

# 409534

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June 8, 1999

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\*\*\*\*\*70.00 \*\*\*\*\*70.00

Office of the Secretary of State  
Division of Corporations  
409 East Gaines Street  
Tallahassee, FL 32301

**VIA AIRBORNE EXPRESS**

Re: Madeira Beach Ice, Inc./ Merger with Dick's Seafood, Inc.

Ladies and Gentlemen:

Pursuant to *Florida Statute* 607.1105, enclosed please find the following original documents:

1. Articles of Merger; and
2. Plan and Agreement of Merger.

The surviving corporation, Dick's Seafood, Inc., is providing the Articles of Merger with the Department of State for filing. The Articles of Merger set forth the plan of merger, the effective date of merger, and the date of the adoption of the plan of merger, are in accordance with Statute 607.1105.

Also enclosed is a check for \$70.00 for the filing of the Articles of Merger. If you have any questions please feel free to contact our office.

Sincerely,

  
MARTHA M. COLLINS

MMC

Enclosures

S. PAYNE JUN 23 1999

merge

FILED  
99 JUN 22 PM 12:38  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Martha Collins  
gave OK to  
move working  
plan from  
6/22/99  
change to one in  
12 of  
new.

ARTICLES OF MERGER  
Merger Sheet

MERGING: -----

MADEIRA BEACH ICE, INC., a Fl corp., F06516

INTO

**DICK'S SEAFOOD, INC.**, a Florida corporation, 409534.

File date: June 22, 1999

Corporate Specialist: Susan Payne

FILED

99 JUN 22 PM 12:38

**ARTICLES OF MERGER**

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These Articles of Merger entered into effective this 1<sup>st</sup> day of June, 1999, between MADEIRA BEACH ICE, Inc., a Florida corporation, ("MADEIRA BEACH ICE"), and DICK'S SEAFOOD, Inc., a Florida corporation, ("DICK'S SEAFOOD").

**WITNESSETH:**

WHEREAS, DICK'S SEAFOOD has an authorized capital stock consisting of 7,500 shares of Common Stock, par value \$1 per share, of which 100 shares have been duly issued and are now outstanding; and

WHEREAS, MADEIRA BEACH ICE has an authorized capital stock consisting of 7,500 shares of Common Stock, par value \$1 per share, of which 100 shares were duly issued and outstanding; and

WHEREAS the Board of Directors of DICK'S SEAFOOD and of MADEIRA BEACH ICE, respectively, deem it advisable and generally to the advantage and welfare of the two corporate parties and their respective shareholders that MADEIRA BEACH ICE merge with DICK'S SEAFOOD under and pursuant to the provisions of the Florida Business Corporation Act; and

WHEREAS, the respective shareholders of MADEIRA BEACH ICE and DICK'S SEAFOOD have approved the terms and conditions of the merger.

NOW, therefore, in consideration of the premises and of the mutual agreements herein contained and of the mutual benefits hereby provided, it is agreed by and between the parties hereto as follows:

**1. Approval.** On January 1, 1999, the directors of MADEIRA BEACH ICE and the directors of DICK'S SEAFOOD unanimously adopted and approved these Articles of Merger by Written Minutes containing Resolutions. These Articles of Merger were unanimously approved in their entirety by the shareholder of MADEIRA BEACH ICE and DICK'S SEAFOOD by Written Minutes containing Resolutions, each dated January 1, 1999.

**2. Merger.** MADEIRA BEACH ICE shall be and hereby is merged with DICK'S SEAFOOD.

**3. Effective Date.** These Articles of Merger shall be deemed effective January 1, 1999 but shall not take effect until compliance with the laws of the State of Florida has occurred.

**4. Surviving Corporation.** DICK'S SEAFOOD shall survive the merger herein contemplated and shall continue to be governed by the laws of

the State of Florida, but the separate corporate existence of MADEIRA BEACH ICE shall cease forthwith upon the Effective Date.

**5. Authorized Capital.** The authorized capital stock of DICK'S SEAFOOD following the Effective Date shall be 7,500 shares of Common Stock, par value \$1 per share, unless and until the same shall be changed in accordance with the laws of the State of Florida.

**6. Articles of Incorporation.** The Articles of Incorporation of DICK'S SEAFOOD following the Effective Date unless and until the same shall be amended or repealed in accordance with the provisions thereof, which power to amend or repeal is hereby expressly reserved, and all rights or powers of whatsoever nature conferred in such Articles of Incorporation of DICK'S SEAFOOD or upon any other person whomsoever are subject to this reserve power, shall continue as the Articles of Incorporation of DICK'S SEAFOOD as the surviving corporation.

**7. Bylaws.** The Bylaws of DICK'S SEAFOOD shall be the Bylaws of DICK'S SEAFOOD as the surviving corporation following the Effective Date unless and until the same shall be amended or repealed in accordance with the provisions thereof.

**8. Further Assurance of Title.** If at any time, DICK'S SEAFOOD shall consider or be advised that any acknowledgements or assurances in law or other similar actions are necessary or desirable in order to acknowledge or confirm in and to DICK'S SEAFOOD any right, title, or interest of MADEIRA BEACH ICE held immediately prior to the Effective Date, MADEIRA BEACH ICE and its proper officers and directors shall and will execute and deliver all such acknowledgements or assurances in law and do all things necessary or proper to acknowledge or confirm such right, title, or interest in DICK'S SEAFOOD as shall be necessary to carry out the purposes of these Articles of Merger, and DICK'S SEAFOOD and the proper officers and directors thereof are fully authorized to take any and all such action in the name of MADEIRA BEACH ICE or otherwise.

**9. Retirement of Organization Stock.** Forthwith upon the Effective Date, each of the 100 shares of the Common Stock of MADEIRA BEACH ICE presently issued and outstanding shall be retired, and no shares of Common Stock or other securities of MADEIRA BEACH ICE shall be issued in respect thereof.

**10. Conversion of Outstanding Stock.** Forthwith upon the Effective Date, each of the issued and outstanding shares of Common Stock of MADEIRA BEACH ICE and all rights in respect thereof shall be converted into one full paid and nonassessable share of Common Stock of DICK'S SEAFOOD. The holders of such certificates shall not be required immediately to surrender the same in exchange for certificates of Common Stock of DICK'S SEAFOOD but, as certificates nominally representing shares of Common Stock of MADEIRA BEACH ICE are presented, DICK'S SEAFOOD will cause to be issued therefor certificates for a like number of shares of Common Stock of it.

**11. Book Entries.** The merger contemplated hereby shall be treated as a pooling of interest and as of the Effective Date entries shall be made upon the books of DICK'S SEAFOOD in accordance with the following:

(a) The assets and liability of MADEIRA BEACH ICE shall be recorded at the amounts at which they are carried on the books of MADEIRA BEACH ICE immediately prior to the Effective Date with appropriate adjustment to reflect the retirement of the 100 shares of Common Stock of MADEIRA BEACH ICE presently issued and outstanding.

(b) There shall be credited to Capital Surplus Account the aggregate amount of the par value per share of all of the Common Stock resulting from the conversion of the outstanding Common Shares of MADEIRA BEACH ICE.

**12. Directors.** The names of the first directors of DICK'S SEAFOOD following the Effective Date, who shall be ~~one~~ (1) in number and who shall be elected and shall qualify, are as follows:

**RICHARD A. TAPPAN**

**13. Officers.** The names of the first officers of DICK'S SEAFOOD following the Effective Date, who shall hold office from the Effective Date until their successors shall be appointed and shall qualify or until they shall resign or be removed from office, are as follows:

<u>Name</u>	<u>Offices</u>
Richard A. Tappan	President
_____	Vice President
_____	Secretary
_____	Treasurer

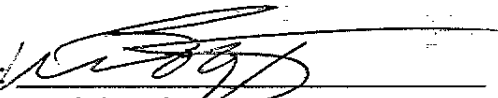
**14. Vacancies.** If, upon the Effective Date, a vacancy shall exist in the Board of Directors or in any of the offices of DICK'S SEAFOOD as the same are specified above, such vacancy shall thereafter be filled in the manner provided by law and the By-laws of DICK'S SEAFOOD.

**15. Amendment.** These Articles of Merger cannot be altered or amended, except pursuant to an instrument in writing signed by all of the parties hereto.


**IN WITNESS WHEREOF,** the parties have caused these Articles of Merger to be executed by the President and Secretary of each of them pursuant to authority given by their respective Boards of Directors.

**"MADEIRA BEACH ICE"**

Approved by the Board of Directors  
Directors and all of its Stockholders  
by written consent on  
January 1, 1999.

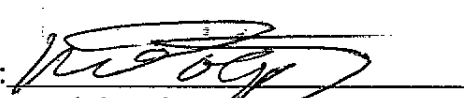
By:   
Richard A. Tappan  
President

ATTEST:


  
Timothy J. Joslin, Secretary

**"DICK'S SEAFOOD"**

Approved by the Board of  
Directors and all of its  
Stockholders by written  
Consent on January 1, 1999.

By:   
Richard A. Tappan  
President

ATTEST:

  
Carleen Rappan, Secretary

STATE OF FLORIDA  
COUNTY OF PINELLAS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1999, before me, the undersigned, personally appeared Richard A. Tappan and Timothy J. Joslin, known to me to be the President and Secretary, respectively, of Madeira Beach, Inc., a corporation organized and existing under the laws of the State of Florida, and acknowledged to me that the foregoing constitutes the Articles of Merger of Madeira Beach, Inc. and Dick's Seafood, Inc., and that they have executed the foregoing instrument in their capacity as officers of said corporation as the free act, deed, and agreement of said corporation.

IN WITNESS WHEREOF, I have set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF FLORIDA  
COUNTY OF PINELLAS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1999, before me, the undersigned, personally appeared RICHARD A. TAPPAN and \_\_\_\_\_, known to me to be the President and Secretary, respectively, of DICK'S SEAFOOD, Inc., a Florida corporation organized and existing under the laws of the State of Florida, and acknowledged to me that the foregoing constitutes the Articles of Merger of DICK'S SEAFOOD, Inc. and MADEIRA BEACH ICE, Inc., and that they have executed the foregoing instrument in their capacity as officers of said corporation as the free act, deed, and agreement of said corporation.

IN WITNESS WHEREOF, I have set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## **PLAN AND AGREEMENT OF MERGER**

**MADEIRA BEACH ICE, Inc., a Florida corporation**  
**merging into**  
**DICK'S SEAFOOD , Inc., a Florida corporation**

**PLAN AND AGREEMENT OF MERGER ("Agreement")** effective January 1, 1999, between DICK'S SEAFOOD , Inc., a Florida corporation ("**DICK'S SEAFOOD**"), and MADEIRA BEACH ICE, Inc., a Florida corporation ("**MADEIRA BEACH ICE**").

WITNESSETH:

**1. Merger of MADEIRA BEACH ICE into DICK'S SEAFOOD.** Upon the Effective Date (as defined in Section 4) MADEIRA BEACH ICE shall be merged with and into DICK'S SEAFOOD and the separate existence of MADEIRA BEACH ICE shall cease. DICK'S SEAFOOD ("**Surviving Corporation**") shall continue its corporate existence under, and shall be governed by, the laws of the State of Florida and the directors and officers of DICK'S SEAFOOD shall continue as the directors and officers of the Surviving Corporation. The address of the registered or principal office of the Surviving Corporation in Florida is Corey Avenue, St. Pete Beach, Florida.

**2. Certificate of Incorporation and Bylaws.** The Certificate of Incorporation of DICK'S SEAFOOD shall be the Certificate of Incorporation of the Surviving Corporation following the effective date, until the same shall be altered, amended or repealed in the manner prescribed by law, and the terms and provisions thereof are hereby incorporated in this Agreement with the same force and effect as though herein set forth in full. The Bylaws of DICK'S SEAFOOD as in effect on the effective date, shall be the Bylaws of the Surviving Corporation until altered, amended or repealed, as provided therein.

**3. Status and Conversion of Shares.** Upon the Effective Date, each issued and outstanding share of DICK'S SEAFOOD common stock, par value \$1 per share, shall be and continue to be an issued and outstanding share of common stock, par value \$1 per share, of the Surviving Corporation. After the Effective Date, each holder of an outstanding certificate or certificates theretofore representing common stock of MADEIRA BEACH ICE may surrender the same to DICK'S SEAFOOD , or its designated exchange agent, and shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of common stock of DICK'S SEAFOOD into which the MADEIRA BEACH ICE shares theretofore represented by the certificate or certificates so surrendered shall have been converted as aforesaid.



Until so surrendered, each outstanding certificate which prior to the effective date represented MADEIRA BEACH ICE shares, shall be deemed for all corporate purposes to evidence ownership of the number of shares of common stock of DICK'S SEAFOOD into which the MADEIRA BEACH ICE shares shall have been converted.

**4. Shareholder's Approval; Effective Date.** This Agreement shall be submitted for approval to the shareholders of MADEIRA BEACH ICE and DICK'S SEAFOOD, respectively, at meeting thereof held on or prior to January 1, 1999 (or such late date as the respective boards of directors shall mutually approve), called and held separately in accordance with laws of Florida, and, if approved by such shareholders by the votes required by law, then Articles of Merger, reflecting this Agreement in the form required under Sections 607.1105 and 607.1107 of the Florida Business Corporation Act shall be delivered to the Florida Department of State. The delivery of the Articles of Merger to the Florida Department of State shall not be made until the fulfillment of the conditions set forth in Sections 10 and 11. Evidence of compliance with such conditions shall be submitted to each company not later than the closing date which in turn shall be on or before January 1, 1999, or such later date as the boards of directors of both MADEIRA BEACH ICE and DICK'S SEAFOOD shall mutually decide. The merger of MADEIRA BEACH ICE and DICK'S SEAFOOD shall become effective on the date the Florida Secretary of State issues its certificate of merger ("**Effective Date**").

**5. Further Assurance.** Before the effective date, MADEIRA BEACH ICE and DICK'S SEAFOOD shall, subject to the terms and conditions of this Agreement, take all such action as shall be necessary or appropriate in order to effectuate the merger. In case, at any time after the effective date, DICK'S SEAFOOD shall determine that any further action or instruments of conveyance are necessary or desirable in order to vest in and confirm to DICK'S SEAFOOD full title to and possession of all the properties, assets, rights, privileges and franchises of MADEIRA BEACH ICE, then the persons who were officers and directors of MADEIRA BEACH ICE as of the effective date shall as such officers and directors take all such action and execute and deliver all such instruments as DICK'S SEAFOOD may so determine to be necessary or desirable.

**6. Representations and Warranties by MADEIRA BEACH ICE.** MADEIRA BEACH ICE represents and warrants as follows:

(a) MADEIRA BEACH ICE is a corporation duly organized, validly existing and in good standing under the laws of Florida and has corporate power to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing in the State of Florida.

(b) MADEIRA BEACH ICE's authorized capital stock consists of 7500 shares of common stock, par value of \$1 per share. The numbers of shares issued and outstanding at March 1, 1998, were 100 shares of common stock. At the meeting of MADEIRA BEACH ICE's shareholders called to vote upon this Agreement, the shareholders entitled to vote thereon will be the holders of all shares of every class outstanding on the record date for such meeting. Holders of stock of each class outstanding on such record date will be entitled to vote as a class. There are no existing options, calls or commitments of any character relating to MADEIRA BEACH ICE's authorized and unissued stock.

(c) The copies of MADEIRA BEACH ICE's Articles of Incorporation and Bylaws which have been delivered to DICK'S SEAFOOD's are complete and correct. The consummation of the transactions contemplated by this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, agreement, indenture or other instrument applicable to MADEIRA BEACH ICE or any of its subsidiaries.

(d) MADEIRA BEACH ICE has no subsidiaries or affiliates.

(e) The execution, delivery and performance of this Agreement by MADEIRA BEACH ICE have been duly approved by MADEIRA BEACH ICE's board of directors, subject to approval by holders of two-thirds of the common stock in the manner required by Florida law.

(f) MADEIRA BEACH ICE has delivered to DICK'S SEAFOOD copies of all of its financial statements, all of which are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principle consistently followed (except as stated in the explanatory notes attached to such statements and, in the case of interim statements, except for year-end adjustments) throughout the periods covered by such statements, and present fairly the financial position of MADEIRA BEACH ICE as at the dates. MADEIRA BEACH ICE has exhibited to DICK'S SEAFOOD complete and correct copies of the Federal Income Tax and State Income Tax and Franchise Tax returns relative to the operations of MADEIRA BEACH ICE.

(g) MADEIRA BEACH ICE does not have any material liabilities or obligations (whether accrued, absolute, contingent or otherwise), including, without limitation thereto, any uninsured liabilities resulting from failure to comply with any law applicable to MADEIRA BEACH ICE or to the conduct of its business of one or more of them, and any tax liabilities due to become due and whether (i) incurred in respect of MADEIRA BEACH ICE's income for any period prior to the close of business on January 1, 1999, or (ii) arising out of transactions entered into, or any state of facts existing, prior thereto.

(h) Since January 1, 1998, (other than as consented to by in writing), there has not been:

(1) Any material and adverse change in MADEIRA BEACH ICE's financial condition, assets, liabilities or business (other than changes in the ordinary course of business);

(2) Any declaration, setting aside or payment of any dividend or other distribution in respect of MADEIRA BEACH ICE's common stock;

(3) Any pension, retirement or similar benefit arrangement made or agreed to by MADEIRA BEACH ICE; or

(4) Any significant labor trouble, or any other event or condition of any character (whether or not covered by insurance) which has materially and adversely affected or will so affect the property or results of operations of.

(i) The provisions made for taxes on MADEIRA BEACH ICE's consolidated balance sheet is sufficient for the payment of all then accrued unpaid federal, state, county and local taxes of MADEIRA BEACH ICE and its subsidiaries, whether or not disputed.

(j) The accounts and notes receivable of MADEIRA BEACH ICE, if any, are current and collectible at the aggregate recorded amounts thereof less applicable reserves (which reserves are adequate).

(k) MADEIRA BEACH ICE has good, valid and defensible title to all its properties and assets, real and personal (including those reflected in MADEIRA BEACH ICE's consolidated balance sheet, except as since sold or otherwise disposed of in the ordinary course of business or as consented to by DICK'S SEAFOOD in writing), free and clear of all liens and encumbrances except the lien of current taxes not yet due and payable and except such defects of title, easements and encumbrances as are not of a character, amount or extent as to materially detract from the value, or interfere with the prospective use, of the property subject thereto or affected thereby, or otherwise materially impair business operations. All leases pursuant to which MADEIRA BEACH ICE leases real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not under any of such leases any existing default, or any event which with notice or lapse of time or both would constitute a default in respect of which MADEIRA BEACH ICE has not taken adequate steps to prevent a default from occurring. MADEIRA BEACH ICE, has not received notice of violation of any applicable zoning regulation, ordinance or other law, order, regulation or requirement relating to its operations or its owned or leased properties except such as have been or are being complied with or are being contested in faith.

(l) MADEIRA BEACH ICE has delivered to DICK'S SEAFOOD accurate lists of the following, unless DICK'S SEAFOOD has waived delivery:

(1) All real property owned or leased by MADEIRA BEACH ICE.

(2) All major items of machinery and equipment owned or leased by MADEIRA BEACH ICE;

(3) All patents, patent applications, trademarks, trademark registrations and applications therefor, trade names, copyrights and copyright registrations and applications therefor, presently owned, in whole or in part, by MADEIRA BEACH ICE, and any patent, trademark or copyright licenses to which it may be a party;

(4) By summary groupings, or property records, all automobiles, trucks, or other conveyances owned by MADEIRA BEACH ICE;

(5) All policies of insurance (including fidelity bonds covering officers and employees) in force with respect to MADEIRA BEACH ICE and, without restricting generality of the foregoing, those covering its respective properties, buildings, machinery, equipment, furniture, fixtures and operations;

(m) Except for suits, if any, of a character incident to the normal conduct of MADEIRA BEACH ICE's business and involving a potential recovery against MADEIRA BEACH ICE of not more than \$10,000 in the aggregate, there is no litigation, proceeding or other government investigation pending, or so far as known to the executive officers of MADEIRA BEACH ICE, in prospect or threatened, against or relating to MADEIRA BEACH ICE or any of its subsidiaries or their respective properties or businesses, or the transactions contemplated by this Agreement.

**7. Representations and Warranties by DICK'S SEAFOOD .** DICK'S SEAFOOD hereby represents and warrants as follows:

(a) DICK'S SEAFOOD is a corporation duly organized, validly existing and in good standing under the laws of Florida. The consummation of any transactions contemplated in this Agreement will not result in any breach or violation of or default under any judgment, decree, mortgage, agreement, indenture, or other instrument applicable to DICK'S SEAFOOD .

(b) DICK'S SEAFOOD's authorized capital stock consists of 7,500 shares of common stock, par value \$1 per share of which, on March 1, 19989, 100 shares were validly issued and outstanding, fully paid and

nonassessable. At the meeting of DICK'S SEAFOOD shareholders called to vote on this Agreement, the shareholders entitled to vote thereon will be the holders of shares of common stock outstanding on the record date for such meeting.

(c) DICK'S SEAFOOD has delivered to MADEIRA BEACH ICE copies of all of its financial statements, all of which are true and complete in all material respects, have been prepared in accordance with generally accepted accounting principles consistently followed (except as stated in the explanatory notes attached to such statements) throughout the periods covered by such statements and present fairly the consolidated financial position of DICK'S SEAFOOD as at the dates, covered by such financial statements.

(d) The execution, delivery and performance of this Agreement by DICK'S SEAFOOD have been duly and effectively authorized and consented to by DICK'S SEAFOOD's board of directors, subject to approval by DICK'S SEAFOOD's shareholders as required by law.

(e) The shares of DICK'S SEAFOOD's common stock to be issued pursuant to this Agreement will, when so issued, be validly issued and outstanding, fully paid and nonassessable.

**8. Access and Information Concerning Properties and Records, etc.** MADEIRA BEACH ICE will give to DICK'S SEAFOOD and to DICK'S SEAFOOD's accountants, engineers, counsel, consultants, consultants and other representatives full access during normal business hours throughout the period prior to the effective date to all of MADEIRA BEACH ICE's and its subsidiaries' properties, books, contracts, commitments and records. MADEIRA BEACH ICE will furnish DICK'S SEAFOOD during such period with such information concerning MADEIRA BEACH ICE's and its subsidiaries affairs as DICK'S SEAFOOD may reasonably request. Unless and until the Effective Date has occurred DICK'S SEAFOOD and its representatives will hold in strict confidence all data and information obtained in confidence from MADEIRA BEACH ICE (to the extent that such data and information are not in the public domain or in DICK'S SEAFOOD's possession at the time of its receipt or subsequent thereto without DICK'S SEAFOOD's violation of this confidence), and if the transactions herein provided for are not consummated as contemplated herein, DICK'S SEAFOOD will continue to hold such confidential information in confidence and will return to MADEIRA BEACH ICE all of MADEIRA BEACH ICE's documents containing such data as MADEIRA BEACH ICE may request. Pending the Effective Date, the officers of MADEIRA BEACH ICE shall keep the officers of DICK'S SEAFOOD informed as to the affairs of MADEIRA BEACH ICE and its subsidiaries and shall consult with the officers of DICK'S SEAFOOD on important matters pertaining to the businesses of MADEIRA BEACH ICE and its subsidiaries.

**9. Conduct of Business Pending the Effective Date.** MADEIRA BEACH ICE hereby agrees that, from the date of this Agreement pending the effective date and except as otherwise permitted by this Agreement or as consented to by DICK'S SEAFOOD in writing:

(a) MADEIRA BEACH ICE's business shall be conducted in ordinary course.

(b) No change shall be made in the Articles of Incorporation or Bylaws of MADEIRA BEACH ICE.

(c) No change shall be made in MADEIRA BEACH ICE's authorized and unissued stock or in the ownership by MADEIRA BEACH ICE of its subsidiaries' issued and outstanding capital stocks nor shall any option or commitment be granted or made relating to MADEIRA BEACH ICE's authorized capital stock.

(d) No dividend or other distribution or payment shall be made in respect of MADEIRA BEACH ICE's common stock.

(e) No increase shall be made in the regular rate of compensation payable by MADEIRA BEACH ICE to any officer or employee, if in any case after such increases the total annual salary rate payable by MADEIRA BEACH ICE and/or its subsidiaries would exceed \$25,000; no bonus in excess of the bonus paid to any such officer or employee for the fiscal year ended December 31, 1999 shall be paid by MADEIRA BEACH ICE; and no pension, retirement or similar benefits shall accrue or be paid to any officer or employee of MADEIRA BEACH ICE.

(f) No borrowing shall be made by MADEIRA BEACH ICE except borrowing in the ordinary course of business.

(g) MADEIRA BEACH ICE will use its best effort, consistent with conducting its business in accordance with its own business judgment, to preserve its business organization; to keep available to DICK'S SEAFOOD the services of MADEIRA BEACH ICE's and each of its subsidiaries' present officers and employees; and to preserve for DICK'S SEAFOOD the good will of MADEIRA BEACH ICE's suppliers, customers and others having business relations with it.

**10. Conditions Precedent to Obligations of DICK'S SEAFOOD .** All obligations of DICK'S SEAFOOD under this Agreement are subject to the fulfillment (or waiver by DICK'S SEAFOOD ), prior to or at the Effective Date, of each of the following conditions:

(a) DICK'S SEAFOOD shall not have discovered any error, misstatement or omission in the representations and warranties made in Section 6 by MADEIRA BEACH ICE (i) which alone is, or in the aggregate are, materially adverse to DICK'S SEAFOOD, (ii) of which DICK'S SEAFOOD promptly gave notice to MADEIRA BEACH ICE upon discovery of the same and (iii) which has not been adequately remedied to the reasonable satisfaction of DICK'S SEAFOOD so that DICK'S SEAFOOD incurs no detriment therefrom.

(b) MADEIRA BEACH ICE's representations and warranties contained in this Agreement shall be deemed to have been made again at and as of the time of the Effective Date and, except as otherwise contemplated by this Agreement, shall then be true in all material respects; MADEIRA BEACH ICE shall have performed and complied with all agreements and conditions by this Agreement to be performed or complied with by it prior to or at the effective date; and DICK'S SEAFOOD shall have been furnished with a certificate of the appropriate officers of MADEIRA BEACH ICE dated prior to the Effective Date certifying to the fulfillment of the foregoing conditions.

(c) The merger of MADEIRA BEACH ICE with and into DICK'S SEAFOOD, in accordance with the provisions of this Agreement, shall have been authorized and approved by the holders of MADEIRA BEACH ICE's and DICK'S SEAFOOD's outstanding stock in the manner required by applicable law.

(d) DICK'S SEAFOOD shall have been furnished with an opinion, dated prior to the effective date, of counsel for MADEIRA BEACH ICE to the effect that:

(1) MADEIRA BEACH ICE is a corporation duly organized and existing and in good standing under the laws of Florida and has corporate power to carry on its business as it is then being conducted;

(2) MADEIRA BEACH ICE's authorized capital stock is as listed under Section 6(b);

(3) The execution, delivery and performance of this Agreement by MADEIRA BEACH ICE have been duly authorized and approved by all requisite action of MADEIRA BEACH ICE's board of directors and shareholders, and this Agreement has been duly executed and delivered by MADEIRA BEACH ICE and constitutes a valid and binding obligation of MADEIRA BEACH ICE in accordance with its terms;

(4) All other actions and proceedings required by law or this Agreement to be taken by MADEIRA BEACH ICE, at or prior to the effective date, in connection with this Agreement and the transactions provided for herein, have been duly and validly taken; and

(5) That the title to such property of MADEIRA BEACH ICE and DICK'S SEAFOOD shall designate is as represented by MADEIRA BEACH ICE under Section 6(m).

(e) MADEIRA BEACH ICE shall have obtained all necessary consents, in writing in form satisfactory to DICK'S SEAFOOD, to DICK'S SEAFOOD's accession to any contracts or commitments of MADEIRA BEACH ICE.

(f) MADEIRA BEACH ICE shall have delivered to DICK'S SEAFOOD appropriate certificates of good standing with respect to MADEIRA BEACH ICE from all jurisdictions in which MADEIRA BEACH ICE is qualified to do business.

(g) No court of competent jurisdiction has issued in an injunction or restraining order in an action or proceeding against the merger, brought at the instance of any federal, state or other governmental department, commission, board, bureau, agency or similar instrumentality, which will be binding on MADEIRA BEACH ICE pending final disposition of such action or proceeding.

(h) DICK'S SEAFOOD shall have received from each shareholder of MADEIRA BEACH ICE who, at the time of the meeting of shareholders referred to in Section 4, may, in the opinion of counsel for DICK'S SEAFOOD, be deemed an "affiliate" of MADEIRA BEACH ICE as defined in Rule 144(a)(1) of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Act of 1933, as amended, an agreement, satisfactory in form and substance to DICK'S SEAFOOD, in which such shareholder:

(1) represents and warrants to DICK'S SEAFOOD that the capital stock of DICK'S SEAFOOD which such shareholder is acquiring in exchange for his MADEIRA BEACH ICE stock is not being acquired by him with a view to distribution; and

(2) agrees with DICK'S SEAFOOD not to dispose of any such common stock of DICK'S SEAFOOD without complying with the Securities Act of 1933, as amended, and all applicable rules and regulations promulgated thereunder.

**11. Conditions Precedent to the Obligations of MADEIRA BEACH ICE.** All obligations of MADEIRA BEACH ICE under this Agreement are subject to the fulfillment (or waiver in writing by MADEIRA BEACH ICE), prior to or at the effective date, of each of the following conditions:



(a) MADEIRA BEACH ICE shall not have discovered any error, misstatement or omission in the representations and warranties made in Section 7 by DICK'S SEAFOOD (i) which alone is, or in the aggregate are, materially adverse to MADEIRA BEACH ICE, (ii) of which MADEIRA BEACH ICE promptly gave notice to DICK'S SEAFOOD upon discovery of the same and (iii) which has not been adequately remedied to the reasonable satisfaction of MADEIRA BEACH ICE so that MADEIRA BEACH ICE incurs no detriment therefrom.

(b) DICK'S SEAFOOD's representations and warranties contained in this Agreement shall be deemed to have been made at and as of the time of the Effective Date and, except as otherwise contemplated by this Agreement, shall then be true in all material respects; DICK'S SEAFOOD shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Effective Date, and MADEIRA BEACH ICE shall have been furnished with a certificate of one of DICK'S SEAFOOD's Vice Presidents, dated prior to the effective date, certifying to the fulfillment of the foregoing conditions.

(c) DICK'S SEAFOOD shall have delivered to MADEIRA BEACH ICE an opinion, dated prior to the effective date, of MADEIRA BEACH ICE's counsel to the effect that:

(1) That DICK'S SEAFOOD is a corporation duly organized and existing and in good standing under the laws of Florida;

(2) The execution, delivery and performance of this Agreement (i) have been duly authorized and approved by all requisite action of DICK'S SEAFOOD's board of directors and shareholders, and this Agreement has been duly executed and delivered by DICK'S SEAFOOD and constitutes a valid and binding obligation of DICK'S SEAFOOD in accordance with its terms;

(3) The shares of DICK'S SEAFOOD's common stock issuable upon conversion of the shares of MADEIRA BEACH ICE in accordance with this Agreement (i) have been duly authorized, and (ii) will be fully paid and nonassessable when so issued upon such conversions.

(d) The merger of MADEIRA BEACH ICE with and into DICK'S SEAFOOD as contemplated by this Agreement shall have been authorized and approved by the holders of not less than a majority of DICK'S SEAFOOD's outstanding common stock.

(e) No court of competent jurisdiction has issued an injunction or restraining order in an action or proceeding against the merger, brought at the instance of any federal, state or other governmental department, commission, board, bureau, agency or similar instrumentality, which will be

binding on DICK'S SEAFOOD pending final disposition of such action or proceeding.

**12. Termination of Representations and Warranties.** The respective representations and warranties of MADEIRA BEACH ICE and DICK'S SEAFOOD contained in Sections 6 and 7) shall expire with, and be terminated and extinguished by, the merger of MADEIRA BEACH ICE with and into DICK'S SEAFOOD, and neither MADEIRA BEACH ICE nor DICK'S SEAFOOD shall be under any liability whatsoever with respect to any such representation or warranty, it being intended that the sole remedy of either party for a breach of such representation or warranty shall be to elect not to proceed with the merger if such breach has resulted in a condition of such party's obligations hereunder not being satisfied. This Section shall have no effect upon any other obligation of MADEIRA BEACH ICE or DICK'S SEAFOOD in this Agreement, whether to be performed before or after the Effective Date.

**13. Certain Effects of Merger.** On the Effective Date, all the rights, privileges, powers and franchises, of a public or private nature, of MADEIRA BEACH ICE shall be possessed by DICK'S SEAFOOD, subject to the restrictions, disabilities, and duties of MADEIRA BEACH ICE, and all and singular rights, the rights, privileges, powers and franchises of MADEIRA BEACH ICE and all property, real personal and mixed and all debts due to MADEIRA BEACH ICE on whatever account, as well for stock subscriptions as all other things in action or belonging to MADEIRA BEACH ICE, shall be vested in DICK'S SEAFOOD, and all property, rights, privileges, powers and franchises and all and every other interest shall thereafter be as effectually the property of DICK'S SEAFOOD as they were of MADEIRA BEACH ICE, and the title to any real estate vested by deed or otherwise under the laws of Florida or any other jurisdiction in MADEIRA BEACH ICE shall not revert or be in any way impaired by reason of the merger herein provided for; but all rights of creditors and all liens upon any property of MADEIRA BEACH ICE shall be preserved unimpaired by reason of the merger herein provided for; but all rights of creditors and all liens upon any property of MADEIRA BEACH ICE shall be preserved unimpaired, and all debts, liabilities, and duties of MADEIRA BEACH ICE shall upon the effective date attach to DICK'S SEAFOOD and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

**14. Expenses.** If the merger contemplated herein is not consummated, the expenses of preparing this Agreement and related documents will be shared equally by MADEIRA BEACH ICE and DICK'S SEAFOOD and all other expenses will be paid by the party incurring them (including, but not limited to, legal fees for the respective corporations). If the merger contemplated herein is consummated, all expense incident thereto not theretofore paid by the parties will be paid by DICK'S SEAFOOD.

**15. Entire Agreement; Waiver; Abandonment.** This Agreement embodies the entire agreement between the parties and there have been and are no agreements, representations or warranties between the parties other than those set forth herein or herein provided for. Either party may waive any inaccuracies in the representations and warranties by the other and compliance by the other with any of the covenants or conditions herein; any such waiver by either party shall be sufficiently authorized for the purposes of this Agreement if authorized or ratified by the board of directors or executive committee of such party. At any time prior to the delivery of Articles of Merger to the Department of State, the merger herein contemplated may be abandoned by action of the boards of directors of both MADEIRA BEACH ICE and DICK'S SEAFOOD and upon such notice to said State Department as may be required by law.

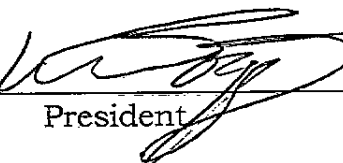
**16. Notices.** All notices, requests, demands and other communications herein shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class postage prepaid to the respective principal office of the other party.

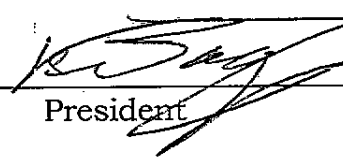
**17. General.** The section headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning and interpretation of this Agreement. This Agreement shall not be assignable by either party without the prior consent of the other. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have duly executed this Agreement as of the date first above written.

**DICK'S SEAFOOD , INC.,**  
**a Florida corporation**

**MADEIRA BEACH ICE, INC.,**  
**a Florida corporation**

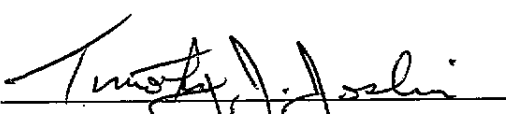
By   
President

By   
President

ATTEST

  
Secretary

ATTEST

  
Secretary