

# LONG JOHN SILVER'S® FRANCHISE AGREEMENT

## TABLE OF CONTENTS

SECTION	PAGE
1 GRANT OF FRANCHISE.....	2
2 TERM.....	5
3 PREMISES AND EQUIPMENT.....	7
4 SUPPLIES, FOOD PRODUCTS, RECIPE ITEMS AND UNIFORMS.....	9
5 OPERATING STANDARDS, PROCEDURES, TRAINING AND SERVICING.....	11
6 FEES AND ADVERTISING EXPENDITURES.....	13
7 ADVERTISING.....	14
8 BOOKS, RECORDS, CONTROL PROCEDURES.....	16
9 INSURANCE - INDEMNITY.....	17
10 OWNERSHIP AND LIMITATIONS ON USE OF PROPRIETARY MARKS, TRADE SECRETS.....	19
11 TERMINATION.....	21
12 FRANCHISEE'S OTHER BUSINESS INTERESTS.....	26
13 ASSIGNMENT.....	27
14 FRANCHISE ASSOCIATION.....	31
15 GENERAL PROVISIONS.....	32

**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT is dated for reference purposes as of June 21, 2002, and it is entered into between LONG JOHN SILVER'S, INC., a Delaware corporation ("Company"), and SOUTHWEST SEAFOOD SHOPPES, LLC, an Arizona Limited Liability company ("Franchisee");**

**PRELIMINARY STATEMENTS:**

**A. The Company is the developer of and sole and exclusive owner of a distinctive food service system ("System") under which food is sold to the public from restaurants and other facilities operated under the names "Long John Silver's" or "Long John Silver's Seafood Shops" ("LJS Restaurants").**

**B. The System so developed now includes, among other things, the following elements, all or some of which may be deleted, changed, improved or further developed by the Company from time to time: (1) procedures for the preparation and serving of food and beverage products; (2) special ingredients, confidential recipes for food products, a secret batter mix and distinctive service accessories (including, without limitation, uniforms, menus, cartons, packages, containers and other paper and plastic items); (3) methods of achieving quality and quantity control and procedures designed to be advantageous to LJS Restaurant operators and consumers; (4) plans and specifications for distinctive premises, featuring characteristic interior and exterior style, design, decor, furnishings, equipment layout and interior and exterior signage; (5) a uniform method of operating that is described in the "Long John Silver's Seafood Shops Confidential Manual of Operations" and in other communications to franchisees, including without limitation, in bulletins, video and audio tapes, computer disks, on-line and via other electronic means (all such other communications and any supplements or additions thereto being hereinafter collectively referred to as the "Confidential Manual"); (6) distinctive and characteristic trademarks, service marks (including, without limitation, "Long John Silver's Seafood Shops" and "Long John Silver's"), signs, designs and emblems as the Company designates in the Confidential Manual or otherwise in writing as prescribed for use with the System ("Proprietary Marks"); (7) a public image that each restaurant or other facility is a unit in an established franchise system and that all are operated with uniform standards of service and product quality and portions; (8) such exclusive copyrights and trade secrets as have been and may from time to time be developed, which are owned by the Company and which are disclosed to its franchisees in confidence in connection with the construction and operation of an LJS Restaurant.**

**C. Franchisee wishes to obtain a franchise from the Company to operate an LJS Restaurant pursuant to the System and to be afforded, or to have its designated personnel afforded, the training and other assistance provided by the Company in connection therewith.**

D. Franchisee recognizes that the terms and conditions in this Agreement are reasonably necessary to maintain the Company's high and uniform standards of quality and service designed to protect the goodwill and enhance the public image of the Proprietary Marks and the System, and Franchisee recognizes the necessity of opening and operating the franchised LJS Restaurant in faithful compliance with the Company's standards and specifications.

**SECTION 1: GRANT OF FRANCHISE**

**1.01 Grant of Franchise.**

(a) This franchise is being granted based on the application, financial statements and other documents submitted by Franchisee to the Company prior to the Company's execution of this Agreement. Franchisee represents and warrants that those materials: (1) are accurate and complete as of their respective dates and the date of this Agreement; and (2) do not omit the statement of any material fact necessary to make them not misleading.

(b) Subject to the conditions of this Agreement and Franchisee's continuing good faith performance under this Agreement, the Company grants to Franchisee: (1) the right to build and operate an LJS Restaurant ("Franchised Restaurant") and to use the System at the location described on Schedule I ("Location"); (2) the right to use such Proprietary Marks of the Company as are now or may hereafter be specifically designated by the Company in writing for use with the System (as they may be changed, improved, and further developed from time to time) in conjunction with the Franchised Restaurant; and (3) the right to indicate to the public that the Franchised Restaurant is operated as a part of, or a unit in, the LJS Restaurant chain.

(c) The Company shall not own, operate or grant (nor grant others the right to own, operate or grant) a franchise for an LJS Restaurant within the area surrounding the Location designated as the "Territory" on Schedule I attached hereto. Notwithstanding the foregoing, the Company shall have the right to own, operate or franchise within the Territory, LJS Restaurants at the locations described in Section 1.01(d)(1) of this Agreement.

(d) The Company may own or operate, or grant franchises or licenses for others to operate LJS Restaurants:

(1) within the Territory at the following locations: on rights-of-way of any limited access highways or toll roads, airports, campus, educational, industrial or health care institutions, office or business complexes or buildings (excluding shopping or strip malls), military installations, or at athletic arenas, expositions, convention centers, fairs, zoos, theme parks or similar facilities or events; and

(2) anywhere outside the Territory (regardless whether such location is within the trading area of the Franchised Restaurant) on such terms and conditions as the Company deems appropriate. The Site Proposal Review referenced and further defined in Section 1.01(f) below shall govern disputes arising from the Company's development of new LJS Restaurants outside the Territory.

(e) The Company reserves the right to sell within the Territory, directly or through third parties, products that are the same as, or similar to, those sold in LJS Restaurants, using brand names the same as, or similar to, the Proprietary Marks designated for use with the System, provided:

(1) The items sold by the Company are of comparable quality to any like items sold in LJS Restaurants, are either packaged or bottled and are not sold for preparation or consumption upon the premises or outlet from which the items are sold, and are not sold by the Company through restaurant outlets; and

(2) In the event that the premises or outlet from which the items are sold is located within the Territory, the Company shall transfer and contribute to LJS Advertising, Inc. ("LJS Advertising", hereinafter further defined) on an annual basis an amount equal to one-half of the net income generated by the sales of such items from such outlet to be used and administered by LJS Advertising for advertising and marketing programs pursuant to Section 7.01 of this Agreement. As used in this Section 1.01(e)(2), the term "net income" shall mean net income from the sales of such items as reflected in the Company's annual audited financial statements.

(f) The Company's then current Site Proposal Review Policy ("Policy", a copy of the Policy in effect as of the date of this Agreement being annexed hereto) shall govern any dispute that arises out of Company's decision to develop or authorize the development of a new LJS Restaurant outside the Territory to which Franchisee objects because Franchisee reasonably believes that the development of the new LJS Restaurant will have a significant adverse impact (as defined in the Policy) upon the gross sales generated from the Franchised Restaurant ("Development Dispute"). The Policy, as modified pursuant to the terms thereof and the terms of this Agreement, shall remain in effect for the term of this Agreement, and Franchisee, so long as Franchisee is a Potentially Impacted Franchisee as defined in the Policy, may invoke the procedures as set forth in the Policy. The Company may modify the Policy from time to time, but the Company may not materially modify the Policy: (1) for a period of five (5) years following the effective date of the Policy as defined therein without the approval of the Franchise Association Board (hereinafter defined) ; and (2) following the date that is five (5) years after the effective date of the Policy except upon consultation with the Franchise Association Board. Franchisee agrees that LJS shall incur no liability to Franchisee arising from any modification to the Policy made in accordance with the Policy and this Agreement. Franchisee agrees not to institute any legal or administrative proceeding for claims arising out of a Development Dispute without first attempting to resolve the matter in accordance with the Policy.

1.02 Other Restaurants.

(a) Franchisee understands that the Company and its affiliates (hereinafter defined) may operate and franchise restaurants and food establishments other than LJS Restaurants. Franchisee agrees that the Company, its parent corporation and affiliates may do so at any location, including locations within the Territory, provided that: (a) such restaurants and food establishments are not operated under the names "Long John Silver's", "Long John Silver's Seafood Shops" or similar trade names; (b) if such restaurants are located within the Territory, the gross sales of seafood of the restaurant or food establishment do not constitute or are not likely to constitute twenty percent (20%) or more of all sales of the restaurant or food establishment; or (c) if such restaurants are located within the Territory the restaurant or food establishment does not sell any battered seafood product in a quick service or "fast food" format. Franchisee further acknowledges and agrees that this franchise is solely for the Location and affords Franchisee no rights in any additional franchise to be operated at any other location. Neither this Agreement nor the franchise issued hereunder obligates the Company in any way to sell or issue any other franchise.

(b) As used in this Agreement with reference to Company or the Franchisee, "affiliate" shall mean any entity that controls, is under common control with or is controlled respectively by the Company or the Franchisee.

**1.03 Acceptance of Franchise; Use of Premises.**

(a) Franchisee accepts the franchise and agrees to diligently develop and operate the Franchised Restaurant and to diligently promote the interests of the System for the term of this Agreement and any renewal thereof. Franchisee agrees to construct, maintain and operate the Franchised Restaurant only at the Location, and in accordance with (1) the Company's plans and specifications, (2) the System, (3) the Confidential Manual, (4) other manuals and procedures as may be included in the System and revised from time to time, and (5) the terms of this Agreement.

(b) Franchisee agrees to use the Franchised Restaurant and the premises upon which it is located ("Franchised Restaurant Premises") solely for the operation of the Franchised Restaurant and purposes designated in this Agreement and for no other purpose.

**1.04 Company Services.**

The Company agrees to provide Franchisee with the following materials and services for the Franchised Restaurant:

(a) one (1) copy of the Confidential Manual (a registered copy of which is concurrently with the execution hereof delivered and loaned to Franchisee for the term hereof), and such additions and modifications thereto as the Company may issue from time to time, in its discretion. The Company will require payment of its then current replacement fee for replacing copies of the Confidential Manual.

(b) a sample of the Company's standardized chart of accounts, statement of earnings and balance sheet, to be used by Franchisee for reporting to the Company;

(c) the Company's regular and continuing supervisory services and periodic inspections and evaluations of Franchisee's operation;

(d) the Long John Silver's marketing and advertising program(s);

(e) reasonable efforts, upon Franchisee's written request, to disseminate to suppliers designated by Franchisee, the System standards and specifications for nonsecret food products and equipment items not subject to Company patent rights.

NEITHER THE COMPANY'S ACCEPTANCE OF THE LOCATION NOR ANY INFORMATION COMMUNICATED TO FRANCHISEE REGARDING THE COMPANY'S SITE SELECTION CRITERIA FOR LJS RESTAURANTS SHALL CONSTITUTE A WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE SUITABILITY OF THE LOCATION FOR AN LJS RESTAURANT OR FOR ANY OTHER PURPOSE. THE COMPANY'S ACCEPTANCE OF THE PROPOSED SITE MERELY SIGNIFIES THAT IT IS WILLING TO GRANT A FRANCHISE FOR AN LJS RESTAURANT FOR SUCH LOCATION. THE COMPANY IS NOT RESPONSIBLE FOR THE FAILURE OF THE LOCATION TO MEET FRANCHISEE'S EXPECTATIONS

AS TO POTENTIAL REVENUES. FRANCHISEE'S DECISION TO OPERATE AN LJS RESTAURANT AT THE LOCATION IS BASED SOLELY ON FRANCHISEE'S INDEPENDENT INVESTIGATION OF THE SUITABILITY OF THE LOCATION FOR AN LJS RESTAURANT.

**SECTION 2: TERM**

(Delete 2.01 or 2.02)

**2.01 Ownership of Franchised Restaurant.**

(a) Franchisee warrants and represents to the Company that Franchisee owns the Franchised Restaurant Premises. Franchisee agrees that it shall notify the Company in writing of any change regarding its ownership of the Franchised Restaurant Premises.

(b) Unless previously terminated pursuant to the terms of this Agreement, the term of the franchise granted herein shall commence on the date of last execution of this Agreement and expire on \_\_\_\_\_.

**2.02 Lease of Franchised Restaurant.**

(a) Franchisee warrants and represents to the Company that Franchisee leases or subleases the Franchised Restaurant Premises pursuant to a lease or sublease agreement, of which Franchisee has provided the Company with a true and accurate copy (together with any modifications or renewals thereof, "Lease"). Franchisee shall promptly provide the Company with copies of any material modifications of the Lease. Franchisee shall cause the Lease to contain a provision that allows Franchisee and the Company to fulfill the requirements of Section 11.02(c) and 11.03(c).

(b) Unless previously terminated pursuant to the terms of this Agreement, the term of the franchise granted herein shall commence on the date of last execution of this Agreement and expire on June 30, 2021. The term of this Agreement shall not extend beyond the expiration of Franchise's Lease.

**2.03 Renewal.**

(a) Franchisee may, at its option, renew this franchise for two (2) additional term(s) of five (5) years each; however, Franchisee's exercise of its renewal option shall not extend the term of this franchise beyond the expiration of Franchisee's Lease. In addition, in order to exercise its renewal option, Franchisee must satisfy all of the following conditions: (1) Franchisee must give the Company written notice of its election to renew no less than six (6) months, nor more than nine (9) months, prior to the end of the then current term. (2) At the time when notice is given and at the end of the then current term, Franchisee must not be in default of any provision of this Agreement, or any other agreement between Franchisee or any of its affiliates and the Company or any of the Company's affiliates, and Franchisee and all of its affiliates shall have substantially complied with the terms and conditions of all such agreements during the initial and any prior renewal term(s) of this Agreement. (3) Franchisee and all of its affiliates shall have satisfied all monetary obligations owed by them to the Company, its subsidiaries and affiliates prior to renewal, and have timely met all such obligations throughout the initial and all prior renewal terms of this Agreement.

(4) Franchisee shall provide such financial information regarding Franchisee as the Company reasonably may request. (5) Franchisee must execute the Company's then current standard form renewal franchise agreement (and cause the execution of personal guarantees and other attachments as required by such renewal franchise agreement), which may contain terms and conditions substantially different from those set forth herein, including, without limitation, increased royalty fees and advertising expenditures (provided that the Company shall then be requiring such increased royalty fees and/or advertising expenditures , provided that such renewal franchise agreement shall not provide for royalty fees or advertising contributions in excess of those the Company then requires of new franchisees for LJS Restaurants similar to the Franchised Restaurant. (6) Franchisee and each of its Owners (hereinafter defined) shall execute a general release, in a form satisfactory to the Company, of any and all claims Franchisee may have as of the date of execution of the renewal franchise agreement, or arising from an event or events which occurred prior to such date, against the Company and its officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances, unless such claims are pending and not finally resolved as of the date Franchisee's notice of renewal is due. (7) Franchisee shall present evidence satisfactory to the Company that Franchisee has the right to remain in possession of the Franchised Restaurant Premises for the duration of the renewal term; and (8) Franchisee shall complete, or provide for, such renovation and modernization of the Franchised Restaurant and Franchised Restaurant Premises as the Company may reasonably require, including, without limitation, such remodeling (including structural modifications), redecoration, repair and replacement of fixtures, furniture, signs and equipment, as may be necessary both to reflect the then current public image required by the Company of new franchisees and to ensure the presentation of the Proprietary Marks consistent with such image.

(b) The Company may, at its option and in its sole discretion, conditionally accept Franchisee's exercise of its renewal option pending Franchisee's satisfaction of the conditions set forth in Section 2.03(a). In such event, Franchisee agrees to execute the Company's then current standard form renewal franchise agreement pursuant to Section 2.03(a)(5), which agreement may provide for a term of a duration substantially shorter than the renewal term provided for in this Agreement and which may grant to the Company the right to terminate the same immediately upon notice to Franchisee.

(c) Upon the expiration of the initial term of this Agreement as stated in Section 2.02(b) and the renewal terms as stated in Section 2.03(a), Franchisee shall be entitled to the issuance of a new franchise agreement for the Franchised Restaurant, subject to the following conditions: (1) Franchisee shall have made written application to the Company for the new franchise agreement no less than six (6) months, nor more than nine (9) months, prior to the expiration of the then current term; (2) Franchisee shall have tendered to the Company, concurrently with the delivery of the application for the new franchise agreement, and in lieu of the initial fee prescribed by the franchise agreement, an administrative fee equal to 10% of the initial fee; and (3) Franchisee shall have satisfied all of the conditions for renewal set forth in Sections 2.03(a)(2) through 2.03(a)(8), inclusive. The new franchise agreement shall provide for an initial term and option terms, if any, equal to the terms then being offered by the Company to new franchisees for LJS Restaurants similar to the Franchised Restaurant and it shall not provide for royalty fees or

advertising contributions in excess of those the Company then requires of new franchisees for LJS Restaurants similar to the Franchised Restaurant.

**SECTION 3: PREMISES AND EQUIPMENT**

**3.01 Casualty Damage.**

If the Franchised Restaurant is damaged or rendered totally or partially untenable by fire or other casualty, Franchisee shall repair or restore the Franchised Restaurant to its former condition within a reasonable time, not to exceed six (6) months after the date of the fire or casualty. The proceeds of all insurance carried by Franchisee covering the Franchised Restaurant Premises shall be applied to the cost of repairing or restoring the Franchised Restaurant, and Franchisee shall pay the balance, if any, of such costs. If, in the Company's reasonable judgment, the damage or destruction is of such an extent that it is feasible for Franchisee, without incurring substantial expense additional to the insurance proceeds, to repair or reconstruct the LJS Restaurant in accordance with the then standard Long John Silver's layout and decor specifications, the Company may require Franchisee to repair or reconstruct the LJS Restaurant in accordance with those specifications. Notwithstanding the foregoing, if the Franchised Restaurant is rendered totally or partially untenable by fire or other casualty within two (2) years prior to the date of expiration of the initial term of this Agreement or any renewal term, Franchisee may terminate this Agreement, provided that Franchisee shall have notified the Company in writing of its election to terminate no later than thirty (30) days following the casualty.

**3.02 Purchase and Installation of Equipment and Furnishing.**

(a) Franchisee shall purchase and install and use in and about the Franchised Restaurant Premises such items and only such items of equipment (including, without limitation, food and beverage preparation equipment, fixtures, furnishings, interior and exterior signage, make-up air and exhaust handling equipment, electronic cash registers, software and computers) and other personal property (collectively, "Equipment") as are designated by the Company from time to time as Approved Brands on the Company's required Equipment and Furnishings List in the Confidential Manual, or which otherwise have been approved by the Company in writing and which strictly conform to the appearance, uniform standards and specifications of the Company and the System as established from time to time. The Company's specifications and standards for such Equipment shall be provided to Franchisee upon written request. If Franchisee desires to purchase or install any item not so listed or approved, Franchisee or the supplier of such item shall submit to the Company a written request for approval of the item. The Company shall have the right to require, among other things, that a sample of the item be delivered (or otherwise be made available in a manner acceptable to the Company), at the Company's option, either to the Company or to an independent certified laboratory designated by the Company for testing prior to acting on the request for approval. A charge not to exceed the cost of the testing shall be paid to the Company by Franchisee or by the item's supplier. The Company shall not be liable for any damage to such items resulting from the testing process. The Company reserves the right to retest any item previously approved by it, and to revoke its approval if the item fails to continue to meet the Company's



standards and specifications. Upon notification by the Company, through revision of the Confidential Manual or otherwise, that approval of any item has been revoked, Franchisee shall not thereafter purchase or, if the Company so directs, use such item. The Company may at any and all times inspect all Equipment and its installation to assure Franchisee's compliance with the Company's standards and specifications.

(b) Franchisee shall not install, sell or use on the Franchised Restaurant Premises any vending machines, telephone booths, entertainment devices, products or services not included in the System without the Company's prior written consent.

**3.03 Maintenance of Premises and Equipment.**

(a) Franchisee shall maintain at all times during the term of this Agreement and any renewals hereof, at Franchisee's expense, the Franchised Restaurant Premises and all Equipment thereon in conformity with the high standards and public image of the Company and the System, and shall make no additions or alterations to the Franchised Restaurant Premises without the Company's prior written consent.

(b) Franchisee shall keep the Franchised Restaurant Premises in the highest degree of sanitation, repair and condition, including, without limitation, such periodic repainting, repairs to Equipment and replacement of obsolete signs and Equipment, as the Company may reasonably direct in accordance with its then current standards set out in the Confidential Manual or otherwise.

(c) Franchisee shall not attach or exhibit any signs, displays or posters on or in the exterior or interior of the Franchised Restaurant or on the Franchised Restaurant Premises, other than signs, posters or displays then currently supplied, required or authorized in writing by the Company, nor permit others to do so.

(d) If Franchisee fails to comply with this Section 3.03 in the Company's judgment, then in addition to all other rights the Company has, the Company may notify Franchisee and specify the action Franchisee must take to correct such deficiency. If Franchisee fails or refuses within ten (10) days after delivery of such notice, to initiate and thereafter continue in good faith and with due diligence a bona fide program to complete such required maintenance, sanitation and repair, the Company will have the right (in addition to all other rights in this Agreement), but not the obligation, to enter the Franchised Restaurant Premises and effect such maintenance, repairs or sanitation on Franchisee's behalf and at Franchisee's expense.

**3.04 Renovation of Equipment and Premises.**

In addition to performing maintenance required under Sections 3.03(a) and (b), Franchisee shall, at the Company's request, but no more often than once every five (5) years, refurbish the Franchised Restaurant Premises to conform to the building design, trade dress, color schemes and presentation of the Proprietary Marks consistent with the Company's then current public image, including, without limitation, extensive structural changes, remodeling, replacement of Equipment, redecoration and modifications to existing improvements. The Company agrees that it will not require any image enhancement refurbishment that has a capital cost on a per restaurant basis in excess of that being required of Company-owned LJS Restaurants.

**SECTION 4: SUPPLIES, FOOD PRODUCTS, RECIPE ITEMS AND UNIFORMS**

**4.01 Use of Food, Supplies and Other Items.**

(a) Franchisee shall serve, sell or offer for sale all food and beverage products and only such products (1) as are listed as standard menu items from time to time in the Confidential Manual; (2) as meet the Company's uniform standards of quality and portions and appear on the Company's Approved Food and Beverage Brands List from time to time in the Confidential Manual; and (3) as have been prepared in accordance with the recipes and food handling and preparation methods and procedures designated from time to time in the Confidential Manual.

(b) Franchisee shall maintain all such products in sufficient supply at all times.

(c) Franchisee shall discontinue immediately serving, selling or offering for sale any of such products as the Company may, in its sole discretion, disapprove in writing at any time.

**4.02 Sampling and Testing.**

Franchisee shall permit the Company or its agents, at any and all reasonable times, to remove from the Franchised Restaurant Premises samples of any inventory items, without payment therefor, in amounts reasonably necessary for testing by the Company or an independent, certified laboratory, to determine whether the samples meet the Company's then current standards and specifications.

**4.03 Suppliers of Food Supplies and Other Items.**

(a) Franchisee shall purchase from the Company or sources designated by the Company such secret recipe items as are set forth from time to time in the Confidential Manual. Franchisee shall not purchase such items from any other source or use any other item in substitution therefor.

(b) Except as set forth in Section 4.03(a), Franchisee shall purchase only those food products, paper and plastic goods and service items (collectively, "Products") that conform to the specifications and standards (including standards for handling and distribution of products) of the Company and the System in effect from time to time and which are included on the Company's then current Approved Food and Beverage Brands and Approved Paper Brands Lists appearing in the Confidential Manual. Franchisee may purchase such approved Products from any source. Franchisee must request the Company's approval of any Products not included on the Approved Lists, and the Company may require samples of any such Products to be submitted to it or to a designated independent, certified testing laboratory for testing to determine whether approval shall be granted. The Company agrees that it will not unreasonably withhold its approval for any Product upon receiving such a request so long as such Product meets the Company's then current specifications and standards. Franchisee shall pay upon invoice to Company a charge not to exceed the cost of such testing. The Company reserves the right to retest any Product previously approved by it and to revoke its approval of any Product that fails to continue to meet the Company's standards and specifications. Upon notification by the Company that any Product being used is unapproved or otherwise does not satisfy the specifications and standards of the Company and System, Franchisee shall not thereafter purchase and, if the Company so directs, immediately cease to use the unacceptable Product.

**4.04 Uniforms.**

Franchisee shall purchase, for its employees' use, uniforms that conform strictly to the current specification, design and style of the Company as set forth from time to time in the Confidential Manual or otherwise in writing.

**4.05 System Purchasing Programs.**

(a) Franchisee acknowledges and agrees that the Company may from time to time at its sole discretion enter into arrangements with distributors and suppliers whereby such distributors and suppliers offer to sell Products to both Company LJS Restaurants and those operated by Long John Silver's franchisees ("Purchasing Program"). Franchisee's participation in any Purchasing Program shall be on a voluntary basis and shall not be required by the Company. The Company agrees that it will not earn a profit from the Purchasing Program and that it will manage and administer the Purchasing Program so that any income or revenue received (including rebates received from suppliers based upon franchisee purchases) by the Company as a result of transactions within the Purchasing Program shall be used to offset the Company's administrative and overhead costs incurred in connection with and reasonably related to the administration of the Purchasing Program. The Company has established and may, in its sole discretion, continue a program ("Patronage Dividend Program") whereby any net income (after taxes) realized by the Company as a result of franchisee transactions within the Purchasing Program shall be returned annually to individual franchisee participants on a prorata basis in proportion to the purchases made through the Purchasing Program by such participating franchisees ("Patronage Dividend").

(1) Franchisee shall not be eligible to receive a Patronage Dividend if it or any of its affiliates has received from Company written notice of default of a monetary obligation in excess of \$5,000.00 or a material non-monetary obligation under this Agreement or any other agreement with Company and it has not cured or in good faith disputed in writing in its entirety such default as of the date of the distribution of the Patronage Dividend.

(2) The Company shall have the right to set off against any Patronage Dividend any amounts owed to Company by Franchisee or its affiliates.

(b) The Company agrees to provide to the Franchise Association Board (hereinafter defined) quarterly profit and loss statements with respect to the Company Purchasing Program and to periodically consult with and advise the Franchise Association Board regarding the costs and administration of the Purchasing Program. The Company further agrees that the Franchise Association Board may cause the Company's books and records of accounts for any Purchasing Program to be audited from time to time, provided that any such audits: (1) must be preceded by reasonable prior written notice to the Company; (2) must be performed no more frequently than annually; (3) must be performed at the Company's corporate headquarters and not unreasonably interfere with the Company's conduct of its business; (4) must be performed at the expense of the Franchise Association (hereinafter defined); (5) must be performed by a recognized national accounting firm reasonably acceptable to the Company; (6) must be provided or made available to Franchisee by the Franchise Association upon request; and (7) must be performed in accordance with generally accepted accounting procedures.

**4.06 Fountain Beverages.**

Notwithstanding any provision in Section 4 or this Agreement to the contrary, Franchisee agrees that it shall sell in the Franchised Restaurant The Coca Cola Company's fountain beverages (hereinafter defined), including Coca Cola Classic, diet Coke and Sprite, except to the extent that: (1) the foregoing agreement is prohibited by applicable law; or (2) Franchisee is a party to or bound by any existing agreement that prohibits Franchisee from selling The Coca Cola Company's fountain beverages. The phrase "fountain beverages" shall mean beverages that are dispensed from post-mix, pre-mix or frozen beverage dispensers, bubblers or similar equipment.

**SECTION 5: OPERATING STANDARDS, PROCEDURES, TRAINING AND SERVICING**

**5.01 Operational Standards.**

(a) Franchisee shall operate the Franchised Restaurant in strict accordance with the Confidential Manual which, among other things, sets forth the standard method of operation for an LJS Restaurant, the business format, recipes, menus and instructions for food preparation and the control of quality and portions. Franchisee shall keep the Confidential Manual and all of its contents in confidence except to the extent disclosure is necessary to operate the Franchised Restaurant. Franchisee understands and agrees the Company may, from time to time, revise the contents of the Confidential Manual and such other manuals, standards, instructions, formulas, recipes and specifications, if any, as it may develop for use with the System, and Franchisee shall comply with each changed requirement within such reasonable time as the Company may require.

(b) Franchisee shall at all times keep current its copy of the Confidential Manual and other manuals issued to it by the Company; in the event of any dispute as to the contents, current status and completeness of any of such manuals, the master copy of such manual maintained by the Company shall control.

(c) Franchisee shall promptly pay when due all taxes levied or assessed on Franchisee in the conduct of the business franchised under this Agreement including, without limitation, unemployment and sales taxes. In the event of any bona fide dispute as to liability for taxes assessed, Franchisee may contest the validity or the amount of the tax in accordance with procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Franchised Restaurant Premises, or any improvements thereon.

(d) Franchisee shall comply with all federal, state, and local laws, rules and regulations, and shall timely obtain and maintain all permits, certificates and licenses necessary for the full and proper conduct of the Franchised Restaurant, including, without limitation, building and other construction and occupancy permits, licenses to do business and fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire code clearances. Copies of all inspection reports, warnings, certificates and ratings issued by any governmental entity during the term of this Agreement in connection with the conduct of the Franchised Restaurant which cite or indicate Franchisee's failure to meet or maintain the highest governmental standards or less than full compliance by Franchisee with any applicable law, rule or regulation shall be forwarded to the Company within five (5) days of

Franchisee's receipt thereof, and Franchisee shall remedy same within the time period specified in the respective citation, report or other notice, or within ten (10) days if no time period is so specified.

(e) Franchisee shall not sell or offer for sale any alcoholic beverages at or from its premises, except beer or wine, which may be offered only where lawful and in strict compliance with the Confidential Manual.

**5.02 Operating Hours.**

The Franchised Restaurant shall be open and in normal operation for such minimum hours and days as may from time to time be prescribed in the Confidential Manual or otherwise by the Company in writing.

**5.03 Training.**

(a) The Company will maintain and conduct programs for training Franchisee and its employees. The Company shall maintain unit(s) and/or training center(s) in Lexington, Kentucky or elsewhere as deemed necessary by the Company for training Franchisee and such of its executive, managerial and supervisory employees as the Company deems necessary. The Company shall determine (1) the number of Franchisee's employees to be Company-trained, (2) the training period necessary to adequately train the employees, and (3) whether and when the employees have satisfactorily completed training. In so doing, the Company shall consider the background, experience and training performance of the trainee. Unless otherwise specified in writing by the Company, Franchisee's opening manager, prior to opening the Franchised Restaurant, and all successor managers, prior to assuming the position of manager in the Franchised Restaurant, shall successfully complete the minimum period then currently specified by the Company for management training at such location(s) as the Company may designate.

(b) In addition to the required management training, all other employees of Franchisee must undergo such on-the-job and instructional training as the Company may from time to time require. Franchisee shall purchase and use such training materials, equipment and supplies to properly conduct such training as may be specified by the Company from time to time in the Confidential Manual.

(c) Franchisee and such executive, managerial, supervisory and other employees as the Company from time to time may require, shall attend and successfully complete subsequent training, refresher, and retraining programs conducted by the Company; however, no individual shall be required to attend more than two (2) such additional training programs in each calendar year.

(d) Upon failure for any reason of Franchisee or any of its employees to complete successfully any training, retraining or refresher program required by the Company, Franchisee shall designate another trainee who shall attend and successfully complete the program, and who, if the Company so directs, shall perform the functions of the category of employee for which the program was offered.

(e) Franchisee shall pay all expenses of travel, room, board, training supplies and materials and salaries or wages of Franchisee's employees while in training, as well as fees to defray the cost of any meeting room facilities as shall be established by the Company from time to time. The Company agrees that fees charged for supplies, materials or meeting room facilities shall only be used to cover the Company's costs incurred for such supplies, materials or meeting room facilities and not to generate a profit for the Company.

**5.04 Continuing Services.**

(a) The Company shall furnish to Franchisee, from time to time, such merchandising and operating aids and services, and printed material in connection therewith, as are furnished generally to other franchisees of the Company.

(b) The Company from time to time, in its discretion, shall send its representatives to the Franchised Restaurant to consult with Franchisee or its management representative relative to the operation of the Franchised Restaurant, and shall inspect the Franchised Restaurant Premises with or without prior notice to determine the efficiency and quality of the operation and the faithfulness of Franchisee's compliance with the System.

(c) On reasonable written request by Franchisee, as determined by the Company, the Company shall furnish services regarding specific problems encountered by Franchisee which are beyond the scope of the services provided by the Company under Section 5.04(b). Franchisee shall reimburse the Company promptly for its actual time expended and expenses incurred in aiding Franchisee with such problems.

**SECTION 6: FEES AND ADVERTISING EXPENDITURES**

**6.01 Renewal and Royalty Fee.**

(a) Franchisee shall pay to the Company, upon the execution of this Agreement, a renewal fee of Two Thousand Dollars (\$2,000).

(b) Franchisee shall pay to the Company as a royalty fee, a sum equal to four percent (4%) of Franchisee's Gross Receipts (as defined below) from the operation of the Franchised Restaurant until June 30, 2006. Upon and following July 1, 2006, Franchisee shall pay to the Company royalty fees calculated at the then-current standard rate then being offered by the Company pursuant to its then-current Uniform Franchise Offering Circular for restaurants similar to the Franchised Restaurant. Franchisee shall pay the royalty fee monthly by the tenth (10th) day of each month for the preceding month's Gross Receipts. A report of the Gross Receipts of the Franchised Restaurant for the preceding month shall accompany each payment.

**6.02 Advertising Contributions.**

(a) Franchisee shall pay to the Company or its designee for advertising and marketing programs as described in Sections 7.01(a) and 7.01(b), a sum equal to five percent (5%) of Franchisee's Gross Receipts from the operation of the Franchised Restaurant. Payment shall be made on or before the tenth (10th) day of each month for the preceding month's Gross Receipts. A report of the Gross Receipts of the Franchised Restaurant for the preceding month shall accompany each payment.

**6.03 Definition of Gross Receipts.**

"Gross Receipts" for computation of the fees payable pursuant to Sections 6.01 and 6.02 shall mean gross receipts from sales of food, food products, beverages and any other items or services sold in or from the Franchised Restaurant Premises or derived from the business operated on the Premises, excluding only (1) receipts from approved pay telephones, if any, and (2) all sales, use, excise and similar taxes separately billed and collected by Franchisee for, and remitted to, governmental authorities and agencies.

**6.04 Charge on Late Payments.**

In addition to any other rights the Company may have, the Company will impose a charge on late payments of the lesser of (1) the maximum rate permitted by Kentucky law or (2) one and one-half percent (1 1/2%) per month, from the date due until paid.

**6.05 Gross Receipts Tax.**

Franchisee shall pay the Company an amount equal to any sales, value added, gross receipts or similar tax required to be paid or collected by the Company and calculated solely on required payments from Franchisee to the Company hereunder.

**6.06 Direct Debit Arrangement.**

The Company shall have the right, upon written notice to Franchisee, to require Franchisee to establish a direct debit arrangement as described in this Section 6.06 upon the occurrence of any of the following events: (1) In the event that Franchisee has been delinquent in the payment of any of its monetary obligations to Company or its affiliates on two (2) or more occasions during any twelve (12) month period; or (2) in the event that Company has given Franchisee a notice of default arising from any of its monetary obligations under this Agreement. If and when the Company exercises its rights established in this Section 6.06, Franchisee shall establish a direct debit arrangement with Franchisee's bank(s) for all payments to be made to the Company or any of its affiliates. Such direct debit arrangement shall be entered into between Franchisee and its bank(s) and shall provide for the electronic transfer of funds from Franchisee's bank(s) to the Company's accounts within twenty-four (24) hours of receipt of written instructions from the Company, whether transmitted by facsimile, courier or regular mail and such instructions may be for multiple future transfers. Franchisee shall maintain sufficient funds in its account at all times to ensure that all amounts due the Company and its affiliates are promptly and fully paid.

**SECTION 7: ADVERTISING**

**7.01 Origination and Approval of Advertising.**

(a) Recognizing the value of advertising, and the importance of the standardization of advertising to the furtherance of the goodwill and public image of the System, Franchisee agrees that the Company or its designee shall conduct, determine, maintain and administer all national, regional, local and other advertising and marketing as may

be instituted from time to time, and shall direct all such advertising and marketing with sole discretion over the concepts, materials, media, nature, type, scope, frequency, place, form, copy, layout and context used therein. The Company agrees to periodically consult with and advise the Franchise Association Board (hereafter defined) in planning the Company's advertising and marketing programs and budget.

(b) The Company shall make advertising expenditures for each of its Company-owned LJS Restaurants in the United States equivalent to those it requires from comparable franchised LJS Restaurants in the United States. The Company may spend in any fiscal year an amount greater or less than the aggregate contributions of all LJS Restaurants in advertising expenditures in that year. Additional advertising funds may be advanced by the Company or obtained from other lenders to cover deficits or to establish surpluses to be invested for future use. Franchisee agrees that its advertising contributions may be used to meet any and all costs incident to the advertising and marketing programs, including without limitation: (1) consumer public relations, marketing research, development of advertising materials, media placement and all forms of sales promotions; (2) taxes upon income generated by advertising contributions; and (3) such reasonable administrative costs and overhead, if any, as may be incurred by the Company or its affiliates in conducting market research, preparing advertising and marketing materials, or in other activities reasonably related to the administration or direction of LJS advertising funds. The Company agrees that all advertising contributions and any income generated as a result of such contributions (including commissions, rebates or discounts for media or advertising purchases) shall be used to promote the sales of LJS Restaurants, including the cost of developing and producing such advertising, and not to generate net income or profit for the Company or its affiliates nor to defray unallocated general operating expenses that are not reasonably related to the administration of the Company's advertising and marketing programs. Franchisee understands and acknowledges that advertising expenditures are intended to maximize general public recognition and acceptance of all LJS Restaurants, and the Company makes no representation or warranty that any particular LJS Restaurant, including the Franchised Restaurant, will benefit directly or pro-rata from such advertising. The Company does not act as a trustee or in any other fiduciary capacity with respect to the advertising monies.

(c) To promote and increase the demand for the products and services of the Franchised Restaurant, Franchisee may conduct, at its separate expense, advertising in addition to that received for the expenditures described in Section 6.02. All such additional advertising must either be prepared or previously approved in writing by the Company.

(d) Franchisee shall, at its separate expense: (1) obtain a listing in the white pages of the telephone directories serving the location of the Franchised Restaurant, which listing shall be the kind and size as may be specified by the Company for all LJS Restaurants from time to time in the Confidential Manual or otherwise in writing; and (2) obtain and maintain an adequate supply of brochures, pamphlets and promotional materials of the kind and size, and at such locations in and around the Franchised Restaurant as the Company may reasonably require of all LJS Restaurants from time to time in the Confidential Manual or otherwise in writing.

(e) Upon written request from Franchisee, the Company or its designee(s) will provide Franchisee with special or additional approved local advertising and marketing plans and materials, including, without limitation, newspaper photostats, radio commercial duplicates, merchandising materials, sales aids, special promotions and



similar advertising and marketing materials. Such special or additional materials and services shall be provided at the Company's cost, including reasonable overhead, which shall be in addition to the fee specified in Section 6.02.

**7.02 Advertising Agency and Use of Advertising Contributions.**

(a) The Company shall have the right to delegate and redelegate its responsibilities and duties hereunder to any designee(s) of its choosing, including LJS Advertising, or any successor or other agency; however, the right of final approval of all advertising programs shall be retained at all times by the Company. Any usual agency commissions and discounts granted for media purchases shall be netted against the invoices for such purchases. The Company further agrees that, subject to unforeseeable matters beyond the Company's reasonable control, the annual amounts spent by the Company for total agency expenses and production costs (excluding media commissions), including allocated administrative costs and overhead, shall not exceed 25% of the sum of the annual total franchisee advertising contributions; and (2) total annual advertising expenditures made by the Company for each of its Company-owned LJS Restaurants in the United States in accordance with Section 7.01(b) above.

(b) The Company agrees to provide to the Franchise Association Board (hereinafter defined) quarterly financial statements with respect to the Company's advertising programs and expenditures. The Company further agrees that the Franchise Association Board may cause the Company's books and records of accounts for its advertising programs to be audited from time to time, provided that any such audits: (1) must be preceded by reasonable prior written notice to the Company; (2) must be performed no more frequently than annually; (3) must be performed at the Company's corporate headquarters and not unreasonably interfere with the Company's conduct of its business; (4) must be performed by a recognized national accounting firm reasonably acceptable to the Company; (5) must be provided or made available to Franchisee by the Franchise Association upon request; and (6) must be performed in accordance with generally accepted accounting procedures. One half of the cost of such audit shall be paid by the Franchisee Association and one half of such cost shall be paid from advertising contributions, provided that the portion of the costs paid from advertising contributions shall not exceed \$10,000.00.

**SECTION 8: BOOKS, RECORDS, CONTROL PROCEDURES**

**8.01 Bookkeeping System.**

(a) The Company shall furnish to Franchisee cost-control procedures to which Franchisee shall adhere, as well as a sample format of a chart of accounts, statement of earnings and balance sheet, which Franchisee shall use in reporting to the Company.

(b) The Company shall have the right to require Franchisee to use computer-based cash registers and software that are fully compatible with the Company's computer system and which include an information interface capability which allows Franchisee to communicate electronically with the Company's computer system. The Company, in its sole discretion, may require Franchisee to obtain a data grade telephone line to be used to facilitate communications between Franchisee's computer-based cash registers and the Company's computer system. The Company shall not be entitled to require Franchisee to replace its then existing cash register or point of sale system

(including any such system installed to meet the requirements of this Section 8.01(b)) more frequently than once every five (5) years from the date of installation by Franchisee of any cash register or point of sale system installed to meet the requirements of this Section 8.01(b).

**8.02 Reports.**

At the Company's request and as specified from time to time in the Confidential Manual or otherwise in writing, Franchisee shall submit to the Company, for review or auditing, such forms, reports, records and financial statements as the Company may reasonably designate.

**8.03 Marketing Information.**

At the Company's request, Franchisee shall promptly furnish requested marketing information based on Franchisee's records.

**8.04 Franchisee's Records.**

Franchisee shall at all times maintain and preserve, during the term of this Agreement, full, complete and accurate books, records and accounts in accordance with generally accepted accounting principles, of such kind, for such length of time and in the form and manner prescribed by the Company from time to time in the Confidential Manual or otherwise in writing.

**8.05 Inspection of Franchisee's Records.**

The Company shall have the right to examine and audit Franchisee's records, accounts and books at reasonable times and places (including, without limitation, at Franchisee's principal place of business). Franchisee shall immediately pay to the Company the amount of any overdue, unreported or understated payment disclosed by such audit, with late payment charges thereon as provided in paragraph 6.04 herein. If any audit reveals an understatement of gross receipts by Franchisee in excess of three percent (3%), Franchisee shall also pay the Company's fees, charges and expenses (including, without limitation, travel expenses and reasonable accounting and legal fees) incurred in connection with such audit.

**SECTION 9: INSURANCE AND INDEMNITY**

**9.01 Indemnity.**

Franchisee agrees to indemnify and hold harmless the Company, its affiliates and their respective officers and employees from liability for any and all debts, obligations, damages, claims, liability, demands, actions, suits, proceedings, judgments or costs of any kind or nature, including attorneys' fees arising directly or indirectly from, as a result of, or otherwise in connection with, Franchisee's operation of the Franchised Restaurant ("Indemnified Matter"). The Company shall have the right to defend and settle any Indemnified Matter in such manner as the Company deems appropriate, in its sole discretion, and without Franchisee's consent. Franchisee agrees to reimburse

the Company for all costs reasonably incurred in defending such Indemnified Matter, including, without limitation, reasonable attorneys' fees. Franchisee's obligations under this Section shall continue in full force and effect subsequent to the expiration or termination of this Agreement.

**9.02 Franchisee's Insurance.**

(a) Prior to opening the Franchised Restaurant, Franchisee, at its expense, shall obtain, and thereafter maintain during the entire term of this Agreement and any renewal(s) thereof, the following insurance in full force and effect:

(1) comprehensive general liability insurance (through a single policy or by a primary policy with one or more excess or umbrella policies) including personal injury, bodily injury, liquor liability (where applicable) and products liability insurance, with minimum policy limits of Five Million Dollars (\$5,000,000) in the aggregate, and One Million Dollars (\$1,000,000) per occurrence, and property damage insurance with policy limits in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, insuring Franchisee and the Company, as well as the Company's affiliates, officers, directors, and employees, as additional named insureds, against any liability that may accrue or have accrued against them, and any claim that is brought against them, by reason of the operation by Franchisee of its business, or by reason of any incident which may occur upon, in, about or in connection with the Franchised Restaurant Premises;

(2) worker's compensation, social security, unemployment compensation, disability insurance and such other insurance coverages as may now or hereafter be required by law; and

(3) fire, business interruption, casualty and extended coverage insurance with limits of not less than the full replacement cost of the Franchised Restaurant and its Equipment and other improvements.

(b) Franchisee acknowledges that the minimum coverages and policy limits required by this Section 9.02 may be reasonably increased from time to time by the Company for its own and Franchisee's protection and Franchisee agrees to comply with such new requirements promptly upon receipt of written notice from the Company; however, in no event shall any such increase require minimum policy limits greater than (1) limits then required for Company-owned LJS Restaurants, or (2) Five Million Dollars (\$5,000,000), whichever is less. Every insurance policy required by this Section 9.02 shall be written by one or more insurance companies possessing an A.M. Best rating of at least A, XII, or such other rating as the Company may specify in the Confidential Manual or otherwise in writing.

(c) Franchisee's obligation to obtain and maintain the foregoing insurance in the amounts specified shall not be diminished in any way by reason of any insurance which may be maintained by the Company, nor shall such obligation relieve Franchisee of liability under the indemnity provisions set forth in Section 9.01.

**9.03 Evidence of Insurance.**

Franchisee shall deliver or cause to be delivered certificates (or copies thereof) of all insurance required by this Section 9 to the Company or, at the Company's request, the policy or policies shall be deposited with and held by the Company or its designee. Franchisee shall also deliver to the Company evidence of payment of all insurance premiums.

9.04 Notice.

All insurance policies shall provide for notice to the Company of any cancellation, termination, modification or nonrenewal thereunder at least thirty (30) days prior to such occurrence and shall permit, but not require, the Company to cure any default in payment of premiums within ten (10) days after written notice. If the Company cures the default, Franchisee shall immediately pay the Company the cost of curing the default together with a reasonable administrative fee to defray the Company's expenses in connection therewith.

9.05 Waiver of Subrogation.

Franchisee and its successors and assigns hereby waive, prior to loss, all of their rights of recovery from the Company, its affiliates, successors and assigns, and their right to sue for loss or damage to the Franchised Restaurant and the Franchised Restaurant Premises, the adjacent premises and improvements or other property of Franchisee; provided such loss or damage is within the coverage of the insurance provided for herein. All property insurance policies carried by Franchisee on the Franchised Restaurant or adjoining property shall, if reasonably possible, contain an express waiver of subrogation.

**SECTION 10:**  
**OWNERSHIP AND LIMITATIONS ON USE OF**  
**PROPRIETARY MARKS, TRADE SECRETS**

10.01 Ownership of Proprietary Marks, Trade Secrets.

All right, title and interest in and to all Proprietary Marks, trade secrets, systems, instruction manuals and the goodwill associated therewith are the sole property of the Company or its affiliates and no such right, title or interest is or shall be transferred by virtue of this Agreement. Franchisee shall not represent in any manner that it has any such ownership, right, title or interest. Franchisee acknowledges that on expiration or termination of this Agreement, no monetary sum shall be designated by it as attributable to any goodwill associated with Franchisee's use of the System and the Proprietary Marks.

10.02 Limitations on Use of Proprietary Marks.

(a) Franchisee acknowledges that the use of the Proprietary Marks or other components of the System outside the scope of this Agreement without the Company's prior written consent, is an infringement of the Company's exclusive right, title and interest in and to the System and the Proprietary Marks. Franchisee shall not, while this Agreement remains in effect and thereafter, directly or indirectly, commit any act of infringement or contest or aid in contesting the validity or the Company's ownership of the System or Proprietary Marks, or take any other action in derogation thereof.

(b) Franchisee shall not incorporate any of the Proprietary Marks, including without limitation "Long John Silver's Seafood Shops" or "Long John Silver's," or words similar thereto in any trade, corporate or firm name of Franchisee or any of its affiliates.

(c) Franchisee shall not display or use any of the Proprietary Marks or other components of the System except as specifically authorized hereunder, nor do or omit to do anything to endanger the Company's proprietary right to use the Proprietary Marks or the System.

**10.03 Use of Proprietary Marks.**

Franchisee understands and acknowledges that each and every detail of the System is important to Franchisee, the Company and other franchisees to develop and maintain high and uniform standards of quality and service, and to protect the reputation and goodwill of LJS Restaurants. Therefore, Franchisee shall:

(a) operate and advertise under the System name as specified in the Confidential Manual, without prefix or suffix;

(b) adopt and use the Proprietary Marks solely in the manner prescribed by the Company;

(c) observe such requirements with respect to trademark registration and copyright notices as the Company may from time to time direct in the Confidential Manual or otherwise in writing;

(d) use, promote and offer for sale only those menu items, products and services which are part of the System and meet the standards or specifications as prescribed by the Company from time to time in the Confidential Manual or otherwise in writing.

**10.04 Defense of Proprietary Marks.**

Franchisee shall promptly notify the Company of any claim, demand, or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Proprietary Marks or any colorable imitation thereof. Franchisee also agrees to notify the Company promptly of any litigation instituted by any person, firm, corporation or governmental agency against the Company or Franchisee relating to the Proprietary Marks, and the Company shall have the sole right and duty to defend any such action. The Company shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Proprietary Marks and shall exercise such right in its sole discretion. In any defense or prosecution of any litigation relating to the Proprietary Marks or components of the System undertaken by the Company, Franchisee shall cooperate with the Company and execute any and all documents and take all actions as may be desirable or necessary in the opinion of the Company's counsel, to carry out such defense or prosecution. The Company makes no representation or warranty, express or implied, as to the use, exclusive ownership, validity or enforceability of the Proprietary Marks.

**10.05 Nondisclosure of Trade Secrets and Confidential Information.**

(a) The Company has disclosed and will continue to disclose to Franchisee certain confidential information relating to the development, marketing and operation of LJS Restaurants, including without limitation: (1) ingredients, specifications, recipes, and methods of preparation and presentation of certain food and beverage

products; (2) site selection criteria for LJS Restaurants and plans and specifications for the development of LJS Restaurants; (3) sales, marketing and advertising programs and techniques for LJS Restaurants; (4) knowledge of specifications for, and suppliers of, certain food products, materials, supplies and equipment; (5) knowledge of operating results and financial performance of LJS Restaurants, other than the Franchised Restaurant; and (6) methods of labor control, inventory control, storage, product handling and management of LJS Restaurants (collectively "Proprietary Information"). Without the Company's prior written approval, Franchisee shall not, during the term of the Agreement, any renewal hereof and thereafter (regardless of cause of termination) divulge any Proprietary Information nor use any Proprietary Information for the benefit of any other person or entity. Notwithstanding the foregoing, Franchisee may disclose Proprietary Information without the Company's prior written consent (1) during the term hereof to Franchisee's employees only to the extent necessary for operation of the Franchised Restaurant; and (2) to the extent such Proprietary Information has become public other than through any action or disclosure of Franchisee.

(b) Franchisee acknowledges that the Company will suffer irreparable harm and that monetary damages will be inadequate to compensate the Company for any breach by Franchisee of the terms of Section 10.05(a); therefore, Franchisee agrees that for such breach the Company shall be entitled to injunctive relief in addition to all other remedies it may have.

**10.06 Survival.**

The covenants set forth in this Section 10 shall survive the termination or expiration of this Agreement.

**SECTION 11: TERMINATION**

**11.01 Termination.**

(a) Franchisee shall be deemed to be in default, and all rights granted under this Agreement shall automatically terminate without notice to Franchisee upon the occurrence of any of the following events:

(1) if Franchisee shall become insolvent or make a general assignment for the benefit of creditors.

(2) if a petition is filed against and consented to by Franchisee, or if Franchisee is adjudicated a bankrupt or insolvent.

(3) if any proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee, or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by a court of competent jurisdiction.

(4) if a final judgment against Franchisee or affecting Franchisee's business remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed).

(5) if execution is levied against Franchisee's business or property, or suit to foreclose any lien against the assets of the Franchised Restaurant is instituted against Franchisee and not dismissed within thirty (30) days, or if the assets of the Franchised Restaurant are sold after levy thereupon by any sheriff, marshal or constable.

(b) Franchisee shall be deemed to be in default, and the Company may, at its option, terminate this Agreement and all rights granted hereunder at any time by notice to Franchisee without any opportunity to cure the default, upon the occurrence of any of the following events:

(1) if Franchisee fails for any reason to have opened the Franchised Restaurant for business within one (1) year from the date hereof, or thereafter ceases to operate or otherwise abandons or forfeits the legal right to transact business at the Franchised Restaurant;

(2) if Franchisee is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely, in the Company's sole judgment, to affect adversely the System, the Proprietary Marks, the goodwill associated therewith or the Company's rights therein;

(3) if Franchisee purports to transfer any rights or obligations arising under this Agreement to any third party without the Company's prior written consent, contrary to the terms of paragraph 13.02 of this Agreement;

(4) if Franchisee misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristic of the System, or otherwise materially impairs the goodwill associated therewith, or the Company's rights therein;

(5) if Franchisee discloses to a third party any Proprietary Information or other confidential information learned from the Company or relating to the System or if Franchisee uses or permits to be used any such information or secret, unique or confidential food product or other element of the System in a restaurant or business other than the Franchised Restaurant or if Franchisee breaches any duty of confidentiality imposed on Franchisee in this Agreement or otherwise by law;

(6) if three (3) or more notices of default pursuant to Section 11.01(c) have been sent to Franchisee for the same, similar or different defaults within a twelve (12)-month period, in which event this Agreement may be terminated in lieu of the Company's sending the fourth (4th) or any subsequent Notice of Default;

(7) if Franchisee made or makes any material misrepresentation to the Company in any information or report provided prior to or during the term of this Agreement; or

(8) if Franchisee fails to repair or restore the Franchised Restaurant Premises to its former condition within six (6) months of its being damaged or rendered totally or partially untenable by fire or other casualty, as required by Section 3.01(e).

(c) Franchisee shall be deemed to be in default and the Company may, at its option, terminate this Agreement and all rights granted under this Agreement without further notice upon the occurrence of any of the following events and Franchisee's failure to cure such default within the time period set forth below:

(1) if Franchisee fails, refuses or neglects to adhere to the standards and specifications of the System as set forth in the Confidential Manual and otherwise adopted by the Company from time to time, including without limitation Franchisee's failure to adhere to Sections 4.01(a), 4.01(b), 4.01(c), 4.03(a) or 4.03 (b) of this Agreement;

(2) if Franchisee or any of its affiliates fails, refuses or neglects to pay promptly when due any amounts owed to the Company or any of its affiliates;

(3) if Franchisee fails, refuses or neglects to submit to the Company any financial or other information required under this Agreement;

(4) if Franchisee fails, refuses or neglects to obtain the Company's prior written approval or consent as required under this Agreement;

(5) if Franchisee fails, refuses or neglects to observe the conditions governing the sale of beer or wine set out in Section 5.01(f);

(6) if Franchisee fails, refuses or neglects to observe any other of its obligations under this Agreement or to carry out the terms of this franchise in good faith.

(d) Franchisee shall have the opportunity and right to cure the events of default listed in Section 11.01(c) for a period of three (3) days with respect to Subsection (1), ten (10) days with respect to Subsection (2) and thirty (30) days with respect to Subsections (3) through (6) following the Company's delivery of written notice of default.

**11.02 Effect of Termination or Expiration.**

(a) Franchisee, upon any termination or expiration of this Agreement, shall promptly pay to the Company, its affiliates and subsidiaries any and all sums owed to them. In the event of termination for any default by Franchisee, such sums shall include all actual and consequential damages, costs and expenses, including reasonable attorneys' fees and expenses, incurred by the Company as a result of the default (whether such fees and expenses are incurred through use of the Company's own legal staff or otherwise), and late payment charges thereon until paid at the lower of (1) the highest rate permitted by Kentucky law, or (2) one and one-half percent (1 1/2%) per month. Franchisee acknowledges and agrees that the proximate cause of the actual and consequential damages sustained by Company is Franchisee's act of default and not Company's exercise of its right to terminate this Agreement. The foregoing obligation shall give rise to and remain a lien in favor of the Company against any and all of the assets of the Franchisee at the time of default including specifically, but not limited to, the Franchised Restaurant.

(b) Upon termination or expiration hereof for any reason, all of Franchisee's rights hereunder shall terminate. Franchisee shall immediately cease to use any Proprietary Information or other trade secrets disclosed to it hereunder or any paper or plastic goods, emblems, signs (other than pole signs and roof signs, which are governed by Section 11.02(c)), displays or other property on which the Company's name, any of the Proprietary Marks or any confusing simulation thereof are imprinted. Franchisee shall not otherwise use or duplicate the System or any portion thereof or assist others to do so. Franchisee shall, on or before the effective date of termination or expiration: (1) remove from the Franchised Restaurant Premises all signs, emblems and displays identifying it as being associated with the Company or the System; (2) cease to use and return to the Company all copies of the Confidential Manual and all other manuals, instructions or materials delivered to it by the Company or otherwise hereunder; and (3) relinquish its Franchised Restaurant telephone number.

(c) Upon termination or expiration of this Agreement, unless otherwise directed in writing by the Company, Franchisee shall modify the exterior and interior design and decor of the Franchised Restaurant Premises and shall make or cause to be made such changes in signs, buildings and structures as the Company shall reasonably direct, so as to effectively distinguish the Franchised Restaurant from its former appearance and from any other LJS



Restaurant. Franchisee shall commence the required modifications immediately upon the termination or expiration of this Agreement and shall complete the modifications within thirty (30) days following the date of termination or expiration. If Franchisee fails or refuses to comply with this Section 11.02(c), in addition to any other rights which the Company may have, the Company shall have the right to enter upon the Franchised Restaurant Premises without being guilty of trespass or any other tort and make or cause to be made such changes at Franchisee's expense, which Franchisee shall pay on demand.

(d) Franchisee and the Company agree that the Company's damages resulting from a breach of the provisions of this Section 11.02 are difficult to estimate or determine accurately. Therefore, in the event of a breach by Franchisee of the provisions of this Section, Franchisee shall pay the Company the sum of Fifty Dollars (\$50) per day beginning on the thirty-first (31st) day after the date of termination or expiration of this Agreement, not to exceed a maximum of Seven Thousand Five Hundred Dollars (\$7,500) if termination occurs during the first ten (10) years of this Agreement, and a maximum of Ten Thousand Dollars (\$10,000) thereafter. Such payment shall be made as liquidated damages and not as a penalty, it having been agreed by Franchisee and the Company that the payments are reasonably representative of the actual damage sustained by the Company in the event of such a breach. However, notwithstanding the provision for liquidated damages, the Company shall be entitled to injunctive relief if Franchisee continues to operate as an LJS Restaurant or breaches any other covenant herein.

(e) The covenants set forth in Sections 11.02(a) through (d), inclusive, and all rights, claims and indebtedness that may accrue to the Company under this Agreement shall survive any termination or expiration of this Agreement and be enforceable by the Company.

(f) Upon termination or expiration of this Agreement, Franchisee shall cease to hold itself out in any way as a franchisee of the Company or do anything that would indicate any relationship between it and the Company.

**11.03 Company's Purchase Rights and Obligations.**

(a) Upon termination or expiration of this Agreement, the Company shall have the option to purchase all of the assets and business comprising the Franchised Restaurant, including the land and building, the leasehold estate and improvements, and any items of LJS Restaurant Equipment, including without limitation equipment, furnishings, signs, sign faces, decor, food items and supplies of Franchisee ("Business Property"). Any such purchase shall be made at the fair market, going concern value of the Business Property, including an appropriate allowance for goodwill, if any. If Franchisee and the Company cannot agree on the fair market value of the Business Property within a reasonable time, the Company and Franchisee each shall commission at their respective expense an appraisal of the value of the Business Property by a person or firm experienced in the appraisal of restaurant property. The two (2) appraised values shall be averaged and that average shall be the fair market value of the Business Property and binding upon the parties. Provided, however, if the two (2) appraisals differ by more than ten percent (10%), the two (2) appraisers shall appoint a third appraiser, whose appraisal shall be binding upon the parties as the fair market value of the Business Property. The cost of the third appraisal shall be borne equally by the Company and Franchisee. If the Company elects to exercise its option to purchase, it shall have the right to set off against the purchase price all amounts due from Franchisee under this Agreement. Franchisee shall cause any lease that affects

the Franchised Restaurant Premises or any other item subject to this option to contain appropriate language permitting the Company to assume such lease without fees or additional charges.

(b) In the case of expiration, the Company shall exercise its option hereunder by giving Franchisee notice at least thirty (30) days prior to expiration. In the case of termination for any other reason, the Company shall exercise its option by giving Franchisee notice within thirty (30) days after such termination. Provided, however, that in either case (expiration or termination) the Company shall have the right to rescind the exercise of its option upon written notice given to Franchisee within ten (10) days following Company's receipt of the determination of the fair market value of the Business Property. In the event the Company shall exercise its option, the closing shall be held and the purchase price shall be paid within thirty (30) days of the date of such exercise. The Company's option hereunder is without prejudice to its right under any security agreement held by it or with respect to which it may have a guarantor's or surety's subrogation interest.

(c) In the event that at any time during the term of this Agreement or at any time prior to the date that is one (1) year following the termination of this Agreement or the expiration of the term of this Agreement, Franchisee desires to accept any bona fide written offer from a third party to purchase all or substantially all of the assets comprising the Franchised Restaurant, Franchisee shall so notify the Company in writing, such notice to contain a copy of the offer and any other written information relating to the offer given or received by the third party offeror. The Company shall have the option to purchase such assets on the same terms and conditions offered by the third party, except that the Company shall have at least fifteen (15) days to prepare for closing. If the third party offer is such that the Company may not reasonably be required to furnish the same consideration, terms or conditions, then the Company may purchase the assets to be sold for the reasonable equivalent in cash. If the Company elects to exercise its option, it shall have the right to set off against purchase price all amounts due from Franchisee under this Agreement. Franchisee shall cause any lease that affects the Franchised Restaurant Premises or any other item subject to this option to contain appropriate language permitting the Company to assume such lease without fees or additional charges. The Company shall notify the Franchisee of its intention to exercise its option within ten (10) days after receipt of the Franchisee's notice and other required information. Any material change in the terms of the third party offer prior to transfer to the third party shall constitute a new offer, subject to the same option by the Company as in the case of an initial offer. The Company's failure to exercise the option afforded by this Section shall not constitute a waiver of any other provision of this Agreement, nor shall such failure constitute a waiver of its right to exercise its option with respect to any subsequent third party offer.

**11.04 Company's Obligation to Purchase.**

Franchisee shall notify the Company within ten (10) days of the expiration or termination of this Agreement of its desire to sell its unbroken inventory packages of approved items and supplies to the Company. At the expiration of the ten (10) day notice period, Franchisee shall deliver such items at its expense, with an itemized inventory listing, to the nearest Company-owned LJS Restaurant or to such other unit as may be designated by the Company. The Company shall purchase such items at Franchisee's cost and shall pay Franchisee, or set off the amount due therefor against any amount owed the Company by Franchisee, within seven (7) days after delivery.

**SECTION 12: FRANCHISEE'S OTHER BUSINESS INTERESTS**

**12.01 Notification of Other Business Activity.**

Without limiting Franchisee's obligations under Section 12.02, Franchisee shall notify the Company of its intention to participate or engage directly or indirectly in any other restaurant, food service or hospitality business activity, at least thirty (30) days before (1) Franchisee becomes a party to any agreement or understanding relating to such activity or (2) such activity commences, whichever is earlier. Franchisee shall provide the Company with such information about the activity as the Company may reasonably request.

**12.02 Competing Business.**

Unless otherwise specified, the term "Owners" as used in this Section 12.02 and in this Agreement shall include, individually and collectively, all partners, officers, directors, members and holders, directly or indirectly (and any partners, officers or directors of any such holder), of any beneficial interest in any entity comprising Franchisee or in the franchise granted hereunder. Franchisee acknowledges that, pursuant to this Agreement, Franchisee will receive valuable training and confidential and trade secret information, including, without limitation, information regarding the promotional, operational, sales and marketing methods and techniques of the Company and the System. Franchisee further acknowledges its obligation under this Agreement to develop the franchised business and to promote the interests of the System. Accordingly, Franchisee agrees that:

(a) During the term of the Agreement, Franchisee and its Owners shall not, except as otherwise approved in writing by the Company, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, engage in, or have any interest in any restaurant or food service business if (1) the gross sales of seafood of that restaurant or business constitute or are likely to constitute twenty percent (20%) or more of all sales of the restaurant or business, or (2) the restaurant or business sells any battered seafood product in a quick service or "fast food" format

(b) Subject to Section 12.02(a), Franchisee and its Owners may, during the term of this Agreement, own all or a portion of a restaurant, food service or hospitality business, on the condition that:

- (1) Franchisee does not use or allow others to use any part of the System in such business;
- (2) such business does not employ or seek to employ any person who is at that time employed by the Company, or otherwise induce such employee to leave his or her employment;
- (3) such business is not advertised on or from the Franchised Restaurant Premises and the business does not share or is not combined in any advertisement with the Franchised Restaurant; and
- (4) No business shall be directed or diverted at any time for any reason by Franchisee from the Franchised Restaurant to any such restaurant, food service or hospitality business.

(c) For a period of one (1) year after the expiration or termination of this Agreement, regardless of the cause of termination, Franchisee and its Owners shall not, except as otherwise approved in writing by the Company, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons,

partnership or corporation, own, maintain, engage in, or have any interest in any restaurant or business engaged in food service, which is located within one and one-half (1 1/2) miles of the Franchised Restaurant, if (1) the gross sales of seafood of the restaurant or business constitute or are likely to constitute twenty percent (20%) or more of all sales of the restaurant or business, or (2) the restaurant sells any battered seafood product in a quick service or "fast food" format.

(d) The Company shall have the right, in its sole discretion and without Franchisee's consent, to reduce the scope of any covenant in Section 12.02. Any covenant as reduced shall be fully enforceable. The reduction shall be effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee shall comply immediately with the covenant as so reduced.

(e) Franchisee expressly agrees that any claim it may have against the Company, whether or not arising from this Agreement, shall not constitute a defense to the Company's enforcement of the covenants in this Section 12.02.

(f) Franchisee acknowledges that its failure to comply with the requirements of this Section 12.02 will cause the Company irreparable injury, and Franchisee hereby accordingly agrees that in addition to all other legal or equitable rights and remedies which the Company may have under this Agreement or otherwise, the Company shall be entitled and Franchisee hereby consents to the entry of an order by any court of competent jurisdiction for specific performance of, or for an injunction against violation of, the requirements of this Section 12.02.

(g) Franchisee expressly acknowledges that its Owners possess skills and abilities of a general nature and have other opportunities for exploiting such skills, so that enforcement of the covenants in this Article will not deprive any of them of their goodwill or ability to earn a living. If Franchisee or any of its Owners fails or refuses to abide by any of the foregoing covenants, and the Company obtains enforcement in a judicial or arbitration proceeding, the applicable covenant shall be in effect and continue for a period of time expiring one (1) year after the date Franchisee or its Owners or such other person as may be affected commences compliance with the order enforcing the applicable covenant.

(h) Subsections (a) through (d) of this Section 12.02 shall not apply to ownership by Franchisee or any Owner of less than a ten percent (10%) beneficial interest in the outstanding equity securities of any corporation which is registered under the Securities Exchange Act of 1934, unless Franchisee shall also serve as a director or executive officer of or in a management capacity in such corporation.

**SECTION 13: ASSIGNMENT OR TRANSFER**

**13.01 Assignment by Company.**

The Company may assign this Agreement and any or all benefits and obligations arising from it without notice to or consent from Franchisee, provided that the assignee assumes and agrees to perform the Company's obligation under this Agreement accruing after the date of the assignment.

**13.02 Franchisee as Corporation or Other Entity; Assignment by Franchisee.**

(a) Franchisee and its Owners shall not, without the Company's prior written consent, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest or partial interest in Franchisee, this Agreement, or in the franchise granted herein, or offer or attempt to do so, or permit the same to be done. Any actual or purported assignment occurring by operation of law or otherwise without the Company's prior written consent shall be a material default of this Agreement and shall be null and void.

(b) If Franchisee or any successor is a partnership, limited liability company or corporation:

(1) The Articles of Partnership, Partnership Agreement, Articles of Incorporation, By-Laws, Articles of Organization, Operating Agreement and other organizational and governing documents shall provide that the issuance and transfer of any interest in Franchisee is restricted by the terms of this Agreement. Copies of such documents and of resolutions of Franchisee's board of directors authorizing its entry into this Agreement shall be furnished to the Company upon request.

(2) All general partners and all direct and indirect holders of a ten percent (10%) or greater equity interest in any entity comprising Franchisee shall upon Franchisee's execution of this Agreement execute an agreement personally guaranteeing to the Company the full payment and performance of Franchisee's obligations to the Company and undertaking to be bound, individually, jointly and severally, by all the terms of this Agreement, including, without limitation, the restrictions on assignment contained herein. The personal Guaranty shall be in the form annexed hereto as Exhibit "B" or in such other form as the Company may from time to time prescribe.

(3) Franchisee shall not use the name "Long John Silver's," any other Proprietary Mark, or any name deceptively similar thereto, in a public offering of its securities, except to reflect its franchise relationship with the Company. Neither Franchisee nor any of its Owners may issue or sell, or offer to issue or sell, any securities of Franchisee or an affiliate of Franchisee, regardless of whether such sale or offer would be required to be registered pursuant to the provisions of the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction, without obtaining the Company's prior written consent and complying with all of the Company's requirements and restrictions concerning use of information about the Company, its affiliates or the System.

(4) Franchisee shall furnish the Company, at the time of execution of this Agreement and upon all transfers subject to the provisions of this Section 13.02, a list of all stockholders, members and partners having an interest in Franchisee, their respective percentage interests and the number of shares directly and indirectly owned or controlled by each.

(5) Franchisee, if a corporation, shall maintain stop transfer instructions against the transfer on its records of any securities with voting rights subject to the restrictions of this Section 13.02 and shall cause all certificates representing outstanding voting securities to be surrendered for reissuance and cause all certificates for voting securities in the future to be issued with this legend printed conspicuously upon the face of each certificate:

**"The transfer of this certificate and the shares it represents is subject to the terms and conditions of a certain Franchise Agreement with Long John**

Silver's, Inc. Reference is made to that Agreement and to certain restrictive provisions of the Articles and By-Laws of this corporation."

(c) Franchisee acknowledges and agrees that the restrictions on transfer imposed herein are reasonable and necessary to protect the System, the Company's Proprietary Marks, Proprietary Information and operating procedures and quality, as well as the Company's high reputation and image, and are for the protection of the Company, Franchisee, and other franchisees. No attempted assignment or transfer permitted by this Section 13.02 shall take effect without the Company's written consent.

(d) Upon Franchisee's written request, the Company shall not unreasonably withhold its consent to any assignment subject to the restrictions of this Section 13.02; however, the Company's consent may be conditioned on the satisfaction of the following requirements:

(1) neither Franchisee nor any successor or affiliate of Franchisee is in default under this Agreement or any other agreement with the Company, and all of the accrued monetary obligations of Franchisee or such successor or affiliate to the Company have been satisfied;

(2) the assignor or transferor and its Owners (as defined in Section 12.02) have executed a general release under seal, in a form prescribed by the Company, of any and all claims against the Company, its affiliates and their officers, directors and employees in their individual and corporate capacities;

(3) the assignee or transferee has demonstrated to the Company's satisfaction that it meets all of the Company's then current requirements for new franchisees, including, without limitation, character, financial and managerial requirements;

(4) the assignee or transferee has executed and/or caused all necessary parties to execute: (a) the Company's then current standard form Franchise Agreement, including the personal guaranty described in Section 13.02(b)(2) and such other then current ancillary agreements as the Company may reasonably require; or, at the Company's option (b) a written assignment in a form prescribed by the Company, assuming and agreeing to discharge all of the assignor's obligations under this Agreement and all other ancillary agreements. The Franchise Agreement shall be for a term expiring on the expiration date of this Agreement and it shall be renewable only upon the terms set forth in such then current Franchise Agreement;

(5) in the sole discretion of the Company, the assignee or transferee and any of its employees responsible for the operation of the Franchised Restaurant shall have satisfactorily completed the Company's training then in effect for all new franchisees;

(6) except in the case of an assignment to a corporation for convenience of ownership pursuant to Section 13.02(e), a transfer fee has been paid to the Company in an amount determined by the Company, not to exceed Two Thousand Dollars (\$2,000), to defray the Company's reasonable costs and expenses in connection with the transfer, including, without limitation, the cost of legal and accounting fees, credit and investigation charges, evaluations, retraining, and additional supervision. Provided, however, that in the case of the assignment of this Agreement by Franchisee to an affiliate as a contemporaneous part of the assignment of additional Company franchise agreements for LJS Restaurants by Franchisee to an affiliate, the total transfer fee shall not exceed \$5,000.

(7) the assignee or transferee is not a business competitor of the Company; and

(8) the requirements of Section 15.08(b) are met.

(e) If Franchisee is an individual and desires to assign all of his rights to a corporation formed solely for convenience of ownership, the Company's consent to such assignment shall be conditioned on the following requirements, in addition to those in Sections 13.02(b) and (c):

(1) the assignee's Articles of Incorporation and By Laws shall provide that its activities shall be confined exclusively to operating the Franchised Restaurant or other businesses franchised under similar agreements with the Company, its subsidiaries, or affiliates;

(2) Franchisee shall be the owner of a majority voting interest in the securities of the assignee; and

(3) all shareholders of the assignee corporation to which Subsection 13.02(b)(2) applies shall comply with the requirements of that Subsection.

(f) Upon the dissolution or death of Franchisee or of a stockholder, member or a general partner of Franchisee, the personal representative or trustee who is legally authorized to transfer the affected interest may sell, assign or otherwise transfer the affected interest in Franchisee to a third party, subject to the conditions set forth in this Agreement for any other transfer. If the personal representative does not receive, or desire to accept, a bona fide offer to sell such interest, and if under applicable law Franchisee's rights in this Agreement and in the Franchised Restaurant are distributable to heirs or legatees who would otherwise qualify as franchisees and assignees under the terms of this Section 13.02, the Company shall consent to such assignment, provided such prospective assignees agree to accept all the conditions imposed on Franchisee by this Agreement.

(g) If any person, partnership, corporation or other entity with an interest subject to the restrictions of this Section 13.02 desires to accept any bona fide written offer from a third party to purchase such interest, the prospective transferor shall notify the Company in writing of each such offer, such notice to contain a copy of the offer and any other written information relating to the offer given or received by the third party offeror. The Company shall have the option to purchase such business, franchise and interest, including any lease, on the same terms and conditions offered by the third party, except that the Company shall have at least fifteen (15) days to prepare for closing. If the third party offer is such that the Company may not reasonably be required to furnish the same consideration, terms or conditions, then the Company may purchase the interest to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, or conditions contained in the offer, the consideration shall be determined by an independent appraiser designated by the Company, whose determination shall be binding. The Company shall notify the prospective transferor of its intention to exercise its option within ten (10) days after receipt of the transferor's notice and other required information. Any material change in the terms of the third party offer prior to transfer to the third party shall constitute a new offer, subject to the same option by the Company as in the case of an initial offer. The Company's failure to exercise the option afforded by this Section 13.02(g) shall not constitute a waiver of any other provision of this Agreement, including any of the requirements of Section 13.02 with respect to the proposed transfer, nor shall such failure constitute a waiver of its right to exercise its option with respect to any subsequent third party offer.

(h) The Company's consent to a transfer of any interest subject to the restrictions of this Section 13.02 shall not constitute a waiver of any claims it may have against the assignor, nor shall it be deemed a waiver of the Company's right to demand exact compliance with any of the terms of this Agreement by the assignee at any time and from time to time.

**SECTION 14: FRANCHISE ASSOCIATION**

**14.01 Franchise Association.**

The Company will recognize one (1) independent association that represents Long John Silver's franchisees ("Franchise Association") so long as such association shall continue to meet the criteria set forth in Sections 14.01 and 14.02 of this Agreement. Subject to the foregoing, the Company will not restrict Franchisee from associating with other LJS Franchise Owners, nor from forming or participating in the lawful activities of any independent association of LJS franchisees. As used in this Section 14.01, the phrase "LJS Franchise Owner[s]" shall mean the person or entity that has executed and is identified as the franchisee in an LJS franchise agreement.

(a) The membership of the Franchise Association must be comprised of (1) LJS Franchise Owners owning at least 51% of all Long John Silver's franchise owned and operated restaurants in the United States; and (2) 51% of all LJS Franchise Owners in the United States.

(b) The Franchise Association must be governed by written by-laws that are not inconsistent with the provisions of this Agreement and that provide that the Franchise Association shall advise the Company of any material changes to the by-laws. The Franchise Association Board (hereinafter defined) shall provide the Company with a certified copy of the by-laws and any material amendments to the by-laws. The Company shall have no obligation to enforce the by-laws.

(c) The Franchise Association must have been formed for a primary purpose of consulting and advising the Company in representing the interests of Long John Silver's franchisees, and membership in the Franchise Association must be limited solely to LJS Franchise Owners that are not owned or controlled by the Company or any affiliate of the Company.

(d) The Franchise Association must have at least one (1) standing committee appointed by the Franchise Association Board whose primary function is to manage audits of the Company's books and records with respect to the Company's advertising and system purchasing functions pursuant to Sections 7.02(b) and 4.05(b) above.

**14.02 Franchise Association Board.**

(a) The Franchise Association must be governed and represented by a board of directors or like body that is duly elected on a periodic basis by the Franchise Association membership ("Franchise Association Board"). To ensure that the composition of the Franchise Association Board is representative of all Franchise Association members: (1) At least 40% of the Franchise Association Board must be nominated and elected in regional elections by LJS Franchise Owners living or having principal business offices within designated geographic areas determined by the Franchise Association Board or the Franchise Association in an effort to have each of the regionally elected



Franchise Association Board members represent an approximately equal number of LJS Restaurants; and (2) At least 10% of the Franchise Association Board must be nominated and elected by LJS Franchise Owners who own five (5) or less LJS Restaurants.

(b) The Franchise Association Board must be composed of LJS Franchise Owners who are individuals, or individuals who own, directly or indirectly, a controlling equity interest in LJS Franchise Owners that are partnerships, corporations, limited liability companies or other entities.

(c) Any LJS Franchise Owner that has received from LJS written notice of default of a monetary obligation in excess of \$5,000.00 or a material non-monetary obligation under one or more of its LJS franchise agreements and has not cured or in good faith disputed in writing in its entirety such default as of the date for nominations for the Franchise Association Board shall not be eligible for election.

(d) The Franchise Association Board shall have the authority to bind and represent the Franchise Association and the Company shall have the right to rely on the authority of the Franchise Association Board. The person serving as chairman of the Franchise Association Board and president of the Franchise Association shall have the authority to bind and represent the Franchise Association Board and the Company shall have the right to rely on such authority. If the Franchise Association by-laws allow the offices of chairman and president to be occupied by two (2) different persons, the Company shall have the right to rely upon the authority of the person holding the office of president.

**14.03 Consultation With Franchisee Association.**

The Company shall have the right to consult with and advise the Franchise Association Board on a periodic basis. The Company will consult with and advise the Franchise Association Board with respect to the Company's advertising and marketing programs and the Purchasing Program pursuant to Sections 7.01(a) and 4.05(b) above. The Company agrees that it shall provide the Franchise Association Board with a specimen copy of the Company's Uniform Franchise Offering Circular ("UFOC") and all material amendments thereto as and when the Company files the same with state franchising authorities; the UFOC shall be marked to show revisions to the UFOC as compared to the most previously issued UFOC. In addition, the Company shall advise the Franchise Association Board of all material changes to the Company's standard form franchise agreement.

**SECTION 15: GENERAL PROVISIONS**

**15.01 Improvements to System.**

All improvements in the System developed by Franchisee, the Company or other franchisees shall be and become the sole and absolute property of the Company. The Company may incorporate such improvements into the System and shall have the sole and exclusive right to copyright, register and protect such improvements in the Company's own name to the exclusion of Franchisee, whose right to use such improvements shall be limited to its rights as a franchisee hereunder.

**15.02 Governing Law Exclusive Jurisdiction.**

(a) This Agreement has been accepted by the Company and shall be deemed to have been made at Lexington, Kentucky, and shall be governed and construed under and in accordance with the laws of the Commonwealth of Kentucky, which law shall prevail in the event of any conflict of law.

(b) Franchisee and the Company agree that any action arising out of or relating to this Agreement (including, without limitation, the offer and sale of the Franchise), shall be instituted and maintained only in a state or federal court of general jurisdiction in Fayette County, Kentucky, and Franchisee irrevocably submits to the jurisdiction of such court and waives any objection it may have to either the jurisdiction or venue of such court.

**15.03 Severability.**

(a) Except as expressly provided to the contrary herein, each section, part, term and provision of this Agreement shall be considered severable. If, for any reason, any section, part, term or provision of this Agreement is determined to be invalid, contrary to, or in conflict with, any existing or future law or regulation of a court or agency having valid jurisdiction, such determination shall not impair the operation or affect such other portions, sections, parts, terms or provisions of this Agreement as may remain otherwise intelligible, and the latter will continue to be given full force and effect and bind the parties hereto. Such invalid sections, parts, terms and provisions shall be deemed not to be a part of this Agreement.

(b) If any applicable law or rule requires a greater period for notice to or performance by Franchisee than the period(s) provided in this Agreement, the period required by such law or rule shall be substituted for the period specified herein.

(c) If any court in a final decision to which the Company is a party holds any provision of this Agreement or portion thereof to be unenforceable or reduces the scope of any covenant or provision herein, Franchisee shall be bound to the fullest extent by such covenant or provision as reformed or reduced to the maximum extent consistent with such decision, and as if such reformed or reduced provision were separately set forth in and made a part of this Agreement.

**15.04 Franchisee Is Independent Contractor.**

(a) This Agreement does not create a fiduciary relationship between the parties hereto. Franchisee shall be at all times an independent contractor, and nothing herein contained shall constitute Franchisee as the agent, legal representative, partner, joint venturer or employee of the Company. Franchisee shall not have any right or power to and shall not bind or obligate the Company in any way or manner whatsoever, nor represent that it has the right to do so.

(b) Franchisee shall have sole responsibility for, and shall promptly pay when due, all taxes levied or assessed by reason of its operation and performance under this Agreement, including, but not limited to, local, state and federal, property, license, sales, use, leasehold, excise and income taxes. Franchisee shall be solely responsible for all loss, damage and contractual liabilities to third persons originating in or in connection with the operation of the Franchised Restaurant and for all claims and demands for damages to property and for injury, illness or death of

persons directly or indirectly resulting therefrom. Franchisee shall indemnify and save the Company harmless from any such claims for taxes and other liabilities, loss, expense or damage.

(c) In all building directories, public records and in its relationship with other persons, Franchisee shall indicate its independent ownership of the Franchised Restaurant and that it is only a franchisee of the Company. Franchisee and any permitted assignee shall file, and keep on file at all times in the proper public office for the locality involved, a statement showing the actual name of Franchisee as the proprietor of its business, if such is required or permitted by the law of the state and for the locality where the Franchised Restaurant and Franchisee's principal place of business are located.

(d) Franchisee shall affix a plaque or have printed or painted in a manner, form and style prescribed by the Company, in one or more places upon the Franchised Restaurant Premises and upon its business forms and stationery, a notification to the public to the effect that Franchisee is franchised by the Company. Franchisee upon request will furnish the Company with reasonable proof of its compliance with the terms of Sections 15.04(c) and (d).

**15.05 Section Titles.**

Section titles and Section and Subsection references are used for convenience only and shall not affect the meaning or construction of any provision of this Agreement.

**15.06 Entire Agreement.**

This Agreement, which shall include the preamble recitals, constitutes the entire agreement of the parties and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to the subject matter hereof, excepting only the following agreements: None. The Company has made no representations inducing the execution of this Agreement other than are expressly stated herein.

**15.07 Number and Gender.**

All the 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 (singular or plural), and any other gender (masculine, feminine or neuter), as the context or sense of this Agreement or any paragraph or clause hereof may require, the same as if such words have been fully and properly written in the appropriate number and gender.

**15.08 Obligations of Interested Parties.**

(a) Except as otherwise provided herein, all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by Franchisee shall be jointly and severally made or undertaken by Franchisee, all persons signing this Agreement in their individual capacities and all guarantors.

(b) Franchisee shall forward to the Company concurrently with the execution and delivery of this Agreement and prior to the acquisition of any interest in Franchisee by a third party during the term of this Agreement and any extension hereof, a Confidentiality and Non-Competition Agreement in the form set forth in

Exhibit A (as it may be revised by the Company from time to time), executed by every Owner (as defined in Section 12.02) of Franchisee.

**15.09 Written Approval, Waiver and Nonwaiver.**

(a) Whenever this Agreement requires the prior approval or consent of the Company, Franchisee shall make a timely written request therefor, and such approval must be obtained in writing. Except where this Agreement expressly obligates the Company to reasonably approve or consent to (or not to unreasonably withhold its approval of or consent to) any action or request by Franchisee, the Company has the absolute right for any reason to refuse any request by Franchisee or to withhold the Company's approval of or consent to any action by Franchisee. The Company may also consider at its option and, in its sole discretion, other reasonable prior requests severally submitted in writing by Franchisee for the Company's waiver of any obligation imposed by this Agreement. The Company makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this franchise or by any neglect or delay in furnishing the same.

(b) No failure of the Company to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the Company's right to demand exact compliance with all of the terms hereof. Waiver by the Company of any particular default by Franchisee shall not affect or impair the Company's rights with respect to any subsequent default of the same, similar or different nature, nor shall any delay, forbearance, or omission of the Company to exercise any power or right arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair the Company's right to exercise the same, nor shall such constitute a waiver by the Company of any right hereunder, or the right to declare any subsequent breach a default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by the Company of any payments due to it hereunder shall not be deemed to be a waiver by the Company of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

(c) No right or remedy conferred upon or reserved to the Company or Franchisee by this Agreement is intended to be, nor shall it be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy.

(d) No amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed in writing.

**15.10 Notices, Payments.**

(a) Subject to Section 15.10(d), all notices, requests and reports permitted or required to be delivered by the provisions of this Agreement shall be deemed delivered: (1) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (2) on the same date of the transmission by facsimile, telegraph or other reasonably reliable electronic communication system; (3) one (1) business day after being placed in the hands of a commercial courier service for guaranteed overnight delivery; or (4) four (4) business days after

placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing.

(b) If notice is sent to the Company, it shall be addressed to the attention of the President, Long John Silver's, Inc., P.O. Box 11988, Lexington, Kentucky 40579, with a copy to the attention of the General Counsel, at the above address, or at such other address as the Company shall from time to time designate in writing.

(c) If notice is sent to Franchisee, it shall be addressed to Franchisee, care of its designated agent, at 4321 North Bear Claw Way, Tucson, AZ 85749 or at such other address as Franchisee shall from time to time designate in writing.

(d) All payments and reports to accompany payments required to be made hereunder to the Company shall be sent by the means specified in Subsection 15.10(a) (1) (3) or (4) above or by electronic wire payment transfer, addressed to the attention of the Treasurer at the above address, or at such address or by such other means as the Company shall from time to time designate in writing. Any payment not actually received by the Company on or before the date specified herein shall be deemed overdue if not postmarked at least five (5) days prior to the date due.

#### **15.11 Designated Agent of Franchisee.**

Franchisee hereby designates John P. Willingham to act in its behalf and execute all documents in all transactions with the Company. All actions by such designee shall be binding upon Franchisee and shall be valid and binding on any partnerships as if done by each and every partner. The Company shall have no duty to deal with anyone other than the designee; however, any documents submitted to the Company executed by any other officer or partner shall be valid and binding upon Franchisee. Franchisee shall promptly notify the Company in writing of any change in its designee.

#### **15.12 Acknowledgments.**

(a) Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon Franchisee's independent business ability. The Company expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

(b) Franchisee acknowledges that it has received, has had an ample time to read, has read, and fully understands this Agreement. Franchisee further acknowledges that the Company has fully and adequately explained the provisions of this Agreement, and that Franchisee has had an adequate opportunity to be advised by advisors of its own choosing regarding all pertinent aspects of this franchise and the franchise relationship.

(c) Franchisee acknowledges that it received a copy of this Agreement, the attachments and related agreements if any, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it has received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission, titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business

Opportunity Ventures," and such additional documents as are required by the state in which Franchisee is located at least ten (10) days prior to the date on which this Agreement was executed.

IN WITNESS WHEREOF, the Company and Franchisee have executed this Agreement as of the date(s) indicated below.

LONG JOHN SILVER'S, INC.

By: Forrest W. Ragsdale, III  
Forrest W. Ragsdale, III

Title: Senior Vice President and General Counsel

Date: 8/11/02

SOUTHWEST SEAFOOD SHOPPES, LLC

By: John P. Willingham  
John P. Willingham

Title: Managing Partner

Date: 7/24/02

Witness or Attest:  
[Signature]

CONFIDENTIAL

**CONFIDENTIALITY AND NONCOMPETITION  
AGREEMENT**

**THIS AGREEMENT, dated for reference purposes as of June 21, 2002, is entered into by and between Long John Silver's, Inc., a Delaware corporation ("Company") and Southwest Seafood Partner, LLC, whose notice address is: 4321 North Bear Claw Way, Tucson, AZ 85749 ("Interested Party"):**


**On June 21, 2002, the Company entered into a Franchise Agreement with SOUTHWEST SEAFOOD SHOPPES, LLC, ("Franchisee"). Interested Party understands that Franchisee will be in default under Franchise Agreement and its franchise rights may be terminated if each general partner or stockholder of Franchisee does not execute a written agreement to be personally bound by the covenants in Sections 10.05 and 12.02 of the Franchise Agreement. Interested Party desires to acquire and/or maintain an interest in Franchisee, and has an interest in ensuring that Franchisee complies fully with all of the terms of the Franchise Agreement.**

**In consideration of the Company's agreement not to terminate the Franchise Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Interested Party hereby agrees:**

- (1) That he or she will comply with all the requirements set forth in Section 12.02 of the Franchise Agreement.**
- (2) That he or she will observe the restrictions on disclosure of confidential and trade secret information set forth in Section 10.05 of the Franchise Agreement, both during its term and after its termination or expiration, regardless of whether he continues to be directly or indirectly associated with the Company or Franchisee.**

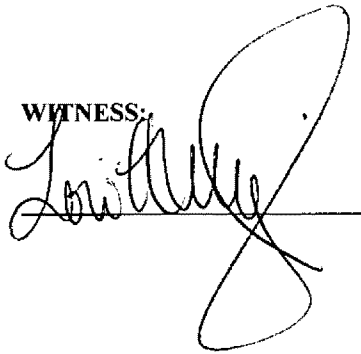
**IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Lexington, Kentucky on the day and year first above written.**

**LONG JOHN SILVER'S, INC.**

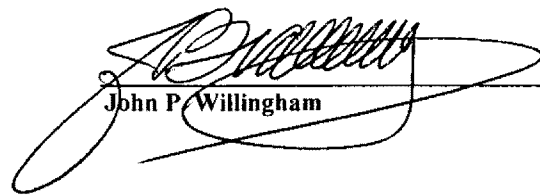
By:   
Forrest W. Ragsdale, III

**Title: Senior Vice President and General Counsel**

**WITNESS:**



**INTERESTED PARTY**

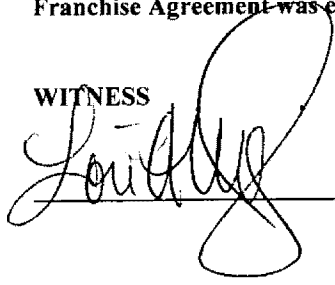
  
John P. Willingham

PERSONAL GUARANTY

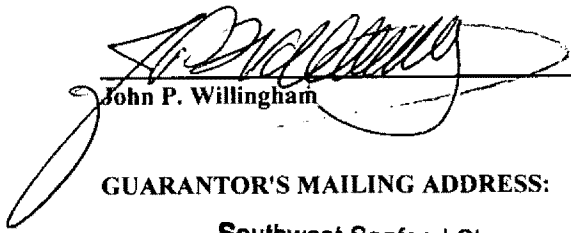
In consideration of, and as an inducement to, the execution of the Franchise Agreement with SOUTHWEST SEAFOOD SHOPPES, LLC, ("Franchisee") dated June 21, 2002, by Long John Silver's, Inc. ("LJS"), the undersigned hereby personally and unconditionally guarantees to LJS, its affiliates, successors, assigns, parent and its parent's other subsidiaries, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Franchise Agreement. The undersigned further waives acceptance and notice of acceptance of the foregoing undertakings; notice of demand for payment of any indebtedness or for performance of any obligations hereby guaranteed; protest and notice of default to any party with respect to the indebtedness or performance of obligations hereby guaranteed; any right he or she may have to require that an action be brought against Franchisee or any other person as a condition of liability; and any and all other notices and legal or equitable defenses to which he or she may be entitled. The undersigned further consents and agrees that his or her direct and immediate liability under this Guaranty shall be joint and several; that he or she shall render any payment or performance required under Franchise Agreement upon demand if Franchisee fails or refuses punctually to do so; that such liability shall not be contingent or conditioned upon the pursuit of any remedies against Franchisee or any other person; and that such liability shall not be diminished, relieved or otherwise affected by the extension of time, credit or any other indulgence which LJS, its affiliates, successors, assigns, parent or its parent's other subsidiaries, may, from time to time, grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty. This Guaranty shall continue and be irrevocable throughout the term of the Franchise Agreement and any extensions thereof, and Guarantor's obligations hereunder shall not be diminished or affected by the termination or expiration of the term of the Franchise Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the same day and year as the above Franchise Agreement was executed.

WITNESS

  
\_\_\_\_\_

GUARANTOR

  
\_\_\_\_\_

John P. Willingham

GUARANTOR'S MAILING ADDRESS:

\_\_\_\_\_  
**Southwest Seafood Shoppes, LLC**  
4321 N. Bear Claw Way  
Tucson, Arizona 85749  
\_\_\_\_\_

GUARANTOR'S SOCIAL SECURITY NUMBER

\_\_\_\_\_



**SCHEDULE I**

**The Location is:**

**4100 North Oracle Road, Tucson, AZ 85705**

**The Territory is the area comprised of a circle having a one and one-half (1½) mile radius with the above Location as the center point of the circle.**

**In addition, if the Franchised Restaurant is or was originally constructed as a freestanding, single-use LJS Restaurant, then for the first five (5) years of the initial term only, expiring June 30, 2006, of the Franchise Agreement to which this Schedule I is attached, the Company will not own, operate or grant a franchise for (nor grant to others the right to own, operate or grant a franchise for) a Co-branded LJS Restaurant within an area comprised of a circle having a three (3) mile radius and having the Franchised Restaurant as the center of such circle ("Extended Territory"). As used in this Schedule I, and solely for purposes of defining the Extended Territory, "Co-branded LJS Restaurant" shall mean a location at which an LJS Restaurant is operated in conjunction with and at the same location as another food service business. The term "Co-branded LJS Restaurant" shall exclude the following locations and facilities, and the Company shall have the right to own, operate or franchise LJS Restaurants within the Extended Territory (but not within the Territory) at such locations and facilities: (1) LJS Restaurants with an additional brand or concept operated within or in conjunction with the LJS Restaurant where the additional brand's or concept's exterior signage is subordinate to the LJS Restaurant signage and the additional brand's or concept's interior image is limited to counter trade dress and menuboard; and (2) LJS Restaurants within a convenience store or gas station, unless an additional established and reputable food service brand is operated in conjunction with the LJS Restaurant from the convenience store or gas station. In addition, the Company shall have the right to own, operate or franchise LJS Restaurants within the Extended Territory (and the Territory) at the locations and facilities described in Section 1.01(d) (1) of the Franchise Agreement.**

CONFIDENTIAL

**SITE PROPOSAL REVIEW POLICY**

November 5, 1999

**SECTION 1: PRELIMINARY STATEMENTS**

**1.01 General Purpose.**

(a) One of Long John Silver's Inc.'s ("LJS") prime objectives is to expand its restaurant system ("System") through the development of new franchised outlets to enable LJS, its franchisees and the System to compete against other restaurant chains. While LJS, as the developer, owner and licensor of the trademarks and other elements of the System, has sole decision-making authority regarding the granting and denial of franchises, LJS desires to be responsive to its existing franchisees' concerns about the possible impact of the development of a new franchised or LJS-owned restaurant on existing franchisees' LJS restaurant operations.

(b) The purpose of this Policy is to provide an efficient and effective process for reconciling disputes relating to LJS restaurant development.

(c) This Policy has been adopted effective as of November 5, 1999 ("Effective Date") in conjunction with the Long John Silver's Franchise Advisory Board ("FAB"), as the same was constituted on the date hereof. For a period of five (5) years following the Effective Date, LJS will not materially modify this Policy without the approval of the FAB, or any successor board of directors or other governing body of the then-recognized association of LJS franchisees ("Board"). Following the date that is five (5) years after the Effective Date, LJS may materially modify this Policy only upon consultation with the Board.

**SECTION 2: NOTIFICATION OF NEW FRANCHISE DEVELOPMENT**

**2.1 Notification.**

(a) Within fifteen (15) days following LJS's determination that it intends to approve a new franchised LJS restaurant site or to develop a new company-owned LJS restaurant site ("Proposed Site"), LJS shall first provide notice ("Notice") to all LJS franchisees whose existing LJS restaurant operations may be significantly adversely affected by development of the Proposed Site ("Potentially Impacted Franchisee[s]").

(b) As used in this Policy, "Potentially Impacted Franchisees" who are entitled to receive an Application Notice are:

(1) LJS franchisees who have one or more existing units within ten (10) miles of the Proposed Site if LJS determines that population within the area of a circle having a three (3)-mile radius and the Potentially Impacted Franchisee's existing LJS restaurant as the center point ("Population Density") is 10,000 or less; and

(2) LJS franchisees who have one or more units within five (5) miles of the Proposed Site if LJS determines that the Population Density is more than 10,000 and less than 20,000; and

(3) LJS franchisees who have one or more units within three (3) miles of the Proposed Site if LJS determines that the Population Density is 20,000 or more.

(4) Notwithstanding the foregoing Sections 2.01(b)(1) through 2.01(b)(3), inclusive, Potentially Impacted Franchisees shall not include any LJS franchisee who has received from LJS written notice of default of a monetary obligation in excess of \$5,000.00 or a material non-monetary obligation under one or more of its LJS franchise agreements and has not cured or in good faith disputed in writing in its entirety such default as of the date of the Application Notice.

(c) Proposed Sites shall exclude LJS restaurants at the following locations ("Excluded Sites"): on rights-of-way of any limited access highways or toll roads, airports, campus, educational, industrial or health care institutions, office or business complexes or buildings, military installations, or at athletic arenas, expositions, convention centers, fairs, zoos, theme parks or similar facilities or events. Potentially Impacted Franchisees shall not be entitled to object to the development of, and shall not receive any Application Notice for Excluded Sites.

**SECTION 3: IMPACT STUDY**

**3.01 Initiation of Impact Study.**

(a) Each Potentially Impacted Franchisee who reasonably believes that the development of the Proposed Site will have a significant adverse impact (hereinafter defined) upon the revenue generated from its existing LJS restaurant(s) shall have the right to commission an impact study by an Approved Consultant (hereinafter defined) in order to support the Potentially Impacted Franchisee's position.

(b) Each Potentially Impacted Franchisee shall have ten (10) days following the date of the Notice to notify LJS of its intent to commission an impact study. The Potentially Impacted Franchisee's notice shall include a check in the amount of \$5,000.00 payable to LJS, and the Potentially Impacted Franchisee's selection of a restaurant industry consulting firm from the list of approved consultants ("Approved Consultants") that LJS shall provide to the Franchise Association Board from time to time. The Approved Consultants shall not be affiliates of LJS or any LJS franchisee and LJS shall consult with and advise the Board in developing the list of Approved Consultants. Alternatively, a Potentially Impacted Franchisee may directly engage an Approved Consultant to conduct the impact study, so long as the Potentially Impacted Franchisee provides LJS with reasonably satisfactory proof of engagement along with the Potentially Impacted Franchisee's notice. The engagement shall require the Approved Consultant to deliver the results of the impact study within a reasonable time concurrently to LJS and the Potentially Impacted Franchisee.

(c) A Potentially Impacted Franchisee who initiates an impact study pursuant to this Policy is referred to as an "Objecting Franchisee".

**3.02 Cost of Impact Study.**

(a) If the results of the impact study conclude that development of the Proposed Site will significantly adversely impact (hereinafter defined) the gross sales generated by the Objecting Franchisee's LJS restaurant, then LJS will reimburse (or refund, as applicable) the \$5,000.00 paid by the Objecting Franchisee and LJS shall pay the cost of the impact study. If the impact study concludes that development of the Proposed Site will not significantly

adversely impact the gross sales generated by the Objecting Franchisee's LJS restaurant, then the cost of the impact study shall be paid directly by the Objecting Franchisee or out of the \$5,000.00 submitted to LJS by the Objecting Franchisee (with any excess funds to be returned promptly).

**3.03 Significant Adverse Impact.**

(a) The development of a Proposed Site will be deemed to have a significant adverse impact upon an Objecting Franchisee's LJS restaurant if the impact study commissioned by the Objecting Franchisee concludes that, solely as a result of the opening of an LJS restaurant at the Proposed Site and without giving effect to any margin of error or like concept, the annual gross sales generated by the Objecting Franchisee's LJS restaurant will decrease by ten percent (10%) or more over the period of one (1) year following the opening date of the new LJS restaurant at the Proposed Site.

**3.04 LJS's and Objecting Franchisee's Elections.**

(a) If the results of the impact study conclude that development of the Proposed Site will significantly adversely impact the revenue generated by the Objecting Franchisee's LJS restaurant, then LJS must elect one of the alternatives set forth in Section 3.04(a)(1) or (2) below, such election to be made in writing and delivered to the Objecting Franchisee within fifteen (15) days following the date that the Approved Consultant delivers the impact study to LJS.

(1) LJS shall not develop or approve development of the Proposed Site; or

(2) LJS shall offer to execute an agreement that will obligate LJS to divert and allocate, for a period of one (1) year following the opening date of the new LJS restaurant at the Proposed Site, an amount equal to one-half (1/2) of the Objecting Franchisee's royalties paid by the Objecting Franchisee during such one (1) year period for the purpose of funding local (i.e., in the market area in which the Objecting Franchisee's restaurant lies) advertising and marketing programs approved by LJS.

(3) The Objecting Franchisee shall have fifteen (15) days following its receipt of any offer made by LJS pursuant to Section 3.04(a)(2) above within which to accept or reject the offer. The Objecting Franchisee's acceptance or rejection must be made in writing and its failure to timely deliver its acceptance or rejection shall be deemed acceptance of LJS's offer. If the Objecting Franchisee accepts the offer, then LJS may develop or approve development of the Proposed Site and the Objecting Franchisee shall release LJS from any liability to the Objecting Franchisee arising from LJS's development or approval of the development. If the Objecting Franchisee rejects the offer, LJS shall not approve the Applicant's development of the Proposed Site.

(b) If the results of the impact study conclude that development of the Proposed Site will not significantly adversely impact the revenue generated by the Objecting Franchisee's LJS restaurant, then LJS may develop or approve development of the Proposed Site. In the event that LJS approves the development of Proposed Site and an Objecting Franchisee continues to object, then the Objecting Franchisee must elect one of the following alternatives, such election to be made in writing delivered to LJS within fifteen (15) days following the date that LJS notifies Objecting Franchisee of the intended development of the Proposed Site:

(1) The Objecting Franchisee and LJS shall execute an agreement that will obligate LJS to divert and allocate, for a period of six (6) months following the opening date of the new LJS restaurant at the Proposed Site, an amount equal to one-half (1/2) of the Objecting Franchisee's royalties paid by the Objecting Franchisee during such six (6) month period for the purpose of funding local (i.e., in the market area in which the Objecting Franchisee's restaurant lies) advertising and marketing programs approved by LJS. If the Objecting Franchisee chooses this alternative, then the Objecting Franchisee shall release LJS from any liability arising from LJS's approval of the Applicant's development.

(2) Alternatively, the Objecting Franchisee shall have the right to pursue against LJS such remedies as are available under applicable law.

The Objecting Franchisee's election shall be its sole and exclusive remedy for the potential or actual adverse effect of the development of the Proposed Site.

**OWNERSHIP OF SOUTHWEST SEAFOOD SHOPPES, LLC**  
**An Arizona Limited Liability Company**

<b>John Willingham</b>	<b>73.3%</b>
<b>Mike &amp; Amy Barbee</b>	<b>8.0%</b>
<b>Paul Chenoweth</b>	<b>1.5%</b>
<b>Carl Chavez</b>	<b>2.1%</b>
<b>Patrick H. Cahalan Trust</b>	<b>1.5%</b>
<b>Jack &amp; Pauline Willingham</b>	<b>1.5%</b>
<b>Kerry Habiger</b>	<b>1.5%</b>
<b>Jim &amp; Sharon Lowell</b>	<b>.6%</b>
<b>Dean &amp; Sandra Hardwick</b>	<b>3.0%</b>
<b>Bruce Miller</b>	<b>1.5%</b>
<b>Mark Willingham</b>	<b>1.5%</b>
<b>Scott Prickett</b>	<b>1.5%</b>
<b>Dan Gutierrez</b>	<b>1.0%</b>
<b>Diane Preece</b>	<b>2.4%</b>

**SOUTHWEST SEAFOOD SHOPPES, LLC**

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

John Willingham

**Title: Managing Member**

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

7/4/02