



SACRAMENTO OFFICE

EXHIBIT A  
FRANCHISE AGREEMENT

**RED ROCK CHILI FRANCHISES, INC.**

**FRANCHISE AGREEMENT**

**FRANCHISE AGREEMENT  
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**EXHIBITS:**

Exhibit 1 - Territory

Exhibit 2 - Schedule of Names and Addresses of Sole Proprietor or Shareholders, Partners or Equity Owner Officers, as Applicable, and Other Information

Exhibit 3 - State Specific Addendum

| Exhibit 4 - Franchisee Compliance Certification

**RED ROCK CHILI  
FRANCHISE AGREEMENT**

This Franchise Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between Red Rock Chili Franchises, Inc., a California corporation, located at 1800 East Garry Avenue, Suite 113, Santa Ana, California 92705-5803 and doing business as "Red Rock Chili" ("Franchisor"), ("Franchisee"), and each person owning 25% or more of Franchisee who will be a party to this Agreement (in such context, "Equity Owner") with reference to the following facts:

As a result of its expenditure of time, skill, effort and money, Franchisor has developed and will supervise the "System" (as defined in Article I hereof) under certain "Marks" (as defined in Article I hereof) operated in accordance with the provisions of this Agreement and Franchisor's "Operations Manual" (as defined in Article I hereof), as amended from time to time.

Franchisor is the owner of the Marks and all rights in respect thereof. Franchisor is engaged in the administration and development of programs for the operation of retail fast-food restaurants that specialize in the on and off premise sale of a full variety of chili dishes and other food, beverages and related products (collectively, "Red Rock Chili Products"), using the Marks, operational techniques, service concepts and proprietary information owned or authorized to be used by and identified with Franchisor. Franchisor's activities in general, and its system (including readily recognized color schemes; fixtures and furniture; distinctive interior and exterior; specifications for food preparation, equipment and operations; designs and layouts for the franchise premises; confidential recipes; specialized advertising, specialty retail items and promotional activities; unique uniforms, paper products, menus and signs in particular) are undertaken to develop, maintain and enhance the Marks and Franchisor's reputation for quality in the retail chili restaurant business.

Franchisee desires to be franchised and licensed by the Franchisor to use the System, Marks and goodwill of Franchisor to conduct the "Franchised Business" (as defined in Article I hereof) at a specific retail location approved by Franchisee and Franchisor (the "Location"). Franchisor is willing to grant to the Franchisee a "Franchise" (as defined in section 2.01 hereof) and license, in accordance with the provisions of this Agreement and the Operations Manual, for the term set forth below.

Franchisee and each Equity Owner acknowledge that, in the administration of this Agreement and in taking actions with respect to its relationship with Franchisee, Franchisor must take into account the needs of the System, and the effect upon the System as a whole, and the need to protect the Marks for the benefit of the System.

**ARTICLE I.  
DEFINITIONS**

**1.01 Abandoned.**

The term "Abandoned" shall mean closure of the Location for a period of seven consecutive days without Franchisor's prior written consent. A repeated pattern of closures of the Location for periods of less than seven consecutive days may result in the Location being deemed Abandoned if in the judgment of Franchisor such closure adversely impacts the Franchised Business. The Location shall not be deemed Abandoned if the closure is due to natural disasters or other matters beyond the control of Franchisee (other than Franchisee's inability to procure money), provided that Franchisee gives notice of



any such closure to Franchisor within ten days after the initial occurrence of the event resulting in such closure and Franchisor acknowledges in writing that such closure is due to one of the foregoing causes and provided further that Franchisee shall re-establish the Franchised Business and be fully operational in another Location within 120 days after the initial occurrence of the event resulting in such closure or such longer period as Franchisor may permit.

**1.02 Anniversary Year.**

The term "Anniversary Year" shall mean the 12 month period between the Effective Date and the first anniversary thereof and between each succeeding anniversary.

**1.03 Consumer Price Index.**

The term "Consumer Price Index" shall mean the annual average of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor (or the highest similar future index if these figures become unavailable).

**1.04 Control.**

The term "Control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

**1.05 Depository Account.**

The term "Depository Account" shall mean any and all accounts opened and maintained by Franchisee at a bank or other financial institution that is a participating member of the Automated Clearinghouse ("ACH") network or such other network or system as may be directed by Franchisor, from which Franchisor may make electronic withdrawal of sums due under Article IV hereof.

**1.06 Franchised Business.**

The term "Franchised Business" shall mean the retail sale of Red Rock Chili Products pursuant to the business method and certain business procedures set forth by Franchisor for the operation of such a retail business.

**1.07 General Manager.**

The term "General Manager" shall mean the employee or agent of Franchisee who has been designated by Franchisee as the person responsible for the day-to-day operation of the Franchised Business and who has successfully completed "Initial Training" (if required pursuant to section 7.01 hereof).

**1.08 Gross Receipts.**

The term "Gross Receipts" shall mean all cash and charge sales of every kind and nature made at or from the Location, including revenues from Red Rock Chili Products and other goods or services sold at or from the Location, excluding only applicable sales taxes.

**1.09 Initial Training.**

The term "Initial Training" shall mean training in the System provided by Franchisor, as described in section 7.01 hereof.

**1.10 Location.**

The term "Location" shall mean business premises from which Franchisee conducts the Franchised Business under the Marks (these premises are typically located within a shopping mall food court or strip center).

**1.11 Marks.**

The term "Marks" shall mean the proprietary mark "RED ROCK CHILI™", in respect of which a registration has been filed with the United States Patent and Trademark Office and California, as well as all common law trademarks and service marks, trade names, logos, insignias, designs and other commercial symbols which Franchisor now or hereafter is authorized to use and does use or authorizes others to use to identify the Franchised Business.

**1.12 Operations Manual.**

The term "Operations Manual" shall mean the manual or manuals (regardless of title) containing policies and procedures to be adhered to by Franchisee in performing under this Agreement, which Operations Manual shall include all amendments and supplements thereto provided to Franchisee from time to time.

**1.13 Proprietary Information.**

The term "Proprietary Information" shall mean all information, knowledge, know-how and technologies that Franchisor designates as confidential, proprietary or trade secrets, including the Operations Manual, recipes, financial information, marketing strategies and programs, operational techniques, service concepts, artwork, graphics, layouts, slogans, names, titles, text, manuals, bulletins, instruction sheets, or supplements thereto, or any equipment, videotapes, videodiscs, forms, advertising matter, marks, devices, insignias, or designs used from time to time inasmuch as they constitute trade secrets not to be used in competition with Franchisor.

**1.14 System.**

The term "System" shall mean a comprehensive marketing and operational system prescribed by Franchisor to be used in the conduct of the Franchised Business, as set forth in this Agreement and the Operations Manual, as amended from time to time. The System includes (i) the Marks, (ii) know-how relating to the formulation, mixing and preparing of certain sauce, spice and other components of chili dishes, (iii) a physical layout for the Location, (iv) advertising, marketing and sales programs and techniques, (v) training programs and (vi) materials, artwork, graphics, layouts, slogans, names, titles, text and other intellectual property that Franchisor makes available to Franchisee. Franchisor, in its sole discretion, may improve or change the System from time to time (including but not limited to adding to, deleting or modifying elements of the System, establishing categories or classifications of franchisees and amending the Operations Manual) for the intended purpose of making the System more effective, efficient, economical or competitive; adapting to or taking advantage of competitive conditions, opportunities, technology, materials or local marketing needs and conditions; enhancing the reputation or public acceptance of the System; or better serving the public.

**1.15 Territory.**

The term "Territory" shall mean the area within a defined radius of the Location, ranging from the outside walls of the strip center or mall where the Location is sited (in densely populated areas) to 3 miles (in less populated urban or rural areas), as shown in Exhibit 1 attached hereto.

**1.16 Transfer.**

The term "Transfer" shall mean to sell, assign, transfer, convey, pledge, mortgage, encumber, abandon, eliminate or give away, voluntarily or involuntarily, by operation of law or otherwise.

**ARTICLE II.  
THE FRANCHISED BUSINESS**

**2.01 Grant of Franchise.**

Franchisor hereby grants to Franchisee, and Franchisee hereby accepts, a license and franchise ("Franchise") to participate in and use the System by conducting the Franchised Business at the Location within the Territory described in article I hereof, in strict accordance with this Agreement and the Operations Manual, from the time of commencement of the Franchised Business until the end of the term hereof and any additional term unless sooner terminated. As long as Franchisee remains in good standing under this Agreement, Franchisor will not open any Red Rock Chili restaurant within the Territory itself or through any affiliate or Red Rock Chili franchisee. Franchisee acknowledges that Franchisor has granted and may in the future operate or grant other licenses and franchises for Chili dishes and related specialty product businesses outside the Territory. FRANCHISEE SHALL NOT USE THE MARKS (AS DEFINED HEREIN), OPERATIONAL TECHNIQUES, SERVICE CONCEPTS OR PROPRIETARY INFORMATION IN CONNECTION WITH SUCH BUSINESSES OR SERVICES WITHOUT THE EXPRESS PRIOR WRITTEN PERMISSION OF THE PRESIDENT OR OTHER EXECUTIVE OFFICER OF FRANCHISOR, WHICH PERMISSION, IF GRANTED, SHALL BRING SUCH BUSINESSES OR SERVICES WITHIN THE SCOPE OF THE FRANCHISED BUSINESS.

**2.02 Reserved Rights.**

Nothing contained herein shall accord Franchisee any right, title or interest in or to the Marks, System, operational techniques, service concepts, proprietary information or goodwill of Franchisor, except such rights as may be granted hereunder. **THE FRANCHISE APPLIES TO FRANCHISEE'S LOCATION AND NO OTHER PLACES OF BUSINESS.**

**2.03 Area and Scope of Operation.**

Franchisee shall only operate its Franchised Business from its Location. Franchisee shall (i) diligently and effectively promote, market and engage in the Franchised Business; (ii) develop, to the best of its ability, the potential for the Franchised Business from its Location and (iii) devote and focus its attentions and efforts to such promotion and development.

**2.04 Extent of Grant.**

Franchisee understands and agrees that the Franchise and license granted herein shall not apply to, and Franchisee shall not conduct, any wholesale sales or wholesale business operations of any

kind, unless permitted by Franchisor in writing, and that Franchisee is licensed hereby only for the operation of a retail franchised business to be operated in accordance with this Agreement and only from the approved Location premises.

### **2.05 Obligations of Equity Owners.**

Each Equity Owner hereby agrees, individually and jointly, to comply with and be bound by the terms and provisions of this Franchise Agreement, and hereby agree not to engage in any activities not permitted to the Franchisee hereunder (whether in their own behalf or in any capacity on behalf of any entity).

## **ARTICLE III. LOCATION OF BUSINESS**

### **3.01 The Location.**

(a) Subject to sections 3.02 and 3.03 hereof, the Franchised Business shall only be operated from the Location listed in section 16.02(c) hereof. In order to promote the orderly and timely service of Red Rock Chili customers, Franchisee shall not deliver Chili dishes or other products, or provide catering services, outside the "Territory" of Franchisee prescribed by Franchisor, and shown in Exhibit 1 attached hereto.

(b) Premises acceptable to Franchisor at which the Location will be operated must be located by Franchisee within 90 days after execution of this Agreement. Franchisee must commence operation of the Franchised Business at the Location within 180 days after execution of this Agreement. If Franchisee fails to find suitable premises for the Location or to commence operation of the Franchise within the specified time periods, Franchisor may terminate this Agreement effective on written notice, in accordance with Article X of this Agreement. Franchisee shall be deemed to have commenced the operation of the Franchise on the date that Franchisee begins offering Red Rock Chili Products for retail sale and related services from the Location furnished and equipped in accordance with Franchisor's requirements.

(c) Franchisor will assist Franchisee in the site selection process with Franchisor reserving the sole right of final approval on any location. Franchisor utilizes available demographic information to help Franchisee evaluate the site and the area in which it is located, and analyze area income figures, traffic patterns, visibility, population density, competition, zoning, parking, accessibility and other related, relevant circumstances. Franchisor's final review and consent to the site is not a guarantee that a Red Rock Chili restaurant can be successfully operated at an approved location.

### **3.02 Design and Construction of Premises.**

(a) Franchisor shall provide Franchisee with a sample layout for the interior of a typical Red Rock Chili restaurant of the type Franchisee has selected. Franchisee shall, at Franchisee's sole expense, employ architects, designers, engineers or others as may be necessary to complete, adapt, modify or substitute the sample plans and specifications for the Location. Franchisee shall submit a complete set of final plans and specifications to Franchisor prior to commencing construction of the Location. Franchisor shall review such plans and specifications promptly and approve or provide comments on the plans and specifications to Franchisee. Franchisee shall not commence construction of the Location until Franchisor approves in writing the final plans and specifications to be used in constructing the Location. Franchisor shall consult with Franchisee, to the extent Franchisor deems necessary, on the construction and equipping of the Location, but it shall be and remain Franchisee's sole responsibility to diligently design, construct,

equip and otherwise ready and open the Location. Franchisee will be responsible, at Franchisee's expense, for obtaining all zoning classifications, permits, clearances, certificates of occupancy and center clearances which may be required by governmental authorities.

(b) Franchisee shall use licensed general contractors, designers and architects as approved by Franchisor prior to performing construction work at the Red Rock Chili restaurant. Franchisor expressly disclaims any warranty of the quality or merchantability of any goods or services provided by architects, contractors, or any other persons or entities to which it may refer to Franchisee. Franchisor shall not be responsible for delays in the construction, equipping or decoration of the Location or for any loss resulting from the Location design or construction since Franchisor has no control over the landlord or developer and numerous construction or related problems that could occur and delay the opening of Franchisee's unit. Franchisor must approve in writing any and all changes in the Location plans prior to construction of the Location or the implementation of such changes.

(c) Franchisor shall have access to the Location while work is in progress and may require such reasonable alterations or modifications of the construction of the Location that Franchisor deems necessary. Franchisee's failure to promptly commence the design, construction, equipping and opening of the Location with due diligence shall be grounds for the termination of this Agreement.

(d) At Franchisor's request, but not more often than once every five years, unless sooner required by Franchisee's lease, Franchisee shall refurbish the Location to conform to the then-current building design, trade dress, and color schemes for a new Location. Such refurbishment may require expenditures by Franchisee on, among other things, structural changes, installing new equipment, remodeling, redecoration and modifications to existing improvements.

### **3.03 Standards of Operation.**

(a) Franchisee agrees that Franchisor, Franchisee, and the Red Rock Chili franchise System as a whole, will benefit from the maintenance of reasonable standards of quality, similar appearance, and prominent display of the Marks on the Location premises, trade dress, packaging, materials, supplies and products used in the operation of the Franchise. Therefore, Franchisee agrees to maintain the standards of quality, appearance and display of the Marks in strict accordance with this Agreement and the Operations Manual as it may be revised from time to time, and as Franchisor may otherwise direct in writing. In order that Franchisor may establish and maintain an effective network of franchisees for the sale of authorized products, Franchisee specifically agrees that it shall not display the Marks nor, either directly or indirectly, establish any place or places of business for the conduct of any of its Franchise operations without the prior written approval of Franchisor.

(b) Franchisee is not permitted to install video games, vending machines, or any other electronic or mechanical device(s) on the Location premises, except with written approval of Franchisor, and subject to further approval of Franchisor as to the number and appearance of such devices, and their consistency with the operation, image, and reputation of the Location.

### **3.04 Obtaining the Location Premises.**

Unless otherwise agreed to in writing by Franchisee and Franchisor, the sole responsibility for locating and obtaining Location premises is that of Franchisee. Franchisee and Franchisee's landlord may be required to execute a Lease Assignment for the Location, the term of the Lease Assignment shall coincide with the term of this Agreement. It is Franchisee's obligation to maintain, refurbish, redecorate and re-equip the Location in accordance with the Operations Manual, as it may be amended from time to time,

and standards established by Franchisor consistent with that manual. Franchisee is required to post signs and logos as reasonably requested by Franchisor.

**3.05 Signs.**

Subject to applicable governmental ordinances, regulations and statutes, Franchisee agrees to erect and maintain, at the Location, entirely at Franchisee's expense, standard authorized signs of types recommended by Franchisor. In addition, Franchisee shall prominently display on all forms, advertising, literature and business cards the following words: "Independently Owned and Operated."

**3.06 Permission to Relocate.**

If Franchisee desires to relocate its Location, it may request Franchisor's consent upon the following conditions:

(a) Not less than 180 days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation in which event notice shall be made as soon as possible), Franchisee must make a written request for consent to relocate, describing the reasons for the relocation and providing complete written details respecting any proposed new location.

(b) Within 60 days after receiving Franchisee's request, Franchisor shall either approve or disapprove in writing such closure or relocation in its sole discretion. In the event of disapproval of a relocation of the Location, Franchisee may request an alternative proposed new location pursuant to the provisions of this section 3.06.

**ARTICLE IV.  
PAYMENTS BY FRANCHISEE**

**4.01 Franchise Fee.**

The "Initial Franchise Fee" for the first Chili Restaurant is \$25,000.00 and is due and payable in full, by check or cash, when Franchisee signs the Franchise Agreement. The Initial Franchise Fee is not refundable and Franchisor does not offer any type of financing. After you sign the Franchise Agreement, if you do not find an acceptable site within your Territory for your Chili Restaurant within 6 months from the date the Franchise Agreement is executed, we may, at our option, keep the entire franchise fee and terminate your agreement.

The Initial Franchise Fee for the second Chili Restaurant is \$20,000, ~~and \$15,000 for the third Chili Restaurant, and \$12,500 for the fourth and each subsequent Chili Restaurants.~~

**4.02 Continuing Royalty.**

(a) Commencing on the date the Location opens for business, on a weekly basis each ~~Wednesday~~ Thursday of the week following the weekly period in which applicable Gross Receipts were earned, Franchisee pays Franchisor a "Continuing Royalty" equal to 5% of Gross Receipts for the prior weekly period. Commencing 90 days after the date the Location opens for business, on a weekly basis by electronic withdrawal from Franchisee's Depository Account each ~~Wednesday~~ Thursday of the week following the weekly period in which applicable Gross Receipts were earned, Franchisee pays Franchisor a Continuing Royalty equal to the greater of (i) 5% of Gross Receipts for the prior weekly period, or (ii)

\$250.00. Unless Franchisor designates to the contrary in a subsequent written directive to Franchisee, a week begins on Sunday and ends the following Monday.

(b) As described previously, Gross Receipts means all money or things of value received or receivable directly or indirectly by Franchisee on account of the Franchised Business, less only applicable sales taxes (without deducting Franchisee's costs or expenses).

(c) Franchisor has the right, in its sole discretion, to reduce the Continuing Royalty rate. If Franchisor reduces the Continuing Royalty rate for the benefit of certain franchisees, then such reduction (and any related changes in contract terms) must be made available on the same terms, conditions and qualifications to all similarly situated franchisees; and Franchisor retains the right, in its sole discretion, upon not less than ten days prior written notice, to partially or totally restore the Continuing Royalty.

(d) Notwithstanding expiration or termination, the Continuing Royalty remains payable as to all transactions executed or sales made prior to such expiration or termination.

#### **4.03 Advertising Fee.**

(a) Commencing on the date the Location opens for business, on a weekly basis each ~~Wednesday~~ Thursday of the week following the weekly period in which applicable Gross Receipts were earned, Franchisee pays to Franchisor an "Advertising Fee" equal to the greater of (i) 1% of Franchisee's Gross Receipts for the prior weekly period or (ii) \$125. Advertising Fees are the property of Franchisor and may be deposited by Franchisor into its general operating account, but administratively segregated for the use contemplated in this section 4.03.

(b) Franchisor determines the cost, form of media, content, format, production, timing (including regional or local concentration and seasonal exposure), location and all other matters relating to advertising, public relations and promotional campaigns.

(c) On a regional or system-wide basis, Franchisor may impose an additional assessment upon affected franchisees for special designated advertising or promotional activities (so long as such assessment is not in substance merely an increase in the general advertising fee referred to in section 4.03(a) hereof) if Red Rock Chili franchisees owning two-thirds of all franchised Locations that would be affected agree to such additional assessment by affirmative vote.

(d) Franchisor shall expend, for the purposes of national, regional or local advertising, cooperative advertising, market research, public relations and promotional campaigns designed to promote and enhance the value of the Marks and general public recognition and acceptance thereof, an amount equal to (i) the aggregate Advertising Fees collected from all of its franchisees less (ii) an administrative fee of 20% of the annual aggregate Advertising Fees received or receivable by Franchisor. No interest on unexpended Advertising Fees shall be imputed for the benefit of, or payable to, Franchisee and no interest on Franchisor expenditures in excess of Advertising Fees collected shall be imputed for the benefit of, or payable to, Franchisor. If requested by Franchisee in writing, on or before March 31 of each year, Franchisor shall deliver to Franchisee a statement of receipts and expenditures of the aggregate Advertising Fees relating to the preceding calendar year, certified to be correct by an officer of Franchisor.

#### **4.04 Lease Assignment.**

Franchisor may, in Franchisor's sole discretion, master lease the premises and sublet the Location premises to Franchisee in certain situations; however, Franchisor shall not do so unless

arrangements satisfactory to Franchisor are made between Franchisor and Franchisee regarding the fees, rents and deposits to be charged by Franchisor for the assumption by Franchisor of this obligation. The Location premises shall be used for no purpose other than the operation of a Red Rock Chili restaurant. Franchisor may require Franchisee and Franchisee's landlord to execute a Lease Assignment Agreement. Franchisee's lease must provide that in the event of Franchisee's breach, the landlord must advise Franchisor, at least 35 days prior to termination, of the breach of the lease with Franchisor having the right to cure the breach and succeed to Franchisee's rights in the lease.

#### **4.05 Grand Opening and Continuing Local Advertising.**

(a) Franchisee shall spend a minimum of \$2,500.00 for the Location grand opening promotion using the promotional materials and procedures developed or approved by Franchisor.

(b) Commencing on the Opening Date and for the first 24 months thereafter, Franchisee shall expend at least 1.5% of its monthly Gross Revenues for the purposes of local advertising. Thereafter, Franchisee must expend at least 1% of its monthly Gross Revenues for the purposes of local advertising.

(c) Franchisee shall submit to Franchisor by the fifth business day of the following month reports (including verified receipts if requested) on monthly advertising expenditures pursuant to section 4.05(b) above.

#### **4.06 Software Maintenance Fee.**

On the fifth business day of each month after the Opening Date, Franchisee shall pay to Franchisor a Software Maintenance Fee in the amount of \$35.00 per month for customized templates and other elements of Franchisor's proprietary "Red Rock Chili Management System".

#### **4.07 Electronic Fund Withdrawal.**

On 14 days written notice, Franchisor may require payment of Continuing Royalty, Advertising Fees and Software Maintenance Fees by electronic withdrawal directly from Franchisee's account in accordance with the procedures specified in the Operations Manual. In such event, Franchisee shall immediately make arrangements with its bank to facilitate such electronic withdrawal capability in accordance with the procedures specified in the Operations Manual.

#### **4.08 Advance Deposit.**

If Franchisee defaults in any obligation to make timely payment of any sums due Franchisor under this Agreement three times within any period of 12 consecutive months, Franchisor may require upon not less than 14 days prior written notice that Franchisee deposit with Franchisor an amount equal to the total of all amounts that became payable from Franchisee to Franchisor under this Agreement during any 30-day period designated by Franchisor and occurring within the six months preceding such notice ("Advance Deposit"). Franchisor shall hold the Advance Deposit in its general funds but shall keep a separate accounting thereof, without allowance for interest, for a period of six months following the date of creation of the Advance Deposit, provided that if Franchisee shall default in any obligation to make timely payment of any sums due Franchisor under this Agreement during such period, Franchisor shall hold the Advance Deposit for a period of six months following the date of Franchisee's latest default. If Franchisee defaults in its obligations to pay any sums due Franchisor under this Agreement while funds are held as an Advance Deposit, Franchisor may withdraw from the Advance Deposit such sums as are necessary to pay



deficiencies created by Franchisee's default. Franchisee shall be obligated to replace any sums as may be withdrawn by Franchisor within seven days of such withdrawal. Nothing contained in this section 4.08 shall in any way affect the amount or manner of payment of sums due Franchisor under this Agreement during any period in which such Advance Deposit is held. Franchisor's right to withdraw sums from the Advance Deposit do not and will not in any manner act to cure Franchisee's defaults under this Agreement.

**4.09 Fees Fully Earned.**

All payments made by Franchisee to Franchisor pursuant to this Article IV are fully earned and non-refundable when paid to Franchisor.

**4.10 Interest on Delinquent Payments.**

All delinquent payments of any sums due Franchisor shall bear interest at the rate of 18% *per annum* or the highest rate permitted by law, whichever is lower.

**4.11 No Accord or Satisfaction.**

If Franchisee pays, or Franchisor otherwise receives, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt shall be applied against the earliest amount due Franchisor. Franchisor may accept any check or payment in any amount without prejudice to Franchisor's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

**ARTICLE V.  
TERM**

**5.01 Initial Term.**

The initial term of this Agreement shall be ten years from the Effective Date hereof, unless sooner terminated pursuant to the provisions of this Agreement or unless Franchisee has entered into a lease or sublease agreement with respect to the Location that, including options to renew, is of a lesser term. In such event, this Agreement will terminate concurrently with the expiration of the term of said lease, sublease, or options to renew; and a copy of said lease, sublease and options to renew shall be attached hereto to provide a reference to such termination date. In either event, this Agreement may be ended sooner by mutual agreement or terminated as provided herein. In no event will the term of this Agreement exceed ten years from the date of execution.

**5.02 Additional Term.**

(a) Subject to the terms and conditions contained in sections 5.01 and 5.02, Franchisee shall have the right to extend its Franchise relationship for additional five year terms, upon the following conditions:

(i) Franchisor notifies Franchisee of the expiration date of the then current term of this Agreement and shall transmit to Franchisee a copy of its then current Franchise Agreement and Franchise Offering Circular not less than 180 days prior to the expiration of the initial term, or any subsequent additional term.

(ii) Not earlier than ten business days after receipt by Franchisee of a Franchise Offering Circular and five business days after receipt by Franchisee of the then current Franchise Agreement complete in all material respects, but not later than 30 business days after receipt by Franchisee of said notice, Franchise Agreement and Franchise Offering Circular, Franchisee executes and returns the then current Franchise Agreement. Upon receipt, Franchisor executes one copy thereof and returns the same to Franchisee. If Franchisee fails or refuses to execute and return to Franchisor the new Franchise Agreement within the time frame set forth in this section 5.02(a)(ii), all of Franchisee's rights and options to enter into an additional Franchise term shall expire. No renewal or additional term fee is payable in order for Franchisee to renew its term.

(iii) If there is a modification to Franchisor's then current Franchise Agreement or Franchise Offering Circular, Franchisor is entitled to transmit to Franchisee a copy of the modified versions thereof, and notwithstanding any other provision hereof Franchisee shall have at least ten business days after receipt of the revised Franchise Offering Circular and five business days after receipt of the revised Franchise Agreement complete in all material respects, to execute and return the revised Franchise Agreement.

(iv) When Franchisee signs the then current Franchise Agreement, Franchisee shall pay a renewal fee of \$2,500.00.

(iv) At the time of commencement of the additional term, Franchisee is not in default and has fully performed all of its obligations under this Agreement.

(b) If Franchisor determines not to grant an additional term by reason of a default by Franchisee which is incurable or has not been cured by Franchisee within the applicable time period or failure of Franchisee to fully perform its obligations under the Agreement, then and in such event, Franchisor must give Franchisee notice of its intention not to grant an additional term (i) within the minimum time required by the jurisdictional authorities or (ii) in the absence of such specific period, within 30 days after Franchisee gives its notice of intention to enter into an agreement for an additional term but not less than 90 days prior to the termination date of the Agreement.

(c) Subsequent to the execution by Franchisee of a Franchise Agreement for an additional term, and prior to the effective date of the new Franchise Agreement, Franchisee shall bring each Location into compliance with the standards then applicable to new Franchises.

**5.03 Notice of Expiration Required by Law.**

If applicable law requires that Franchisor give a longer period of notice to Franchisee than herein provided prior to the expiration of the initial term or any additional term, Franchisor will give such additional required notice. If Franchisor does not give such required additional notice, this Agreement shall remain in effect on a month-to-month basis only until Franchisee has received such required additional notice.

**ARTICLE VI.  
PROPRIETARY MARKS**

**6.01 License of the Marks.**

(a) Franchisor hereby grants to Franchisee the right during the term hereof to use and display the Marks in accordance with the provisions contained herein and in the Operations Manual, solely

in connection with the operation of the Franchised Business. Franchisee acknowledges that Franchisor prescribes minimum standards respecting the nature and quality of Red Rock Chili services and instruction provided by Franchisee in connection with which the Marks are used. Franchisee agrees that all of Franchisee's use of the Marks under this Agreement inures to the benefit of Franchisor. **Franchisee may only use the Marks on the Internet in the manner and as specifically authorized by Franchisor in the Operations Manual or otherwise in writing.**

(b) Neither Franchisee nor any Equity Owner shall use or display the Marks in connection with the operation of any business or other activity that is outside the scope of the Franchised Business. Franchisee agrees to be responsible for and supervise all of its employees and agents in order to insure the proper use of the Marks in compliance with this Agreement. Nothing herein shall give Franchisee any right, title or interest in or to any of the Marks, except a mere privilege and license during the term hereof to display and use the same strictly according to the limitations provided in this Agreement and the Operations Manual.

(c) Neither Franchisee nor any Equity Owner shall use nor display nor permit the use or display of trademarks, trade names, service marks, insignias or logo types other than the Marks, Assumed Name and other trademarks and service marks approved for use by Franchisor in connection with the Franchised Business.

(d) Franchisee shall not use any of the Marks in its legal entity name, unless required by applicable law to do so (in which event Franchisee shall change its legal entity name to delete the Marks so used immediately upon termination of this Agreement).

(e) Franchisee and the Equity Owners agree that all materials associated with Red Rock Chili Products or services, artwork, graphics, layouts, slogans, names, titles, text or similar materials incorporating, or being used in connection with, the Marks which may be created by Franchisee, its employees, agents and subcontractors and any other party with whom it may contract to have such materials produced pursuant to this Agreement shall become the sole property of Franchisor, including copyright and trademark rights, and Franchisee agrees on behalf of itself, its employees, its agents, its subcontractors and any other party with whom it may contract to have such materials produced, to promptly execute any and all appropriate documents in this regard.

(f) If necessary, Franchisee agrees to join with Franchisor in any application to enter Franchisee as a registered or permitted user, or the like, of the Marks with any appropriate governmental agency or entity. Upon termination of this Agreement for any reason whatsoever, Franchisor may immediately apply to cancel Franchisee's status as a registered or permitted user and Franchisee hereby consents to the cancellation and agrees to join in any cancellation petition. The expense of any of the foregoing recording activities shall be borne by Franchisee.

#### **6.02 Acts in Derogation of the Marks.**

(a) Franchisee agrees that as between Franchisor and Franchisee, the Marks are the exclusive property of Franchisor. Franchisee now asserts no claim and will hereafter assert no claim to any goodwill, reputation or ownership thereof by virtue of Franchisee's franchised or licensed use thereof or otherwise. It is expressly understood and agreed that ownership and title of the Marks and Franchisor's manuals, bulletins, instruction sheets, forms, methods of operation and goodwill are and, as between Franchisor and Franchisee, shall remain vested solely in Franchisor, and the use thereof is only co-extensive with the term of this Agreement. Franchisee acknowledges that the material and information now and

hereafter provided or revealed to Franchisee pursuant to this Agreement (including in particular, but without limitation, the contents of the Operations Manual) are confidential trade secrets of Franchisor and are revealed in confidence, and Franchisee expressly agrees to keep and respect the confidences so reposed, both during the term of this Agreement and thereafter. Franchisor expressly reserves all rights with respect to the Marks, confidential trade secrets, methods of operation and other proprietary information, except as may be expressly granted to Franchisee hereby or in the Operations Manual. Franchisor shall disclose its trade secrets to Franchisee by loaning to Franchisee for the term of this Agreement manuals and other written materials containing the trade secrets, through training and assistance provided to Franchisee hereunder, and by and through the performance of Franchisor's other obligations under this Agreement. Franchisee acknowledges that Franchisor is the sole owner of all proprietary information and trade secrets; that such information is being imparted to Franchisee only by reason of its special status as a franchisee of the System; and that the trade secrets are not generally known to the retail food industry or public at large and are not known to Franchisee except by reason of such disclosure. Franchisee further acknowledges that it shall acquire no interest in the trade secrets, other than the right to utilize them in the development and operation of the Franchised Business during the term of this Agreement. In addition, Franchisee acknowledges that the use or duplication of the trade secrets except as expressly permitted by this Agreement shall constitute an unfair method of competition and that Franchisor shall suffer irreparable injury thereby. Franchisee agrees that it will not do or permit any act or thing to be done in derogation of any of the rights of Franchisor in connection with the Marks, either during the term of this Agreement or thereafter, and that it will use same only for the uses and in the manner franchised and licensed hereunder and as herein provided. Furthermore, Franchisee and its employees and agents will not engage in any acts or conducts that impair the goodwill associated with the Marks.

(b) In connection with the operation of the Franchised Business, Franchisee agrees that at all times and in all advertising, promotions, signs and other display materials, on its letterheads, business forms, and at the Location and other authorized business sites, in all of its business dealings related thereto and to the general public, it will identify the Franchised Business solely under the names (in such context, the "Business Name"), authorized by Franchisor (together with the words "INDEPENDENTLY OWNED AND OPERATED" on stationery, letterhead and other written materials containing the Marks) or such other similar designation as shall hereafter be prescribed by Franchisor, all in such form, size and style as shall be prescribed in the Operations Manual. Franchisee shall file and keep current a "Fictitious Business Name Statement" (or similar document) with respect to its Business Name in the county or other designated region in which Franchisee is conducting business and at such other places as may be required by law. Prior to commencing business under the Marks, Franchisee shall supply evidence satisfactory to Franchisor that Franchisee has complied with relevant laws regarding the use of fictitious or assumed names. Franchisee further agrees that it will not identify itself as (i) Franchisor, (ii) a subsidiary, parent, division, shareholder, partner, joint venturer, agent or employee of Franchisor or other owner of the Marks or (iii) any of Franchisor's other franchisees. If Franchisee is a corporation, Franchisee shall not use any of the Marks in its corporate name.

### **6.03 Modification of Marks.**

Franchisor may add to, substitute or modify any or all of the Marks from time to time, by directive in the Operations Manual. Franchisee shall accept, use, display, or cease using, as may be applicable, the Marks, including but not limited to, any such modified or additional trade names, trademarks, service marks, logo types and commercial symbols, and shall within 30 days of receiving notification, commence to implement such changes and use its best efforts to complete such changes as soon as practicable. On expiration or sooner termination of this Agreement, Franchisor may, if Franchisee does not do so, execute in Franchisee's name and on Franchisee's behalf any and all documents necessary, in Franchisor's judgment, to end and cause a discontinuance of the use by Franchisee of the Marks and

Business Name registrations and Franchisor is hereby irrevocably appointed and designated as Franchisee's attorney-in-fact to do so.

**6.04 Use of Other Trademarks.**

In connection with the operation of the Franchised Business, Franchisee agrees that at all times and in all advertising, promotions, signs and other display materials, on its letterheads, business forms, and at the Location and other authorized business sites, in all of its business dealings related thereto and to the general public, it will identify the Franchised Business under the Assumed Name, together with such other designations as may be required by Franchisor, and all in such form, size and style as shall be prescribed in the Confidential Operations Manual.

**6.05 Proprietary Information.**

Franchisee acknowledges and expressly agrees that (i) as between (A) Franchisor and (B) Franchisee and the Equity Owners, Franchisor is the sole owner of all Proprietary Information, (ii) the Proprietary Information now and hereafter provided or revealed to Franchisee pursuant to this Agreement (including in particular, but without limitation, the recipes and the contents of the Confidential Operations Manual) are confidential trade secrets of Franchisor, (iii) such Proprietary Information is being imparted to Franchisee only by reason of its special status as a Franchisee of the System, (iv) Proprietary Information is not generally known to the food industry or public at large, (v) Franchisee shall acquire no interest in the Proprietary Information, other than the right to utilize it during the term of this Agreement in the development and operation of the Franchised Business, (vi) such Proprietary Information shall be disclosed only to personnel of Franchisee on a "need to know basis", and (vii) the use or duplication of the Proprietary Information except as expressly permitted by this Agreement shall constitute an unfair method of competition and that Franchisor shall suffer irreparable injury thereby.

**6.06 Service Mark Infringement Claims and Defense of Marks.**

In the event Franchisee receives notice or otherwise becomes aware of any claim, suit or demand against it by any party other than Franchisor or its affiliates on account of any alleged infringement, unfair competition or similar matter arising from its use of the Marks in accordance with the terms of this Agreement, Franchisee shall promptly notify Franchisor of any such claim, suit or demand. Franchisee shall have no power, right or authority to settle or compromise any such claim, suit or demand by a third party without the prior written consent of Franchisor. Franchisor shall defend, compromise or settle at its discretion any such claim, suit or demand at Franchisor's cost and expense, using attorneys selected by Franchisor or the owner of the Marks, and Franchisee agrees to cooperate fully in such matter; and Franchisor shall indemnify and hold harmless Franchisee from and against any and all judgments resulting from such claim, suit or demand arising from Franchisee's use of the Marks in accordance with the terms of this Agreement. Franchisor shall have the sole discretion to determine whether a similar trademark or service mark that is being used by a third party is confusingly similar to the Marks being used by Franchisee and whether and what subsequent action, if any, should be undertaken with respect to such similar trademark or service mark.

**ARTICLE VII.  
INSTRUCTION AND OPERATING ASSISTANCE**

**7.01 Initial Training and Assistance.**

(a) Franchisee understands that it is of paramount importance that Franchisee and Franchisee's employees or representatives understand Franchisor's system, and therefore failure to complete Franchisor's training to Franchisor's satisfaction, shall be grounds for termination of the Franchise Agreement.

(b) Franchisor agrees that Franchisee's Location will not be open to the public until Franchisee's General Manager has satisfactorily completed the training and has taken charge of the Location operations after securing Franchisor's approval.

(c) To assist Franchisee in the fulfillment of its responsibilities, Franchisor shall provide the following assistance and materials to Franchisee:

(i) An initial training program for Franchisee's General Manager and one other Equity Owner for a period of ~~four weeks~~ one hundred thirty (130) hours in Newport Beach, California or at one of Franchisor's approved training facilities at no tuition charge to Franchisee. This training covers all aspects of a chili retail operation including but not limited to new product introduction, on-site food preparation, proper baking procedures, customer service procedures, management techniques, equipment operation, purchasing, scheduling, bookkeeping and business procedures, among other topics. The training includes classroom and on the job training. Five days of this training will be at Franchisee's location. Franchisee must designate its General Manager within 60 days before the Location opens for business, together with another Equity Owner to be trained, and they must attend and complete Franchisor's training programs to Franchisor's satisfaction. Franchisee is responsible for all travel, lodging and living expenses of its attendees. In addition, Franchisor will provide Franchisee with a total of eighty (80) hours of operating assistance after Franchisee's location opens.

(ii) Telephone assistance, without charge, to instruct in all phases of the Franchise operation.

(iii) Provide such staff at Franchisor's expense with the exception that all costs including lodging and living expenses that may be incurred by Franchisor after expiration of the ~~four week~~ one hundred thirty (130) hours opening training period is borne by Franchisee at Franchisee's sole expense, if such personnel are available for such extended period.

(iv) General advertising programs, sales promotion and campaign materials, and copies of sample advertising materials.

(v) Copies of the standard business forms designated in the Operations Manual, as revised from time to time.

(vi) An approved Gross Receipts reporting system including copies of certain materials and forms to be used in connection therewith.

(vii) One loaned copy of the Operations Manual.

(viii) Periodic reviews and follow-up assistance and visitation by Franchisor to the extent Franchisor deems necessary to assist Franchisee in management, merchandising, and training in its day-to-day operations.

(ix) Periodic news releases discussing matters of interest to Red Rock Chili franchisees. These newsletters will be designed to be instructive, informative and to continually enhance the wholesomeness of Red Rock Chili Products.