



SACRAMENTO OFFICE

**7.02 Costs of Initial Training.**

All costs and expenses (including travel, hotel and meal) of attendees of Initial Training shall be the sole responsibility of Franchisee. Additional attendees of initial training are in the sole discretion of Franchisor and all persons attending Initial Training must have a demonstrable relationship to the management and operation of the Location. Franchisor reserves the right to assess a reasonable tuition charge (not to exceed \$250 per day) for training all attendees other than the General Manager and one other Equity Owner.

**7.03 Mandatory Meetings.**

Not more often than once each year, Franchisor may conduct a system-wide or series of regional meetings to discuss Red Rock Chili business activities or other matters relating to the Franchised Business. Attendance of the General Manager at these meetings will be mandatory (and is highly recommended for other principals of Franchisee). Franchisee must pay all costs incurred as a result thereof including the cost of transportation, accommodations and living expenses. Franchisee may be required to pay Franchisor a fee to attend such annual meetings. The annual meetings referenced in this section 7.03 are in addition to any voluntary convention or sales conference that may be coordinated by Franchisor.

**7.04 Staff Training Courses.**

(a) Franchisor may make available to Franchisee, from time to time, optional staff training courses, seminars, conferences, or other programs, in a suitable location in Franchisor's discretion.

(b) Upon reasonable notice, Franchisor may require attendance of designated personnel of Franchisee at training courses, seminars, conferences or other programs other than Initial Training that are deemed by Franchisor to be relevant or appropriate to the successful operation of the System. No fees shall be charged by Franchisor for required training courses, seminars, conferences or other programs.

(c) In connection with any staff training courses described in sections 7.04(a) and 7.04(b) above, Franchisee shall pay the travel, hotel and meal expenses for Franchisee's attendees.

**7.05 Continuing Assistance.**

(a) Franchisor shall provide Franchisee with periodic supervision and assistance as Franchisor deems appropriate, utilizing Franchisor's field representatives who may visit the franchised Location from time to time. The frequency and duration of such visits to the Location by representatives of Franchisor shall be in the sole discretion of Franchisor. In addition, Franchisor will be available on an ongoing basis at its national headquarters for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Operations Manual, Franchisor may from time to time provide Franchisee with additional materials relating to the Franchised Business.

(b) Franchisee has the right to request additional training from time to time and Franchisor shall, at its sole discretion, provide such training to Franchisee or Franchisee's manager at such times and places and for such duration as Franchisor deems necessary. Franchisee may be required to pay (i) a fee (not to exceed \$300 per day per trainer) of such additional instruction and training and (ii) the cost of transportation, living expenses and lodging of the trainers, as incurred.

(c) In its sole discretion, Franchisor may require any person or persons employed in a managerial or other responsible capacity by Franchisee or a subsequent approved assignee to complete such training as designated by Franchisor, subject to Franchisor's required reasonable costs of training such additional persons and the cost of transportation, subsistence and lodging being borne by Franchisee or Franchisee's assignee. Franchisee specifically agrees that only persons trained by Franchisor or under Franchisor's supervision shall have overall responsibility for the operation of the Location and that Franchisee will send each manager to Franchisor for training if so requested by Franchisor.

(d) Franchisor offers periodic training programs for Franchisee to insure that all food products maintain minimum nutritional values, are wholesome, and meet the strict quality food handling standards established by Franchisor. Franchisor's representatives are authorized to conduct periodic visits to all franchise locations to inspect and report on all food preparation and food service facilities to insure that all Locations are operated in accordance with all applicable health codes.

#### **7.06 Proprietary Materials.**

At the Initial Training or other training programs (if any), Franchisor shall provide to Franchisee Proprietary Information, training materials, training curricula and related materials for use in connection with the training of Franchisee's staff. Such items are and shall remain the property of Franchisor. Franchisor may also from time to time make available to Franchisee for purchase other materials relevant to the System and the Franchised Business. Franchisee shall not, and shall not allow its employees or others, to copy, reproduce, disseminate or otherwise reveal to third parties any of the foregoing Proprietary Information and related materials without Franchisor's express prior written consent.

### **ARTICLE VIII.** **OPERATION OF BUSINESS**

#### **8.01 Franchisee Operational and Staff Requirements.**

(a) Franchisee shall employ or engage the services of, on a full time basis, at least one General Manager (must be a Equity Owner) who shall devote his or her entire time during normal business hours, as defined in the Operations Manual, to the management, operation and development of the Franchised Business and shall not engage in any other business activity requiring his or her active participation during normal business hours.

(b) Franchisee shall continuously operate the between the hours of 11:00 A.M. to 9:00 P.M. seven days per week (except days of religious observance required by religious convictions) unless different hours have been approved in writing by Franchisor based upon the circumstances existing with the particular franchisee, or on a full time and continuous basis, consistent with the schedule of the mall food court or shopping strip center within which the Location is located. The obligation to remain open shall not apply in the event of natural or man-made disasters or public emergencies.

(c) Franchisee is required to maintain an adequate level of supplies and inventory in order to properly operate its Franchise as specified in the Operations Manual and in this Agreement.

(d) All of Franchisee's Locations must display brochures describing the availability of the Red Rock Chili franchise opportunity.

(e) In order to protect and maintain the integrity, reputation and goodwill of Franchisor's System and the Marks, Franchisor requires that all Franchisee supplies, equipment, furnishings and fixtures, which are not purchased directly from Franchisor, conform to the specifications and quality standards established by Franchisor and be purchased only from suppliers approved by Franchisor.

(f) Franchisee understands and agrees that the maintenance of the quality of the Chili dishes and other products and services offered by each Red Rock Chili franchisee is of primary importance to Franchisor in order to properly promote and protect the public image of each of such products and services, and to protect the Marks under which such franchisees are licensed to operate. Franchisee therefore agrees to sell only those products and services provided to Franchisee under the terms of this Agreement and to purchase the same only from Franchisor or its suppliers who are recommended in writing to Franchisee. If Franchisee proposes to use anything not approved by Franchisor or from a non-approved supplier, Franchisee must first notify Franchisor in writing, and then submit to Franchisor sufficient specifications and other information or samples for examination or testing, so that Franchisor can determine whether the product meets its specifications and standards. In addition, Franchisor reserves the right to revoke its approval upon the supplier's failure to continue to meet Franchisor's specifications and standards. Franchisor reserves the right to open Franchisor commissaries.

(g) At any time or from time to time, Franchisor may at its sole option, make use of others to obtain, hold, inventory or distribute to Franchisee products approved for use by Franchisee. Any such inventory supplier may also be used to supply products to Franchisee which Franchisee has requested and which Franchisor has approved in writing for use by Franchisee. In that event, Franchisee agrees to pay to Franchisor the reasonable cost to Franchisor to administer the inventory and distribution of any such product and the fees charged by any such inventory supplier.

(h) All Red Rock Chili franchisees must offer a variety of Chili dishes, cornbread, other foods, beverages and special menu items specifically designated by Franchisor.

(i) Franchisee shall acquire and install in the Location fixtures, furnishings, equipment, decor, and signs as Franchisor may reasonably direct from time to time. Franchisee shall not install or permit to be installed on or about the Premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved by Franchisor.

(j) Franchisee is to provide or cause a designated supplier to make available for immediate purchase and delivery sufficient quantities of Chili dishes, beverages, and related food products and non-food products such as paper plates, cups, paper goods, modular cabinets, specified equipment, *etc.*, for the operation of the Location.

(k) Franchisor may open commissaries for the purpose of selling and supplying raw and frozen Chili dishes, related food products and non-food products, such as but not limited to paper plates, cups, paper goods, *etc.*

## **8.02 Reporting Requirements.**

Franchisee is required to report to Franchisor on a periodic basis, certain statistical data as Franchisor deems appropriate, including, but not limited to, Gross Receipts received or receivable, gross sales, operating expenses and such other data as further specified in the Operations Manual.

## **8.03 Operations Manual.**

(a) Franchisee shall operate the Franchised Business in accordance with the Operations Manual, a copy of which shall be provided to Franchisee at Initial Training. Franchisor shall have the right to modify the Operations Manual at any time by the addition, deletion or other modification of the provisions thereof. Franchisor agrees that although such modifications to the Operations Manual may be material in that they may have an effect on the operation of the business, they may not conflict with or materially alter the terms of this Agreement. All such additions, deletions or modifications shall be effective five business days after Franchisor has deposited notification to Franchisee of these with the United States Postal Service.

(b) All additions, deletions or modifications to the Operations Manual shall be equally applicable to all similarly situated Franchisees. The Operations Manual, as modified or amended from time to time, shall not alter Franchisee's fundamental status and rights under this Agreement. As modified from time to time, the Operations Manual shall be deemed to be an integral part of this Agreement and references to the Operations Manual made in this Agreement, or in any amendments or exhibits hereto, shall be deemed to mean the Operations Manual, as amended from time to time. If there is any discrepancy or dispute about the version of the Operations Manual being maintained by Franchisee, the master copy of the Operations Manual maintained at Franchisor's headquarters shall control.

(c) **If Franchisee loses or allows the unauthorized duplication of the Operations Manual or any other confidential manuals or proprietary materials loaned to it by Franchisor, it may be required to pay Franchisor upon demand the sum of \$5,000.00.**

(d) Upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee shall immediately return the Operations Manual to Franchisor. Except as specifically permitted by Franchisor, at no time may Franchisee, or its employees or agents, make, or cause to be made, any copies or reproductions of all or any portion of the Operations Manual and shall not disclose the terms thereof to any other person except employees and agents of Franchisee when required in the operation of the Franchised Business.

#### **8.04 Equipment and Supplies.**

Franchisee must have certain supplies, equipment and other items as required by Franchisor under this Agreement or in the Operations Manual in order to fulfill Franchisee's obligations under this Agreement. In this regard, all sales made in the operation of the Franchise shall be recorded upon a cash register, which includes a locked and non-resettable sales total and which shall be located within the Location. If a sale is made within the Location the sale must be recorded at the time of sale. If the sale is made away from the Location, it must be recorded as soon as possible after the sale.

#### **8.05 Minimum Red Rock Chili Product Inventories.**

Franchisee agrees that it shall, at all times during this Agreement, achieve and maintain at least the minimum types and amounts of inventory of products and items as specified in the Operations Manual. Franchisee understands and agrees that the maintaining of the quality of the Red Rock Chili Products and other goods and services offered by each Red Rock Chili franchisee is of primary importance to Franchisor in order to properly promote and protect the public image of each of such products and services, and to protect the Marks under which such franchisees are licensed to operate. Franchisee therefore agrees to sell only those products and services provided to Franchisee under the terms of this Agreement and as specified in the Operations Manual and to purchase the same only from Franchisor or its suppliers who are recommended in writing to Franchisee.

**8.06 Menu.**

A standard menu format is required by Franchisor and shall be used by Franchisee. Any changes, additions or deletions in the menu format to be used at the Location shall be approved in writing by Franchisor prior to its use by Franchisee. Franchisee agrees to indemnify and hold Franchisor, Franchisor's shareholders, directors, officers, employees and agents harmless from and against any and all loss, damage, cost or expense, including attorney's fees, resulting from any change Franchisee makes in the standard menu or for any deviation of Franchisee's products from the descriptions contained in Franchisor's approved menu. At Franchisor's direction, the standard menu format may contain advertising references to other Locations. Notwithstanding the foregoing, prices that will appear on the menus are set exclusively by Franchisee. Franchisor's right to approve the menu format shall not apply to approval of the prices at which any products are sold. Franchisor may change the standard menu format at any time and from time to time.

**8.07 Uniforms.**

Franchisor is entitled to prescribe standard uniforms and attire for all of Franchisee's Red Rock Chili personnel in order to enhance Franchisor's product and format. Franchisee shall be entitled to obtain such uniforms and attire from any manufacturer or distributor, so long as the uniforms are of a reasonable quality and are in strict accordance with Franchisor's design and other specifications.

**8.08 Signs and Display Materials.**

All signs, display materials and other Materials shall be in full compliance with the specifications provided in, and in conformity with, the Operations Manual. These Materials may be purchased and procured by Franchisee from Franchisor or suppliers designated or approved by Franchisor in accordance with Operations Manual guidelines.

**8.09 Telephone Numbers.**

At its sole expense, Franchisee shall obtain "white pages" and "yellow pages" listings in the form, size and content and in accordance with procedures prescribed by the Operations Manual, in at least one applicable telephone directory of general distribution covering the Location, or such other areas as Franchisor may direct, of its authorized Business Name as promptly as possible after the Location premises have been identified, and shall list the telephone numbers for its Location. At the time of termination of this Agreement, for any reason, with respect to telephone numbers, Franchisee shall comply with the provisions of section 12.01(b) below.

**8.10 Computer Hardware and Software.**

Franchisee may acquire and install in the Location, at Franchisee's expense, such accounting and computer hardware and software as Franchisee desires. However, the computer system must support the Red Rock Chili Management System. Franchisee shall maintain electronic connection of Franchisee's accounting and computer systems. Franchisee shall bear all costs of installation, operation, and maintenance of the accounting and computer systems.

**8.11 Point of Sale System.**

Franchisee shall record all sales and all sales receipts of revenue on a prescribed model computerized point of sale system ("POS"). At present, Franchisor requires Franchisee to purchase or lease

a specific brand of computerized POS compatible with and fully accessible with Franchisor's system on a 24-hour basis from a manufacturer designated by Franchisor. Franchisee agrees that certain key data will be made available to or from Franchisor through direct polling technology, in which Franchisor will electronically access or transfer key information from or to Franchisee on a daily basis. Financial information required or made available will include but may not be limited to (i) total daily gross sales; (ii) the royalty and advertising fees as they relate to those sales; and (iii) information pertaining to Franchisee's daily profits and losses. Franchisee agrees that all of Franchisee's POS will be linked to Franchisor's master unit with Franchisee's outlet and that Franchisee's unit will be accessible 24 hours a day by Franchisor's central computer data dispatch and recovery center. Franchisee further agrees that no other POS or cash register of any nature will be introduced or employed in the daily operation of any Location. Franchisor may, at Franchisor's sole discretion, require the use of new and improved POS upon prior written notice. The franchise uniform accounting system is mandatory but does not require Franchisee to purchase any items from Franchisor or designated suppliers. All financial records must be kept by Franchisee for at least five years following the end of the calendar year in which they relate. Franchisee shall deliver to Franchisor semiannually, a complete and accurate profit and loss statement and a balance sheet for the preceding half year along with a summarized royalty statement and any other sales data requested by Franchisor on a form specified by Franchisor.

#### **8.12 Insurance.**

(a) Franchisee shall have in effect on the Opening Date and maintain during the term of this Agreement general liability insurance, and worker's compensation and disability insurance as may be required by law. Policy coverage limitations and other terms relating to insurance will be set forth in the Operations Manual. Any policies of insurance to be maintained by Franchisee shall contain a separate endorsement naming Franchisor, and if required, its parent and affiliated companies, as additional insured parties to the full extent of coverage provided under the insurance policies. Franchisee shall obtain any other insurance coverage as required by the State, Federal or local municipality in which the franchised premises is located

(b) Franchisee shall promptly notify Franchisor of any and all claims against Franchisee or Franchisor under said policies of insurance and shall deliver to Franchisor certificates evidencing that such insurance are in full force and effect within 30 days after signing this Agreement and each year thereafter. Such insurance certificate shall contain a statement that the certificate shall not be canceled without 30 days prior written notice to Franchisee and to Franchisor.

#### **8.13 Records and Rights of Inspection.**

(a) Franchisee covenants and agrees that it shall keep and maintain during the term hereof, and for a period of 60 months following expiration or termination for any reason, full, true and complete records of all revenues and expenditures respecting the Location, in the form and manner specified by Franchisor in its Operations Manual and shall permit Franchisor or its representatives or agents selected in the sole discretion of Franchisor, during normal business hours, to examine or audit the books of accounts, bank statements, documents, records, papers, and federal, state and local tax return records relating to the Franchised Business or individual officers, directors, owners, partners, or affiliated or related entities or shareholders. If Franchisor should cause an audit to be made and the Gross Receipts as shown by Franchisee's records should be found to be understated by any amount, Franchisee shall immediately pay to Franchisor the additional amount payable as shown by such audit, plus interest thereon at the rate of 18% *per annum* or the highest rate of interest allowed by law, whichever is lower, computed from the date (or dates) said understated amount (or amounts) were due. If (i) the Gross Receipts are found to be understated by 3% or more or (ii) if Franchisee's records require a substantial effort (as determined in the sole judgment

of Franchisor, exercised in good faith) on behalf of Franchisor's auditors to be placed in a condition readily conducive to audit, Franchisee will be required to immediately pay to Franchisor the entire cost of such audit; otherwise, the cost of the audit shall be borne by Franchisor. Franchisee shall furnish Franchisor with a copy of any and all certified financial statements respecting Franchisee's business, in the format and chart of accounts specified by Franchisor, without any cost or expense to Franchisor.

(b) Within 90 days after the end of each of Franchisee's fiscal years, Franchisee shall furnish Franchisor with (i) a Profit and Loss Statement and Balance Sheet of the Franchised Business for the previous fiscal year, and (ii) a statement of Gross Receipts for the previous fiscal year along with any further information Franchisor shall reasonably request. All such financial statements and information shall be prepared in accordance with the guidelines prescribed by Franchisor in the Operations Manual, and shall be certified by Franchisee, or in the case of a corporate Franchisee, by Franchisee's Chief Executive Officer or Chief Financial Officer, as being true and correct.

(c) Franchisee shall permit Franchisor and Franchisor's agents to enter the Location and any facility in which Franchisee makes Chili dishes at any time during normal business hours to conduct inspections; shall cooperate with such inspections by rendering such assistance as Franchisor's representatives may reasonably request; and, upon notice from Franchisor or Franchisor's agents, shall immediately begin such steps as may be necessary to correct any deficiencies noted during any such inspection.

#### **8.14 Review.**

Upon reasonable prior written notice, Franchisor shall have the right to send representatives at reasonable intervals during normal business hours, into Franchisee's Location or other offices to inspect Franchisee's other records, operations, business methods, service, management and administration, to determine the quality thereof and the faithfulness of Franchisee's compliance with the provisions of this Agreement and the Operations Manual. If such other records are not located at the Location or an administrative office, Franchisor's representatives shall have the right to inspect said other records, wherever located.

#### **8.15 Compliance with Laws.**

Franchisee shall (i) operate the Franchised Business in compliance with all applicable laws, rules and regulations of all governmental authorities, (ii) comply with all applicable wage, hour and other laws and regulations of the federal, state or local governments, (iii) prepare and file all necessary tax returns and (iv) pay promptly all taxes imposed upon Franchisee or upon its business or property. Franchisee represents and warrants that it shall obtain and at all times maintain all necessary permits, certificates or licenses necessary to conduct the Franchised Business in the localities within which the Location or other office is situated. Franchisee shall immediately notify Franchisor of any litigation, arbitration, disciplinary action, criminal proceeding, or any other legal proceeding or action brought against or involving Franchisee, or any entity affiliated with Franchisee, or any agent, employee, owner, director or partner of Franchisee, which notification shall include all relevant details in respect thereof, according to the procedures set forth in the Operations Manual.

#### **8.16 Review.**

Franchisee may not engage in Franchised Business directly or indirectly through the Internet, except as authorized by Franchisor in the Operations Manual or otherwise in writing. Franchisee is required to participate in Franchisor's web site (by having its own content page hyper linked to Franchisor's

home page). Under no circumstances will Franchisee be authorized to establish its own web site for the purpose of advertising the Franchised Business.

**8.17 No Other Chili Restaurant or Chili Food Businesses.**

(a) Franchisee acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and trade secrets, including, without limitation, information regarding the operational, sales, promotional and marketing methods and techniques of the System. In consideration for the use and license of such valuable information, Franchisee agrees that it shall not during the term of this Agreement and for a period of one year after termination of this Agreement (for any reason), engage in activities which are licensed under this Agreement with respect to any business other than the Franchised Business, nor operate, manage, own, assist or hold an interest, direct or indirect (as an employee, officer, director, shareowner, partner, joint venturer or otherwise), in any retail or wholesale food business or business selling Red Rock Chili-style products other than the Franchised Business, without the express prior written consent of Franchisor. It is the intention of the parties that Franchisee maximize the Franchised Business and Gross Receipts for the mutual benefit of Franchisor and Franchisee, and any action of Franchisee which diverts business to another entity or diminishes the Gross Receipts of the Franchised Business shall be a material breach of this Agreement. Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with, any person, persons, partnership, or corporation, (i) divert or attempt to divert any business or customer of the Franchised Business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System, or (ii) solicit any person who is at that time employed by, or engaged as a sales agent or broker by, Franchisor or any related entity to leave his or her employment. This section 8.17 shall apply to each of its directors, officers, general partners, and Equity Owners.

(b) Franchisee acknowledges that the restrictions contained in this section are reasonable and necessary in order to protect legitimate interest of Franchisor, and in the event of violation of any of these restrictions, Franchisor shall be entitled to obtain damages including, without limitation, Continuing Royalty and other fees that would have been payable if such business were included in the Franchised Business, and an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which Franchisor may be entitled at law or in equity.

(c) During the term of this Agreement, Franchisee shall not directly or indirectly sell, dispense, give away or otherwise provide Franchisee's food products for sale within the exclusive territory of any other franchised or company-owned Red Rock Chili Location.

(d) In the event of violation of any of the restrictions set forth in this section 8.17, Franchisor shall be entitled to obtain damages including, without limitation, Continuing Royalty and other fees that would have been payable if such business were included in the Franchised Business, and an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which Franchisor may be entitled at law or in equity.

**ARTICLE IX.**  
**ASSIGNMENT**

**9.01 Assignment by Franchisor.**



Franchisor shall have the right to Transfer this Agreement, and all of its rights and privileges hereunder to any other person, firm or corporation (“Assignee of Franchisor”); provided that, in respect to any Transfer (“Assignment by Franchisor”) resulting in the subsequent performance by such Assignee of Franchisor of the functions of the Franchisor: (i) at the time of Assignment by Franchisor, the Assignee of Franchisor is financially responsible and economically capable of performing the obligations of Franchisor hereunder; and (ii) the Assignee of Franchisor expressly assumes and agrees to perform such obligations. In the event of such Assignment by Franchisor, Franchisor shall be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement; provided however, that if Franchisee continues to comply with all terms and conditions of this Agreement, then Franchisee shall be entitled during such continued compliance to use the Marks, licensed hereunder until the later of the end of the then current term of this Agreement or two years from the date of such Assignment by Franchisor. At the end of such period of continued compliance and use of the Marks, Franchisee shall comply with the terms of section 10.01 below.

#### **9.02 Assignment by Franchisee.**

(a) This Agreement is being entered into in reliance upon and in consideration of the singular personal skills and qualifications of Franchisee and its principals and the trust and confidence reposed in Franchisee by Franchisor, or, in the case of a corporate Franchisee, the principal officers thereof who will actively and substantially participate in the ownership and operation of the Franchised Business or, in the case of a partnership Franchisee, the partners thereof who will actively and substantially participate in the ownership and operation of the Franchised Business. Therefore, neither Franchisee’s interest in this Agreement and the Franchise granted hereunder nor substantially all of its assets nor any of its other rights or privileges hereunder shall be assigned, transferred, shared or divided, voluntarily or involuntarily, in whole or in part, by operation of law or otherwise, in any manner (collectively, “Assignment by Franchisee”), without the prior written consent of Franchisor and subject to Franchisor’s right of first refusal provided for in section 9.03 hereof. Notwithstanding the foregoing, in the event of the death or legal incapacity of Franchisee, if an individual, or of a stockholder of a corporate Franchisee, or of a partner of a Franchisee which is a partnership, the transfer of Franchisee’s or the stockholder’s or the deceased partner’s interest in this Agreement to his or her heirs, personal representatives or conservators, as applicable, shall not be deemed an Assignment by Franchisee (provided that the responsible management employees or agents of Franchisee have been satisfactorily trained at Initial Training) nor obligate Franchisee to pay any Assignment by Franchisee processing fee nor give rise to the Franchisor’s right of first refusal as set forth in section 9.03 hereof, although such refusal right or obligation to pay shall apply as to any proposed transfer or assignment by such heirs, personal representatives or conservators; provided however, if Franchisor determines (i) there is no imminent sale to a qualified successor or (ii) there is no heir or other principal person capable of operating the Franchise, Franchisor may immediately commence operating the Franchise on behalf of Franchisee. For such management assistance, Franchisor may charge Franchisee a fee equal to 8% of the Gross Receipts during the Franchisor’s operation, plus the cost of wages for the interim manager.

(b) Should Franchisor elect not to exercise its right of first refusal, or should such right of first refusal be inapplicable, as herein provided, Franchisor’s consent to an Assignment by Franchisee shall not be unreasonably withheld; provided, however, that it shall not be unreasonable for Franchisor to impose, among other things, the following conditions precedent to its consent to any such Assignment by Franchisee:

(i) The assignee (“Assignee of Franchisee”) shall complete Franchisor’s application for Franchise, and in connection therewith, Franchisee and Assignee of Franchisee shall fully disclose in writing all of the terms and conditions of the Assignment by Franchisee;

(ii) The Assignee of Franchisee or the Equity Owners, officers, shareholders or directors of the Assignee of Franchisee in the case of a corporate Assignee of Franchisee, or the partners of the Assignee of Franchisee in the case of a partnership Assignee of Franchisee, demonstrate that it has or they have the skills, qualifications and economic resources necessary, in Franchisor's sole judgment, to conduct the business contemplated by this Agreement;

(iii) The Assignee of Franchisee and each shareholder of a corporate Assignee of Franchisee expressly assumes in writing for the benefit of Franchisor all of the obligations of Franchisee under this Agreement;

(iv) The Assignee of Franchisee executes the then current form of Franchise Agreement being used by Franchisor for the remainder of the term of this Agreement or, in the sole discretion of Franchisor, for the initial term of the then current form of Franchise Agreement (in the sole discretion of Franchisor, the Assignee of Franchisee may be permitted to assume in writing this Agreement for the remainder of its term);

(v) Franchisee shall have complied fully as of the date of any such Assignment by Franchisee with all of its obligations to Franchisor, whether under this Agreement or any other agreement, arrangement or understanding with Franchisor;

(vi) The Assignee of Franchisee agrees that Franchisor's Initial Training program described in section 7.01 hereof and any other training or orientation programs then required by Franchisor will be satisfactorily completed by necessary personnel within 30 days after the execution of the above described Franchise Agreement, provided, however, that Assignee of Franchisee shall agree to pay for all of its expenses incurred in connection therewith, including travel, hotel and meal expenses; and

(vii) Franchisee shall pay to Franchisor a non-refundable transfer fee of \$10,000.00.

(c) If Franchisee is a partnership, limited liability company or other form of business association, Franchisee shall provide Franchisor at the Effective Date a copy of Franchisee's partnership agreement, operating agreement or other agreement between the partners and members of the company or association. If Franchisee is a corporation or other entity that issues capital stock, Franchisee shall provide Franchisor at the Effective Date copies of articles or certificate of incorporation or other corporate charter, bylaws and stock certificates. As a condition to entering into the Franchised Business, if Franchisee is a corporation or limited liability company, Franchisee must place the following legend on all stock or membership certificates:

"THE TRANSFER OF THE EQUITY INTEREST IN THE COMPANY REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN FRANCHISE AGREEMENT DATED \_\_\_\_\_, 20 \_\_\_\_ BETWEEN THIS COMPANY AND RED ROCK CHILI FRANCHISES, INC. REFERENCE IS MADE TO SUCH FRANCHISE AGREEMENT AND THE RESTRICTIVE PROVISIONS CONTAINED THEREIN AND AS MAY BE OTHERWISE SET FORTH IN THE ARTICLES OF INCORPORATION OR FORMATION AND BYLAWS OR OPERATING AGREEMENT OF THIS COMPANY."

(d) If there is an Assignment by Franchisee of this Agreement or the business contemplated hereby, if legally permissible, Franchisee shall also assign all of its rights under any lease for its Location to the same Assignee of Franchisee. If Franchisee is a corporation, the cumulative Transfer in any 12 consecutive month period of 49% or more of its capital stock, membership interests or voting power

shall be deemed to be an Assignment by Franchisee of this Agreement for purposes of this Article IX; provided, however, that a transfer of the Franchise from a sole proprietorship or partnership Franchisee to a corporation or limited liability company, all of the equity interests of which are owned by the sole proprietor or partners in the same proportionate amount, shall not require the payment of the Assignment by Franchisee fee described in section 9.02(b)(vii) above. Notwithstanding the foregoing, Franchisee shall not in any event have the right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement in any manner whatsoever, nor sub-franchise or otherwise transfer, or attempt to sub-franchise or otherwise transfer the Location so long as it is operated as a franchised Location, or to transfer or sub-franchise a portion but not all of Franchisee's rights hereunder without the express prior written permission of Franchisor, which permission may be withheld for any reason whatsoever in Franchisor's sole discretion. Any attempt by the Franchisee to assign or any purported assignment by the Franchisee in violation of this section 9.02 is void.

(e) Upon Franchisor's consent to any assignment, Franchisee shall bring all accounts with Franchisor current and Franchisee may be required to execute a general release of all claims against Franchisor.

### **9.03 Right of First Refusal.**

The right of Franchisee to assign, transfer or sell its interest in the Franchise granted by this Agreement, as provided in section 9.02 hereof, except for a transfer to the Franchisee's heirs, personal representatives or conservators in the case of his death or legal incapacity, shall be subject to Franchisor's right of first refusal with respect thereto. Franchisor's right of first refusal may be exercised in the following manner:

(a) Franchisee shall serve upon Franchisor a written notice setting forth (i) all of the terms and conditions of any *bona fide* offer relating to a proposed Assignment by Franchisee, and (ii) all available information concerning the proposed Assignee of Franchisee.

(b) Within ten days after Franchisor's receipt of such notice (or if it shall request additional information, within ten days after receipt of such additional information), Franchisor may either consent or withhold its consent to such Assignment by Franchisee, in accordance with section 9.02 hereof or, at its option, may accept the Assignment by Franchisee itself or on behalf of its nominee upon the terms and conditions specified in the notice.

(c) If Franchisor shall elect not to exercise said right of first refusal and shall consent to such Assignment by Franchisee, Franchisee shall for a period of 90 days, and subject to the provisions of section 9.02 hereof, be free to assign this Agreement to such proposed Assignee of Franchisee upon the terms and conditions specified in said notice. If, however, said terms shall be materially changed, or if said 90-day period shall have expired, Franchisor shall again have such right of first refusal with respect thereto and Franchisee shall again be required to comply with section 9.03(a) above.

### **9.04 Transfers to Family Members.**

Franchisee or a principal owner, if a natural person, may with Franchisor's consent, which will not be unreasonably withheld, Transfer the Franchised Business or an equity interest in Franchisee to such person's spouse, parent, sibling, niece, nephew, descendant or spouse's descendant provided that adequate provision is made for the management of the Franchised Business and the transferor guarantees, in form and substance satisfactory to Franchisor, the performance of the transferee's obligations under this Agreement. No transfer under this section 9.04 shall be subject to (i) Franchisor's right of first refusal set

forth in section 9.03 hereof or (ii) the transfer fee set forth in section 9.02(b)(vii) hereof. Franchisee shall be required to comply with section 9.02(b)(i) through (vi) above.

**9.05 Transfers to Affiliated Corporations.**

Franchisee or a Equity Owner, if a natural person, a sole proprietorship or a partnership, may without the consent of Franchisor, upon 30 days prior written notice to Franchisor, Transfer the Franchised Business or an equity interest in Franchisee to a corporation entirely owned by such natural person, sole proprietorship or partnership, as the case may be, in the same proportionate amount of ownership as prior to such Transfer, provided that adequate provision is made for the management of the Franchised Business and that the transferor guarantees, in form and substance satisfactory to Franchisor, the performance of the transferee's obligations under this Agreement. No transfer under this section 9.05 shall be subject to (i) Franchisor's right of first refusal set forth in section 9.03 hereof or (ii) the transfer fee set forth in section 9.02(b)(vii) hereof. Franchisee shall be required to comply with section 9.02(b)(i) through (vi) above.

**9.06 Transfers Upon Death, Incapacity.**

Notwithstanding any of the foregoing, in the event of the death or legal incapacity of Franchisee or a Equity Owner, if a natural person, such person's interest in this Agreement or its equity interest in the Franchisee will Transfer in accordance with such person's will or, if such person dies intestate, in accordance with laws of intestacy governing the distribution of such person's estate, provided that adequate provision is made for the management of the Franchised Business and the transferee is one or more of the decedent's spouse, parents, siblings, nieces, nephews, descendants or spouse's descendants. No transfer under this section 9.06 shall be subject to (i) Franchisor's right of first refusal set forth in section 9.03 hereof or (ii) the transfer fee set forth in section 9.02(b)(vii) hereof. Franchisee shall be required to comply with section 9.02(b)(i) through (vi) above.

**9.07 Restrictions on Granting Security Interests and Subfranchising.**

Except as otherwise set forth below, Franchisee shall not in any event have the right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise Transfer, or attempt to subfranchise or otherwise Transfer any Location so long as it is operated as the Location, or to Transfer or subfranchise a portion but not all of Franchisee's rights hereunder without the express prior written permission of Franchisor, which permission may be withheld for any reason whatsoever in Franchisor's sole discretion. Notwithstanding anything contained herein to the contrary, Franchisee shall have the right to pledge its accounts receivable without the prior written consent of Franchisor for the sole purpose of obtaining financing for the operation of the Franchised Business provided Franchisee is in full compliance with all of the terms and conditions of this Agreement, and any other agreement, arrangement or understanding with Franchisor.

**9.08 Other Transfers.**

Except as otherwise provided in this Agreement and subject to Franchisor's right of first refusal provided in section 9.03 hereof, Franchisee or a Equity Owner may effect any Transfer of a direct or indirect interest in this Agreement, in the Franchised Business or in the economic benefits derived therefrom, or any equity interest in Franchisee, not permitted by the preceding sections 9.04, 9.05 and 9.06, only after written notice to Franchisor and only with Franchisor's written consent, which may not be unreasonably withheld. Franchisor shall exercise its good faith business judgment in determining whether to give or withhold its consent to a Transfer under this section 9.08. Such exercise of good faith business

judgment shall include Franchisor's consideration of certain skills and qualifications of the prospective transferee which are of business concern to Franchisor, including without limitation, the following: experience in similar retail businesses, financial and operational skills and qualifications, economic resources, reputation and character of such prospective transferees; the ability of such prospective transferee(s) to fully and faithfully conduct the Franchised Business as contemplated by this Agreement; and the effect that the Transfer and the prospective transferees will have or may reasonably be expected to have on the reputation or business operations of the Franchised Business, the System or Franchisor, its parent or any of its affiliates.

**ARTICLE X.**  
**DEFAULT AND TERMINATION**

**10.01 General.**

(a) This Agreement may be terminated unilaterally by Franchisor only for good cause, which for purposes of this Agreement shall mean a material violation of this Agreement and shall include any failure by Franchisee to substantially comply with any obligation, duty or promise under the Agreement, including, without limitation, those acts or omissions specified in sections 10.02 and 10.03 hereof. Franchisor shall exercise its right to terminate this Agreement in the manner described in this Article X.

(b) Notwithstanding anything contained herein to the contrary, in those circumstances under which Franchisor shall have the right to terminate this Agreement, except in the case of violations specified in sections 10.03(a) or (b) hereof, Franchisor shall have the option, to be exercised in its sole discretion, to choose alternative remedies to its right to terminate the entire Agreement.

(c) If Franchisor gives Franchisee written notice to cure a violation of Article VI of this Agreement (which may include a statement of the method of cure to be employed), Franchisee shall commence such cure within 24 hours and must effect a complete cure and remedy the damage caused by such violation as fully as possible in the shortest possible time, in no event more than seven days; and Franchisee shall take action to prevent recurrence of the same type of violation.

(d) Notwithstanding anything contained herein to the contrary, in those circumstances under which Franchisor shall have the right to terminate this Agreement, Franchisor shall have the right to exercise any and all remedies available to it at law or in equity, including without limitation specific performance and damages (including without limitation direct, indirect, special, incidental or consequential damages.) All rights and remedies provided herein shall be in addition to and not in substitution of all other rights and remedies available to a party at law or in equity.

**10.02 Termination Without Prior Notice.**

Franchisor shall have the right to terminate this Agreement without prior notice to Franchisee upon the occurrence of any or all of the following events, each of which shall be deemed an incurable breach of this Agreement:

(a) If Franchisee Abandons its Location;

(b) To the extent permitted by law (including without limitation the applicable provisions of the Federal Bankruptcy Act), (i) if Franchisee or a general partner thereof becomes insolvent (as revealed by its records or otherwise), or (ii) if Franchisee files a voluntary petition and is adjudicated bankrupt, or if an involuntary petition is filed against Franchisee and such petition is not dismissed within

30 days, or (iii) if Franchisee shall make an Assignment by Franchisee for the benefit of creditors, or (iv) if a receiver or trustee in bankruptcy or similar officer, temporary or permanent, be appointed to take charge of Franchisee's affairs or any of its property, or (v) if dissolution proceedings are commenced by or against Franchisee (if a corporation or partnership) and are not dismissed within 30 days thereafter, or (vi) if any final judgment against Franchisee from which no further appeal is available and which is not currently on appeal remains unsatisfied or not bonded of record for 30 days after receipt by Franchisee of actual or constructive notice thereof, and the amount of such judgment exceeds \$50,000.00 or 10% of Franchisee's Gross Receipts for the preceding Anniversary Year, whichever is less;

(c) If (i) Franchisee has knowingly either inaccurately reported or withheld the reporting of Gross Receipts twice within 12 consecutive calendar months, or if (ii) a Equity Owner has knowingly and directly caused or authorized Franchisee to either inaccurately report or withhold the reporting of any Gross Receipts;

(d) If Franchisee violates the provisions of section 9.02 of this Agreement or otherwise sell, assign, transfer or encumber the Marks without the prior written consent of Franchisor as hereinabove provided;

(e) If the Location is closed for health reasons by appropriate authorities or if licenses necessary to operate the Location are suspended or revoked, and such licenses or substitute licenses have not been reinstated within seven days thereafter;

(f) If Franchisee defaults in any material obligation in respect of which Franchisee twice previously within the preceding 12 months has received a notice of default from Franchisor with respect to the same or similar breach; or

(g) If Franchisee defaults in its obligation to permit Franchisor or its representative or agents to examine or audit books of accounts, bank statements, documents, records, papers or tax return records under sections 8.07 or 8.08 hereof.

### **10.03 Termination With Notice.**

(a) As stated in section 10.01(c) hereof, if Franchisor gives Franchisee written notice to cure a violation of Article VI of this Agreement (which may include a statement of the method of cure to be employed), Franchisee shall commence such cure within 24 hours and must effect a complete cure and remedy the damage caused by such violation as fully as possible in the shortest possible time, in no event more than seven days; and Franchisee shall take action to prevent recurrence of the same type of violation. Franchisor may terminate this Agreement if (i) Franchisee previously received notice of two violations of the same or a similar type within the preceding 12 months, (ii) Franchisee fails to comply with the preceding sentence, provided that if the sole reason for such noncompliance is that such violation was impossible to cure, Franchisor may terminate this Agreement only if Franchisee received notice of one prior violation under this section 10.03(a) within the preceding 12 months, or (iii) a Equity Owner directly caused or authorized a violation which materially impaired the goodwill associated with the Marks in Franchisee's geographical area, and either he or she did so knowingly, or Franchisee failed to comply with the preceding sentence, or a Equity Owner had done so once previously within the preceding 12 months.

(b) Franchisor may terminate this Agreement if Franchisee uses the Marks in any manner that is not permitted by this Agreement, or takes any action that incorrectly indicates that certain products or services are associated with the Marks, and Franchisee fails to cure such violation within 24 hours of receipt of written notice by Franchisor to cure.

(c) With respect to any default by Franchisee of its obligation to pay any sums due Franchisor under this Agreement, Franchisor may terminate this Agreement upon not less than 14 days prior written notice of such default. If Franchisee shall cure said default prior to the end of such period, Franchisor's right to terminate shall cease with respect to the breach which has been so cured.

(d) Except as otherwise expressly provided herein, including, without limitation, section 10.06 below, Franchisor may terminate this Agreement only upon 30 days prior written notice to Franchisee setting forth the breach complained of in this Agreement or any other agreement to which both Franchisor or any of its affiliates and either Franchisee or any of its affiliates or Equity Owners are party. Upon receipt of such notice, Franchisee shall immediately commence diligently to cure said breach, and if Franchisee shall cure said breach during such period, Franchisor's right to terminate this Agreement shall cease; provided, however, that if, because of the nature of said breach, Franchisee shall be unable to cure the same within said 30 day period, Franchisee shall be given such additional time as shall be reasonably necessary within which to cure said breach, not to exceed an additional 30 days, upon condition that Franchisee shall, upon receipt of such notice from Franchisor, immediately commence to cure such breach and continue to use its best efforts to do so.

(e) A material violation of this Agreement shall mean any action or omission by Franchisee which impairs or adversely affects the System, Franchisor, or the relationship created by this Agreement. Without limitation, each of the following events, along with the events set forth in section 10.02 above is deemed a material violation of this Agreement. The parties acknowledge, however, that these events do not represent an exhaustive list of material violations of this Agreement. Additional events may take place which, individually or in combination with other events, would constitute a material violation of this Agreement. It shall be a material violation of this Agreement:

- (i) If Franchisee fails to pay any sum due Franchisor;
- (ii) If Franchisee fails to perform any material provision of a lease or sublease covering the Location premises;
- (iii) If the lease or sublease covering the Location premises is terminated or expires and Franchisee fails or is unable to locate suitable replacement premises for the Location satisfactory to Franchisor prior to the effective date of such termination or expiration;
- (iv) If Franchisee is convicted of a felony or any other criminal misconduct which Franchisor deems relevant to the operation of the Franchise;
- (v) If Franchisor makes a reasonable determination that the continued operation of the Franchise by Franchisee will result in immediate danger to public health or safety;
- (vi) If Franchisee fails to make any of the periodic reports required pursuant to section 8.02 or section 8.13 of this Agreement;
- (vii) If Franchisee violates any of the provisions of Article VI of this Agreement;
- (viii) If Franchisee Abandons its Location;

(ix) If Franchisee closes or relocates the Location, except as provided by section 3.06 of this Agreement;

(x) If Franchisee fails to maintain an independent contractor relationship with Franchisor;

(xi) If Franchisee has knowingly either inaccurately reported or failed to report any information as part of its application or qualification as a Franchisee; or

(xii) If Franchisee or any Equity Owners commit an act, or permit an act to be committed, which violates any federal, state or local law.

#### **10.04 Description of Default.**

The description of any default in any notice served by Franchisor hereunder upon Franchisee shall in no way preclude Franchisor from specifying additional or supplemental defaults in any action, arbitration, mediation, hearing or suit relating to this Agreement or the termination thereof.

#### **10.05 Statutory Limitations.**

Notwithstanding anything to the contrary in this Article X, in the event any valid, applicable law or regulation of a competent governmental authority having jurisdiction over this Agreement or the parties hereto shall limit Franchisor's rights of termination hereunder or shall require longer notice periods than those set forth herein, and in the event the parties are prohibited by law from agreeing to the shorter periods set forth herein, then this Agreement shall be deemed amended to conform to the requirements of such laws and regulations, but in such event the provisions of the Agreement thus affected shall be amended only to the extent necessary to bring it within the requirements of the law or regulation.

#### **10.06 Extended Cure Period.**

Notwithstanding anything contained herein to the contrary, including, without limitation, section 10.03(c) hereof, in those circumstances under which Franchisor shall have the right to terminate this Agreement, except in the case of violations specified in sections 10.03(a) and 10.03(b), Franchisor shall have the right, to be exercised in its sole discretion; to grant to Franchisee, in lieu of immediate termination of this Agreement, an extended period of time to cure the breach which gave rise to Franchisor's right to terminate, but in no event shall such extended cure period exceed six months from the last day of the cure period otherwise applicable to such breach. Franchisee acknowledges that Franchisor's election to grant such an extended cure period to Franchisee shall not operate as a waiver of any of Franchisor's rights hereunder.

#### **10.07 Continuance of Business Relations.**

Any continuance of business relations between Franchisor and Franchisee after termination of this Agreement shall not be construed as a renewal, extension or continuation of this Agreement.

### **ARTICLE XI. DISPUTE RESOLUTION**

#### **11.01 Arbitration.**



(a) Except as specifically modified by this Article XI, and excepting matters involving provisional remedies as set forth in section 11.02 below, any dispute between (i) Franchisor and its affiliated entities and (ii) Franchisee and its affiliated entities, arising out of or relating to this Agreement or its breach, including without limitation, any claim that this Agreement or any of its parts, is invalid, illegal or otherwise voidable or void, will be resolved by submission to binding arbitration by and before one arbitrator from the American Arbitration Association ("AAA"), in accordance with its Commercial Arbitration Rules, provided that the AAA arbitrator must be an attorney with at least 5 years of experience in franchise law. If all parties to the dispute agree, the dispute may be arbitrated by any other arbitration organization. If all parties to the dispute agree, the dispute may be arbitrated by any other arbitration organization.

(b) All arbitration proceedings will be conducted individually by a single plaintiff, and not as a class or by multiple plaintiffs in one action. All hearings and other proceedings shall take place in Orange County, California, or if Franchisor so elects, in the county where the principal place of business of Franchisee is then located.

(c) The arbitrators are affirmatively instructed to apply California law (except where pre-empted by federal law) in conducting the arbitration, including determination of all issues relating to the arbitrability or the enforcement of the agreement to arbitrate.

(d) Either party may present briefs and deposition of witnesses who are unable to attend hearings. Otherwise, no interrogatories, depositions or other discovery shall be permitted. Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be binding, final and not appealable.

(e) **NO PUNITIVE OR EXEMPLARY DAMAGES SHALL BE AWARDED AGAINST FRANCHISOR OR FRANCHISEE, THEIR RESPECTIVE EQUITY HOLDERS, OR ENTITIES AFFILIATED WITH ANY OF THEM, IN ARBITRATION PROCEEDINGS (OR OTHER PROCEEDINGS), AND ARE HEREBY WAIVED.**

(f) Before any arbitration proceeding takes place, either party may, at its option, elect to (i) have the arbitrator conduct, in a separate proceeding prior to the actual arbitration, a preliminary hearing, at which hearing testimony and other evidence may be presented and briefs may be submitted, including without limitation a brief setting forth then applicable statutory or common law methods of measuring damages in respect of the controversy or claim being arbitrated, or (ii) conduct non-binding mediation in Orange County, California, before a mediator referred by the AAA (or other mutually agreeable mediator), in which event the parties shall execute a confidentiality agreement.

(g) This arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after expiration or termination of this Agreement. If either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party by default or otherwise notwithstanding said failure to appear.

(h) This section 11.01 shall be construed as independent of any other covenant or provision of this Agreement; provided, however, that if a court of competent jurisdiction determines that any of such provisions are unlawful in any way, the court shall modify or interpret such provisions to the minimum extent necessary to comply with the law.

[Franchisor's Initials: \_\_\_\_\_ Franchisee's Initials: \_\_\_\_\_ ]

[Equity Owners' Initials \_\_\_\_\_ ]

**11.02 Injunctive or Extraordinary Remedies.**

Notwithstanding the provisions of section 11.01 above, Franchisor may bring an action in any court of competent jurisdiction in California or other venue selected by Franchisor for injunctive or other extraordinary relief, without the necessity of posting any bond (and if bond shall nevertheless be required by a court of competent jurisdiction, the parties agree that the sum of \$1,000.00 shall be sufficient bond), as Franchisor deems necessary or appropriate (i) respecting violations of Franchisee's obligations under section 8.17 hereof, or (ii) respecting the use or display of the Marks, or (iii) to otherwise compel Franchisee to take steps reasonably necessary to preserve Franchisor's reputation, goodwill and proprietary rights. Franchisee acknowledges that it is one of a number of licensed franchisees using the Marks and that failure on its part to comply fully with any of the terms of this Agreement respecting the foregoing obligations regarding examinations, audits and the Marks could cause irreparable damage to Franchisor or other franchisees of Franchisor. Therefore, Franchisor shall have the immediate right to seek a preliminary order or injunction enforcing the foregoing obligations during the pendency of all arbitration or other proceedings, without the necessity of posting a bond. This covenant shall be independent, severable and enforceable notwithstanding any other rights or remedies that Franchisor may have.

**11.03 Limitation of Actions.**

Notwithstanding anything to the contrary in this Article XI, if in the event any valid, applicable law or regulation of a competent governmental authority having jurisdiction over this Agreement or the parties hereto shall limit Franchisor's rights of termination hereunder or shall require longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the requirements of such laws and regulations, but in such event the provisions of the Agreement thus affected shall be amended only to the extent necessary to bring it within the requirements of the law or regulation.

**ARTICLE XII.**  
**FURTHER OBLIGATIONS AND RIGHTS OF THE PARTIES UPON TERMINATION OR EXPIRATION**

**12.01 Franchisee's Obligations.**

(a) Except as otherwise set forth in section 9.01 with respect to assignment by Franchisor of any or all of its interest in this Agreement, in the event of termination or expiration of this Agreement whether by reason of Franchisee's breach, default, non-renewal, lapse of time, or other cause, in addition to any other obligations provided for in this Agreement, Franchisee shall forthwith discontinue the use or display of the Marks in any manner whatsoever and all materials containing or bearing same and shall not thereafter operate or do business under the Business Name or any other name or in any manner that might tend to give the general public the impression that Franchisee is in any way associated or affiliated with Franchisor, or any of the businesses conducted by it or other owners of the Marks. In such event, Franchisee also shall comply with section 12.02 respecting the return to Franchisor of certain materials and shall not thereafter use, in any manner, or for any purpose, directly or indirectly, any of Franchisor's trade secrets, procedures, techniques, or materials acquired by Franchisee by virtue of the relationship established by this Agreement, including, without limitation, (i) any training or other materials, manuals, bulletins, instruction sheets, or supplements thereto, or (ii) any equipment, videotapes, videodiscs, forms, advertising matter, marks, devices, insignias, slogans or designs used from time to time in connection with the Franchised Business. At such time as requested by Franchisor, Franchisee shall make its books and records available to Franchisor's representatives who shall conduct a termination audit.

(b) If there is a termination or expiration as described in section 12.01(a) above, Franchisee shall promptly:

(i) Remove at Franchisee's expense all signs erected or used by Franchisee and bearing the Marks, or any word or mark indicating that Franchisee is associated or affiliated with Franchisor;

(ii) Erase or obliterate from letterheads, stationery, printed matter, advertising or other forms used by Franchisee the Marks and all words indicating that Franchisee is associated or affiliated with Franchisor;

(iii) Permanently discontinue all advertising of Franchisee to the effect that Franchisee is associated or affiliated with Franchisor;

(iv) Refrain from doing anything which would indicate that Franchisee is or ever was an authorized Franchisee including, without limitation, indicating, directly or indirectly, that Franchisee was licensed to use the Marks or any other distinctive System features or that Franchisee at any time operated under any name, word or mark associated or affiliated with Franchisor;

(v) If Franchisee engages in any business thereafter, it shall use trade names, service marks or trademarks (if any) which are significantly different from those under which Franchisee had done business and shall use sign formats (if any) which are significantly different in color and type face; and take all necessary steps to ensure that its present and former employees, agents, officers, shareholders and partners observe the foregoing obligations; and

(vi) If such termination or expiration is not the result of Franchisee's election to not renew this Agreement pursuant to section 5.02 hereof, assign all interest and right to use all telephone numbers and all listings applicable to the Franchised Business in use at the time of such termination to Franchisor and take all action necessary to change all such telephone numbers immediately and change all such listings as soon as possible; provided, however, that in the event such termination or expiration is the result of Franchisee's election to not renew this Agreement pursuant to section 5.02 hereof, then Franchisee may retain its interest and right to use such telephone numbers and listings.

(c) If Franchisee fails or omits to make or causes to be made any removal or change described in section 12.01(b) above, then Franchisor shall have the right within 15 days after written notice to enter upon Franchisee's premises upon which the Franchised Business is being conducted without being deemed guilty of trespass or any other tort, and make or cause to be made such removal and changes at the expense of Franchisee, which expense Franchisee agrees to pay to Franchisor promptly upon demand; and Franchisee hereby irrevocably appoints Franchisor as its lawful attorney upon termination of this Agreement with authority to file any document in the name of and on behalf of Franchisee for the purpose of terminating any and all of Franchisee's rights in the Business Name and any of the Marks.

(d) If the Location is Abandoned or otherwise closed for a period of seven consecutive days without Franchisor's prior written consent, Franchisee shall promptly take action to remove any indication that the Location is associated or affiliated with either Franchisee or Franchisor, and remove at Franchisee's expense all signs erected or used by Franchisee on, in or in connection with such Location and bearing either the Marks or any word or mark indicating that such Location is associated or affiliated with either Franchisee or Franchisor, except as otherwise required by law.

(e) For one year after termination of this Agreement, Franchisee and Franchisee's principals agree not to engage in any cafe or restaurant business selling or offering related products within 50 miles of any Red Rock Chili restaurant. Should this restriction violate the laws of the state whose laws govern this Agreement, the maximum restriction permitted in that state shall govern this provision.

#### **12.02 Rights of Franchisor.**

The expiration or termination of this Agreement shall be without prejudice to any rights of Franchisor against Franchisee and such expiration or termination shall not relieve Franchisee of any of its obligations to Franchisor existing at the time of expiration or termination or terminate those obligations of Franchisee which, by their nature, survive the expiration or termination of this Agreement.

(a) Franchisee is obligated to return, at no expense to the Franchisor, any and all copies of the Operations Manual, computer equipment, video equipment, video tapes, videodiscs, software, software manuals and documentation, and any other communications media and material provided for Franchisee's use without additional charge in connection with the operation of the Franchised Business.

(b) Within 30 days after termination or the expiration of the Franchise, Franchisor will have the option to purchase all or any portion of Franchisee's business forms as well as all other supplies, advertising materials, signs and documents using any of the Marks. Franchisor will be permitted to deduct and withdraw from the purchase price to be paid to Franchisee all sums due and owing Franchisor. Franchisor's purchase price for such materials will be Franchisee's cost for them, less an amount for reasonable wear and tear as appropriate. The purchase price will be paid in cash at the closing of any such purchase that will occur no less than 30 days from the date of exercise of the option. Franchisee shall receive no payment or adjustment whatsoever for any goodwill that Franchisee may have established either prior to or during its operation of its Franchise.

(c) Within 30 days after termination or expiration of this Agreement, Franchisor shall have the option to purchase all or any portion of Franchisee's inventory, equipment, parts, supplies, fixtures and furnishings owned and used by Franchisee in its franchised operation. Franchisor will be permitted to deduct and withdraw from the purchase price to be paid to Franchisee all sums due and owing to Franchisor. The purchase price for the inventory of merchandise purchased by Franchisor will be Franchisee's cost for said items. The purchase price for the remaining inventory, equipment, parts, fixtures and furnishings owned by Franchisee and used in Franchisee's business will be the fair market value thereof. In determining the fair market value of such items the parties agree to exclude any factor or increment for goodwill or going concern value.

(d) The purchase price to be paid to Franchisee will be paid in cash at the closing of any purchase that will occur no less than 30 days from the date of exercise of the option, unless the parties are unable to agree on the fair market value of the assets to be purchased hereby. If the parties are unable to reach agreement as to the fair market value of the items Franchisor has agreed to purchase the parties will appoint a single appraiser to make the determination of fair market value that shall be binding upon the parties. If the parties are unable to decide upon an appraiser the matter is to be submitted to arbitration in Orange County, California before and in accordance with the then current rules of the AAA.

### **ARTICLE XIII. GENERAL CONDITIONS AND PROVISIONS**

#### **13.01 Relationship of Franchisee to Franchisor.**

It is expressly agreed that the parties intend by this Agreement to establish between Franchisor and Franchisee the relationship of franchisor and franchisee. It is further agreed that Franchisee has no authority to create or assume in Franchisor's name or on behalf of Franchisor, any obligation, express or implied, or to act or purport to act as agent or representative on behalf of Franchisor for any purpose whatsoever. Neither Franchisor nor Franchisee is the employer, employee, agent, partner, fiduciary or co-venturer of or with the other, each being independent. Franchisee agrees that it will not hold itself out as the agent, employee, partner or co-venturer of Franchisor or the owner of the Marks. All employees or agents hired or engaged by or working for Franchisee shall be only the employees or agents of Franchisee and shall not for any purpose be deemed employees or agents of Franchisor or the owner of the Marks, nor subject to Franchisor's control; and in particular, Franchisor shall have no authority to exercise control over the hiring or termination of such employees, independent contractors, or others who work for Franchisee, their compensation, working hours or conditions, or the day-to-day activities of such persons, except to the extent necessary to protect the Marks. Franchisee agrees to respond to customer indications of dissatisfaction with services rendered by Franchisee in a diligent and professional manner and agrees to cooperate with representatives of Franchisor or the owner of the Marks in any investigation undertaken by Franchisor of complaints respecting Franchisee's activities. Each of the parties agrees to file its own tax, regulatory and payroll reports with respect to its respective employees or agents and operations, saving and indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof.

**13.02 Franchisor's Right to Cure Defaults by Franchisee.**

In addition to all other remedies herein granted, if Franchisee shall default in the performance of any of its obligations or breach any term or condition of this Agreement or any related agreement involving third parties, Franchisor may, at its election, immediately or at any time thereafter, without waiving any claim for breach hereunder and without notice to Franchisee, cure such default for the account of and on behalf of Franchisee, and all costs or expenses including attorney's fees incurred by Franchisor on account thereof shall be due and payable by Franchisee to Franchisor on demand.

**13.03 Waiver and Delay.**

No waiver by Franchisor of any breach or series of breaches or defaults in performance by Franchisee and no failure, refusal or neglect of Franchisor either to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of Franchisee's obligations under this Agreement or the Operations Manual, shall constitute a waiver of the provisions of this Agreement or the Operations Manual with respect to any subsequent breach thereof or a waiver by Franchisor of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

**13.04 Attorney's Fees and Expenses.**

Should any party hereto commence any action or proceeding for the purpose of enforcing or preventing the breach of any provision hereof, whether by judicial or quasi-judicial action, arbitration, or otherwise or any appeal therefrom or for damages for any alleged breach of any provision hereof, or for a declaration of such party's rights or obligations hereunder, then the prevailing party shall be reimbursed by the losing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorney's fees for the services rendered to such prevailing party.

**13.05 Indemnity.**

Except as otherwise expressly provided in section 6.06 hereof, Franchisee hereby agrees to protect, defend and indemnify Franchisor, its direct or indirect parents, their subsidiaries, affiliates and

designees and hold them harmless from and against any and all costs and expenses actually incurred by them or for which they are liable, including attorney's fees, court costs, losses, liabilities, damages, claims and demands of every kind or nature, and including those incurred pursuant to a settlement entered into in good faith, arising out of or in connection with the Franchised Business, including specifically without limitation any claim or controversy arising out of (i) any Transfer by Franchisee referred to in section 9.02 hereof, (ii) acts or omissions of Franchisee which are not in strict compliance with this Agreement and the Operations Manual in respect of use or display of the Marks, or (iii) acts or omissions of Franchisee which tend to create an impression that the relationship between the parties hereto is other than one of Franchisor and Franchisee. Notwithstanding the foregoing, (iv) Franchisee shall have no obligation to protect, defend or indemnify Franchisor, its direct or indirect parents, their subsidiaries, affiliates or designees from and against any such costs or expenses arising from the conduct of Franchisor found to be willful, malicious or grossly negligent, and (v) in any proceeding in which Franchisor has been found to have been actively negligent (as opposed to passively negligent or vicariously liable), Franchisor and Franchisee shall each bear all of such costs and expenses in proportion to any finding of comparative negligence made in such proceeding.

### **13.06 Survival of Covenants.**

The covenants contained in this Agreement that by their terms require performance by the parties after the expiration or termination of this Agreement shall be enforceable notwithstanding said expiration or other termination of this Agreement for any reason whatsoever.

### **13.07 Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Franchisor and shall be binding upon and inure to the benefit of the Franchisee and its or their respective heirs, executors, administrators, successors and assigns, subject to the restrictions on Assignment by Franchisee contained herein.

### **13.08 Joint and Several Liability.**

If Franchisee consists of more than one person or entity, or a combination thereof, the obligation and liabilities to Franchisor of each such person or entity are joint and several.

### **13.09 Counterparts.**

This Agreement may be executed in any number of copies, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

### **13.10 Notices.**

(a) All notices which the parties hereto may be required or may desire to give under or in connection with this Agreement shall be in writing and shall be actually delivered, or (i) sent by certified mail, return receipt requested, or (ii) sent by reliable air courier, addressed as follows:

(i) IF TO FRANCHISOR:

Red Rock Chili Franchises, Inc.  
1800 E Garry Avenue, Suite 113  
Santa Ana, California 92705-5803

AND

Harold L. Kestenbaum P.C.  
EAB1320 Reckson Plaza, West Tower-14<sup>th</sup> Floor  
Uniondale, New York 11556-1320  
Attention: Harold L. Kestenbaum, Esq.

(ii) If to Franchisee, to the attention of the General Manager at the address indicated in section 16.02(c) hereof unless another or an additional receiving person or address is desired by Franchisee, in which event the different receiving person and/or address will be attached hereto as an exhibit.

(b) Notices between Franchisor and Franchisee shall be deemed given the earlier of (i) when actually delivered, (ii) the next business day after deposit with a reliable overnight air courier, or (iii) three business days after deposit with the United States Postal Service, postage paid and properly addressed.

**ARTICLE XIV.**  
**CONSTRUCTION OF AGREEMENT**

**14.01 Governing Law.**

To the extent applicable, the United States Arbitration Act (9 U.S.C. §1 *et seq.*) governs procedural and jurisdictional issues respecting arbitration of disputes under this Agreement. To the extent applicable, the Lanham Act (15 U.S.C. §1051 *et seq.*) governs any federal issue involving the Marks. Except as otherwise provided in Article XI hereof and this section 14.01, this Agreement and the totality of the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of California.

**14.02 Entire Agreement; Modification.**

This Agreement contains all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof. No other agreements oral or otherwise shall be deemed to exist or to bind any of the parties hereto and all prior agreements and understandings are superseded hereby. No officer or employee or agent of Franchisor has any authority to make any representation or promise not contained in this Agreement. Franchisee agrees that it has executed this Agreement without reliance upon any such unauthorized representation or promise. This Agreement cannot be modified or changed except by (i) written instrument signed by all of the parties hereto, or (ii) by Franchisor's reduction of the scope of any of Franchisee's obligations under this Agreement, which may be done without Franchisee's consent and which is effective immediately upon notice.

**14.03 Titles for Convenience Only.**

Section titles used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants or conditions of this Agreement.

**14.04 Gender.**

All terms used in any one number or gender shall extend to mean and include any other number and gender as the facts, context or sense of this Agreement or any section may require.

**14.05 Severability.**

Nothing contained in this Agreement shall be construed as requiring the commission of any act contrary to law. Whenever there is any conflict between any provisions of this Agreement or the Operations Manual and any present or future statute, law, ordinance, regulation or judicial decision, contrary to which the parties have no legal right under this Agreement, the latter shall prevail, but in such event the provision of this Agreement or the Operations Manual thus affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. In the event that any part, article, section, sentence or clause of this Agreement or the Operations Manual shall be held to be indefinite, invalid or otherwise unenforceable, the indefinite, invalid or unenforceable provision shall be deemed deleted, and the remaining parts thereof shall continue in full force and effect, unless said provision pertains to the payment of fees pursuant to Articles III and IV hereof, in which case this Agreement shall terminate.

**14.06 No Third Party Beneficiaries.**

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third party beneficiary rights" or otherwise.

**ARTICLE XV.  
SUBMISSION OF AGREEMENT**

The submission of this Agreement to Franchisee does not constitute an offer and this Agreement shall become effective only upon the execution thereof by Franchisor and Franchisee. THIS AGREEMENT SHALL NOT BE BINDING ON FRANCHISOR UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY THE PRESIDENT OR OTHER EXECUTIVE OFFICER OF FRANCHISOR. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL AND UNLESS FRANCHISEE SHALL HAVE BEEN FURNISHED BY FRANCHISOR WITH ANY DISCLOSURE, IN WRITTEN FORM, AS MAY BE REQUIRED UNDER OR PURSUANT TO APPLICABLE LAW.

**ARTICLE XVI.  
ACKNOWLEDGEMENTS AND REPRESENTATIONS OF FRANCHISEE**

**16.01 Certain Acknowledgements and Representations of Franchisee.**

Franchisee represents and warrants that the following statements are true and accurate:

(a) Franchisee does not seek to obtain the Franchise for speculative or investment purposes and has no present intention to sell or transfer or attempt to sell or transfer the Franchised Business or the Franchise.

(b) Franchisee understands and acknowledges the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Operations Manual and the necessity of operating the Franchised Business under the standards set forth in the Operations Manual. Franchisee represents that it has the capabilities, professionally, financially and otherwise, to comply with the standards of Franchisor.



(c) If Franchisee is a corporation, Franchisee is duly incorporated and is qualified to do business in the state and any other applicable jurisdiction within which the Location is located.

(d) The execution of this Agreement by Franchisee will not constitute or violate any other agreement or commitment to which Franchisee is a party.

(e) Any individual executing this Agreement on behalf of Franchisee is duly authorized to do so and the Agreement shall constitute a valid and binding obligation of the Franchisee and, if applicable, all of its partners, if Franchisee is a partnership.

(f) Franchisee has, or if a partnership, corporation or other entity, its partners or its principals have, carefully read this Agreement and all other related documents to be executed by it concurrently or in conjunction with the execution hereof, that it has obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement, that it understands the nature of this Agreement, and that it intends to comply herewith and be bound thereby.

**16.02 Additional Information Respecting Franchisee.**

(a) Attached hereto as Exhibit 2 is a schedule containing complete information respecting the owners, partners, officers and directors, as the case may be, of Franchisee.

(b) The address (written notice of any change in this information after the Effective Date must be delivered to Franchisor pursuant to section 13.07 hereof) where Franchisee's financial and other records are maintained is:

\_\_\_\_\_  
\_\_\_\_\_

(c) The name and business address (this should be the address of the Location; written notice of any change in this information after the Effective Date must be delivered to Franchisor pursuant to section 13.07 hereof) of the General Manager of the Location is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) Franchisee has delivered to Franchisor complete and accurate copies of all organizational documents relating to Franchisee, including without limitation all partnership agreements, certificates of partnership, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

(e) The initial term of this Agreement expires on \_\_\_\_\_, 20 \_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and accepted by Franchisor as of the Effective Date first above written:

FRANCHISEE:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EQUITY OWNER:

\_\_\_\_\_  
[NAME]

EQUITY OWNER:

\_\_\_\_\_  
[NAME]

EQUITY OWNER:

\_\_\_\_\_  
[NAME]

EQUITY OWNER:

\_\_\_\_\_  
[NAME]

FRANCHISOR:

RED ROCK CHILI FRANCHISES, INC.

By: \_\_\_\_\_  
Name: Paul Collis  
Title: President

**EXHIBIT 1**  
**TERRITORY**

The Territory is described as checked below:

\_\_\_\_\_ the outside walls of the strip center or mall where the Location is sited; or

\_\_\_\_\_ a three mile radius around the Location.



% \_\_\_\_\_ %

c. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

d. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

4. If the prospective franchisee is a corporation or LLC, list below the names and residential addresses of each director of the corporation or manager of the LLC, if not previously provided herein (if more space is required, attach additional sheets):

a. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

b. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

c. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

d. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

FRANCHISEE INITIAL HERE [ ]

[ ]

5. If the prospective franchisee is a corporation or an LLC with officers, list the names, residential addresses and respective offices of each officer, if not previously provided in section 4 (if necessary, list other officers on additional sheets attached):

a. President  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

b. Secretary  
\_\_\_\_\_  
\_\_\_\_\_  
% \_\_\_\_\_

c. Vice President

\_\_\_\_\_

\_\_\_\_\_

% \_\_\_\_\_

FRANCHISEE INITIAL HERE

d. Treasurer

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ %

[ ]

[ ]

**EXHIBIT 3**  
**STATE SPECIFIC ADDENDUM**

**EXHIBIT 3**  
**APPENDIX FOR CALIFORNIA FRANCHISEES**

The Commissioner of Corporations requires the following specific disclosures to be made to prospective California franchisees:

1. California Business and Professions Code sections 20000 through 20043 (the "Act") provide rights to you concerning termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the Act, the Act will control.

2. Section 31125 of the California Corporations Code requires RRC to give you a disclosure document, approved by the Department of Corporations before a solicitation of a proposed material modification of an existing franchise.

3. The Franchise Agreement and the Development Agreement require binding arbitration. The arbitration will occur in Orange County, California with the costs being borne equally by both parties. Franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws to any provisions of a franchise agreement that restricts venue to a forum outside of California.

4. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. §101 *et seq.*)

5. The Franchise Agreement contains a covenant not to compete that extends beyond the termination of the franchise. This provision may not be enforceable under California law.

6. The Franchise Agreement requires you to execute a general release of claims upon renewal or transfer of the Franchise Agreement. California Corporations Code section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order is void. Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000-31516). Business and Professions Code section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000-20043).

7. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE OFFERING CIRCULAR.

8. The agreements contain a liquidated damage clause, under Civil Code, Section 1671, certain liquidated damage clauses are enforceable.

9. Neither RRC, nor any person or franchise broker listed in Item 2 of the offering circular is subject to any currently effective order of any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78A *et seq.*, suspending or expelling these persons from membership in such association or exchange.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



ATTEST

**RED ROCK CHILI FRANCHISES, INC.**

\_\_\_\_\_  
Witness

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

FRANCHISEE:

\_\_\_\_\_

**EXHIBIT 4**  
**FRANCHISEE COMPLIANCE CERTIFICATION**

**Red Rock Chili Franchises, Inc.**

As you know, Red Rock Chili Franchises, Inc. (the "Franchisor") and you are preparing to enter into a franchise agreement (the "Franchise Agreement") for the establishment and operation of a Red Rock Chili Restaurant. The purpose of this Questionnaire is to determine whether any statements or promises were made to you by employees or authorized representatives of the Franchisor, or by employees or authorized representatives of Fransmart, Inc. ("Fransmart") that have not been authorized, or that were not disclosed in the Uniform Franchise Offering Circular or that may be untrue, inaccurate or misleading.

In the event that you are intending to purchase an existing Red Rock Chili Restaurant from an existing Franchisee, you may have received information from the transferring Franchisee, who are not employees or representatives of the Franchisor. The questions below do not apply to any communications that you had with the transferring Franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Are you seeking to enter into the Franchise Agreement in connection with a purchase or transfer of an existing Red Rock Chili Restaurant from an existing Franchisee?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. I had my first face-to-face meeting with a Franchisor representative on \_\_\_\_\_, 20\_\_\_\_.

3. Have you received and personally reviewed the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Do you understand all of the information contained in the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, what parts of the Franchise Agreement, any Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Have you received and personally reviewed the Franchisor's Uniform Franchise Offering Circular ("UFOC") that was provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Did you sign a receipt for the UFOC indicating the date you received it?

Yes                      No

7. Do you understand all of the information contained in the UFOC and any state-specific Addendum to the UFOC?

Yes                      No

If No, what parts of the UFOC and/or Addendum do you not understand? (Attach additional pages, if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Have you discussed the benefits and risks of establishing and operating a Red Rock Chili Restaurant with an attorney, accountant, or other professional advisor?

Yes                      No

If No, do you wish to have more time to do so?

Yes                      No

9. Do you understand that the success or failure of your Red Rock Chili Restaurant will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, location, lease terms, your management capabilities and other economic, and business factors?

Yes                      No

10. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise concerning the actual or potential revenues, profits or operating costs of any particular Red Rock Chili Restaurant operated by the Franchisor or its franchisees (or of any group of such businesses), that is contrary to or different from the information contained in the UFOC?

Yes                      No

11. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn in operating the franchised business that is contrary to or different from the information contained in the UFOC?

Yes                      No

12. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise concerning the total amount of revenue the Red Rock Chili Restaurant will generate, that is contrary to or different from the information contained in the UFOC?

Yes                      No

13. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise regarding the costs you may incur in operating the Red Rock Chili Restaurant that is contrary to or different from the information contained in the UFOC?

Yes                      No

14. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Red Rock Chili Restaurant?

Yes                      No

15. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the UFOC or franchise agreement?

Yes                      No

16. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise prior to today?

Yes                      No

17. Have you paid any money to the Franchisor concerning the purchase of this franchise prior to today?

Yes                      No

18. Have you spoken to any other franchisee(s) of this system before deciding to purchase this franchise? If so, who?

\_\_\_\_\_

\_\_\_\_\_

If you have answered No to question 9, or Yes to any one of questions 10-17, please provide a full explanation of each answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered Yes to question 9, and No to each of questions 10-17, please leave the following lines blank.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I signed the Franchise Agreement and Addendum (if any) on \_\_\_\_\_, 20\_\_\_\_, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them. By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

\_\_\_\_\_  
FRANCHISEE APPLICANT

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated