

Development Agents Agreement – Sample Text

**DEVELOPMENT AGENT AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into \_\_\_\_\_, by and between ABC SYSTEMS XXXXXXXXXXXX (the "Company"), a XXXXXXXX XXXXXXXX corporation, with its registered office in care of XXXXXXXX Solicitors, XXXXXXXXXXXXXXXXXXXX and \_\_\_\_\_, an individual or individuals (collectively, the "DA"), having a place of business at \_\_\_\_\_. This Agreement supplements and amends all existing Agreements, if any, between the parties on the subject matter hereof.

RECITALS:

- A. The Company has licensed certain proprietary and other rights and interests in various service marks, trademarks, trade names, trade dress and goodwill used in its business including the trade name and service mark ABC from ABC Associates Inc., a XXX corporation and an affiliate of the Company ("Licensor").
- B. The Company operates and franchise others to operate restaurants under the trade name and service mark ABC ("Restaurants") using certain recipes, formulas, food preparations procedures, business methods, business forms and business policies it has licensed. The Company has also licensed a body of knowledge pertaining to the establishment and operation of Restaurants.
- C. The DA acknowledges that he understands his success depends primarily upon his efforts and that neither the Company nor its affiliates nor any of the employees, agents or representatives of the Company or its affiliates have made any oral, written or visual representations or projections of actual or potential sales, earnings, income, net or gross profits. The DA understands that he may lose money or fail.
- D. The DA desires to act as a representative of the Company to work as an independent contractor to develop and service the Company's Restaurants in the following Territory (hereinafter called the "Territory"):  
\_\_\_\_\_  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
If all or part of this Territory has been previously assigned to another development agent, that portion shall be eliminated from this Territory.
- E. The Company and the DA acknowledge and understand that this Agreement is not a Franchise Agreement, and that a franchise is not created by execution of this Agreement.
- F. As used in this Agreement, the term "AUV" shall be defined as the average weekly Gross Sales per Restaurant for all Restaurants in the Territory over the prior 52 week period. Gross Sales are all sales, exclusive of goods and services tax ("TAX") and any sales taxes, upon which the Company is paid eight percent (8%) royalty. All references to dollars (\$) in this Agreement shall be deemed to refer to the lawful money of xxxxxxxx, and all such amounts described as being "adjusted by the CPI" shall at all future times be adjusted based upon the same percentage change as the change in the CPI (Statistics Consumer Price Index, Eight Capital Cities Weighted Average, All Groups,

1989-90=100) from the December Quarter 2001, for which the CPI was 135.4, to such future time.

**G. NOTICE IS HEREBY PROVIDED TO ALL CREDITORS OF THE DA, AND ALL PROSPECTIVE PURCHASERS OR ASSIGNEES OF ANY RIGHT(S) OR FINANCIAL INTEREST(S) IN THE BUSINESS CONDUCTED BY THE DA UNDER THIS AGREEMENT, THAT THEIR RIGHTS AND COMPANY'S LIABILITY TO THEM IN CONNECTION WITH THIS AGREEMENT ARE STRICTLY LIMITED BY THE PROVISIONS OF PARAGRAPH 6.D. HEREOF.**

**H. THE DEVELOPMENT AGENT UNDERSTANDS AND ACKNOWLEDGES THAT BY ENTERING INTO THIS AGREEMENT, ALL OF THE DEVELOPMENT AGENT'S EXISTING DEVELOPMENT AGENT AGREEMENTS, IF ANY, WILL BE AMENDED UNDER PARAGRAPH 21 BELOW.**

### **AGREEMENT**

Acknowledging the above recitals, which are part of this Agreement, the parties hereto agree as follows:

**1. APPOINTMENT.** The Company appoints the DA, and the DA accepts the appointment, as the Company's representative for developing and servicing ABC Restaurant franchises within the Territory.

**1.A. Independent Contractor; Relationship of the Parties.** The DA is, and shall be, an independent contractor and not an employee or partner of the Company. Nothing contained herein shall constitute a partnership between or joint venture by the parties or constitute either party the agent of the other. Under no circumstances shall the Company be liable for any act (including specifically, but not by way of limitation, any violation by the DA of any applicable franchise sales and disclosure laws), or any omission, debt, or other obligation of the DA and the DA shall indemnify and hold the Company harmless from any such claim and the cost of defending against such claim, including attorneys' fees, arising directly or indirectly in connection with the DA's activities.

**1.B. Receipt of Confidential Information.** The DA understands that he will receive confidential information from the Company, its officers, directors, employees, partners, shareholders, agents, franchisees, master franchisees or other Development Agents so that he may more effectively develop and service Restaurants ("Confidential Information"). This information has been developed at great effort and expense, is and shall remain solely the property of the Company, and shall be promptly returned upon request. The DA acknowledges and agrees that the Company, in developing its Confidential Information, has made and continues to make a substantial investment of time and capital in technical and commercial research. The DA shall not, during this Agreement or at any time thereafter, without the prior written consent of the Company, divulge, or use for the benefit of any unauthorised party, any Confidential Information or any other proprietary knowledge, know-how, formulas or techniques. Any failure to comply with this shall cause the Company irreparable injury, and the DA agrees to pay damages, plus any court or arbitration costs and reasonable attorneys' fees in a hearing for specific performance of, or an injunction for violation of, the requirements of this Subparagraph. In order to prevent any possible future disputes concerning the importance of the DA's obligations under this Paragraph 1.B., in the event the DA materially breaches said obligations, which are recognised by the parties as essential

and principal obligations of this Agreement, the DA agrees that the DA's monthly compensation from the Company shall be reduced by a sum for each breach equal to the greater of the Company's damages or \$35,000, plus TAX (adjusted by the CPI). See Paragraph 3.A.

**2. DA DUTIES.** The DA will have the following work responsibilities relating to the Territory. The DA will receive a percentage of the Company's income for his work in the Territory, reduced by an equal percentage of any expenses the Company has which are related to the Territory. In addition, if the DA fails to perform any of his duties, the Company may perform such duties and reduce the compensation due to the DA by amount of the Company's expenses in performing those duties plus twenty five percent (25%) of such amount.

**2.A. Compliance with Law and Company Policies.** The DA agrees to operate his business in compliance with all applicable governmental laws, regulations and ordinances. The DA will obtain at his expense and keep in force, any permits, licenses or other consents required for his business and shall forward to the Company copies of any documentation relating to these items. In addition, the DA shall be governed by and shall operate his business in accordance with the Company's policies, which may be changed by the Company at its sole discretion at any time and which changes may cause the DA to incur additional expenses.

**2.B. Compliance with Franchise Agreements.** The DA and any affiliate of the DA shall comply with the terms and provisions of any Franchise Agreement executed by the DA or such affiliate as Franchisee for any Restaurant. A default under the DA's Franchise Agreement, if any, by the DA or such affiliate shall also be a default under this Agreement. The DA shall maintain the accounts of all such Restaurants in perfect status with no unpaid balances owed to the Company, the Franchisee Advertising Fund or any of the Company's affiliates. Such Restaurants shall participate in the Company's preauthorised check and/or electronic funds transfer programme, if available. The Company shall have the right to offset and thereby reduce any monies paid to the DA under this Agreement, by any obligation of the DA to the Company, the Franchisee Advertising Fund or the Company's affiliates, including, but without limitation, monies owed due to the operation of any Restaurant owned wholly or partially by the DA.

**2.C. Development and Servicing of Restaurants; Development Criteria.** The DA agrees to develop and service the Company's Restaurants including but not limited to the following: advertising for prospective franchisees; providing prospective franchisees with information about the Company; providing site selection and lease negotiation advice and assistance to the Company and its franchisees; providing construction advice; assisting with Restaurant openings; inspecting Restaurants; and providing ongoing business advice to franchisees. All duties shall be carried out in strict accordance with the Company's policies.

In the Territory there are 52 operating Restaurants (the "Initial Restaurant Count"), at the locations listed in Schedule A attached, with a weekly AUV of \$6,168.00 per Restaurant (the "Initial AUV"). The DA shall increase both the number of ABC® Restaurants and the AUV of the Restaurants in the Territory according to the requirements set out below. The DA understands that it will be a material breach of this Agreement, and grounds for its termination, if the DA fails at any time to maintain the AUV and the number of operating Restaurants at these levels, except that any such default shall be waived for such time as the combined weekly gross sales of all Restaurants in the Territory, averaged over the prior 52 week period, is at least equal to the level that is the product of the AUV required by Paragraph 2.C.1. below multiplied by

the number of operating Restaurants required by Paragraph 2.C.2. below. *Example:* If 2.C.1. requires an AUV of \$9500 and 2.C.2. requires 100 Restaurants to be in operation, then if the gross sales for the Territory average at least \$950,000 per week (equivalent to \$9500 x 100 Restaurants), the Development Agent shall not be in default of either Paragraph 2.C.1. or Paragraph 2.C.2.

**2.C.1. Average Unit Volume (AUV).** The AUV shall at all times be no less than the greater of: (a) \$9500 (as adjusted by the CPI); (b) the then current national average Restaurant AUV; or (c) the Initial AUV (as adjusted by the CPI). If the Initial AUV on the date of this Agreement is less than the amount required above, then the AUV required for the first year of this Agreement shall be the Initial AUV, and on each anniversary date of this Agreement thereafter the required AUV shall increase to equal the prior year's required AUV (as adjusted by the CPI) plus an increment equal to the lesser of: (1) 20% of the difference between the Initial AUV and the amount required by the first sentence above; or (2) \$600. Such increment shall be adjusted by the CPI both initially and to each anniversary date. Once the required AUV level reaches the greater of \$9500 (as adjusted by the CPI) or the then current national average AUV, the first sentence of this paragraph 2.C.1. shall govern.

**2.C.2. Development Schedule.** During the first two (2) years from the date of this Agreement, the required number of Restaurants in the Territory (the "Development Target") shall be the Initial Restaurant Count. On or about the date which is two (2) years from the date of this Agreement (the "Schedule Commencement Date"), the Company shall establish a Development Schedule which will require the DA to develop additional Restaurants in the Territory to reach at least the Development Target of one Restaurant per 15,000 of Territory population or the number of stores operated by the largest other fast food chain in the Territory, whichever is greater. Beginning five (5) years from the Schedule Commencement Date, the Development Target shall be one Restaurant per 12,000 of Territory population or the number of stores operated by the largest other fast food chain in the Territory, whichever is greater, and at that time the Company shall establish a second Development Schedule. However, during the initial term of this Agreement, the Development Target shall not be set lower than the Initial Restaurant Count, nor higher than one hundred forty percent (140%) of the number of stores operated by the largest other fast food chain in the Territory if that 140% number exceeds the Initial Restaurant Count. The Development Target and shall be calculated on the Schedule Commencement Date and yearly thereafter. Each Development Schedule will contain intermediate goals set in even increments at six (6) month intervals, with the first goal six (6) months from the date the schedule is set, and shall require that additional Restaurants must be developed at the rate of 20% of the total additional required Restaurants per year. As of the date of this Agreement, the population of the Territory is estimated as 1,916,716 and the largest other fast food chain is believed to be McDonald's with 52 stores.

The following is a sample Development Schedule of the type to be established as of the Schedule Commencement Date, assuming that: (a) June 1, 2004 is the Schedule Commencement Date; (b) 52 Restaurants are operating in the Territory at that time; (c) the fast food chain with the most stores in the Territory has fifty-two (52) stores in operation at that time; and (d) the population remains at its current level. The Development Schedule would therefore call for a Development Target of 73 Restaurants (equal to 140% of the number of stores operated by the largest other fast food chain in the Territory, as per the formula above).

*Sample Only Not Complete*