and whose loss will not have a Material Adverse Effect.

(f) Except as provided below, the Grantor agrees to notify the Collateral Agent promptly and in writing if it learns (i) that any item of the Intellectual Property Collateral may be determined to have become abandoned or dedicated to the public (other than an abandonment or dedication for which such Grantor has previously determined will not have a Material Adverse Effect pursuant to Section 5(e) above) or (ii) of any adverse determination or the institution of any proceeding (including, without limitation, the institution of any proceeding in the United States Patent and Trademark Office or any court) regarding any item of the United States Intellectual Property Collateral. The Grantor shall not be required to notify the Collateral Agent in writing of an adverse determination or the institution of any proceeding involving a franchisee, unless such Grantor deems, in its reasonable business judgment, that such adverse determination or institution of proceeding may have a Material Adverse Effect upon such Grantor's business, in which case, such Grantor shall promptly and in writing notify the Collateral Agent of any such adverse determination or institution of proceeding.

(g) In the event that the Grantor becomes aware that any item of the Intellectual Property Collateral is infringed, diluted, violated or misappropriated by a third party, such Grantor shall promptly notify the Collateral Agent (except as provided below) and shall take such actions as such Grantor or the Collateral Agent deems reasonable and appropriate under the circumstances to protect such Intellectual Property Collateral, including, without limitation, commencing suit for infringement, dilution, violation or misappropriation thereof. Any expense incurred in connection with such activities shall be borne by such Grantor. In the case of infringements or misappropriations of any item of Intellectual Property Collateral by a franchisee, the Grantor shall use its best efforts to notify the Collateral Agent of any such infringement or misappropriation that such Grantor believes, in its reasonable business judgment, may have a Material Adverse Effect upon such Grantor's business.

(h) The Grantor shall continue to use proper statutory notice in connection with its use of each of its patents, registered trademarks and service marks, and copyrights contained in Schedules I, II and III, to the extent deemed necessary in the reasonable business judgment of such Grantor to protect the rights in each such patent, registered trademark and service mark and copyright.

(i) The Grantor shall take all steps which it or the Collateral Agent deems reasonable and appropriate under the circumstances to preserve and protect each item of its Intellectual Property Collateral, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with any of the Trademarks, consistent with the quality of the products and services as of the date hereof, and taking all steps necessary to ensure that all licensed users of any of the Trademarks use such consistent standards of quality.

SECTION 6. Transfers and Other Liens. The Grantor agrees that, except as permitted in the Credit Agreement it shall not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any item of the Intellectual Property Collateral, or (ii) create or suffer to exist any Lien upon or with respect to any of the Intellectual Property Collateral, except for the assignment and security interest created by this Agreement; provided, however, that this Section 6 shall not be deemed to impose any restrictions on the right of the Grantor to grant Licenses to use the Intellectual Property Collateral in the ordinary course

of business, so long as such Grantor notifies the Collateral Agent promptly and in writing of all such Licenses other than Franchise Agreements.

SECTION 7. Collateral Agent Appointed Attorney-in-Fact. The Grantor hereby irrevocably appoints the Collateral Agent such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Collateral Agent's discretion, to take any action and to execute any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) to ask for, demand, collect, sue for, recover, compromise, receive and give acquaintance and receipts for moneys due and to become due under or in respect of any of the Intellectual Property Collateral,

(b) to receive, indorse and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above, and

(c) to file any claims, or take any action or to institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any payments relating to any of the Intellectual Property Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any item of the Intellectual Property Collateral.

SECTION 8. Collateral Agent May Perform. If the Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by such Grantor under Section 11(b).

SECTION 9. The Collateral Agent's Duties. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Intellectual Property Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of the certificates of registration for any of the Trademarks and Copyrights, the letters patent for any of the Patents and any License in its possession, if any, and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Intellectual Property Collateral, whether or not the Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Intellectual Property Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the certificates of registration for any of the Trademarks and Copyrights, the letters patent for any of the Patents and any License in its possession, if any, if such certificates of registration, letters patent and licenses are accorded treatment substantially equal to that which Bank of America accords its own property.

SECTION 10. Remedies. If any Event of Default shall have occurred and be continuing:

(a) The Collateral Agent may exercise in respect of the Intellectual Property Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party upon default under the

Uniform Commercial Code in effect in the State of New York at such time (the "N.Y. Uniform Commercial Code") (whether or not the N.Y. Uniform Commercial Code applies to the affected Intellectual Property Collateral), and also may (i) require any or all of the Grantor to, and such Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of the documents and things embodying all or any part of the Intellectual Property Collateral as directed by the Collateral Agent and make them available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties; (ii) without notice, except as specified below, sell the Intellectual Property Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Collateral Agent may deem commercially reasonable; and (iii) exercise any and all rights and remedies of the Grantor under or in respect of the Intellectual Property Collateral, including, without limitation, any and all rights of such Grantor to demand or otherwise require payments of any amount under the Intellectual Property Collateral. In the event of any sale, assignment, or other disposition of any of the Intellectual Property Collateral of the Grantor, the goodwill of the business connected with and symbolized by any Trademarks subject to such disposition shall be included, and such Grantor shall supply to the Collateral Agent or its designee such Grantor's know-how and expertise, and documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property Collateral subject to such disposition, and such Grantor's customer lists and other records and documents relating to such Intellectual Property Collateral and to the manufacture, distribution, advertising and sale of such products and services. The Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Intellectual Property Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Intellectual Property Collateral may, in the discretion of the Collateral Agent, be held by the Collateral Agent as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Collateral Agent pursuant to Section 11) in whole or in part by the Collateral Agent for the ratable benefit of the Secured Parties against all or any part of the Secured Obligations in such order as the Collateral Agent shall elect. Any surplus of such cash or cash proceeds held by the Collateral Agent and remaining after payment in full of all of the Secured Obligations shall be paid over to the applicable Grantor or to whomsoever may be lawfully entitled to receive such surplus.

(c) The Collateral Agent may exercise any and all rights and remedies of the Grantor under or in respect of the Intellectual Property Collateral, including, without limitation, any and all rights of such Grantor to demand or otherwise require payment of

any amount under, or performance of any provision of, any of the Intellectual Property Collateral.

(d) All payments received by the Grantor under or in respect of the Intellectual Property Collateral shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary endorsement).

SECTION 11. Indemnity and Expenses. (a) The Grantor agrees to indemnify the Collateral Agent from and against any and all claims, losses and liabilities growing out of or resulting from this Agreement (including, without limitation, enforcement of this Agreement), except claims, losses or liabilities resulting from the Collateral Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction.

(b) The Grantor will upon demand pay to the Collateral Agent the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that the Collateral Agent may incur in connection with (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from or other realization upon, any of the Intellectual Property Collateral, (iii) the exercise or enforcement of any of the rights of the Collateral Agent or the Secured Parties hereunder or (iv) the failure by the Grantor to perform or observe any of the provisions hereof.

SECTION 12. Security Interest Absolute. The obligations of the Grantor under this Agreement are independent of the Secured Obligations, and a separate action or actions may be brought and prosecuted against the Grantor to enforce this Agreement, irrespective of whether any action is brought against the Borrower or any Loan Party or whether the Borrower is joined in any such action or actions. All rights of the Collateral Agent and the assignment and security interest hereunder, and all obligations of the Grantor hereunder, shall be absolute and unconditional, irrespective of:

(a) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations or any other amendment or waiver of or any consent to any departure from any Loan Document, including, without limitation, any increase in the Secured Obligations resulting from the extension of additional credit to the Borrower, any other Loan Party or any of their subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Secured Obligations;

(d) any manner of application of collateral, or proceeds thereof, to all or any of the Secured Obligations, or any manner of sale or other disposition of any collateral for all or any of the Secured Obligations or any other assets of any Grantor or any of its subsidiaries;



(e) any change, restructuring or termination of the corporate structure or existence of any Grantor or any of its subsidiaries;

(f) any failure of any Loan Party to disclose to any Secured Party any information relating to the business, assets, liabilities (actual or contingent) operations, condition (financial or otherwise), or prospects of any other Loan Party now or hereafter known to such Secured Party (the Grantors waiving any duty on the part of the Secured Parties to disclose such information);

(g) the failure of any other Person to execute this Agreement or any other Collateral Document, guaranty or agreement or the release or reduction of liability of any Grantor or surety with respect to the Secured Obligations;

(h) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by any Secured Party that might otherwise constitute a defense available to, or a discharge of, any Grantor or a third party grantor of a security interest; or

(i) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Grantor or a third party grantor of a security interest.

SECTION 13. Amendments; Waivers; Etc. (a) No amendment or waiver of any provision of this Agreement, and no consent to any departure by the Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Collateral Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Collateral Agent to exercise, and no delay in exercising any right hereunder, shall operate as a waiver thereof, nor shall any single or, partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

(b) Upon the execution and delivery by any Person of a supplement to this Agreement, in each case in substantially the form of Exhibit A hereto (each an "Intellectual Property Security Agreement Supplement"), (i) such Person shall be referred to as an "Additional Grantor" and shall be and become a Grantor, and each reference in this Agreement to an "Additional Grantor" or a "Grantor" shall also mean and be a reference to such Additional Grantor, and each reference in any other Loan Document to a "Grantor" or a "Loan Party" shall also mean and be a reference to such Additional Grantor, and (ii) the schedule supplements attached to each Intellectual Property Security Agreement Supplement shall be incorporated into and become a part of and supplement the Schedules to this Agreement, as appropriate, and the Collateral Agent may attach such supplements to such Schedules, and each reference to such Schedules shall mean and be a reference to such Schedules, as supplemented pursuant hereto.

SECTION 14. Addresses for Notices. All notices and other communications provided for hereunder shall be in writing (including facsimile, telecopier, telegraphic, telex or cable communication) and mailed, faxed, telecopied, telegraphed, telexed, cabled or delivered, if to the Grantor, addressed to it at the address set forth below the name of such Grantor on the signature pages hereof, if to any Additional Grantor, addressed to it at the address set forth below

its name on the signature pages to the Intellectual Property Security Agreement Supplement executed and delivered by such Additional Grantor, if to the Collateral Agent, addressed to it at its address set forth in Section 8.02 of the Credit Agreement or, as to any party, at such other address as shall be designated by such party in a written notice to the Grantor and the Collateral Agent. All such notices and other communications shall, when mailed, telecopied, telegraphed, telexed or cabled, respectively, be effective three days after being deposited in the mails, or, if sent by overnight courier, on the next Business Day following the day of delivery to the overnight courier, or, when delivered to the telegraph company, transmitted by telecopier or confirmed by telex answer back, respectively, addressed as aforesaid.

SECTION 15. Continuing Security Interest; Assignments Under the Credit Agreement. This Agreement shall create a continuing security interest in the Intellectual Property Collateral and shall (a) remain in full force and effect until the latest of the payment in full in cash of the Secured Obligations and the Termination Date, (b) be binding upon each Grantor, its successors and assigns and (c) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent, the Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Secured Party may assign or otherwise transfer all or any portion of its rights and obligations under the Credit Agreement (including, without limitation, all or any portion of its Commitment, and the Advances owing to it and any Note or Notes held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party herein or otherwise, in each case as provided in Section 8.07 of the Credit Agreement.

SECTION 16. Release and Termination. (a) Upon any sale, lease, transfer or other disposition of any item of Intellectual Property Collateral in accordance with the terms of the Loan Documents, the Collateral Agent will, at the expense of the Grantor pledging such item of Intellectual Property Collateral hereunder, execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence the release of such item of Intellectual Property Collateral from the assignment and security interest granted hereby; provided, however, that (i) at the time of such request and such release no Event of Default shall have occurred and be continuing, (ii) such Grantor shall have delivered to the Collateral Agent, at least ten Business Days (or such later date as the Collateral Agent may agree) prior to the date of the proposed release, a written request for release describing the item of Intellectual Property Collateral and such other information as the Collateral Agent may reasonably request, together with a form of release for execution by the Collateral Agent and a certification by such Grantor to the effect that the transaction is in compliance with the Loan Documents and as to such other matters as the Collateral Agent may request, and (iii) the proceeds of any such sale, lease, transfer or other disposition required to be applied in accordance with Section 2.06 of the Credit Agreement shall be paid to, or in accordance with the instructions of, the Collateral Agent at the closing.

(b) Upon the later of the payment in full in cash of the Secured Obligations and the Termination Date, the pledge, assignment and security interest granted hereby shall terminate and all rights to the Intellectual Property Collateral shall revert to the appropriate Grantor. Upon any such termination, the Collateral Agent will, at such Grantor's expense, execute and deliver to

such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

SECTION 17. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 18. Governing Law; Terms. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except to the extent that the validity or perfection of the security interest hereunder, or remedies hereunder, in respect of any particular item of the Intellectual Property Collateral are governed by the laws of a jurisdiction other than the State of New York. Unless otherwise defined herein or in the Credit Agreement, terms used in Article 9 of the N.Y. Uniform Commercial Code are used herein as therein defined.

IN WITNESS WHEREOF, the Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written

CAPTAIN D'S, INC.

By: Donna M. Adams  
Name: DONNA M. ADAMS  
Title: ASSISTANT SECRETARY

CAPTAIN D'S REALTY, LLC

By: Captain D's, Inc., as Managing Member

By: Donna M. Adams  
Name: DONNA M. ADAMS  
Title: ASSISTANT SECRETARY

SHN PROPERTIES, LLC

By: Captain D's, Inc., as Managing Member

By: Donna M. Adams  
Name: DONNA M. ADAMS  
Title: ASSISTANT SECRETARY

BEVERAGES SALES, INC.

By: Donna M. Adams  
Name: DONNA M. ADAMS  
Title: ASSISTANT SECRETARY

Agreed and consented  
to as of the date first above written:

BANK OF AMERICA, N.A.

By: Brendon Jones  
Name: Brendon Jones  
Title: ATTORNEY IN FACT

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 6<sup>th</sup> day of September, 2000, before me personally came DONNA Adams to me known, who, being by me duly sworn, did depose and say he resides at \_\_\_\_\_ and that he is the ASSISTANT secretary of CAPTAIN D'S, INC., and Beverage Sales, Inc. the corporation described in and which executed the above instrument; that he has been authorized to execute said instrument on behalf of said corporation; and that he signed said instrument on behalf of said corporation pursuant to said authority.

Mary R. Hoets  
\_\_\_\_\_  
Notary Public

MARY R. HOETS  
Notary Public, State of New York  
No. 31-4985420  
Qualified in New York County  
Certificate filed in New York County  
Commission Expires Aug. 19, 19\_\_ 1/8/2002

STATE OF New York )  
 ) ss :  
COUNTY OF New York )

On the 6<sup>th</sup> day of September, 2000, before me personally came Bradford Jones to me known, who, being by me duly sworn, did depose and say he resides at \_\_\_\_\_ and that he is the Attorney in fact of BANK OF AMERICA, N.A., the corporation described in and which executed the above instrument; that he has been authorized to execute said instrument on behalf of said corporation; and that he signed said instrument on behalf of said corporation pursuant to said authority.

[Notarial Seal] Mary R. Hoets  
\_\_\_\_\_  
Notary Public

MARY R. HOETS  
Notary Public, State of New York  
No. 31-4985420  
Qualified in New York County  
Certificate filed in New York County  
Commission Expires Aug. 19, 19\_\_  
1/8/2002