Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
 XXXXX'X RESTAURANTS, INC.  
  
   
  
 FRANCHISEE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
 XXXXX'X RESTAURANTS, INC.  
   
  
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 XXXXX'X RESTAURANTS, INC.  
   
  
  
Date of this Agreement: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
Franchisor: Xxxxx'x Restaurants, Inc., a corporation  
 (Also referred to as "we," "us" or "our.")  
  
Franchisee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (Also referred to as "you" or "your.")  
  
  
1. BACKGROUND  
  
 1.1. We've developed, and plan to continue to develop, methods of  
operating upscale, quick-service Mexican-style restaurants which offer a wide  
variety of Mexican-style food, and certain other products, to a broad customer  
base. These businesses, which are referred to in this Agreement as "Rubio's  
Stores," feature a distinctive format and method of doing business, which we  
refer to as the "System" (as defined below). The System and its components may  
be changed, improved and further developed by us from time to time.  
  
 1.2. We own and operate, and selectively award franchises for  
others to own and operate, Rubio's Stores using the System and the Marks (as  
defined below). You've applied for a franchise to own and operate a Rubio's  
Store at the Premises (as defined below) and your application has been approved  
by us in reliance on all of the representations made in your application.  
  
 1.3. You understand and acknowledge the importance of our high and  
uniform standards of quality, operations and service and the necessity of  
developing and operating the Rubio's Store at the Premises in strict conformity  
with this Agreement, the System and the Manuals (as defined below).  
  
 1.4. For purposes of this Agreement, the following terms have the  
meanings listed below. Other terms used in this Agreement are defined and  
construed in the context in which they occur.  
  
 "AFFILIATE" - Any person, company or other entity which controls, is  
 controlled by or is under common control with another person, company  
 or other entity, as well as any spouse, parent, child and/or sibling  
 and any entity controlled by any spouse, parent, child and/or sibling.  
  
 "AGREEMENT" - This .  
  
 "DESIGNATED EQUIPMENT" - Equipment that meets our requirements and is  
 to obtained and used by you in the operation of your Rubio's Store,  
 including (but not limited to) cash registers, computers and software.  
  
 "FRANCHISE" - The nonexclusive right to use the System and the Marks in  
 the continuous operation of a single Rubio's Store at the Premises  
 pursuant to the terms and conditions of this Agreement.  
  
 "GENERAL RELEASE" - A general release, in a form prescribed by us, of  
 any and all claims, known or unknown, against us and/or all Rubio's  
 Affiliates, excepting only those claims which, by applicable law, may  
 not be released. A copy of our current form of releasing language  
 (which is subject to change by us at any time) is attached as Exhibit 2  
 and, by signing this Agreement, you approve that language.  
  
 "GOOD STANDING" - "Good Standing" includes (but is not limited to) you  
 and each Affiliate of yours: (A) not being in default or threat of  
 default under this Agreement and/or any other agreement, or any other  
 legal obligation, to us and/or any Rubio's Affiliate; and (B) operating  
 each Rubio's Store, in which you  
  
  
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 and/or any Affiliate of yours has any ownership or other interest, in  
 full compliance with the Manuals and the System.  
  
 "MANUALS" - One or more handbooks, manuals, bulletins and/or volumes,  
 other written materials, and video, audio and/or software media  
 (including materials distributed electronically or otherwise),  
 regardless of title, containing (among other things) specifications,  
 standards, policies and procedures prescribed by us from time to time  
 and to be followed by you in connection with your development,  
 operation and marketing of your Rubio's Store and your performance  
 under this Agreement, including (but not limited to) all goods and  
 services to be sold and/or provided at or from your Rubio's Store  
 and/or in association with the Marks. The term "Manuals" also includes  
 all changes and supplements that may be issued by us in the future.  
  
 "MARKS" - The trademarks, service marks and other commercial symbols  
 now and/or in the future owned by, or licensed to, us and which we  
 designate, from time to time, to be used to identify the services  
 and/or products offered by Rubio's Stores, including (but not limited  
 to) the xxxx "Rubio's(R)" and design, "Home of the Fish Taco(R),"  
 "Pesky(R)" and design, "Health Mex(R)," "Baja Grill(R)," the Trade  
 Dress and certain associated logos.  
  
 "PREMISES" - The location at which you will operate a single Rubio's  
 Store, as permitted and accepted by us pursuant to this Agreement, and  
 as identified in Exhibit 1.  
  
 "PRODUCTS" AND "SERVICES" - Products and services designated by us from  
 time to time for use, sale, lease, rental or to be otherwise used,  
 offered and/or provided at or from your Rubio's Store, and/or in  
 association with the Marks, including (among other things) all  
 beverages, food products and paper goods served and/or used in or from  
 your Rubio's Store.  
  
 "RUBIO'S AFFILIATE(S)" - Each and all of the following, whether past,  
 present and/or future: each and all company(ies) and/or person(s)  
 acting by, through, under, in concert, affiliated and/or associated in  
 any way with us; each and all of the partners, shareholders, officers,  
 directors, agents, attorneys, accountants, and/or employees of us  
 and/or any of the foregoing; as well as each and all of the successors  
 and/or assigns of us and/or any of the foregoing.  
  
 "RUBIO'S STORE" - The Rubio's Store which you're franchised to operate  
 at the Premises pursuant to this Agreement.  
  
 "SUPPLIER" - "Supplier" includes (but is not limited to) manufacturers,  
 distributors, wholesalers and all others in the distribution chain  
 and/or process.  
  
 "SYSTEM" - The distinctive format and method of doing business now or  
 in the future developed, used and/or modified by us in the exercise of  
 our reasonable business judgment for the operation of a retail sales  
 outlet specializing in the sale of Mexican-style food, including but  
 not limited to: (A) distinguishing characteristics related to the  
 image, design, appearance, layout and color scheme of a Rubio's Store;  
 (B) design, style, color and other distinguishing characteristics of  
 fixtures, menu boards, signs and furnishings; (C) layout, design and  
 selection of equipment; (D) specifications for Products and as used in  
 preparing Products for sale; (E) methods used for selecting,  
 purchasing, marketing, displaying and selling Products; (F) operating,  
 marketing, training and other systems, procedures and standards; and  
 (G) the standards of quality, service and cleanliness used in the  
 operation of a Rubio's Store.  
  
 "TRADE DRESS" - The Rubio's Store design and image developed and owned  
 by us for Rubio's Stores, as it currently exists and as it may be  
 revised and further developed by us from time to time.  
  
 "US," "WE," "OUR" OR "FRANCHISOR" - Xxxxx'x Restaurants, Inc., a  
 corporation.  
  
 "YOU," "YOUR" OR "FRANCHISEE" - The entity(ies) or individual(s)  
 signing this Agreement as Franchisee. (If there's more than one entity  
 or individual identified as the "Franchisee," each is jointly and  
 severally  
  
  
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 obligated under this Agreement.)  
  
 1.5. We only award franchises to individuals and entities that  
share, and have made a commitment to, our mission statement, key objectives and  
shared values. Without that commitment, it wouldn't be appropriate for you and  
us to be involved in a long-term business relationship, such as a Rubio's  
Franchise. Your commitment to the mission statement, key objectives and shared  
values is one of the most important parts of your being a Rubio's franchisee and  
that's why we've placed them at the beginning of this Agreement. You agree that  
you'll continuously comply with, observe and support the following:  
  
  
 THE RUBIO'S MISSION STATEMENT  
  
  
 THE RUBIO'S MISSION IS TO OPERATE IN A MANNER THAT IS RESPONSIBLE,  
 PROFITABLE AND TO THE BENEFIT OF EMPLOYEES, GUESTS AND COMMUNITY. WE  
 PROVIDE THE HIGHEST QUALITY PRODUCT, SERVICE, CLEANLINESS AND  
 EFFICIENCY AT REASONABLE PRICES.  
  
  
 RUBIO'S BAJA GRILL, THE "HOME OF THE FISH TACO," IS A LEADER IN THE  
 RESTAURANT INDUSTRY AND IS RENOWNED FOR ITS INNOVATIVE AND DYNAMIC  
 APPROACH IN PROVIDING AUTHENTIC MEXICAN FOOD.  
  
 RUBIO'S KEY OBJECTIVES  
  
  
 1. ATTRACT, TRAIN, DEVELOP, MOTIVATE AND RETAIN THE HIGHEST  
 QUALITY MANAGEMENT AND FRANCHISEE TEAM POSSIBLE.  
  
 2. BECOME THE RECOGNIZED LEADER IN GUEST SATISFACTION AND VALUE  
 BY SUPERIOR H.Q.S.C. EXECUTION.  
  
 3. EXPAND RUBIO'S MARKET PRESENCE - CREATE AND SUCCESSFULLY  
 IMPLEMENT A STRATEGIC DEVELOPMENT PLAN.  
  
 4. DEVELOP AND ENHANCE THE "RUBIO'S CULTURE" AND OUR SHARED  
 VALUES.  
  
 5. DEVELOP, COMMUNICATE AND EXCEED FINANCIAL OBJECTIVES.  
  
  
 RUBIO'S SHARED VALUES  
  
  
 O FAMILY  
  
 O GUEST FOCUS  
  
 O EMPLOYEE COMMITMENT  
  
 O INTEGRITY/TRUST  
  
 O TEAMWORK  
  
 O ACCOUNTABILITY  
  
 O GROWTH  
  
  
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2. AWARD OF FRANCHISE  
  
 2.1. AWARD. We're pleased to award you a Franchise to operate a  
single Rubio's Store at the Premises, and to use the Marks and the System in the  
operation of your Rubio's Store. You may not operate a Rubio's Store at any  
location other than the Premises and you may not relocate your Rubio's Store  
without our prior written consent, which we may withhold in the exercise of our  
reasonable business judgment and which will be conditioned on execution of a  
General Release by you and all guarantors of your obligations to us. If you  
request our consent to a relocation of your Rubio's Store, you must pay us a  
reasonable fee to reimburse us for all expenses incurred in connection with your  
relocation request.  
  
 You agree that you will at all times faithfully, honestly and  
diligently perform your obligations under this Agreement, and that you will  
continuously exert your best efforts to promote, enhance and maximize the  
business of your Rubio's Store and the goodwill of the Marks. You understand and  
agree that critical to the System and this Agreement, as well as your possible  
success, is full adherence by you to each element of the System. Accordingly,  
you will continuously comply with the following (and all other) elements of the  
System: (A) you'll use and sell only Products and Services, and only deal with  
Suppliers, approved by us; (B) you'll use only prescribed building and equipment  
layouts and designs; (C) you'll strictly adhere to our then-current standards of  
quality, service and cleanliness; (D) you'll maintain a close and personal  
working relationship with your Rubio's Store; and (E) you agree to be personally  
accountable for the performance of your obligations under this and all other  
agreements pertaining to your Rubio's Store.  
  
 You agree that it would be inappropriate for us to enter into this  
Agreement if there might be a possibility of your asserting claims against us  
and/or Rubio's Affiliates based on our prior relationship. Accordingly, you  
agree that you and all guarantors of your obligations to us will,  
contemporaneously with the execution of this Agreement, execute a General  
Release.  
  
 2.2. NO EXCLUSIVITY. The Franchise is a site/address specific (or  
"spot") franchise only, with you having no other rights. Except for those rights  
expressly awarded to you under an Area Development Agreement, you do not have,  
have not paid for, and have no expectation of receiving any benefits of, any  
"exclusive territory" or any "exclusive," "protected" or "reserved" territorial,  
similar or other rights, no such rights are awarded or will be inferred, and  
there will be no limitation of any type on our rights, or of anyone we  
designate, to locate and/or consent to the location of other Rubio's Stores, or  
other distribution facilities and/or channels of distribution of any type,  
whether or not using the System, the Marks and/or Trade Dress at any location,  
regardless of the distance from, impact on, or vicinity of, your Rubio's Store  
or the number of Rubio's Stores, other outlets or otherwise in any area or  
market.  
  
 We retain, without limitation of any kind or nature, all rights with  
respect to Rubio's Stores, the System, the Marks and Trade Dress, the sale of  
Products and any other products and services under any name, xxxx, trade dress  
or otherwise, anywhere in the world, including in proximity to your Rubio's  
Store. The rights we retain include: (A) the right to operate and/or license  
others to operate Rubio's Stores at any location other than the Premises during  
the term of this Agreement and at any location, including the Premises, after  
this Agreement terminates or expires; (B) the right to operate and/or license  
others to operate any other business at any location during and after the term  
of this Agreement; and (C) the right to merchandise and distribute goods and  
services identified by the Marks at any location through any other method or  
channel of distribution.  
  
 2.3. FORMS OF AGREEMENT. You acknowledge that, over time, we have  
entered, and will continue to enter, into agreements with other  
franchisees/licensee that may contain provisions, conditions and obligations  
that differ from those contained in this Agreement. The existence of different  
forms of agreement and the fact that we and other franchisees/licensees may have  
different rights and obligations does not affect the duties of the parties to  
this Agreement to comply with the terms of this Agreement.  
  
  
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3. TERM  
  
 3.1. INITIAL TERM. The Initial Term of this Agreement and the  
Franchise granted by this Agreement begins on the date of this Agreement and  
terminates at midnight on the day preceding the 10th anniversary of the date  
your Rubio's Store first opened for business, unless this Agreement is  
terminated at an earlier date pursuant to Section 16. Notwithstanding the  
foregoing, if this Agreement is awarded in connection with your acquisition of  
an existing franchised Rubio's Store, the Initial Term will expire on the date  
that the initial term of the prior would have expired. We  
shall complete and forward to you a notice, in the form of attached Rider A, to  
memorialize the date the your Rubio's Store first opened for business.  
  
 If, during the term of this Agreement, you, through no act or failure  
to act on your part (except the failure to extend the lease for the Premises  
through the Initial Term of this Agreement), lose the right to possession of the  
Premises, the Initial Term shall expire as of the date of the loss of the right  
to possession. However, if the right to possession is lost through no act or  
failure to act on your part, you may relocate the Rubio's Store (without paying  
any additional new store opening fee or transfer fee) at your expense and the  
Initial Term shall not expire if: (A) we consent to the new location in writing;  
(B) you construct and equip a Rubio's Store at the new location in accordance  
with the then-current System standards and specifications; (C) a Rubio's Store  
at the new location is open to the public for business within 6 months after the  
loss of possession of the Premises; and (D) you reimburse us for all reasonable  
expenses actually incurred by us in connection with the approval of the new  
location.  
  
 3.2. RENEWAL TERMS. At the expiration of the Initial Term, you  
shall have an option to remain a franchisee for a First Renewal Term of 10 years  
and, at the expiration of the First Renewal Term, a Second Renewal Term of, at  
your option, 5 or 10 years, unless this Agreement or a successor is terminated prior to its expiration. The conditions for renewal at  
the expiration of the Initial Term are set forth in this Section 3.2. Except as  
provided in Section 3.3., the conditions for renewal at the expiration of the  
First Renewal Term shall be set forth in the in effect at  
that time.  
  
 A. If you desire to extend the Franchise for the First  
Renewal Term, you must provide us written notice of your intent to do so at  
least 180 days, but not more than 270 days, before the Initial Term expires. (If  
you fail to timely provide us this notice, you will be deemed to have waived  
your option to extend the Franchise.)  
  
 B. If you desire to extend the Franchise for the First  
Renewal Term, you must comply with all of the following conditions prior to and  
at the end of the Initial Term:  
  
 (1) You shall not be in default under this  
Agreement or any other agreements between you and us or any Rubio's Affiliate;  
you shall not be in default beyond the applicable cure period under any real  
estate lease, equipment lease or financing instrument relating to your Rubio's  
Store; you shall not be in default beyond the applicable cure period with any  
vendor or supplier to your Rubio's Store; and, for the 12 months before the date  
of your notice and the 12 months before the expiration of the Initial Term, you  
shall not have been in default beyond the applicable cure period under this  
Agreement or any other agreements between you and us or any Rubio's Affiliate.  
  
 (2) You shall make the capital expenditures  
required to renovate and modernize your Rubio's Store to conform to the interior  
and exterior designs, decor, color schemes, furnishings and equipment and  
presentation of the Marks consistent with the image of the System for new  
Rubio's Stores at the time you provides us the renewal notice, including such  
structural changes, remodeling, redecoration and modifications to existing  
improvements as may be necessary to do so.  
  
 (3) You and your employees at your Rubio's Store  
shall be in compliance with our then-current training requirements.  
  
 (4) You shall have the right to remain in  
possession of the Premises, or another location approved in writing by us, for  
the First Renewal Term and all monetary obligations owed to your landlord, if  
any, must be current.  
  
  
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 (5) You and all guarantors of your obligations  
to us shall have executed a General Release.  
  
 (6) As determined by us, in the exercise of our  
reasonable business judgment, you have operated your Rubio's Store in accordance  
with this Agreement and the System.  
  
 C. Within 4 months after our receipt of the written  
notice of your desire to extend the Franchise for the First Renewal Term, we  
will advise you whether or not you may extend the Franchise for the First  
Renewal Term. If we are willing to let you extend the Franchise, the notice from  
us will contain preliminary information regarding actions you must take to  
satisfy Sections 3.2.B.(2) and (3). If not, the notice from us will specify the  
reasons for non-renewal. If we do not to permit you to extend the Franchise for  
the First Renewal Term, we shall have the right to unilaterally extend the  
Initial Term of this Agreement as necessary to comply with any applicable laws.  
  
 D. If the Franchise is extended for the First Renewal  
Term, we shall forward you a new for the First Renewal Term  
for your signature at least 2 months prior to the expiration of the Initial  
Term. The form of successor franchise agreement shall be the form then in  
general use by us for Rubio's Stores (or, if we are not then granting franchises  
for Rubio's Stores, that form of agreement as specified by us) and likely will  
differ from this Agreement, including, but not limited to, provisions relating  
to the royalty fee and Marketing Fund Contributions.  
  
 E. You shall execute the successor franchise agreement  
for the First Renewal Term and return the signed agreement to us at least one  
month prior to the expiration of the Initial Term. Your failure to sign the  
successor franchise agreement and return it to us within this time shall be  
deemed an election by you not to extend the Franchise and shall result in  
termination of this Agreement and the Franchise granted by this Agreement at the  
expiration of the Initial Term. Provided you have timely complied with all of  
the conditions set forth in this Section 3.2., we shall execute the successor  
franchise agreement and promptly return a fully-executed copy to you.  
  
 3.3. CONDITIONS TO THE SECOND RENEWAL TERM. In addition to the  
conditions on renewal that will be contained in the franchise agreement in  
effect for the First Renewal Term, the following conditions must be satisfied  
before the Second Renewal Term may begin: (A) you shall pay us a renewal fee in  
an amount equal to the greater of 50% of the New Store Opening Fee paid by you  
in connection with this Agreement or 50% of the new store opening fee we are  
charging to new franchisees at the expiration of the First Renewal Term (if the  
Second Renewal Term will be for 10 years), or the greater of 25% of the New  
Store Opening Fee paid by you in connection with this Agreement or 25% of the  
new store opening fee we are charging to new franchisees at the expiration of  
the First Renewal Term (if the Second Renewal Term will be for 5 years); and (B)  
if, in the exercise of our reasonable business judgment, we determine that the  
Premises no longer satisfies our criteria for a site for a Rubio's Store, we may  
require that you relocate your Rubio's Store to another location that satisfies  
our criteria, to which we have consented in writing, in the general trade area  
where the Premises are located.  
  
4. DEVELOPMENT AND OPENING OF YOUR RUBIO'S STORE  
  
 4.1. SITE CLEARANCE.  
  
 A. If the site for your Rubio's Store has not been  
identified and purchased (or leased) by you and consented to by us by the time  
you and we sign this Agreement, you must purchase or lease (and obtain  
possession of) a site suitable for the operation of your Rubio's Store and  
obtain our written consent to the site within 60 days after the date of this  
Agreement. You won't make any commitments with respect to any location, or  
operate a Rubio's Store and/or use any of the Marks from or at any location,  
until and unless we've consented to the location. If you are unable to purchase  
or lease an acceptable site within such period, we may (but have no obligation  
to), at any time thereafter, terminate our obligations and your rights under  
this Agreement, provided we refund to you the lesser of: (A) 50% of the New  
Store Opening Fee paid to us pursuant to this Agreement; or (B) the New Store  
Opening Fee less all expenses (including legal fees, commissions, training  
costs, etc.) incurred in connection with such franchising and termination; and  
you will concurrently execute documents acceptable to us, providing for:  
  
  
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(1) continuation of your indemnification, confidentiality and noncompetition  
obligations and the dispute resolution provisions of this Agreement, including  
those of Sections 15, 19.5. and 21 and (2) a General Release.  
  
 B. For each proposed site for your Rubio's Store, you  
shall, if requested by us, submit a complete real estate package (containing  
that information as we may reasonably require) for a proposed site which you  
reasonably believe conforms to site selection criteria we establish from time to  
time for demographic characteristics, traffic patterns, parking, character of  
the neighborhood, competition from other businesses in the area, the proximity  
to other businesses (including other Rubio's Stores), the nature of other  
businesses in proximity to the site and other commercial characteristics  
(including the purchase price, rental obligations and other lease terms for the  
proposed site) and the size, appearance, other physical characteristics, and a  
site plan of the premises.  
  
 You acknowledge and agree that, in order to enhance the reputation and  
goodwill of all Rubio's Stores and the goodwill of the Marks, your Rubio's Store  
must be properly developed, operated and maintained. Accordingly, you agree that  
we may refuse to consent to a site for your Rubio's Store unless you demonstrate  
sufficient financial capabilities, in our sole judgment, applying standards  
consistent with criteria we use to establish franchised Rubio's Stores in other  
comparable market areas, to properly develop, operate and maintain the proposed  
Rubio's Store. To this end, you shall furnish us with such financial statements  
and other information regarding you and the development and operation of the  
proposed Rubio's Store, including, without limitation, investment and financing  
plans for the proposed Rubio's Store, as we reasonably may require.  
  
 C. Within 30 days after our receipt of the information  
described in Section 4.1.B., we shall advise you in writing whether we have  
consented to a particular site. If we do not respond to a completed real estate  
package within 30 days, we shall be deemed to have not consented to that site.  
Our consent may be subject to reasonable conditions as determined by us in the  
exercise of our reasonable business judgment. You may not begin construction of  
a Rubio's Store at a particular site until we have consented to the site in  
writing. Our consent to one or more sites is not a representation or a promise  
by us that a Rubio's Store at such a site will achieve a certain sales volume or  
a certain level of profitability. Similarly, our consent to one or more sites  
and our refusal to consent to other sites is not a representation or a promise  
that a site to which we have consented will have a higher sales volume or be  
more profitable than a site to which we did not consent. We assume no liability  
or responsibility for: (1) evaluation of a site's soil for hazardous substances;  
(2) inspection of any structure on a site for asbestos or other toxic or  
hazardous materials; (3) compliance with the Americans With Disabilities Act  
("ADA"); or (4) compliance with any other applicable law. It is your sole  
responsibility to obtain satisfactory evidence and/or assurances that a site  
(and any structures thereon) is free from environmental contamination and in  
compliance with the requirements of the ADA.  
  
 4.2. LEASE OF PREMISES. If you propose to lease or sublease the  
Premises, you shall provide us with a copy of the fully-executed lease or  
sublease (for a term, including renewal terms, for at least the Initial Term of  
this Agreement) for the Premises within 5 days after the later of execution of  
this Agreement or written consent to the Premises by us. The lease or sublease  
shall not contain any covenants or other obligations that would prevent you from  
performing your obligations under this Agreement. Unless waived by us in  
writing, any lease or sublease for the Premises shall contain provisions that  
satisfy the following requirements during the entire term of the lease,  
including any renewal terms:  
  
 A. The landlord consents to your use of the proprietary  
signs, distinctive exterior and interior designs and layouts, and the Marks  
prescribed by us, and upon expiration or the earlier termination of the lease,  
consents to permit you, at your expense, to remove all such items and other  
trade fixtures, so long as you make repairs to the building caused by such  
removal.  
  
 B. The landlord agrees to provide us (at the same time  
sent to you) a copy of all amendments and assignments and notices of default  
pertaining to the lease and the leased premises.  
  
 C. We shall have the right to enter the leased premises  
to make any modifications or alterations necessary to protect the System and the  
Marks and to cure, within the time periods provided by the lease, any default  
under the lease, all without being guilty of trespass or other tort, and to  
charge you for these costs.  
  
  
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 D. The landlord agrees that you shall be solely  
responsible for all obligations, debts and payments under the lease.  
  
 E. The landlord agrees that, following the termination  
or earlier expiration of this Agreement, you shall have the right to make those  
alterations and modifications to the Premises as may be necessary to clearly  
distinguish to the public the Premises from a Rubio's Store and also make those  
specific additional changes as we reasonably may request for that purpose. The  
landlord also agrees that, if you fail to promptly make these alterations and  
modifications, we shall have the right to do so without being guilty of trespass  
or other tort so long as we make repairs to the building caused by such removal.  
  
 F. The landlord agrees not to amend or otherwise modify  
the lease in any manner that would affect any of the foregoing requirements  
without our prior written consent, which consent shall not be unreasonably  
withheld.  
  
 G. The landlord consents to your assignment of the lease  
to us or our designee without payment of any assignment fee or similar charge or  
increase in any rentals payable to the landlord.  
  
 If these provisions are not in your lease or sublease, we may, at our  
option, either require that you immediately cause such provisions to be added or  
terminate this Agreement following written notice to you.  
  
 4.3. FRANCHISEE'S RESPONSIBILITY. You assume all cost, liability  
and expense for developing, constructing and equipping your Rubio's Store in  
accordance with the requirements of this Agreement and the System. It also shall  
be your responsibility to have prepared all required construction plans and  
specifications to suit the shape and dimensions of the Premises and you must  
ensure that these plans and specifications comply with applicable ordinances,  
building codes and permit requirements and with lease requirements and  
restrictions. You shall use only registered architects, registered engineers,  
and professional and licensed contractors. We do not warrant or guarantee to you  
in any way that any contractor (even one referred to you by us) is suitable,  
competent, reliable or otherwise able to perform adequately the tasks for which  
they are hired and you're the only person/entity with any responsibility for the  
work of any contractor selected and/or employed by you. We're unable to provide  
any assurance as to costs of construction or otherwise, or as to when you may be  
open for business, since such matters are not within our control.  
  
 4.4. RUBIO'S STORE DESIGN STANDARDS. We'll furnish you with (and  
may update from time to time) standards, specifications and other requirements  
for design, decoration, layout, equipment, furniture, fixtures, signs and other  
items for Rubio's Stores ("Rubio's Store Design Standards"), with which you'll  
promptly comply. You agree that the Rubio's Store Design Standards are an  
integral part of the System and that your Rubio's Store will be developed,  
constructed, designed and operated in full compliance with the latest Rubio's  
Store Design Standards at all times.  
  
 4.5. DEVELOPMENT SCHEDULE FOR YOUR RUBIO'S STORE. Within 180 days  
after the last to occur of the date of this Agreement or the date we consent in  
writing to a site, you must: (A) secure all financing required to fully develop  
your Rubio's Store; (B) submit to us for consent any proposed modifications to  
the Rubio's Store Design Standards to comply with applicable ordinances,  
building codes, permit requirements, lease requirements and restrictions (any  
modifications will be at your expense); (C) obtain all required zoning changes,  
building, utility, sign, health, sanitation and business permits and licenses  
and any other required permits and licenses; (D) construct all required  
improvements in compliance with construction plans and specifications supplied  
or consented to by us; (E) decorate your Rubio's Store in compliance with plans  
and specifications consented to by us; (F) purchase and install all required  
equipment, furniture, fixtures and signs (including the Designated Equipment and  
computer hardware and software); (G) purchase an opening inventory of the  
Products designated by us; (H) obtain all customary contractors' sworn  
statements and partial and final waivers of lien for construction, remodeling,  
decorating and installation services; and (I) open your Rubio's Store for  
business to the general public.  
  
 Within such periods you'll also select and employ a licensed contractor  
reasonably consented to by us and  
  
  
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you'll commence construction and/or development as soon as possible and will  
expeditiously attend to its completion, purchase and pay for all supplies;  
purchase, pay for and attend to the installation of all fixtures and equipment,  
train all employees, obtain all required insurance, permits and licenses and do  
everything necessary for your Rubio's Store to open for business.  
  
 4.6. EQUIPMENT, FURNITURE, FIXTURES AND SIGNS. You'll use in the  
development and operation of your Rubio's Store only those (and use each of  
those) brands, types and/or models of equipment, furniture, fixtures and signs  
as are consented to by us. You'll purchase or otherwise obtain approved brands,  
types and/or models of equipment, fixtures and signs only from suppliers  
designated by us, which may include and/or be limited to ourselves and/or our  
affiliates.  
  
 4.7. RUBIO'S STORE OPENING. You won't open your Rubio's Store for  
business until: (A) we notify you that all of your pre-opening obligations have  
been fulfilled; (B) pre-opening training of all of your personnel has been  
completed; (C) all amounts then due us have been paid; and (D) we've been  
furnished with copies of all insurance policies (or such other evidence of  
insurance coverage and payment of premiums as we request), leases/subleases and  
other documents as required by this Agreement. You'll comply with these  
conditions and be prepared to open your Rubio's Store for business within the  
periods of time specified by this Agreement and, in any case, you'll open your  
Rubio's Store for business and commence business pursuant to this Agreement  
within 5 days after we give notice to you stating that your Rubio's Store is  
ready for opening.  
  
 4.8. GRAND OPENING PROGRAM. You'll conduct a grand opening  
advertising and promotional program, meeting our specifications, for your  
Rubio's Store and will, within 28 days after its opening, spend no less than  
$3,500 on such advertising and promotion during that time. Such advertising and  
promotional program will only utilize marketing, advertising and public  
relations programs, formats, media and materials consented to by us. We'll  
furnish advice and guidance to you with respect to your grand opening  
advertising and promotional program. The monies you spend for grand opening  
advertising are in addition to the monies you are required to spend for local  
store marketing pursuant to Section 6.2.  
  
5. FEES  
  
 5.1. NEW STORE OPENING FEE. You'll pay us, on signing this  
Agreement, a New Store Opening Fee of $25,000. The New Store Opening Fee is  
fully earned by us on signing of this Agreement and is entirely nonrefundable  
(as are all amounts paid to us and/or any Rubio's Affiliate) except for possible  
partial or other refund as expressly provided in other provisions of this  
Agreement.  
  
 5.2. ROYALTY FEE. In addition to all other amounts to be paid by  
you to us, on a twice monthly basis, you'll pay us a nonrefundable and  
continuing royalty fee in an amount equal to 4% of the "Gross Volume" (as  
defined in Section 5.3.) of your Rubio's Store, for the right to use the System  
and the Marks at your Rubio's Store. We may, at any time after the 3rd  
anniversary of the date of this Agreement, increase the royalty fee to as much  
as 5% of Gross Volume for the remainder of the Initial Term if the form of  
franchise agreement then generally being offered to new Rubio's franchisees at  
the time of the proposed increase provides for a royalty fee greater than 4% of  
Gross Volume.  
  
 You must participate in our then-current electronic funds transfer  
program authorizing us to utilize a pre-authorized bank draft system on a twice  
monthly basis (or otherwise as we specify from time to time in the exercise of  
our reasonable business judgment). All royalty fees, Marketing Fund  
Contributions and other amounts due us for each period must be received by us or  
credited to our account by pre-authorized bank debit before 5:00 p.m. on the day  
after the end of each period (I.E., on the 16th for the period from the 1st  
through the 15th and on the 1st day of the following month for the period from  
the 16th through the end of the month), or at a later point in time specified by  
us from time to time. If you fail to timely make any payments or provide us with  
any reports, or fail to fully cooperate with any audit, we may thereafter  
specify periodic amounts for regular transfer to our (or a Rubio's Affiliate)  
account, based on past reports of sales by you and/or reasonable expectations of  
royalty fees, Marketing  
  
  
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Fund Contributions and other amounts to become due from you and, in any event,  
covering royalty fees and Marketing Fund Contributions. You will, of course,  
fully participate in our then-current electronic reporting system covering sales  
and other items.  
  
 5.3. DEFINITION OF "GROSS VOLUME." Gross Volume includes all  
revenues (except sales tax collected and paid when due to the appropriate taxing  
authority and actual customer refunds, adjustments and credits) which are, or  
could be, received by you: (A) by or with respect to your Rubio's Store; (B)  
which relate to the type of products, services or any other items which are or  
could be provided, sold, rented or otherwise distributed at, through or in  
association with a Rubio's Store; and/or (C) with respect to any products and  
services which are, or could be, provided, sold, or otherwise distributed in  
association with any use of the Marks or the System. You'll not divert any  
business or take any other actions (or fail to take any actions) which would  
have the effect of reducing the Gross Volume with respect to which royalty fees  
are payable and you will use your best efforts to maximize Gross Volume. All  
sales and/or xxxxxxxx, whether collected or not, will be included in Gross  
Volume, with no deduction for credit card or other charges.  
  
 5.4. INTEREST. All amounts you may owe us and/or any Rubio's  
Affiliate will bear interest at the highest applicable legal rate for open  
account business credit, but not to exceed 1.5% per month. This doesn't  
constitute our agreement to accept payments after they're due or any commitment  
to extend credit to, or otherwise finance your operation of, your Rubio's Store.  
If you fail to pay any amounts (including any electronic draft returns, returns  
for insufficient funds or otherwise), or fail to deliver any report when due,  
that failure can constitute grounds for termination of this Agreement, in spite  
of the provisions of this Section. Notwithstanding any provision in this  
Agreement to the contrary, in no event will any amounts be charged as late fees  
or otherwise which exceed or violate any applicable legal restrictions.  
  
 5.5. APPLICATION OF PAYMENTS. Notwithstanding any designation by  
you, we can apply any payments received from you, whether designated as payable  
to us, the Marketing Fund or otherwise, to any past due or other indebtedness of  
yours for royalty fees, Marketing Fund Contributions, purchases, interest or  
otherwise as we choose in the exercise of our reasonable business judgment. We  
can set off, from any amounts that may be owed to you, any amount that you owe  
to us. We can retain any amounts we have received for your account (whether  
rebates or other funds and whether paid by or due from suppliers or otherwise),  
as a credit and payment against any amounts that you owe or will owe to us or  
with respect to any Marketing Fund Contribution, without notice and at any time.  
We have the right to accept payment from any other person or entity as payment  
by you. Our acceptance of that payment will not result in that other person or  
entity being substituted for the named Franchisee.  
  
6. MARKETING  
  
 6.1. MARKETING FUND.  
  
 YOUR CONTRIBUTIONS. We've instituted an advertising, publicity and  
marketing fund ("Marketing Fund") for such advertising, advertising-related,  
marketing and/or public relations programs, services and/or materials as we, in  
the exercise of our reasonable business judgment, may deem necessary or  
appropriate to promote Rubio's Stores. You'll contribute to the Marketing Fund  
3% of Gross Volume; provided that we can, at any time, whether on a temporary,  
permanent, regional, national or any other basis, require you to pay a Marketing  
Fund Contribution of up to and including 5% of Gross Volume, but we will not  
increase your required contribution by more than one percentage point in any  
12-month period (E.G. an increase from a 3% level to a 4% level of Gross Volume  
in any 12-month period would be allowed) and we will provide you with at least  
90 days' prior notice of any such increase. Your Marketing Fund Contributions  
will be calculated and payable at the same time and in the same manner as  
royalty fees.  
  
 For management purposes, the Marketing Fund is divided into two  
subfunds: the "Production Fund" and the "Media Fund."  
  
  
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 PRODUCTION FUND. With respect to your Marketing Fund Contributions, no  
more than 1.5% of your Gross Volume will be paid into the Production Fund. (On a  
temporary, regional or any other basis, we can specify that less, but not more,  
than that amount will be paid into, and disbursed under, the Production Fund for  
any period.)  
  
 The Production Fund may be used to pay the costs of preparing,  
producing, distributing and using marketing, advertising and other materials,  
items and/or programs, including production of commercials, advertisements and  
other promotional and advertising materials, programs and/or items; development  
of creative concepts and related content; administering national, regional  
and/or local marketing programs, including, without limitation, employing  
advertising, public relations and other agencies and firms (such as consultants,  
lawyers and accountants, among others); supporting public relations, market  
and/or product research and related activities (including tests and surveys);  
providing advertising and marketing materials for use by Rubio's Stores; new  
product development, menu boards and other signage; and/or other purposes deemed  
beneficial for the general recognition of the Marks and/or the benefit of  
Rubio's operators generally, as well as any expenses associated with any  
Franchisee Advisory Council(s), if those Councils, and such expenses, are  
approved by us in the exercise of our reasonable business judgment. The  
Production Fund will, as available, furnish you with marketing, advertising and  
promotional formats and sample materials and may charge the direct cost of  
producing items supplied to you, plus shipping, handling and other related  
costs. In the exercise of our reasonable business judgment, we can reallocate  
amounts paid into the Production Fund to the Media Fund and spend those amounts  
for purposes authorized under the Media Fund.  
  
 MEDIA FUND. With respect to your Marketing Fund Contributions, any  
amounts not contributed to the Production Fund will be allocated to the Media  
Fund and spent on either: (A) national advertising media, "image advertising"  
(which may include advertising, public relations and/or otherwise) and/or other  
advertising media that the advertising industry generally regards as "national  
media" and/or its functional equivalent; and/or (B) local and/or regional  
advertising media, including media placement and/or other advertising-related  
programs/materials (and/or public relations programs/materials) reaching the  
Designated Market Area ("DMA") in which your Rubio's Store is located ("local  
media expenditures.") Such local media expenditures may be made directly by us,  
through a local cooperative or other association which we have approved, and/or  
directly by return to, and expenditure by, you, in each case under such  
procedures and conditions as we designate from time to time. In each case, all  
advertising and/or other marketing efforts are subject to our prior written  
approval, in the exercise of our reasonable business judgment.  
  
 GENERAL ADMINISTRATIVE PROVISIONS. Subject to the above express  
limitations, we'll have sole discretion over all matters relating to the  
Marketing Fund in any way, including (but not limited to) its management, all  
financial matters, expenditures, receipts and/or investments by the Marketing  
Fund, timing of expenditures, media placement and allocation thereof or  
otherwise.  
  
 You'll participate in all marketing programs instituted by the  
Marketing Fund or us but will retain full freedom to set your own prices, except  
that we may, to the greatest degree permitted by applicable law, specify maximum  
prices above which you will not sell or otherwise provide any goods or services  
and you will comply with all such maximum prices. We may, in the exercise of our  
reasonable business judgment, use the Marketing Fund to pay the costs of  
advertising, advertising-related, marketing and/or public relations programs,  
services and/or materials with respect to locations, programs or concepts where  
products and/or services offered under the Marks are to be offered in  
conjunction with products and/or services offered under other marks, including  
(but not limited to) any co-branding, dual franchising or other programs, and  
any other franchised or non-franchised alternative channel of distribution,  
whether controlled by us or not.  
  
 The Marketing Fund will be accounted for separately from our other  
funds (but may be commingled with our other funds) and will not be used to  
defray any of our general operating expenses, except for such salaries,  
administrative costs, overhead and other expenses as we may reasonably incur in  
activities related to the Marketing Fund and/or its programs (including, without  
limitation, conducting market research, preparing advertising and marketing  
materials, insurance, legal costs and collecting and accounting for the  
Marketing Fund, which will be paid out of the Production Fund). In any event, we  
may charge the Marketing Fund for attorneys' fees and other costs related in any  
way to our defense of any claims against us and/or any Rubio's Affiliate  
regarding the Marketing Fund  
  
  
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and/or with respect to collecting amounts due and/or expenditures by or from the  
Marketing Fund. We may, in the exercise of our reasonable business judgment,  
spend in any fiscal year an amount greater or less than the aggregate  
contributions to the Marketing Fund (and/or any sub-fund) in that year and the  
Marketing Fund (and/or any sub-fund) may borrow from us or other lenders to  
cover deficits or to invest any surplus for future use.  
  
 You authorize us to collect for remittance to the Marketing Fund (and  
allocation/disbursement as we deem appropriate in the exercise of our reasonable  
business judgment) any advertising or promotional monies or credits offered by  
any supplier based upon purchases by you or otherwise. A statement of monies  
collected and costs incurred by the Marketing Fund will be prepared annually by  
us and be furnished to you upon written request. We'll have the right to cause  
the Marketing Fund (and/or any sub-funds) to be incorporated or operated through  
an entity separate from us as we deem appropriate, and such successor entity  
will have all rights and duties of ours relating to the Marketing Fund. The  
Marketing Fund may be combined with any marketing fund otherwise established for  
Rubio's Stores and the funds merged for use in accordance with this Agreement.  
(A brief statement regarding the availability of information on the purchase of  
Rubio's franchises may be included in advertising and other items produced  
and/or distributed using the Marketing Fund.)  
  
 We can, in the exercise of our reasonable business judgment, arrange  
for services, goods and otherwise to be provided to the Marketing Fund by  
ourselves, any Rubio's Affiliate and our and/or their employees or agents,  
including persons/entities who may be owned, operated, controlled by, and/or  
affiliated with, us (such as an "in-house advertising agency") or which may be  
independent. We may use the Marketing Fund to compensate and reimburse any such  
persons/entities (including ourselves) as we deem appropriate in the exercise of  
our reasonable business judgment (including payment of commissions) and to  
compensate ourselves and/or others for administrative and other services,  
materials, etc. rendered to the Marketing Fund, provided that any compensation  
to us or any persons/entities owned, controlled and/or operated by us will not  
be unreasonable in amount.  
  
 We'll cause all Rubio's Stores owned by us to contribute to the  
Marketing Fund on the same basis as comparable franchisees. You understand that,  
due to differing forms of franchise agreements or otherwise, some Rubio's  
franchisees/licensees may have different Marketing Fund and/or other obligations  
than in this Agreement. The Marketing Fund Contribution any franchisee/licensee  
is required to pay may be decreased by us on a market-by-market, general,  
temporary, permanent or other basis as we believe necessary or desirable.  
  
 We may (but are not required to) remit a portion of Marketing Fund  
contributions back to a franchisee (or cooperative) on such terms and conditions  
as we determine in the exercise of our reasonable business judgment, including  
(but not limited to) reimbursement of local advertising expenditures made by a  
franchisee and we may waive and/or compromise claims for contributions to,  
and/or claims against or with respect to, the Marketing Fund in the exercise of  
our reasonable business judgment, using the Marketing Fund to pay any such  
claims and related legal and other costs. We'll have sole discretion as to  
whether or not we take legal or other action against any franchisee who is in  
default of his or her obligations with respect to the Marketing Fund (including  
obligations to make contributions) or otherwise and whether a franchisee may be  
allowed to make direct advertising expenditures in place of contributions to the  
Marketing Fund.  
  
 Except as expressly provided above with respect to the use of the Media  
Fund for local and/or regional advertising, we will have no obligation to ensure  
that expenditures by the Marketing Fund in or affecting any geographic area are  
or will be proportionate or equivalent to the contributions to the Marketing  
Fund by Rubio's Stores operating in that geographic area or that any Rubio's  
Store will benefit directly or in proportion to its contribution to the  
Marketing Fund or from the development of advertising and marketing materials  
and/or programs, the placement of advertising or otherwise. We have no  
obligation to cause other Rubio's Stores, licensees or outlets (some of which  
may be under different arrangements) to contribute to the Marketing Fund, any  
cooperative or engage in local marketing. You agree that we will not have any  
direct or indirect liability or obligation to you, the Marketing Fund or  
otherwise with respect to the management, maintenance, direction, administration  
or otherwise of the Marketing Fund. You agree that neither we nor any Rubio's  
Affiliate will be liable for any act or omission, whether with respect to the  
Marketing Fund or otherwise which is consistent with this Agreement or other  
information provided to you, or which is done in subjective good faith.  
  
  
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 You and we, each having a mutual interest in, and agreeing on the  
critical practical business importance of, your and our relationship being  
governed solely by written instruments signed by the parties to be bound (and  
not having either of us subject to the uncertainty and ambiguity inherent in the  
application of legal or other concepts not expressly agreed to in writing by you  
and us), agree that your and our rights and obligations with respect to the  
Marketing Fund and all related matters are governed solely by the express terms  
of this Agreement and that this Agreement (and all rights and obligations with  
respect to the Marketing Fund) is not in the nature of a "trust," "fiduciary  
relationship" or similar special arrangement (neither you nor we intending to  
create such relationships and expressly disavowing any such or similar  
relationships) and is only an ordinary commercial relationship between  
independent businesspersons for their independent economic benefit. We may  
maintain Marketing Fund assets in one or more accounts designated as "trust  
accounts" (or similarly designated), for purposes of protecting such assets from  
claims of third-party creditors or otherwise, but such designation and/or  
treatment will not operate to create any "trust," "fiduciary relationship" or  
similar special arrangement as to the Marketing Fund, its assets or otherwise.  
While we're not required to do so, if we submit any matters with regard to the  
Marketing Fund or otherwise for approval to any Franchisee Advisory Council and  
approval is granted by a majority of that council, the approval will be binding  
on you.  
  
 6.2. LOCAL STORE MARKETING. Prior to their use by you, samples of  
all advertising and promotional materials and programs (including any use of the  
Internet, World Wide Web or other electronic media) not prepared or previously  
approved by us must be submitted to us, in the form and manner prescribed by us  
from time to time, for our review and consent, which we may withhold or  
condition as we see fit in the exercise of our reasonable business judgment. If  
written disapproval is not received by you within 15 days from the date of  
receipt by us of such materials, we will be deemed to have given the required  
consent, but we can later retract any consent (whether express or as a result of  
such failure to respond) by notice to you. Our review of and consent to your  
local store marketing materials is not a representation or a promise that those  
materials (utilized in the media you propose) will have a positive effect on the  
sales at your Rubio's Store. Our consent only indicates that the materials  
properly use the Marks in a manner consistent with our overall marketing plan.  
  
 You won't use any advertising or promotional materials or programs that  
we have disapproved or that do not include the copyright, trademark and other  
notices required by us. In no event shall your advertising contain any statement  
or material which, in the exercise of our reasonable business judgment, may be  
considered: (A) in bad taste or offensive to the public or to any group of  
persons; (B) defamatory of any person or an attack on any competitor; (C) to  
infringe upon the use, without permission, of any other persons' trade name,  
trademark, service xxxx or identification; or (D) inconsistent with our public  
image or the public image of the System. We can require that a brief statement  
regarding the purchase of Rubio's franchises may be included in all advertising  
used by you and that a brochure regarding purchase of Rubio's franchises be  
placed in a prominent location in your Rubio's Store.  
  
7. STORE RECORDS AND REPORTING  
  
 7.1. BOOKKEEPING AND ACCOUNTING. You'll establish and maintain at  
your own expense a bookkeeping, accounting, recordkeeping and records retention  
system conforming to requirements prescribed by us from time to time (including,  
without limitation, requirements for timely entering of information into  
databases of a computer program designated by us and periodic printouts of  
reports generated by such computer program).  
  
 Each transaction related to your Rubio's Store will be processed on a  
computer system as prescribed by us. You will use (and only use) the cash  
register, computer and other systems (including hardware and software) as  
designated by us from time to time in the exercise of our reasonable business  
judgment. We may, from time to time in the exercise of our reasonable business  
judgment, designate different cash register, computer and other systems for use  
in your Rubio's Store and may modify such systems, and/or may require you to  
obtain management information and similar services from one or more suppliers  
designated by us (which may include us and/or affiliates of ours), each of which  
you'll promptly and fully comply with at your sole expense.  
  
  
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 As directed by us, you will participate in our electronic reporting  
system covering sales and other items, with direct interconnection to (and full,  
on-line access by) our computer hardware and software systems. You will  
continuously use, maintain and update electronic cash register, computer and  
other systems (including point-of-sale, back-office and other systems) and  
software programs which meet such specifications as we designate, from time to  
time in the exercise of our reasonable business judgment, and which, in some  
cases, may include components only available from us, our affiliates and/or  
suppliers designated by us. You will maintain your systems on-line to provide  
full access for computer systems used by us and you will promptly update and  
otherwise change your electronic cash register, computer hardware and software  
systems as we require from time to time in the exercise of our reasonable  
business judgment, at your sole expense. We reserve the right to have full  
access to such electronic cash register, computer and other systems and the  
sales information and data contained therein and to retrieve, analyze, download  
and use the software and all data contained therein (as well as any other  
information reported to us) at any time. You will promptly and fully pay all  
amounts charged by any supplier or licensor of the systems and programs used by  
you, including charges for use, maintenance, support and/or update of these  
systems or programs.  
  
 We may require you to obtain specified computer hardware and/or  
software, including, without limitation, a license to use proprietary software  
developed by us or others. Modification of specifications for the components of  
the cash register, computer and other systems may require you to incur costs to  
purchase, lease and/or license new or modified computer hardware and/or software  
and to obtain service and support for the cash register, computer and other  
systems during the term of this Agreement. We cannot estimate the future costs  
of the cash register, computer and other systems (or additions, modifications,  
maintenance or support) and your related costs may not be fully amortizable over  
the remaining term of this Agreement. You agree to pay all costs in connection  
with obtaining, maintaining, upgrading, etc. the computer hardware and software  
comprising the cash register, computer and other systems (and additions,  
modifications, maintenance or support), including (but not limited to) the  
services of any "help desk" or other support function, whether provided by us  
and/or anyone else. Within 60 days after you receive notice from us, you will  
obtain, install and thereafter use the components of the cash register, computer  
and other systems that we designate from time to time. We have the right to  
charge a reasonable fee for the license, modification, maintenance or support of  
proprietary software that we may license to you and other goods and services  
that we or any affiliates furnish to you related to the cash register, computer  
and other systems.  
  
 7.2. REPORTS. You will provide to us such information regarding the  
operation of your Rubio's Store, and in such form and format, as we specify from  
time to time, including by faxed or mailed copies of reports or documents,  
including through full, direct, on-line access to your cash register, computer  
and other systems, or otherwise as we designate.  
  
 Our current information requirements (which we may expand or otherwise  
change from time to time) are as follows:  
  
 A. daily forwarding (by hard copy, electronically or  
otherwise as we designate) to us of any information from your cash register  
and/or other computer systems;  
  
 B. within 24 hours after the end of each week (currently  
ending on Sunday) a report of Gross Volume by hard copy, electronically or  
otherwise as we designate;  
  
 C. within 30 days after the end of each fiscal quarter,  
a period and year-to-date profit and loss statement and a balance sheet for your  
Rubio's Store, prepared, verified and signed by you;  
  
 D. within 45 days after the end of each of your fiscal  
years, an unaudited fiscal year-end balance sheet, income statement reflecting  
all year-end adjustments and statement of changes in financial position, in each  
case for your Rubio's Store, prepared in accordance with generally accepted  
accounting principles consistently applied, and verified and signed by you. (We  
reserve the right to require you, at your own expense, to have audited annual  
financial statements prepared by a certified public accountant on an annual  
basis and presented to us with such account's report);  
  
  
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 E. on request by us, such other data, information and  
supporting records for such periods as we from time to time require, including  
period financial statements, sales tax returns and state and federal income tax  
returns. Each report and financial statement submitted by you to us will be  
verified as correct and signed by you personally if a sole proprietorship, by a  
general partner if a partnership, or by an executive officer if a corporation or  
a limited liability company.  
  
 You'll maintain and furnish to us, on request, complete copies of: (1)  
all records of or relating to your Rubio's Store; and (2) all income, sales and  
other tax returns filed by you reflecting activities of your Rubio's Store for  
the most recently completed fiscal years, you hereby waiving any privileges with  
regard to any records and/or tax returns.  
  
 7.3. AUDIT AND INSPECTION. We and/or our designees will have the  
right at any time during business hours, and without prior notice to you, to  
inspect and/or audit the properties, assets, premises, business records,  
bookkeeping and accounting records, sales and income tax records and returns  
(you waiving all privileges with respect thereto), cash register tapes,  
invoices, payroll records, check stubs and bank deposit receipts, computer files  
and other records of, and/or relating in any way to, your Rubio's Store and the  
books and records of any person(s), corporation or partnership which holds, or  
does business with, the Franchise. You'll fully cooperate with our  
representatives and independent accountants/attorneys hired by us to conduct any  
such inspection or audit. Our right to audit includes the right to access all  
cash registers, computers and other equipment by electronic means.  
  
 If any inspection or audit discloses an understatement of Gross Volume,  
you will pay to us, within 5 days after receipt of the inspection or audit  
report, the royalty fees and Marketing Fund Contributions due on the amount of  
such understatement, plus interest (at the rate and on the terms provided  
herein) from the date originally due until the date of payment. If any  
inspection or audit is made necessary by your failure to furnish reports,  
supporting records, other information or financial statements, or to furnish  
reports, records, information or financial statements on a timely basis, or if  
an understatement of Gross Volume for any period is determined by any audit or  
inspection to be greater than 2%, you will reimburse us for the cost of the  
inspection or audit, including, without limitation, the charges of any  
independent accountants, and the travel expenses, room and board and applicable  
per diem charges for our and their employees. Should any audit reveal an  
intentional understatement of Gross Volume for any period in any amount, or an  
understatement (whether intentional or not) of Gross Volume for any period to be  
greater than 5%, or any other violation of this Agreement, we may terminate all  
of your rights, and our obligations, hereunder, in addition to exercising any  
other remedies we may have. These remedies are in addition to all other remedies  
and rights of ours hereunder or under applicable law, including termination.  
  
8. COMPUTER HARDWARE AND SOFTWARE SYSTEMS  
  
 8.1. USE AND MAINTENANCE. Since the effective and efficient  
operation of a Rubio's Store is closely connected with the use and maintenance  
of appropriate computer hardware and software systems as specified by us, with  
direct interconnection to (and access by) our computer hardware and software  
systems, you must purchase, use, maintain and update computer and other systems  
(including point-of-sale, back-office and other systems) and software programs  
which meet our specifications as they evolve over time and which, in some cases,  
may only be available through us and/or Rubio's Affiliates. You must maintain  
your systems on-line to provide full access for computer systems used by us and  
you must promptly update and otherwise change your computer hardware and  
software systems as we require from time to time, at your expense. You'll pay  
all amounts charged by any supplier or licensor (which may be us or a Rubio's  
Affiliate) of the systems and programs used by you, including charges for use,  
maintenance, support and/or update of these systems or programs.  
  
 Neither we nor any supplier designated by us or otherwise will have any  
liability and/or obligation (and neither you, nor any Affiliate of yours, will  
make any claims) with respect to, any failures, errors or otherwise, of or by  
(and/or any loss, damage, liability, expense or otherwise caused by or related  
to) any computer systems, software, hardware or otherwise, whether or not  
provided and/or specified by us, any Rubio's Affiliate and/or any supplier.  
  
 8.2. RUBIO'S RESTAURANT INFORMATION SYSTEM HELP DESK FEE. On  
signing this Agreement, and by January 2 of each year during its term, you will  
pay us a non-refundable Rubio's Restaurant Information System  
  
  
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("RRIS") Help Desk Fee, pro-rated for any period of less than 12 months, to  
compensate us for access to our RRIS Help Desk. As of the date of this  
Agreement, the annual RRIS Help Desk Fee is $1,800. We may adjust this fee on an  
annual basis to cover the RRIS Help Desk costs we expect to incur in that year.  
This fee entitles you to 24 hour per day/7 days per week support for the RRIS,  
which currently includes software for a POS system, Back Office System,  
Communications/Polling, and Decision Support tools, but may be changed by us  
(including deletion/addition/modification of features, benefits or otherwise) in  
the future in the exercise of our reasonable business judgment. Hardware costs  
and all software/hardware maintenance fees and costs are in addition to this fee  
and will be your sole responsibility. If, in our reasonable judgment, the  
support required by you is beyond that appropriate for such fee, we may  
terminate all such support (and such fee) and/or increase this fee to a level  
reasonably appropriate to the service and benefits to be provided.  
  
9. MODIFICATIONS OF THE SYSTEM  
  
 9.1. We shall be entitled from time to time, in the exercise of our  
reasonable business judgment, to change or modify the System, including  
modifications to the Manuals, the menu and menu formats, the Designated  
Equipment, the signage, the building and exterior areas of your Rubio's Store  
(including the Trade Dress, decor and color schemes), the presentation of the  
Marks, the adoption of new administrative forms and methods of reporting and of  
payment of any monies owed to us and the adoption and use of new or modified  
Marks or copyrighted materials. You shall accept and use or display in your  
Rubio's Store any such changes or modifications in the System as if they were a  
part of the System at the time this Agreement was executed, and you will make  
such expenditures as the changes or modifications in the System may reasonably  
require.  
  
 9.2. Within 30 days after receipt of written notice from us, you  
shall begin selling any newly authorized menu items and cease selling any menu  
items that are no longer authorized. All food, beverage and merchandise items  
authorized for sale at your Rubio's Store shall be offered for sale under the  
specific name designated by us. If you have a suggestion for a new menu item or  
for a change to an authorized menu item or you desire to participate in a test  
market program, you must provide us written notice, and obtain our written  
consent, prior to implementation. You shall purchase any additional equipment  
and smallwares as we deem reasonably necessary in connection with new menu  
items. If we require you to begin offering a new menu item which requires the  
purchase of additional equipment, a reasonable period of time, as determined in  
the exercise of our reasonable business judgment, shall be provided for the  
financing, purchase and installation of any such equipment before such new menu  
items must be offered for sale at your Rubio's Store.  
  
 9.3. Extensive structural changes, major remodeling and renovations  
and substantial modifications to existing equipment and improvements to  
modernize and conform your Rubio's Store to the image of the System for new  
franchised and company restaurants shall be required at our request (but not  
more often than every 5 years). Capital expenses necessary for the repair and  
maintenance of your Rubio's Store are not subject to the time limitations  
described in the preceding sentence. Within 60 days after your receipt of our  
written notice regarding the required modernization, you shall prepare and  
complete drawings and plans for the required modernization. These drawings and  
plans must be submitted to, and their use approved by, us prior to the  
commencement of work. You shall complete the required modernization within the  
time reasonably specified by us in our written notice.  
  
 9.4. We shall have the right, in the exercise of our reasonable  
business judgment, to waive, defer or permit variations from the standards of  
the System or the applicable agreement to any franchisee or prospective  
franchisee based on the peculiarities of a particular site, existing building  
configuration or circumstance, density of population, business potential, trade  
area population or any other condition or circumstances. We shall have the  
right, in the exercise of our reasonable business judgment, to deny any such  
request we believe would not be in the best interests of the System.  
  
 9.5. If you develop any new concepts, processes or improvements  
relating to the System, whether or not pursuant to an test we authorize, you  
promptly shall notify us and provide us with all information regarding the new  
concept, process or improvement, all of which shall become our property and  
which may be incorporated into the System without any payment to you. You, at  
your expense, promptly shall take all actions deemed necessary or desirable by  
us to vest in us ownership of such concepts, processes or improvements.  
  
  
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10. TRAINING AND GUIDANCE  
  
 10.1. TRAINING. We'll furnish to you (or a managing partner or owner  
of yours consented to by us), and the initial Rubio's Store manager appointed by  
you in accordance with this Agreement, an initial training program covering the  
operation of a Rubio's Store. We'll furnish the initial training program at a  
time and place, and for such period, as we designate in the exercise of our  
reasonable business judgment (we're currently requiring approximately 25 days of  
pre-opening training.) If you've been previously trained or if an Affiliate of  
yours is an operator of a Rubio's Store in Good Standing, we may elect to not  
provide training or may provide a revised/shortened training program. You (or a  
managing partner or owner of yours consented to by us) and/or the initial  
Rubio's Store manager appointed by you must each attend and complete such  
training program to our satisfaction (in the exercise of our reasonable business  
judgment) before beginning operation of your Rubio's Store. Each manager of your  
Rubio's Store must have successfully completed all training required by us. We  
may charge a reasonable fee for training of subsequent managers. We can require  
successful completion of training by all of your supervisory personnel and we'll  
furnish such training program at reasonable charges and at such times and places  
as we designate.  
  
 If Franchisee is a business entity, Franchisee's chief executive  
officer, operating partner or similar individual must successfully complete such  
portion of the initial training (and any subsequent refresher or other training)  
as we designate from time to time. (We currently require a minimum of 5 days  
training for such individual.)  
  
 If we, in the exercise of our reasonable business judgment, determine  
that you (or a managing partner or owner of yours consented to by us) have not  
successfully completed (or are not making satisfactory progress in) the initial  
training, we may cancel all of your rights (and all of our obligations) under  
this Agreement and/or any other agreements with you and return the New Store  
Opening Fee (less $12,500 to cover our sales, training and other expenses, among  
other things) to you, and you will return all Manuals and you (and each  
Affiliate of yours) will execute documentation providing for a General Release,  
and we will provide you with a similar release, except that your indemnity,  
noncompetition and confidentiality obligations, and the dispute resolution  
provisions of this Agreement, including those of Sections 15, 19.5. and 21, will  
continue in force and effect. Since the possibility of such termination exists,  
you understand that if you make any investments or sign any documents prior to  
completion of training, you are at risk. Alternatively, we can (in the exercise  
of our reasonable business judgment) require you to hire a substitute manager  
and arrange for him/her to complete the training program to our satisfaction.  
  
 If, whether as a result of observations, test results or otherwise  
during the initial training or thereafter (including during operation of your  
Rubio's Store) we determine, in the exercise of our reasonable business  
judgment, that it's appropriate, we can require that you (or a managing partner  
or owner of yours consented to by us) and/or a manager appointed by you, at your  
sole cost, re-attend and successfully complete training.  
  
 You (or a managing partner or owner of your consented to by us) and  
your supervisory personnel must attend additional and/or refresher training  
programs (if we designate them as mandatory) conducted at location(s) specified  
by us, including national and regional conferences, conventions and meetings,  
and your other employees may be required to attend mandatory training programs  
presented by us at your Rubio's Store. You and your managers and employees may  
attend any additional training programs offered by us from time to time which we  
designate as optional. We may charge a fee for any optional training programs.  
You'll be responsible for all travel, living, incidental and other expenses and  
compensation of you and your personnel attending any training program.  
  
 10.2. ANNUAL IN-PERSON REVIEW. Once each year, at a time designated  
by us, you and your director of operations/manager will, at your expense, meet  
with our representatives at our headquarters or another location designated by  
us for the purpose of discussing and reviewing your Rubio's Store's operations,  
status, financial performance and other matters.  
  
 10.3. OUR INSPECTIONS. We and/or our agents will have the right, at  
any time during business hours, and without prior notice to you, to: (A) inspect  
the Premises, the Designated Equipment and other equipment, furniture, fixtures,  
signs, operating materials and supplies; (B) observe, photograph and video tape  
(or otherwise record) the operations of your Rubio's Store for such periods as  
we deem necessary or advisable; (C) remove samples of any  
  
  
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items for testing and analysis without paying for the samples; (D) interview  
personnel of your Rubio's Store; (E) interview customers of your Rubio's Store;  
(F) inspect, and/or conduct, supervise or observe a physical count of, the  
inventory and assets of your Rubio's Store; and (G) inspect and copy any books,  
records, documents or otherwise relating to your Rubio's Store. You'll cooperate  
fully with us in connection with such matters. You'll present to your customers  
such evaluation forms as are periodically prescribed by us and will participate  
and/or request your customers to participate in any surveys performed by or on  
behalf of us.  
  
 10.4. GUIDANCE AND ASSISTANCE. We'll furnish guidance to you with  
respect to: (A) specifications, standards and operating procedures utilized by  
Rubio's Stores, including any modifications; (B) purchasing approved equipment,  
fixtures, signs, inventory, operating materials and supplies; (C) developing and  
implementing local advertising and promotional programs; (D) administrative,  
bookkeeping, accounting, inventory control and general operating and management  
procedures; and (E) establishing and conducting employee training programs at  
your Rubio's Store. This guidance can, in the exercise of our reasonable  
business judgment, be furnished in the Manuals, bulletins, written reports and  
recommendations, other written materials, refresher training programs and/or  
telephonic consultations or consultations at our offices or at your Rubio's  
Store. You'll follow and comply with this guidance.  
  
 10.5. MANUALS. During the term of the Franchise, we will loan you  
(or allow you electronic or other access to) one copy of the Manuals, containing  
mandatory and suggested specifications, standards and operating procedures  
prescribed from time to time by us for a Rubio's Store and information relative  
to your obligations under this Agreement. We can, in the exercise of our  
reasonable business judgment, modify any aspect of the Manuals, or  
specifications, standards, policies and procedures of Rubio's Stores, to, among  
other things, specify brands, types and/or models of equipment which must be  
used by you in the operation of your Rubio's Store, to specify changes in the  
Products and Services used and/or offered by you, and/or to specify changes in  
the decor, format, image, products, services, operations or otherwise of a  
Rubio's Store.  
  
 You'll promptly and continuously comply, at your sole expense, with all  
provisions of, and additions/deletions/changes to, the Manuals. You have no  
expectation that the Manuals will not be changed over time and you and we, in  
fact, anticipate that such changes will take place, in response to competitive  
challenges, commercial opportunities and otherwise. You'll keep your copy of the  
Manuals current by immediately inserting all modified pages and (at our option)  
destroying or returning to us all superseded material. Any such  
additions/deletions/changes will take precedence over all prior communications  
and in the event of a dispute, the master Manuals maintained at our office shall  
control. The provisions of the Manuals as modified from time to time by us and  
communicated to you constitute provisions of this Agreement and are binding upon  
you. The Manuals contain proprietary information of ours and you agree to keep  
the Manuals and information contained therein confidential at all times during  
and after the term of this Agreement.  
  
11. YOUR RUBIO'S STORE -- IMAGE AND OPERATION  
  
 Products sold and Services performed under the Marks have a reputation  
for quality. This reputation has been developed and maintained by us, and it is  
of the utmost importance to you, us and all other of our franchisees/licensees  
that this reputation be maintained. In recognition of the mutual benefits that  
come from maintaining the reputation for quality enjoyed by the System, you  
covenant and agree, with respect to the operation of your Rubio's Store and the  
Products and Services provided in connection with your Rubio's Store, that you  
and your employees shall comply with all of the requirements of the System as  
set forth in the Manuals or otherwise, and you additionally shall comply with  
the following:  
  
 11.1. UPKEEP OF YOUR RUBIO'S STORE. You shall constantly maintain  
and continuously operate your Rubio's Store and all furniture, fixtures,  
equipment, furnishings, floor coverings, interior and exterior signage, the  
building interior and exterior, interior and exterior lighting, landscaping and  
parking lot surfaces in first-class condition and repair in accordance with the  
requirements of the System, including all ongoing necessary remodeling,  
redecorating, refurbishing and repairs. In addition, you shall promptly and  
diligently perform all necessary maintenance, repairs and replacements to your  
Rubio's Store as we may prescribe from time to time including  
  
  
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periodic interior and exterior painting; resurfacing of the parking lot; roof  
repairs; and replacement of obsolete or worn out signage, floor coverings,  
furnishings, equipment and decor.  
  
 You shall not make any material alterations to your Rubio's Store that  
affect operations or the image of the System without our prior written approval.  
You acknowledge and agree that the requirements of this Section are both  
reasonable and necessary to ensure continued public acceptance and patronage of  
Rubio's Stores, to assist your Rubio's Store to compete effectively in the  
marketplace and to avoid deterioration of your Rubio's Store.  
  
 11.2. MAXIMUM OPERATION OF YOUR RUBIO'S STORE. During the term of  
this Agreement, you shall use the Premises solely for the operation of your  
Rubio's Store and you shall maintain sufficient inventories, adequately staff  
each shift with qualified employees and continuously operate your Rubio's Store  
at its maximum capacity and efficiency for the minimum number of days and hours  
set forth in the Manuals (subject to the requirements of local laws and  
licensing requirements). You shall immediately resolve any customer complaints  
regarding the quality of food or beverages, service and/or cleanliness of your  
Rubio's Store or any similar complaints. When any customer complaints cannot be  
immediately resolved, you shall use best efforts to resolve the customer  
complaints as soon as practical and shall, whenever feasible, give the customer  
the benefit of the doubt.  
  
 11.3. DESIGNATED EQUIPMENT, PRODUCTS AND/OR SUPPLIERS. We've already  
specified, and plan to specify in the future, various suppliers of Designated  
Equipment, Products and/or Services to be used or provided by Rubio's Stores and  
that meet our standards and requirements, in each case in the exercise of our  
reasonable business judgment. Your Rubio's Store will purchase, use and offer  
each of, and only, such types, brands and/or quality of Designated Equipment,  
menu items, and other Products and Services as we designate and, where we so  
require, use only suppliers as designated by us. Designated suppliers may  
include, and may be limited to, us and/or companies affiliated with us. We may  
designate a single supplier or limited number of suppliers, may designate a  
supplier only as to certain items and may concentrate purchases with one or more  
suppliers to obtain lower prices, advertising support and/or other benefits in  
the exercise of our reasonable business judgment. Specification of a supplier  
may be conditioned on requirements relating to frequency of delivery, standards  
of service, including prompt attention to complaints, as well as payments,  
contributions or other consideration to us, Rubio's Affiliates, the Marketing  
Fund and/or otherwise, or other criteria, and may be temporary, pending a  
further evaluation of such supplier by us, in each case in the exercise of our  
reasonable business judgment.  
  
 In particular, and without limiting the foregoing, all beverages, food  
products and paper goods served, and/or used, in or from your Rubio's Store, all  
suppliers thereof, and all menu items (including the specific recipes for these  
items) must be only those approved by us, in the exercise of our reasonable  
business judgment.  
  
 You'll notify us in writing (and submit to us such information,  
recipes, specifications, and samples as we request) if you propose to purchase,  
use or offer any type, brand and/or quality of items that have not been  
previously specified by us, or if you propose to use any supplier who has not  
been previously specified by us for the proposed item and will arrange for  
pre-payment of reasonable charges connected with our review and evaluation of  
any proposal. We'll notify you within a reasonable time whether or not you're  
authorized to purchase or use the proposed type, brand and/or model of such  
items or to deal with the proposed supplier. We may, from time to time,  
withhold, condition and/or revoke our approval of particular items or suppliers  
in the exercise of our reasonable business judgment. On receipt of written  
notice of revocation, you must immediately cease to sell or use any disapproved  
items and cease to deal with or use items from any such suppliers.  
  
 11.4. SPECIFICATIONS, STANDARDS AND OPERATING PROCEDURES. You agree  
to operate your Rubio's Store, and use the Marks, in prompt, continuous and full  
compliance with the System and the Manuals, as each is modified by us from time  
to time. In particular, you'll promptly comply with all of our ongoing  
requirements, standards and operating procedures relating to the operation,  
appearance, function, cleanliness, menu, products, ingredients, and otherwise of  
a Rubio's Store (including, without limitation, use of specified equipment,  
products, services, programs and computer hardware and software), and with our  
other requirements for a Rubio's Store, as they may be developed or changed by  
us from time to time. You'll purchase, use and offer each of the systems,  
services, equipment and products designated by us and, where we so require, use  
only suppliers specified by us and will not use or offer any systems, services,  
equipment, products or suppliers not specified by us. Mandatory specifications,  
standards and  
  
  
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operating procedures prescribed from time to time by us in the Manuals, or  
otherwise communicated to you in writing, electronically or otherwise, will  
constitute provisions of this Agreement as if fully set forth herein. All  
references to this Agreement include all such mandatory specifications,  
standards and operating procedures.  
  
 11.5. COMPLIANCE WITH LAWS AND ETHICAL BUSINESS PRACTICES. You'll  
secure and maintain in force, in your name, all required licenses, permits and  
certificates relating to the operation of your Rubio's Store. You'll operate  
your Rubio's Store in full compliance with all applicable laws, ordinances and  
regulations, including, without limitation, laws relating to health regulations,  
immigration and discrimination, worker's compensation insurance, unemployment  
insurance, and withholding and payment of income taxes, social security taxes  
and sales taxes. We make no representations or assurances as to what (if any)  
licenses, permits, authorizations or otherwise may be required in connection  
with your establishment or operation of your Rubio's Store and it's your sole  
responsibility to determine what licenses, permits, authorizations or otherwise  
are required and to obtain them, all at your sole cost. All advertising by you  
will be completely factual, in good taste in the exercise of our reasonable  
business judgment, and will conform to high standards of ethical advertising.  
You will, in all dealings with your customers, suppliers and public officials,  
adhere to high standards of honesty, integrity, fair dealing and ethical  
conduct, in each case above and beyond merely legal requirements. You'll refrain  
from any business or advertising practice which may be injurious to our business  
and the goodwill associated with the Marks and other Rubio's Stores. You'll  
notify us in writing within 5 days of the commencement of any action, suit, or  
proceeding, and of the issuance of any order, writ, injunction, award, or decree  
of any court, agency, or other governmental instrumentality, which relates to,  
or which may affect the operation or financial condition of, you and/or your  
Rubio's Store.  
  
 11.6. MANAGEMENT AND PERSONNEL. Your Rubio's Store must be  
personally managed on a full-time basis by a person who has successfully  
completed all training required by us and meets all of our other then-current  
standards. Although we don't require it, we strongly recommend that you  
personally manage your Rubio's Store on an "on-premises" basis: absentee  
ownership is not recommended by us and exposes you to a greater risk of failure  
than if you are personally involved, on a full time basis, in the on-site daily  
management of your Rubio's Store. Training for the first Rubio's Store manager  
is included in the New Store Opening Fee but you'll be responsible for all  
travel, meals, lodging and similar costs for all persons attending training and  
we may charge a reasonable training fee for training subsequent Rubio's Store  
managers. You'll keep us advised of the identities of the manager and other  
supervisors of your Rubio's Store, and we'll have the right to deal with the  
manager on matters pertaining to day-to-day operations of, and reporting  
requirements for, your Rubio's Store. We reserve the right to review any  
agreements between you and your manager and to require the manager to sign  
confidentiality, noncompetition and other agreements acceptable to us. We  
strongly recommend, but do not require, that the manager of your Rubio's Store  
have a profit participation in your Rubio's Store. You'll hire all employees of  
your Rubio's Store and will be solely responsible for their supervision and  
possible termination, the terms of their employment and compensation and for the  
proper training of such employees in the operation of your Rubio's Store. You'll  
establish and maintain at your Rubio's Store an ongoing training program,  
meeting our standards, for new and continuing employees.  
  
 11.7. SIGNS AND LOGOS. Subject to local ordinances, you shall  
prominently display in and upon the land and buildings of the Premises interior  
and exterior signs and logos using the name "RUBIO'S," and those other names,  
marks, advertising signs and logos, of such nature, form, color, number,  
location and size, and containing that material as we may from time to time  
direct. You shall not display in or upon the Premises any sign, logo or  
advertising media of any kind to which we object.  
  
 11.8. INSURANCE. You'll maintain in force insurance policies issued  
by carriers approved by us covering various risks, as specified by us from time  
to time, including (but not limited to) the following: (A) comprehensive general  
liability insurance against claims for bodily and personal injury, death and  
property damage caused by, or occurring in conjunction with, your Rubio's Store,  
under one or more policies of insurance containing minimum liability coverage  
prescribed by us from time to time; (B) all risk property and casualty insurance  
for the replacement value of your Rubio's Store and all associated items  
(including, but not limited to, leasehold improvements, furniture, fixtures,  
equipment, signs, inventory, supplies, and materials); and (C) business  
interruption insurance providing for continued payment of all amounts due (or to  
become due) us and/or any Rubio's Affiliate under this Agreement or otherwise.  
  
  
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 We may periodically specify the types and amounts of coverage required  
under such insurance policies and require different and/or additional kinds of  
insurance at any time, including excess liability insurance. Each insurance  
policy must name us as an additional insured, will contain a waiver of all  
subrogation rights against us, Rubio's Affiliates and any successors and  
assigns, and will provide for 30 days' prior written notice to us of any  
material modifications, cancellation, or expiration of such policies.  
  
 On request by us, you'll furnish us with: (1) a copy of each renewal or  
replacement insurance policy to be maintained by you for the immediately  
following term; and (2) evidence of pre-payment of the premium and proof of  
coverage. If you fail to maintain required insurance coverage, or to furnish  
satisfactory evidence thereof and the payment of the premiums therefor, we, in  
addition to our other rights and remedies hereunder, may (but aren't required  
to) obtain such insurance coverage on your behalf and you'll fully cooperate  
with us in our efforts to obtain the insurance policies, promptly execute all  
forms or instruments required, allow any required inspections of your Rubio's  
Store, and pay to us, on demand, any costs and premiums incurred by us.  
  
 Your obligations to maintain insurance coverage will not be affected by  
reason of any separate insurance maintained by us, nor will the maintenance of  
such insurance relieve you of any obligations under this Agreement or otherwise.  
You acknowledge that no requirement for insurance contained in this Agreement  
constitutes advice or a representation by us that only such policies, in such  
amounts, are necessary to protect you from losses in connection with your  
business under this Agreement. Maintenance of this insurance, and your  
performance of your obligations under this Section, shall not relieve you of  
liability under the indemnification provisions of this Agreement.  
  
 11.9. PROGRAM PARTICIPATION. We may condition your participation in  
any program, whether with suppliers, referral sources or otherwise (including,  
but not limited to, any program involving payments from third party suppliers),  
as we determine, including, but not limited to, our requiring you to be in  
compliance with such standards and qualifications as we designate and/or you  
(and each Affiliate of yours) being a Rubio's franchisee in Good Standing and  
not in default under this, or any other, agreement with us and/or any Rubio's  
Affiliate.  
  
 11.10. 800 NUMBER, SECRET SHOPPERS. In order to (among other things)  
maintain and enhance the goodwill associated with the Marks and each Rubio's  
Store, we may institute various programs for verifying customer satisfaction  
and/or your compliance with all operational and other aspects of the System,  
including (but not limited to) an 800 number, secret shoppers or otherwise. We  
will share the results of such programs, as they pertain to your Rubio's Store,  
with you. You will reimburse us for all costs associated with any and all such  
programs. We may fund any or all fees, costs, expenses, etc. related to such  
programs from the Marketing Fund.  
  
  
12. MARKS  
  
 12.1. GOODWILL AND OWNERSHIP OF MARKS. Your right to use the Marks  
is derived solely from this Agreement and is limited to the operation of a  
single Rubio's Store at the Premises in compliance with this Agreement and all  
applicable standards, specifications and procedures prescribed by us. You'll use  
the Marks only as expressly authorized by us. You won't oppose, or engage in any  
acts or omissions inconsistent with, our rights in and to the Marks. Any  
unauthorized use of the Marks by you is a breach of this Agreement and an  
infringement of our rights in and to the Marks. This Agreement, and your  
operation of your Rubio's Store, does not confer any goodwill or other interests  
in the Marks on you (other than the right to operate your Rubio's Store in  
compliance with this Agreement), all goodwill (whether relating to the Marks or  
otherwise) and such interests belonging exclusively to us. All provisions of  
this Agreement applicable to the Marks will apply to any other trademarks,  
service marks and commercial symbols whenever authorized for use by, and  
licensed to, you by us. Any marks or other forms of identification developed by  
us in the future will remain our property and you will have no rights in or to  
them but we may require you to use them as we direct. You agree that if you  
breach any obligation regarding the Marks, we would have no adequate remedy at  
law and that we will be entitled to equitable relief with respect to any such  
breach. Your rights to the Marks are non-exclusive, are only as set forth in  
this Agreement, and we retain the sole right to grant other licenses for the  
Marks (in addition to those already granted) and to establish and/or become  
  
  
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involved with other, similar and/or related businesses and to grant them rights  
with respect to the Marks without providing you with any rights.  
  
 12.2. LIMITATIONS AND USE OF MARKS. Unless we direct or consent (in  
writing) otherwise, you will use the Marks as the sole identification in  
connection with your Rubio's Store, provided that you'll identify yourself as  
the independent owner of your Rubio's Store as prescribed by us. You'll not use  
any Xxxx as part of any corporate or trade name or as your primary business name  
or with any prefix, suffix, or other modifying words, terms, designs, or  
symbols, or in any modified form. (For example, you wouldn't use "Rubio's of  
Alabama, Inc." or "Xxxxx'x Rubio's.") You won't use any Xxxx in connection with  
the performance or sale of any unauthorized services or products or at any  
location or in any other manner not expressly authorized in writing by us. The  
use of any geographic or other designation in connection with the Marks will be  
only as permitted by us, you will have no exclusive or other rights with regard  
to any geographic or other designation and you will not take any action  
inhibiting or otherwise affecting the use of the Marks by any Rubio's franchisee  
or anyone else, unless expressly authorized by us in writing. You'll display the  
Marks prominently as we require (including copyright, trademark and other  
notices) at your Rubio's Store and in connection with advertising and marketing  
materials and you won't use any of the Marks so as to negatively affect the  
goodwill associated with the Marks. You won't provide any goods or services from  
your Rubio's Store or otherwise under any identification or trade name, other  
than the Marks. You'll give such trademark and other notices (including notices  
of independent ownership) as we direct and will, at your expense, obtain  
fictitious or assumed name registrations as may be required under law. You'll  
sign such documents and act as required by us from time to time to protect our  
interests in the Marks and you won't take any action, or omit to take an action,  
so as to jeopardize our interests or their validity or enforceability of the  
Marks.  
  
 12.3. NOTIFICATION OF INFRINGEMENTS AND CLAIMS. You'll immediately  
notify us of any apparent or actual infringement of, or challenge to, your use  
of any Xxxx, or any claim by any person of any rights in any Xxxx, and you won't  
communicate with anyone other than us and our counsel in connection with any  
such matter. We'll have sole discretion to take such action as we deem  
appropriate in connection with such (or any related) matters, and the right to  
control exclusively any settlement, litigation or Patent and Trademark Office or  
other proceeding arising out of or related to any such matters or otherwise  
relating to any Xxxx. You'll execute any and all instruments and documents,  
render such assistance, and do such acts and things as may, in our opinion, be  
advisable to protect and maintain our interests in any litigation or other  
proceeding or to otherwise protect and maintain our interests in the Marks.  
  
 12.4. DISCONTINUANCE OF USE OF MARKS. If it becomes advisable at any  
time in the exercise of our reasonable business judgment for you to modify or  
discontinue the use of any of the Marks or use one or more additional or  
substitute trademarks or service marks, you will promptly comply (at your sole  
expense) with our directions to modify or otherwise discontinue the use of such  
Marks, or use one or more additional or substitute trademarks or service marks,  
including (but not limited to) replacement of all signage, etc. We won't have  
any liability or obligation (whether of defense, indemnity, expense  
reimbursement or otherwise) to you, and you agree to make no claim, for, or in  
connection with, any modification, discontinuance or otherwise, and/or any  
dispute regarding the Marks and/or your and/or our rights in or to them. We make  
no guarantee that a modification, discontinuance or otherwise may not be  
required, whether as a result of expiration, termination or limitation of our  
rights to the Marks or otherwise.  
  
 You understand that there is always a possibility that there might be  
one or more businesses, similar to the business covered by the Franchise,  
operating in or near the area(s) where you may do business or otherwise, using a  
name and/or marks similar to ours and with superior rights to such name and/or  
marks as a result of prior use or otherwise. We strongly urge you to research  
this possibility, using telephone directories, local filings and other means,  
prior to your signing this Agreement, any other documents, expending or paying  
any sums or making any commitments and you understand that if you fail to do so,  
you're at risk.  
  
  
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13. ORGANIZATION OF FRANCHISEE  
  
 13.1. REPRESENTATIONS. If Franchisee is a corporation, a limited  
liability company or a partnership, you make the following representations and  
warranties: (A) you are duly organized and validly existing under the laws of  
the state of your formation; (B) you are qualified to do business in the state  
in which the Premises are located; (C) execution of this Agreement and the  
development and operation of your Rubio's Store is permitted by your governing  
documents; and (D) unless otherwise approved by us in writing, your Articles of  
Incorporation, Articles of Organization or written partnership agreement shall  
at all times provide that your activities are limited exclusively to the  
development and operation of Rubio's Stores.  
  
 13.2. GOVERNING DOCUMENTS. If Franchisee is a corporation, a limited  
liability company or a partnership, copies of all of Franchisee's governing  
documents (E.G., Articles of Incorporation/Organization, partnership agreement,  
etc.) have been furnished to us. When any of these governing documents are  
modified or changed, you promptly shall provide copies to us.  
  
 13.3. OWNERSHIP INTERESTS. If Franchisee is a corporation, a limited  
liability company or a partnership, you have provided to us a list of the name,  
address and ownership interest held by each person or entity with a legal or  
beneficial ownership interest in you ("Ownership List"). You shall comply with  
Section 14.2. prior to any change in ownership interests and shall provide us an  
updated Ownership List as changes occur in order to ensure that the Ownership  
List provided to us is true, accurate and complete at all times. The  
requirements of this Section 13.3 shall apply only to your Control Group  
(defined in Section 13.5.) if, as of the date of the first franchise-related  
agreement between Franchisee and us, Franchisee was a publicly-held entity  
(I.E., an entity THAT has a class of securities traded on a recognized  
securities exchange or quoted on the inter-dealer quotation sheets known as the  
"pink sheets.").  
  
 13.4. RESTRICTIVE LEGEND. If Franchisee is a corporation, you shall  
maintain stop-transfer instructions against the transfer on your records of any  
voting securities. If Franchisee is a corporation, a limited liability company  
or a partnership, each stock or membership certificate shall provide that any  
assignment or transfer of ownership interests is subject to the restrictions  
imposed by this Agreement and the Franchise Agreement(s) we and you will enter.  
  
 13.5. CONTROL GROUP. If Franchisee is a corporation, a limited  
liability company or a partnership, Exhibit 1 lists those persons who we and you  
have designated as your "Control Group" who, at all times, shall own at least  
51% of all legal and beneficial ownership interests in you. In the event of any  
change in the Control Group or in the ownership interests of any member of the  
Control Group, you shall timely provide us written notice of the change.  
  
 13.6. GUARANTEES. All members of the Control Group shall jointly and  
severally guarantee payment and performance under this Agreement and shall bind  
themselves to the terms of this Agreement pursuant to the attached Guarantee and  
Assumption of Franchisee's Obligations ("Guarantee"). Unless Franchisee is a  
publicly-held entity, all of your executive officers and holders of a legal or  
beneficial interest of 10% or more ("10% Owners") also shall bind themselves to  
the terms of this Agreement pursuant to the attached Guarantee. Notwithstanding  
the foregoing, we reserve the right, in the exercise of our reasonable business  
judgment, to waive the requirement that some or all of the previously described  
individuals execute the attached Guarantee. We also reserve the right to require  
any guarantor to provide personal financial statements to us from time to time.  
  
 13.7. AUTHORIZED AGENT. Franchisee shall designate and retain an  
individual to serve as your Authorized Agent to act on your behalf and to make  
any and all commitments on your behalf. The Authorized Agent, as of the date if  
this Agreement, is identified in Exhibit 1. We may deal exclusively with the  
Authorized Agent on all matters pertaining to this Agreement until we receive  
written notice from you of the appointment of a new Authorized Agent who we have  
approved. The Authorized Agent shall meet all of the following qualifications:  
  
 A. The Authorized Agent, at all times, shall have an  
equity ownership interest in you unless you were a publicly-held entity or a  
wholly-owned subsidiary of a publicly-held entity as of the date of the first  
franchise-related agreement between you and us.  
  
  
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 B. The Authorized Agent, at all times, shall be a member  
of the Control Group and have full control over the day-to-day operation of the  
your Rubio's Store.  
  
 C. The Authorized Agent shall devote best efforts to  
supervising the operation of your Rubio's Stores.  
  
 D. The Authorized Agent shall be responsible to ensure  
that your Rubio's Store is staffed at all times by an individual(s) that have  
successfully completed our training program and will ensure that those  
individuals maintain a certified trained status and will obtain additional or  
remedial training as we may require.  
  
 If the Authorized Agent no longer meets these qualifications, you shall  
designate another person to act as Authorized Agent within 30 days of the date  
of failing to remain qualified.  
  
14. TRANSFERABILITY OF INTEREST  
  
 14.1. TRANSFERS BY US. We have the absolute, unrestricted right,  
exercisable at any time, to transfer and assign all or any part of our rights  
and obligations under this Agreement to any person or legal entity without your  
consent. If we transfer this Agreement, or any and/or all of our rights and/or  
obligations under it, all our past, current and future obligations to you will  
cease and be forever extinguished. We also have the right, from time to time, to  
delegate the performance of any portion or all of our obligations and duties  
under this Agreement to designees, whether affiliates, agents or independent  
contractors with whom we have contracted to provide this service.  
  
 You expressly recognize that we, without your consent, may sell our  
assets, the Marks or the System outright to a third party; may merge, acquire  
other corporations or entities, or be acquired by another corporation or other  
entity; may undertake a refinancing, recapitalization, leveraged buy-out or  
other economic or financial restructuring; and, with regard to any or all of the  
above sales, assignments and dispositions, you expressly and specifically waive  
any claims, demands or damages regarding the loss of the Marks (or any  
variation) and/or the loss of association with or identification of us as the  
franchisor under this Agreement.  
  
14.2. TRANSFERS BY YOU.  
  
 A. You understand and acknowledge that the rights and  
duties set forth in this Agreement are personal to you and that we have entered  
into this Agreement in reliance on your business skill, financial capacity,  
personal character, experience and demonstrated or purported ability in  
developing and operating high quality foodservice operations. Accordingly,  
neither you nor any immediate or remote successor to any part of your interest  
in this Agreement, nor any individual, partnership, corporation or other legal  
entity which directly or indirectly controls you shall sell, assign, transfer,  
convey, give away, pledge, mortgage, or otherwise encumber any interest in you,  
this Agreement or any other assets pertaining to your operations under this  
Agreement (collectively "Transfer") without our prior written consent.  
  
 Except as otherwise provided in this Agreement, any purported Transfer,  
by operation of law or otherwise, not having our prior written consent shall be  
null and void and shall constitute a material breach of this Agreement, for  
which we may terminate this Agreement without providing you an opportunity to  
cure the breach.  
  
 B. You shall advise us in writing of any proposed  
Transfer, submit (or cause the proposed transferee to submit) a franchise  
application for the proposed transferee, and submit a copy of all contracts and  
all other agreements or proposals, and all other information requested by us,  
relating to the proposed Transfer. If we do not exercise our right of first  
refusal, the decision as to whether or not to approve a proposed Transfer shall  
be made by us in the exercise of our reasonable business judgment and shall  
include numerous factors deemed relevant by us. These factors may include, but  
will not be limited to, the following:  
  
  
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 (1) The proposed transferee (and if the proposed  
transferee is other than an individual, such owners of an interest in the  
proposed transferee as we may request) must demonstrate that it has extensive  
experience in high quality restaurant operations of a character and complexity  
similar to Rubio's Stores; meets the managerial, operational, experience,  
quality, character and business standards for a franchisee promulgated by us  
from time to time; possesses a good character, business reputation and credit  
rating; has an organization whose management culture is compatible with our  
management culture; and has adequate financial resources and working capital to  
meet the obligations under this Agreement.  
  
 (2) The sales price shall not be so high, in our  
reasonable judgment, as to jeopardize the ability of the transferee to develop,  
maintain, operate and promote the Rubio's Store and meet financial obligations  
to us, third party suppliers and creditors. Our decision with respect to a  
proposed Transfer shall not create any liability on our part: (A) to the  
transferee, if we approves the Transfer and the transferee experiences financial  
difficulties; or (B) to the transferor or the proposed transferee, if we  
disapprove the Transfer pursuant to this Section 14.2.B.(2) or for other  
legitimate business reasons. We have the right, in the exercise of our  
reasonable business judgment and without any liability to the transferor or the  
proposed transferee, to communicate and counsel with the transferor and the  
proposed transferee regarding any aspect of the proposed Transfer.  
  
 (3) All of your accrued monetary obligations to  
us and Rubio's Affiliates (whether arising under this Agreement or otherwise)  
and all other outstanding obligations related to the Rubio's Store (including,  
but not limited to, bills from suppliers, taxes, judgments and any required  
governmental reports, returns, affidavits or bonds) have been satisfied or, in  
our reasonable judgment, adequately provided for. We reserve the right to  
require that a reasonable sum of money be placed in escrow to ensure that all of  
these obligations are satisfied.  
  
 (4) You are not then in material default of any  
provision of this Agreement or any other agreement between you and us and/or  
Rubio's Affiliates, are not in default beyond the applicable cure period under  
any real estate lease, equipment lease or financing instrument relating to the  
Rubio's Store and are not in default beyond the applicable cure period with any  
vendor or supplier to the Rubio's Store.  
  
 (5) You and all guarantors of your obligations  
to us execute a General Release.  
  
 C. If we approve a proposed Transfer, prior to the  
Transfer becoming effective:  
  
 (1) The transferor shall pay us a nonrefundable  
Transfer fee in an amount not to exceed $5,000 in connection with our review of  
the Transfer application.  
  
 (2) You and the proposed transferee shall  
execute, as directed by us, either an assignment agreement and any amendments to  
this Agreement deemed necessary or desirable by us to reflect the Transfer or  
our then-current standard form of franchise agreement for a term ending on the  
expiration of the Initial Term. In either event, a guarantee of the type  
required by Section 13.6. shall be executed by those individuals identified in  
Section 13.6. with an interest in the proposed transferee.  
  
 (3) The transferor shall remain liable for all  
obligations to us incurred before the date of the Transfer and shall execute any  
and all instruments reasonably requested by us to evidence that liability.  
  
 D. If you are an individual or a partnership and desire  
to Transfer this Agreement to a corporation (or limited liability company)  
formed for the convenience of ownership, the requirements of Section 14.2.B.  
shall apply to such a Transfer, however, you will not be required to pay a  
Transfer fee. Notwithstanding such a Transfer, the individual or individuals  
that comprise Franchisee shall continue to be jointly and severally bound by,  
and personally liable for the timely and complete performance and breach of each  
and every provision of this Agreement. Approval by us also will be conditioned  
on the following: (1) the corporation (or limited liability company) must be  
newly organized; (2) prior to the Transfer, we must receive a copy of the  
documents specified in Section 13.2. and the transferee shall comply with the  
remaining provisions of Section 13; and (3) you must own all voting securities  
of the corporation (or membership interests of the limited liability  
  
  
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company) or, if you are comprised of more than one individual, each person shall  
have the same proportionate ownership interest in the corporation (or the  
limited liability company) as prior to the Transfer.  
  
 E. On your death or permanent disability or, if  
Franchisee is a corporation, limited liability company or partnership, on the  
death or permanent disability of the owner of a controlling interest in  
Franchisee, the executor, administrator, conservator, guardian or other personal  
representative of such person will Transfer his or her interest in this  
Agreement and the Franchise, or such interest in Franchisee, to a third party  
subject to our approval and all of the provisions of this Section 14.2. Such  
disposition of this Agreement and the Franchise, or such interest in Franchisee  
(including, without limitation, Transfer by bequest or inheritance), will be  
completed within a reasonable time, not to exceed 6 months from the date of  
death or permanent disability and will be subject to all the terms and  
conditions applicable to Transfers contained in this Section 14.2. Failure to so  
Transfer the interest in this Agreement and the Franchise, or such interest in  
Franchisee, within said period of time will constitute a breach of this  
Agreement. A person shall be deemed to have a "permanent disability" if his  
personal, active participation in management of the Rubio's Store is for any  
reason curtailed for a continuous period of 6 months.  
  
 F. Notwithstanding the provisions of Section 14.2.B.,  
the issuance of options or the exercise of options pursuant to a qualified stock  
option plan or a qualified employee stock ownership plan shall not be considered  
a Transfer and shall not require our prior written approval; provided no more  
than a total of 49% of your outstanding voting securities are subject to the  
qualified stock option plan or qualified employee stock ownership plan.  
  
 G. If you were a publicly-held entity as of the date of  
the first franchise-related agreement between you and us, Section 14.2.B. shall  
be applicable to transfers of ownership interests in you only if the proposed  
Transfer would result in either: (1) 50% or more of your voting securities or  
membership interests being held by different owners than as of the date of the  
first franchise-related agreement between you and us or any Rubio's Affiliate;  
or (2) any change in ownership of your voting securities whereby any existing  
owner acquires an additional 10% or more of your voting securities or membership  
interests; or (3) any change in the membership of the Control Group.  
  
 H. Securities or partnership interests in you may be  
sold, by private or public offering, only with our prior written consent  
(whether or not our consent is required under any other provision of this  
Section), which consent shall not be unreasonably withheld. In addition to the  
requirements of Section 14.2.B., prior to the time that any public offering or  
private placement of securities or partnership interests in you are made  
available to potential investors, you, at your expense, shall deliver to us a  
copy of the offering documents. You, at your expense, also shall deliver to us  
an opinion of your legal counsel and an opinion of one other legal counsel  
selected by us (both of which shall be addressed to us and in a form acceptable  
to us) that the offering documents properly use the Marks and accurately  
describe your relationship with us and Rubio's Affiliates. The indemnification  
provisions of Section 19.5. shall also include any losses or expenses incurred  
by us and Rubio's Affiliates in connection with any statements made by or on  
behalf of you in any public offering or private placement of your securities.  
  
 I. If any party holding any interest in you or in this  
Agreement receives a bona fide offer (as determined by us in our reasonable  
discretion) from a third party or otherwise desires to undertake any Transfer  
that would require our approval (other than a Transfer for convenience of  
ownership pursuant to Section 14.2.D.), it shall notify us in writing of the  
terms of the proposed Transfer, and shall provide such information and  
documentation relating to the proposed Transfer as we may reasonably require. We  
or our designee may elect to purchase the interest that the seller proposes to  
Transfer any time within 30 days after receipt of written notification, and all  
documents and other information required by Section 14.2.B. by sending written  
notice to the seller that we or our designee intend to purchase the seller's  
interest on the same terms and conditions offered by the third party (except  
that we or our designee shall not be obligated to pay any finder's or broker's  
fees). In purchasing the interest, we or our designee shall be entitled to set  
off any monies owed to us or Rubio's Affiliates by you and we or our designee  
shall be entitled to all customary representations and warranties that the  
assets are free and clear (or, if not, accurate and complete disclosure) as to:  
(1) ownership, condition and title; (2) liens and encumbrances; (3)  
environmental and hazardous substances; and (4) validity of contracts inuring to  
the purchaser or affecting the assets, whether contingent or otherwise.  
  
  
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 If the offer you receive involves assets in addition to this Agreement,  
the Rubio's Store at the Premises and other Rubio's Stores operated by you, the  
notice to us shall state the cash value of that portion of the offer received by  
you relating to this Agreement, the Rubio's Store at the Premises and those  
other Rubio's Stores. If the proposed Transfer provides for payment of  
consideration other than cash or it involves intangible benefits, we or our  
designee may elect to purchase the interest proposed to be sold for the  
reasonable equivalent in cash. If the parties are unable to agree within 30 days  
on the reasonable equivalent in cash of the non-cash part of the offer received  
by you, or the cash value of the offer received by you relating to this  
Agreement, the Rubio's Store at the Premises and other Rubio's Stores operated  
by you, the amount shall be determined by two professionally certified  
appraisers, you selecting one and we or our designee selecting one. If the  
amounts set by the 2 appraisers differ by more than 10%, the 2 appraisers shall  
select a 3rd professionally certified appraiser who also shall determine the  
amount. The average value set by the appraisers (whether 2 or 3 appraisers as  
the case may be) shall be conclusive and we or our designee may exercise the  
right of first refusal within 30 days after being advised in writing of the  
decision of the appraisers. The cost of the appraisers shall be shared equally  
by the parties.  
  
 Our failure to exercise the right of first refusal shall not constitute  
approval of the proposed Transfer nor a waiver of any other provision of this  
Section 14.2. with respect to a proposed Transfer. If we do not exercise the  
right of first refusal, you may not thereafter Transfer the interest at a lower  
price or on more favorable terms than those that have been offered to us. We  
shall again be given a right of first refusal if a transaction does not close  
within 6 months after we elected not to exercise our right of first refusal. In  
no event shall you offer the interest for sale or transfer at public auction,  
nor at any time shall an offer be made to the public to sell, transfer or  
assign, through any advertisement, either in the newspapers or otherwise,  
without first having obtained our written approval to the auction or  
advertisement.  
  
 J. Our consent to any Transfer shall not constitute a  
waiver of any claims we may have against the transferring party, nor shall it be  
deemed a waiver of our right to demand exact compliance with any of the terms of  
this Agreement by the transferee, nor will it be deemed a waiver of our right to  
give or withhold approval to future Transfers.  
  
15. COVENANTS  
  
 15.1. CONFIDENTIALITY. You acknowledge and agree that we own all  
right, title and interest in and to the System. You also acknowledge and agree  
that: (A) the System consists of trade secrets and confidential and proprietary  
information and know-how that gives us a competitive advantage; (B) we have  
taken all measures necessary to protect the trade secrets and the  
confidentiality of the proprietary information and know-how comprising the  
System; (C) all material or other information now or hereafter provided or  
disclosed to you regarding the System is disclosed in confidence; (D) you have  
no right to disclose any part of the System to anyone who is not your employee;  
(E) you will disclose to your employees only those parts of the System that an  
employee needs to know; (F) you will have a system in place to ensure your  
employees keep confidential our trade secrets and confidential and proprietary  
information and, if requested by us, you shall obtain from those of your  
employees reasonably designated by us an executed confidential disclosure  
agreement in the form we prescribe; (G) you will not acquire any interest in the  
System; and (H) the use or duplication of the System or any part of the System  
in any other business would constitute an unfair method of competition, for  
which we would be entitled to all legal and equitable remedies, including  
injunctive relief, without posting a bond.  
  
 You shall not, during the term of this Agreement or at any time  
thereafter, communicate or disclose any trade secrets or confidential or  
proprietary information or know-how of the System to any unauthorized person, or  
do or perform, directly or indirectly, any other acts injurious or prejudicial  
to the Marks or the System. Any and all information, knowledge, know-how and  
techniques, including all drawings, materials, equipment, specifications,  
recipes, techniques and other data that we designate as confidential shall be  
deemed confidential for purposes of this Agreement.  
  
 15.2. RESTRICTIONS. You acknowledge and agree that: (A) pursuant to  
this Agreement, you will have access to valuable trade secrets, specialized  
training and confidential information from us regarding the development,  
operation, purchasing, sales and marketing methods and techniques of the System;  
(B) the System and the  
  
  
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opportunities, associations and experience established and acquired by you under  
this Agreement are of substantial and material value; (C) in developing the  
System, we have made and continue to make substantial investments of time,  
technical and commercial research and money; (D) we would be unable adequately  
to protect the System and our trade secrets and confidential and proprietary  
information against unauthorized use or disclosure and would be unable  
adequately to encourage a free exchange of ideas and information among Rubio's  
Stores if franchisees were permitted to hold interests in competitive  
businesses; and (E) restrictions on your right to hold interests in, or perform  
services for, competitive businesses will not hinder your activities.  
  
 Accordingly, you covenant and agree that during the term of this  
Agreement and for a period of 24 months following its expiration or earlier  
termination, you shall not, either directly or indirectly, for yourself, or  
through, on behalf of, or in conjunction with, any person, firm, partnership,  
corporation, or other entity, own, maintain, operate, engage in, advise, help,  
make loans to, or have any interest in, either directly or indirectly, any: (1)  
quick casual or quick service Mexican-themed restaurant; or (2) any restaurant  
at which fish tacos comprise more than 10% of sales. During the term of this  
Agreement, there is no geographical limitation on this restriction. Following  
the expiration or earlier termination of the term of this Agreement, this  
restriction shall apply at the Premises and within a 10 mile radius of the  
Premises, except as we otherwise approve in writing. This restriction shall not  
apply to your existing restaurant operations, if any, which are identified in  
Exhibit 1.  
  
 If any part of these restrictions is found to be unreasonable in time  
or distance, each month of time or mile of distance may be deemed a separate  
unit so that the time or distance may be reduced by appropriate order of the  
court to that deemed reasonable. If we file arbitration or litigation to enforce  
the post-termination portion of these restrictions, the 24-month period shall  
begin running upon the entry of a final, non-appealable judgment.  
  
 15.3. MODIFICATION. We shall have the right, in the exercise of our  
reasonable business judgment, to reduce the scope of any covenant in this  
Section 15 effective immediately upon your receipt of written notice, and you  
agree that you shall comply forthwith with any covenant as so modified, which  
shall be fully enforceable notwithstanding the provisions of Section 19.10.  
  
 15.4. APPLICABILITY. The restrictions contained in this Section 15  
apply to you and all guarantors of your obligations to us, but do not apply to  
ownership of less than a 3% legal or beneficial ownership in the outstanding  
equity securities of any publicly held corporation by you or any guarantor. The  
existence of any claim you or any guarantor may have against us or any Rubio's  
Affiliate, whether or not arising from this Agreement, shall not constitute a  
defense to the enforcement by us of the provisions of this Section 15.  
  
16. TERMINATION  
  
 16.1. GROUNDS FOR TERMINATION. In addition to the grounds for  
termination that may be stated elsewhere in this Agreement, we may terminate  
this Agreement, and the rights granted by this Agreement, upon written notice to  
you without an opportunity to cure upon the occurrence of any of the following  
events:  
  
 A. You cease to continuously operate your Rubio's Store  
for a period in excess of 5 consecutive days, unless the closing is due to an  
act of God, fire or other natural disaster or is approved in writing in advance  
by us.  
  
 B. Execution is levied against your business or  
property; suit to foreclose any lien or mortgage against the Premises or  
equipment of your Rubio's Store is instituted against you and is not dismissed  
(or a bond posted) within 60 days; or the real or personal property of your  
Rubio's Store is sold after levy thereupon by any sheriff, marshal or constable.  
  
 C. You are insolvent or unable to pay your creditors  
(including us); file a petition in bankruptcy, an arrangement for the benefit of  
creditors or a petition for reorganization; there is filed against you a  
petition in bankruptcy, an arrangement for the benefit of creditors or petition  
for reorganization, which is not  
  
  
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dismissed within 60 days of the filing; you make an assignment for the benefit  
of creditors; or a receiver or trustee is appointed for you and not dismissed  
within 60 days of the appointment.  
  
 D. There is a material breach of any obligation under  
Section 15.  
  
 E. Any Transfer that requires our prior written consent  
occurs without you having obtained that prior written consent.  
  
 F. We discover that you made a material  
misrepresentation or omitted a material fact in the information that was  
furnished to us in connection with our decision to enter into this Agreement.  
  
 G. You knowingly falsify any report required to be  
furnished to us or make any material misrepresentation in your dealings with us.  
  
 H. You fail to open your Rubio's Store for business  
within 60 days after we first authorize the opening of your Rubio's Store.  
  
 I. We make a reasonable determination that continued  
operation of your Rubio's Store by you will result in an imminent danger to  
public health or safety.  
  
 J. You lose possession of the Premises through your own  
fault or your failure to extend the lease for the Premises through the Initial  
Term of this Agreement.  
  
 K. You or any member of the Control Group are convicted  
of, or plead no contest to, a felony charge; a crime involving moral turpitude;  
or any other crime or offense that is reasonably likely, in our sole opinion to  
adversely affect us or the System.  
  
 L. You or any member of the Control Group remain in  
default beyond the applicable cure period under any other agreement with us or  
any Rubio's Affiliate; provided that, if the default is by a member of the  
Control Group, you receive written notice of the default and a 30 day period to  
cure the default.  
  
 M. You fail or refuse to comply with any other provision  
of this Agreement and do not correct the failure or refusal within 30 days (10  
days for monetary defaults) after receiving written notice of default. Except  
for monetary defaults, if the default cannot be corrected within 30 days, you  
shall have that additional time to correct the default as reasonably required  
(not to exceed 90 days) provided that you begin taking the actions necessary to  
correct the default during the 30-day cure period and diligently and in good  
faith pursue those actions to completion. You will be in default under this  
Section 16.1M. for any failure to materially comply with any of the requirements  
imposed by this Agreement, or to carry out the terms of this Agreement in good  
faith. If you have received 2 or more notices of default pursuant to this  
Section 16.1.M. within the previous 12 months, we shall be entitled to send you  
a notice of termination upon your next default under this Section 16.1.M. in  
that 12-month period without providing you an opportunity to remedy that  
default.  
  
 16.2. TERMINATION FOLLOWING INSPECTION. We have the right to  
periodically conduct inspections of your Rubio's Store to evaluate your  
compliance with the System and this Agreement. Following each inspection, we  
will provide you an inspection report listing your score on the inspection and  
those conditions at your Rubio's Store that must be rectified. If you fail to  
achieve a passing Systems Standards Score on an inspection, the inspection  
report shall constitute a notice of default. If you fail to achieve a passing  
Systems Standards Score on the next inspection (which shall be conducted at  
least 30 days after your receipt of the inspection report for the prior  
inspection), we may terminate this Agreement, without opportunity to cure, by  
providing you written notice of termination along with the inspection report.  
  
 16.3. STATUTORY LIMITATIONS. If any valid, applicable law or  
regulation of a competent governmental authority with jurisdiction over this  
Agreement requires a notice or cure period prior to termination longer than set  
  
  
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forth in this Section, this Agreement will be deemed amended to conform to the  
minimum notice or cure period required by the applicable law or regulation.  
  
 16.4. EXTENDED CURE PERIOD. Notwithstanding anything contained  
herein to the contrary, where we have the right to terminate this Agreement, we  
shall have the right, to be exercised in the exercise of our reasonable business  
judgment, to grant to you an extended period of time to cure the breach which  
gave rise to our right to terminate. You acknowledge that our election to grant  
such an extended cure period shall not operate as a waiver of any of our rights  
hereunder and that, in consideration for and at the time of such an extension,  
you and all guarantors of your obligations to us will execute a General Release.  
  
 16.5. OUR RIGHT TO DISCONTINUE PRODUCTS/SERVICES TO YOU AFTER  
ISSUANCE OF NOTICE OF DEFAULT. If we issue a notice of default, we and each  
Rubio's Affiliate will have the right, in addition to our other rights and  
remedies, to discontinue selling and/or providing any goods and/or services to  
you until you have cured all defaults and we and/or Rubio's Affiliates may cease  
providing such items to you or require you to pay cash on delivery by certified  
check until such time as you correct this problem.  
  
17. OBLIGATIONS ON TERMINATION OR EXPIRATION  
  
 Upon termination or expiration of this Agreement:  
  
 17.1. Since your ownership of the Franchise is controlled by the  
provisions of this Agreement, you will have no equity or other continuing  
interest in the Franchise, any goodwill associated with it or otherwise, or any  
right to compensation, return of amounts paid or otherwise.  
  
 17.2. You immediately shall pay us and each Rubio's Affiliates all  
sums due and owing us and each Rubio's Affiliate pursuant to this Agreement.  
  
 17.3. You promptly shall return to us the Manuals, any copies of the  
Manuals and all other materials and information furnished by us or a Rubio's  
Affiliate and you promptly shall return to us, in good condition and repair  
excepting normal wear and tear, all computer software, disks, tapes and other  
magnetic storage media.  
  
 17.4. You and all persons subject to the covenants contained in  
Section 15 shall continue to abide by those covenants and shall not, directly or  
indirectly, take any action that violates those covenants. If the noncompetition  
covenant contained in Section 15.2. is unenforceable or is reduced to a level  
which we, in the exercise of our reasonable business judgment, find  
unacceptable, we may, in the alternative, require you to pay a fee (either on a  
present value basis or over time, as we select) of 1/2 of the royalty fees which  
would be payable if the business in question was a franchised Rubio's Store, for  
a period of 24 months after termination, expiration or repurchase, such amount  
having been jointly selected by you and us as fair and appropriate damages and  
in consideration of: (A) the difficulty of accurately predicting actual damages;  
(B) the fact you will inevitably benefit in the operation of such business from  
your training and experience as a Rubio's franchisee; (C) the possible impact on  
the expansion and operation of the System, including the expense and difficulty  
of a sale of a franchise in the area of operation of such a business; and (D)  
you not having any rights, nor we having any obligations, under this Agreement  
or otherwise during such period.  
  
 17.5. You immediately shall discontinue all use of the Marks in  
connection with your Rubio's Store and of any and all items bearing the Marks;  
remove the Marks from your Rubio's Store and from clothing, signs, materials,  
motor vehicles and other items owned or used by you in the operation of your  
Rubio's Store; cancel all advertising for your Rubio's Store that contains the  
Marks (including telephone directory listings); and take such action as may be  
necessary to cancel any filings or registrations for your Rubio's Store that  
contain any Marks.  
  
 17.6. You promptly shall make such alterations and modifications to  
the Premises as may be necessary to clearly distinguish to the public the  
Premises from its former appearance and also make those specific additional  
changes as us may request for that purpose. If you fail to promptly make these  
alterations and modifications, us shall  
  
  
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have the right (at your expense, to be paid upon your receipt of an invoice from  
us) to do so without being guilty of trespass or other tort.  
  
 17.7. You shall furnish us, within 30 days after the effective date  
of termination or expiration, evidence (certified to be true, complete, accurate  
and correct by your chief executive officer) reasonably satisfactory to us of  
your compliance with Sections 17.2. through 17.6.  
  
 17.8. You shall not, except with respect to a restaurant franchised  
by us or a Rubio's Affiliate which is then open and operating pursuant to an  
effective franchise agreement: (A) operate or do business under any name or in  
any manner that might tend to give the public the impression that you are  
connected in any way with us or Rubio's Affiliates or have any right to use the  
System or the Marks; (B) make use or avail yourself of any of the materials or  
information furnished or disclosed by us or a Rubio's Affiliate under this  
Agreement or disclose or reveal any such materials or information or any portion  
thereof to anyone else; or (C) assist anyone not licensed by us or Rubio's  
Affiliates to construct or equip a foodservice outlet substantially similar to a  
Rubio's Store.  
  
18. OPTION TO PURCHASE  
  
 18.1. Upon the expiration or termination of this Agreement for any  
reason, we shall give written notice to you, within 30 days after the effective  
date of termination or expiration, if we intend to exercise our option to  
purchase from you some or all of the assets used in your Rubio's Store  
("Assets"). As used in this Section 18, "Assets" shall mean and include, without  
limitation, leasehold improvements, equipment, vehicles, furnishings, fixtures,  
signs and inventory (non-perishable products, materials and supplies) used in  
your Rubio's Store, and the real estate fee simple or the lease or sublease for  
the Premises. We shall have the unrestricted right to assign this option to  
purchase the Assets. We or our assignee shall be entitled to all customary  
representations and warranties that the Assets are free and clear (or, if not,  
accurate and complete disclosure) as to: (A) ownership, condition and title; (B)  
liens and encumbrances; (C) environmental and hazardous substances; and (D)  
validity of contracts and liabilities inuring to us or affecting the Assets,  
whether contingent or otherwise.  
  
 18.2. The purchase price for the Assets ("Purchase Price") shall be  
their fair market value, (or, for leased assets, the fair market value of your  
lease) determined as of the effective date of purchase in a manner that accounts  
for reasonable depreciation and condition of the Assets; provided, however, that  
the Purchase Price shall take into account the termination of this Agreement.  
Further, the Purchase Price for the Assets shall not contain any factor or  
increment for any trademark, service xxxx or other commercial symbol used in  
connection with the operation of your Rubio's Store nor any goodwill or "going  
concern" value for your Rubio's Store. We may exclude from the Assets purchased  
in accordance with this Section any equipment, vehicles, furnishings, fixtures,  
signs, and inventory that are not approved as meeting then-current standards for  
a Rubio's Store or for which you cannot deliver a Xxxx of Sale in a form  
satisfactory to us.  
  
 18.3. If we and you are unable to agree on the fair market value of  
the Assets within 30 days after your receipt of our notice of intent to exercise  
our option to purchase the Assets, the fair market value shall be determined by  
2 professionally certified appraisers, you selecting one and we selecting one.  
If the valuations set by the two appraisers differ by more than 10%, the 2  
appraisers shall select a 3rd professionally certified appraiser who also shall  
appraise the fair market value of the Assets. The average value set by the  
appraisers (whether 2 or 3 appraisers as the case may be) shall be conclusive  
and shall be the Purchase Price.  
  
 18.4. The appraisers shall be given full access to your Rubio's  
Store, the Premises and your books and records during customary business hours  
to conduct the appraisal and shall value the leasehold improvements, equipment,  
furnishings, fixtures, signs and inventory in accordance with the standards of  
this Section 18. The appraisers' fees and costs shall be borne equally by us and  
you.  
  
 18.5. Within 10 days after the Purchase Price has been determined,  
we may exercise our option to purchase the Assets by so notifying you. The  
Purchase Price shall be paid in cash or cash equivalents at the closing of the  
purchase ("Closing"), which shall take place no later than 60 days after our  
receipt of the valuations set by the appraisers. At the Closing, you shall  
deliver instruments transferring to us or our assignee: (A) good and  
  
  
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merchantable title to the Assets purchased, free and clear of all liens and  
encumbrances (other than liens and security interests acceptable to us or our  
assignee), with all sales and other transfer taxes paid by you; (B) all licenses  
and permits for your Rubio's Store that may be assigned or transferred, with  
appropriate consents, if required; and (C) the lease or sublease for the  
Premises, with appropriate consents, if required. If you cannot deliver clear  
title to all of the purchased Assets as indicated in this Section, or if there  
are other unresolved issues, the Closing shall be accomplished through an  
escrow.  
  
 18.6. Prior to Closing, you and we shall comply with all applicable  
legal requirements, including the bulk sales provisions of the Uniform  
Commercial Code of the state in which your Rubio's Store is located and the bulk  
sales provisions of any applicable tax laws and regulations. You shall, prior to  
or simultaneously with the Closing, pay all tax liabilities incurred in  
connection with the operation of your Rubio's Store prior to Closing. We shall  
have the right to set off against and reduce the Purchase Price by any and all  
amounts owed by you to us, and the amount of any encumbrances or liens against  
the Assets or any obligations assumed by us.  
  
 18.7. If we or our assignee exercises the option to purchase,  
pending the Closing, we shall have the right to appoint a manager to operate  
your Rubio's Store, effective upon your receipt of the notice from us pursuant  
to Section 18.5. Alternatively, we may require you to close your Rubio's Store  
during such time period without removing any Assets from the Rubio's Store. You  
shall maintain in force all insurance policies required under this Agreement  
until the Closing. If the Premises are leased, we agree to use reasonable  
efforts to effect a termination of the existing lease for the Premises. If the  
lease for the Premises is assigned to us or we sublease the Premises from you,  
we will indemnify and hold you harmless from any ongoing liability under the  
lease from the date we assume possession of the Premises, and you will indemnify  
and hold us harmless from any liability under the lease prior to and including  
that date. If you own the Premises, we, at our option, will either purchase the  
fee simple interest or, upon purchase of the other Assets, enter into a standard  
lease with you on terms comparable to those for which similar commercial  
properties in the area are then being leased. The initial term of this lease  
with you shall be at least 10 years with 4 options to renew of 5 years each and  
the rent shall be the fair market rental value of the Premises. If you and we  
cannot agree on the fair market rental value of the Premises, then the rental  
value shall be determined by appraisers (selected in the manner described in  
Section 18.3.).  
  
  
19. GENERAL MATTERS  
  
 19.1. NO WAIVER. Our failure to exercise any power reserved to us,  
or our failure to insist upon compliance by you (or anyone else) with any  
obligation or condition in this Agreement, any other agreement, any Manuals or  
otherwise, and no custom or practice of the parties at variance with the terms  
of this Agreement, shall constitute a waiver of our right to demand exact  
compliance with the terms of this Agreement, any other agreement, any Manuals or  
otherwise. Waiver by us of any of our rights in connection with any particular  
default by you (or anyone else) shall not affect or impair our rights with  
respect to any subsequent or other default of the same or a different nature,  
nor shall any delay, forbearance or omission by us to exercise any power or  
rights arising out of any breach or default by you (or anyone else) of any of  
the terms, provisions or covenants of this Agreement, any other agreement, any  
Manuals or otherwise, affect or impair our rights, nor shall such constitute a  
waiver by us of any rights hereunder or the right to declare any subsequent  
breach or default.  
  
 Acceptance by us of any payments due to us, and/or our failure to  
insist on compliance with any required signing, payment and/or opening or other  
date, shall not be deemed to be a waiver by us of that, or any preceding or  
other, breach by you of any terms, covenants or conditions of this Agreement or  
otherwise. Our failure to give notice of default or to pursue any remedy for a  
breach of this or any other agreement shall not affect our right to give notice  
of termination upon subsequent defaults or to pursue any remedy upon subsequent  
similar or other breaches, under this or any other agreement or in the case of  
any other area developer or franchisee.  
  
 19.2. CONSENTS. Whenever this Agreement requires our prior approval  
or consent, you shall make a timely written request to us; and any approval or  
consent received, in order to be effective and binding upon us, must be obtained  
in writing and be signed by one of our authorized officers. We make no  
warranties or guarantees upon which you may rely by providing any waiver,  
approval, consent or suggestion to you in connection with this  
  
  
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Agreement, and we assume no liability or obligation to you in that regard, or by  
reason of any neglect, delay, or denial of any request therefor. We shall not,  
by virtue of any approvals, advice or services provided to you, assume  
responsibility or liability to you or to any third parties to which we would not  
otherwise by subject.  
  
 19.3. RELATIONSHIP OF THE PARTIES. The relationship between us and  
you is that of franchisor and franchisee only, the parties have dealt with each  
other at arm's length and as businesspersons with equivalent bargaining power  
and no other relationship is intended or created hereby. You are in no sense an  
agent of ours and all obligations to you are those of Xxxxx'x Restaurants, Inc.  
only, no other entity or individual having any obligations to you under this  
Agreement or otherwise. Neither you nor any person employed by you shall be, or  
shall at any time represent or hold itself out as being, our employee, partner,  
joint venturer, subsidiary, subfranchisor, agent or affiliate. You will be an  
independent contractor and are in no way authorized to make any contract,  
agreement, warranty or representation on behalf of us, or to create any  
obligation, express or implied, on behalf of us. You are and shall remain an  
independent business entity and nothing in this Agreement or otherwise shall be  
construed to create an agency or fiduciary or trust relationship, a partnership  
or joint venture, between you and us or any other entity or individual (neither  
you nor we intending to create, and expressly disavowing, any such or similar  
relationships) and there does not, and will not, exist any fiduciary, trust or  
similar special relationship between you and us. Neither you nor we shall act as  
the agent of the other, and neither you nor we shall guarantee or become in any  
way responsible for the obligations, debts or expenses of the other.  
  
 We are not entitled to share in your profits nor obligated to share in  
your losses or liabilities, nor do we have any ownership or equity interest in  
you nor can we regulate the hiring or firing of your employees (other than as  
specified in this Agreement or any Manuals issued by us) or other persons  
performing functions on your behalf nor regulate working conditions or determine  
whom you shall accept as customers, except to the extent necessary to protect  
our Marks and the goodwill associated therewith. The conduct of your business  
shall be determined by your own independent reasonable business judgment and  
discretion, subject only to the provisions of this Agreement and the Manuals.  
  
 Each of the rights and benefits of this Agreement which apply to us  
shall also apply to all Rubio's Affiliates. The restrictions, obligations and  
requirements of this Agreement applying to you will also apply to each Affiliate  
of yours, together with each of your owners (if you are a business entity). Any  
default by any Affiliate of yours in any obligation to us may be regarded as a  
default by you under this Agreement and you will not use any Affiliate or other  
means to avoid your obligations to us. In any case, any rights held by us under  
this Agreement or otherwise may be exercised, and will benefit, each Rubio's  
Affiliate and any other persons/entities we designate.  
  
 19.4. TAXES. We'll have no liability for any sales, VAT, GST, use,  
service, occupation, excise, gross receipts, income, property or other taxes,  
whether levied on you, your Rubio's Store or your property, or on us, in  
connection with the sales made and/or business conducted by you (except for any  
taxes we are required by law to collect from you with respect to purchases from  
us.) Payment of all taxes will be your sole responsibility.  
  
 19.5. INDEMNIFICATION. You're the only one responsible for any  
damage, loss or other claims arising out of, or related in any way to, any of  
your acts, errors or omissions, whether related to you, your employees, agents  
or representatives, your operations or ownership of your Rubio's Store or  
otherwise arising. You will indemnify and hold harmless us and all Rubio's  
Affiliates from all fines, suits, proceedings, claims, demands, actions, loss,  
damages, costs, fees (including attorneys' fees and related expenses) and/or any  
other expense, obligation and/or liability of any kind or nature (including, but  
not limited to, claims of negligence), however arising, growing out of or  
otherwise connected with and/or related to any act, error and/or omission of  
yours (including, but not limited to, your ownership and/or operation of your  
Rubio's Store, any act or omission of your employees and/or agents, and/or any  
Transfer of any interest in this Agreement, your Rubio's Store, the Franchise,  
Franchisee or otherwise.) We'll have the right to control all litigation, and  
defend and/or settle any claim, against and/or including us and/or the Rubio's  
Affiliates or affecting our and/or their interests, in such manner as we deem  
appropriate in our reasonable discretion, in each case without affecting our  
rights under such indemnity.  
  
 With respect to anything (goods, services or otherwise) provided,  
approved or otherwise by us and/or any  
  
  
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person/company affiliated in any way with and/or referred/"approved" by us,  
other than specific written warranties expressly provided by us in connection  
with such items, such items are provided without any warranties, express or  
implied, the warranties of merchantability and fitness for a particular purpose  
being expressly disclaimed, nor do there exist any express or implied warranties  
on the part of us or any Rubio's Affiliate as to the design, condition,  
capacity, performance or any other aspect of such items or their material or  
workmanship. Any warranty or other responsibility with respect to any Designated  
Equipment, Products and/or Services or otherwise will be those of the  
manufacturers or service providers only.  
  
 19.6. DISCLOSURE. We may, in the exercise of our reasonable business  
judgment, disclose, whether in offering circulars or otherwise, any information  
relating to your ownership and operation of your Rubio's Store, including (but  
not limited to) your name, any address and/or phone number, revenues, expenses,  
results of operations or other information but, wherever practicable and legal,  
we will make no public disclosures of revenues of your specific Rubio's Store  
such that a recipient will be able to match such store-specific revenues with  
your ownership of your specific Rubio's Store.  
  
 19.7. CAPTIONS. Any titles or captions contained in this Agreement  
are for convenience of reference only and shall not be deemed part of the  
context of this Agreement.  
  
 19.8. SEVERABILITY. If any provision of this Agreement is deemed to  
be invalid or unenforceable for any reason and to any extent, the remainder of  
this Agreement shall not be affected thereby, but rather shall be enforced to  
the greatest extent permitted by law. In the event of any inconsistencies and/or  
conflicts between this Agreement and any other agreement and/or document, the  
agreement and/or document which gives us (and/or Rubio's Affiliates) the  
greatest rights and/or benefits shall control.  
  
 19.9. ENTIRE AGREEMENT. This Agreement contains the entire  
understanding between the parties with respect to its subject matter and  
supersedes any prior understandings and agreements between you and us respecting  
its subject matter. You acknowledge that you are a sophisticated businessperson  
experienced in franchising, foodservice and/or other businesses, have had the  
benefit of advice by your own independent legal counsel (which is strongly  
recommended by us), have conducted an independent investigation of the Rubio's  
Franchise and business, and recognize that the business venture contemplated by  
this Agreement involves speculative business risks and any results will be  
primarily dependent upon your ability as an independent businessperson. We  
expressly disclaim the making of, and you acknowledge that you have not  
received, any representation, promise, warranty or guarantee, express or  
implied, as to the potential volume, profits, success or otherwise of any  
business venture contemplated by this Agreement. THERE ARE NO REPRESENTATIONS,  
WARRANTIES, EARNINGS, REVENUE OR OTHER CLAIMS, AGREEMENTS, PROMISES,  
ARRANGEMENTS OR UNDERSTANDINGS, ORAL OR WRITTEN, BETWEEN OR AMONG THE PARTIES  
HERETO RELATING TO THE WITHIN SUBJECT MATTER WHICH ARE NOT FULLY EXPRESSED  
HEREIN OR WHICH HAVE BEEN RELIED UPON BY THE PARTIES.  
  
 19.10. AMENDMENTS. Any modification or change in or to this Agreement  
must be in writing and signed by each of the parties thereto and this Agreement  
and any modification or change thereto must be approved in a writing signed by a  
corporate officer of ours before this Agreement or any modification or change  
can take effect or bind us.  
  
 19.11. INSOLVENCY. No corporation, firm or person other than you  
shall have or acquire any rights awarded to you hereunder by virtue of any  
bankruptcy, insolvency or assignment for the benefit of creditors or  
reorganization proceedings, or any receivership or other legal process, either  
under attachment, execution or otherwise, or in any manner whatsoever growing  
out of any proceeding or suit in law or in equity, without our prior written  
consent.  
  
 19.12. REMEDIES. All rights and remedies of each party will be  
cumulative and not alternative, in addition to and not exclusive of any other  
rights or remedies which are provided for herein or which may be available at  
law or in equity in case of any breach, failure or default or threatened breach,  
failure or default of any term, provision or condition of this Agreement or  
otherwise.  
  
  
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20. NOTICES AND PAYMENTS  
  
 All notices and reports permitted or required to be delivered by the  
provisions of this Agreement shall be in writing. All notices or reports to you  
or any guarantors of your obligations to us may be addressed to your Authorized  
Agent at the notice address set forth in Exhibit 1 and all notices or reports to  
us shall be addressed to us at Xxxxx'x Restaurants, Inc., 0000 Xxxxxx Xxxxx,  
Xxxxx 000, Xxxxxxxx, Xxxxxxxxxx, 00000 (or our then-current headquarters), to  
the attention of the President. Any party may designate a new address for  
notices by giving written notice of the new address pursuant to this Section.  
Notices shall be effective upon receipt (or first refusal) and may be: (A)  
delivered personally; (B) transmitted by facsimile or electronic mail with  
electronic confirmation of receipt; (C) mailed in the United States mail,  
postage prepaid, certified mail, return receipt requested; or (D) sent via  
commercial courier service. All payments required by this Agreement will be  
directed to us at our address as specified above. Any required payment or report  
not actually received by us during regular business hours on the date due will  
be deemed delinquent. Notice to the Authorized Agent shall be deemed effective  
as to you, all persons with an ownership interest in you and all guarantors of  
your obligations to us.  
  
21. DISPUTE RESOLUTION  
  
 21.1. ARBITRATION. Except as provided in Section 21.2., any monetary  
claim arising out of or relating to this Agreement, or any breach of this  
Agreement, or any controversies, disputes or claims arising between us and you,  
including controversies, disputes or claims regarding: (A) any provision of this  
Agreement or any other agreement between the parties related to this Agreement;  
(B) the relationship of the parties; (C) the validity of this Agreement or any  
other agreement between the parties related to this Agreement; or (D) any  
specification, standard or operating procedure relating to the establishment or  
operation of your Rubio's Store must be submitted to final and binding  
arbitration before the American Arbitration Association ("AAA") as the sole and  
exclusive remedy.  
  
 The arbitration will be governed by the AAA commercial arbitration  
rules in effect on the date the demand for arbitration is filed and shall be  
conducted before one neutral arbitrator selected in accordance with the AAA  
commercial arbitration rules from the AAA's national or regional arbitrator  
lists. The arbitration shall be administered by the AAA office nearest to our  
principal offices at the time the demand for arbitration is filed and all  
hearings shall take place in the county in which our principal offices are  
located at the time the demand for arbitration is filed. Any demand for  
arbitration shall specify the amount of damages sought. The arbitrator shall  
have no authority to amend or modify the provisions of this Agreement and any  
settlement offers made by either party may not be considered by the arbitrator.  
The arbitrator may award or otherwise provide for temporary restraining orders,  
preliminary injunctions, injunctions, attachments, claim and delivery  
proceedings, temporary protective orders, receiverships and other pre-judgment,  
equitable and/or interim relief as appropriate pending final resolution by  
binding arbitration of a claim, as well as in connection with any such final  
resolution, and may issue summary orders disposing of all or part of a claim at  
any point. The award and decision of the arbitrator shall be conclusive and  
binding upon all parties thereto and judgment upon the award may be entered in  
any court of competent jurisdiction, and we and you waive any right to contest  
the validity or enforceability of the award.  
  
 We and you agree that each party will provide discovery to the other in  
the form of document production and depositions in accordance with the Federal  
Rules of Civil Procedure. We and you also will obtain the agreement of the  
arbitrator that: (1) the arbitrator shall provide a written ruling, stating in  
separate sections the findings of fact and conclusions of law on which his  
ruling is based; and (2) the ruling is due not later then 60 days after the  
final hearing. This arbitration provision will be deemed to be self-executing  
and if you fail to appear at any properly noticed arbitration proceeding, award  
may be entered against you despite your failure to appear.  
  
 21.2. RESERVATIONS. Notwithstanding anything to the contrary  
contained in Section 21.1., we may file suit with respect to claims or issues  
relating primarily to: (A) the validity, or your use, of any of the Marks or our  
other intellectual property; (B) our rights to obtain possession of any real  
and/or personal property (including any action in unlawful detailer, ejectment  
or otherwise); and (C) our rights to obtain a writ of attachment and/or other  
pre-judgment remedies. In addition, either we or you may file suit for the entry  
of temporary or preliminary injunctive relief, restraining orders and orders of  
specific performance, including, without limitation, injunctive relief  
  
  
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pertaining to your use of the Marks and/or the System. You and we agree that any  
judicial actions that either you or we may file: (1) shall, if filed by you, be  
filed only in the federal or state court having jurisdiction where our principal  
offices are located at the time suit is filed; and (2) may, if filed by us, be  
filed in the federal or state court located in the jurisdiction where our  
principal offices are located at the time suit is filed or in the jurisdiction  
where you reside or do business or where your Rubio's Store is or was located or  
where the claim arose.  
  
 21.3. PRIOR NOTICE OF CLAIMS BY YOU. Prior to you taking any legal  
or other action against us and/or any Rubio's Affiliate, whether for  
arbitration, damages, injunctive, equitable or other relief (including but not  
limited to rescission) and whether by way of claim, counterclaim,  
cross-complaint, raised as an affirmative defense, offset or otherwise, you will  
first give us 60 days' prior written notice and opportunity to cure such alleged  
act or omission (or, if the alleged act or omission cannot reasonably be cured  
within that 60 day period, and we are diligently continuing efforts to attempt  
to cure such alleged act or omission, such additional time as reasonably  
necessary); provided that any dispute regarding our withholding consent with  
respect to a proposed Transfer by you may be immediately submitted to  
arbitration as provided in Section 21.1.  
  
 Since we and you share a mutual interest in your possible success and  
each believe that it's important that any possible business problems be  
addressed as soon as possible, we and you agree that if you have any complaint  
regarding our failing to perform any obligation to you (including, but not  
limited to, training, marketing, operational support, representations by us or  
otherwise) you will promptly advise us in writing of such problem within 90 days  
of the problem arising, so that we can have an opportunity to correct the  
problem. If you fail to so advise us, then, notwithstanding any provision in  
this Agreement or otherwise, you'll be forever precluded from taking any legal  
or other action against us and/or any of the Rubio's Affiliates, whether for  
arbitration, damages, injunctive, equitable or other relief (including but not  
limited to rescission) and whether by way of claim, counterclaim,  
cross-complaint, raised as an affirmative defense, offset or otherwise, with  
regard to the problem.  
  
 21.4. PERIODS IN WHICH TO MAKE CLAIMS.  
  
 A. No arbitration, action or suit (whether by way of  
claim, counterclaim, cross-complaint, raised as an affirmative defense, offset  
or otherwise) by either we or you may be filed against the other (nor by you  
against any Rubio's Affiliate), whether for damages, rescission, injunctive or  
any other legal and/or equitable relief, in respect of any alleged breach of  
this Agreement, or any other claim of any type, unless such party will have  
commenced such arbitration, action or suit before the expiration of the earlier  
of: (1) one year after the date on which the state of facts giving rise to the  
cause of action comes to the attention of, or should reasonably have come to the  
attention of, such party; or (2) one year after the initial occurrence of any  
act or omission giving rise to the cause of action, whenever discovered.  
Notwithstanding the foregoing limitations, where any federal, state or  
provincial law provides for a shorter limitations period than above described,  
whether on notice or otherwise, such shorter period will govern.  
  
 B. The foregoing limitations may, where brought into  
effect by our failure to commence an action within the time periods specified,  
operate to exclude our right to xxx for damages but will in no case, even on  
expiration or lapse of the periods specified or referenced above, operate to  
prevent us from: (1) terminating your rights and our obligations under this  
Agreement as provided herein and/or under applicable law nor prevent us from  
obtaining any appropriate court judgment, order or otherwise which enforces  
and/or is otherwise consistent with such termination; or (2) obtaining and/or  
enforcing a temporary restraining order, preliminary injunction, permanent  
injunction or other equitable relief (whether by an arbitrator or a court) with  
respect to any operational non-compliance by you, irrespective of when such  
operational non-compliance occurred or came to our attention, in each case you  
agree that such relief is appropriate so that we can, among other things,  
protect the goodwill inherent in the Marks and the related investments by us and  
all other Rubio's franchisees.  
  
 C. The limitations set forth in this Section 21.4. will  
not apply to our claims arising from or related to: (1) indemnification by you;  
(2) your confidentiality, noncompetition or other exclusive relationship  
obligations; and/or (3) your unauthorized use of the Marks.  
  
  
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 21.5. WAIVERS. We and you waive, to the fullest extent permitted by  
law, any right or claim of any consequential, punitive or exemplary damages  
against each other and agree that, in the event of a dispute between us, we and  
you shall be limited to the recovery of actual damages sustained by either we or  
you. We and you waive, to the fullest extent permitted by law, the right to  
bring, or be a class member in, any class action proceeding (whether in  
arbitration or in a judicial proceeding) and the right to trial by jury.  
  
 21.6. CHOICE OF LAWS. Except with respect to the applicability of  
the Federal Arbitration Act, 9 U.S.C. ss. 1 et seq. and the effect of federal  
preemption of state law by that Act and except to the extent governed by the  
United States Trademark Act and other federal laws, or as provided elsewhere in  
this Agreement, you and we agree that this Agreement (including any claims,  
counterclaims or otherwise by you) and all other matters concerning you and us  
(and/or you and any Rubio's Affiliate), including your and our/their respective  
rights and obligations, will be governed by, and construed and enforced in  
accordance with, the laws of the state of , without regard to the laws  
of such state relating to conflicts of laws or choice of law; except that the  
provisions of any law of that state regarding franchises (including, without  
limitation, registration, disclosure, or relationship, and the regulations  
thereunder) shall not apply unless such state's jurisdictional, definitional and  
other requirements are met independently of, and without reference to, this  
Section.  
  
 21.7. SURVIVAL AND CONSTRUCTION. Each provision of this Section 21  
will be deemed to be self-executing and continue in full force and effect  
subsequent to and notwithstanding the expiration, termination, setting aside,  
cancellation, rescission, unenforceability or otherwise of this Agreement (or  
any part of it) for any reason, will survive and will govern any claim for  
rescission or otherwise. Your noncompetition and confidentiality obligations as  
set forth in this Agreement or elsewhere also shall survive the expiration  
and/or termination of this Agreement according to their terms, and your  
indemnity/hold harmless obligation as set forth in this Agreement or elsewhere  
also shall forever survive the expiration and/or termination of this Agreement.  
To the maximum extent permitted by law, you waive the effect of any statute of  
limitations which would, by lapse of time, limit your duties to observe such  
obligations and/or so defend and/or indemnify and/or hold harmless.  
  
 Each provision of this Agreement (including but not limited to those  
relating to mandatory arbitration, waiver of jury trial, limitation of damages,  
prior notice of claims, shortened periods in which to bring claims, costs and  
attorneys' fees, or otherwise) will be construed as independent of, and  
severable from, every other provision and if any provisions are deemed to be  
unenforceable in any way, such provisions will be modified or interpreted to the  
minimum extent necessary to have them comply with the law (including making such  
provision mutual in effect) and the remaining provisions of this Agreement will  
remain in full force and effect, the parties agreeing that the unenforceability  
of any provisions of this Section 21 will not affect the remainder of this  
Section 21, notwithstanding any statutory or decisional law to the contrary.  
  
 The rights and obligations of this Agreement run directly between you  
and us, are not intended to create any third-party beneficiary or similar rights  
or obligations (except for benefits to Rubio's Affiliates) and we do not have  
any duty to take any legal or other actions against, or with respect to, any  
other Rubio's franchisees in connection with any alleged violation of their  
obligations.  
  
 21.8. ATTORNEYS' FEES.  
  
 A. If either party is required to enforce this Agreement  
in a judicial or arbitration proceeding, the party prevailing in that proceeding  
shall be entitled to reimbursement of costs and expenses, including, but not  
limited to, reasonable accountants', attorneys', attorneys' assistants' and  
expert witness fees, the cost of investigation and proof of facts, court costs,  
other litigation expenses, and travel and living expenses, whether incurred  
prior to, in preparation for, or in contemplation of the filing of, any  
proceeding. The prevailing party shall be the party that prevails on its claims  
regardless of whether judgment is entered in its favor. If there are multiple  
claims, the costs and expenses shall be reimbursed accordingly. In any judicial  
proceeding, the amount of these costs and expenses will be determined by the  
court and not by a jury.  
  
  
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 B. If we are required to utilize legal counsel  
(including in-house counsel employed by us or any Rubio's Affiliate) in  
connection with any failure by you to comply with this Agreement, you shall  
reimburse us for any of the above-listed costs and expenses incurred by us.  
  
  
22. ACKNOWLEDGMENTS  
  
 You and each guarantor of your obligations to us expressly acknowledge  
that:  
  
 22.1. You have entered into this agreement as a result of your own  
independent investigation, after consultation with an attorney or other  
advisor(s) of your choice, and not as a result of any representations of Xxxxx'x  
Restaurants, Inc., its agents, officers or employees or anyone else, except as  
expressly set forth herein.  
  
 22.2. The possible success of your Rubio's Store is speculative and  
will be largely dependent upon your abilities and efforts and the abilities and  
efforts of the guarantors of your obligations, and neither Xxxxx'x Restaurants,  
Inc. nor anyone else has made any representation or guarantee to you or any  
guarantor that your Rubio's Store will be successful or profitable.  
  
 22.3. Neither you nor any guarantor of your obligations has received  
or relied on (nor have we or anyone else provided) any oral or written: sales,  
income or other projections of any kind or nature or any statements,  
representations, data, charts, tables, spreadsheets or mathematical calculations  
or otherwise which stated or suggested any level or range of actual or potential  
sales, costs, income, expenses, profits, cash flow, tax effects or otherwise  
with respect to, and neither we nor anyone else has made, nor have you or any  
guarantor relied on, any promises, representations or warranties as to any  
profits or otherwise you may realize in the operation of, a Rubio's Store, nor  
have you or any guarantor received or relied on any representations regarding  
any working capital or other funds necessary to reach any "break-even" or any  
other financial level. We can't reliably predict, forecast or project future  
performance, revenues, profits or otherwise of any Rubio's Store, even including  
one owned and/or operated by us, due to the large number of factors outside our  
control, and we certainly can't reliably predict what your results might be. We  
are unable, and do not attempt, to predict, forecast or project future  
performance, revenues, profits or otherwise of any Rubio's Stores. If any such  
information, promises, representations and/or warranties has been provided to  
you or any guarantor, they haven't been authorized, they should not be relied  
on, we will not be bound by them, and, if you or any guarantor does rely on such  
information, promises, representations and/or warranties, you and each guarantor  
do so at their own risk.  
  
 22.4. A complete ready-to-sign copy of this Agreement as signed by  
you was received by you and each guarantor of your obligations at least 5  
business days prior to the earlier of its execution by you and each guarantor or  
payment of any amounts, and a complete copy of Xxxxx'x Restaurants, Inc.'s  
franchise offering circular, together with all exhibits, was received at least  
10 business days prior to the earlier of you and each guarantor signing this  
agreement or paying any amounts to us.  
  
  
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 IN WITNESS WHEREOF, the undersigned have executed this Agreement to be  
effective the day and year first above written.  
  
  
  
 RUBIO'S:  
ATTEST: XXXXX'X RESTAURANTS, INC.  
  
By: By  
 --------------------------------- ----------------------------  
  
Title: Title  
 ------------------------------ -------------------------  
  
 Date:  
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ATTEST/WITNESS: FRANCHISEE:  
  
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 Date:  
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 GUARANTEE AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS  
  
 In consideration of, and as an inducement to, the execution of the  
Rubio's Restaurants Franchise Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
("Agreement") by Xxxxx'x Restaurants, Inc. ("Rubio's"), entered into with  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Franchisee"), the  
undersigned ("Guarantors"), each of whom is a member of Franchisee's Control  
Group, a holder of a legal or beneficial interest in Franchisee of 10% or more  
("10% Owner") or an executive officer of Franchisee, hereby personally and  
unconditionally: (1) guarantee to Rubio's and its successors and assigns, for  
the term of the Agreement and thereafter as provided in the Agreement, that  
Franchisee shall punctually pay and perform each and every undertaking,  
agreement and covenant set forth in the Agreement; (2) agree personally to be  
bound by each and every provision in the Agreement, including, without  
limitation, the provisions of Sections 15 and 19.5.; and (3) agree personally to  
be liable for the breach of each and every provision in this Agreement,  
including, without limitation, Section 15.  
  
 Each of the undersigned waives: (A) acceptance and notice of acceptance  
by Rubio's of the foregoing undertakings; (B) notice of demand for payment of  
any indebtedness or nonperformance of any obligations hereby guaranteed; (C)  
protest and notice of default to any party with respect to the indebtedness or  
nonperformance of any obligations hereby guaranteed; (D) any right he may have  
to require that an action be brought against Franchisee or any other person as a  
condition of liability; (E) all rights to payments and claims for reimbursement  
or subrogation which any of the undersigned may have against Franchisee arising  
as a result of the execution of and performance under this Guarantee by the  
undersigned; (F) any law or statute which requires that Rubio's make demand  
upon, assert claims against or collect from Franchisee or any others, foreclose  
any security interest, sell collateral, exhaust any remedies or take any other  
action against Franchisee or any others prior to making any demand upon,  
collecting from or taking any action against the undersigned with respect to  
this Guarantee; (G) any and all other notices and legal or equitable defenses to  
which he may be entitled; and (H) any and all right to have any legal action  
under this Guarantee decided by a jury.  
  
 Each of the undersigned consents and agrees that: (I) his direct and  
immediate liability under this Guarantee shall be joint and several; (II) he  
shall render any payment or performance required under the Agreement upon demand  
if Franchisee fails or refuses punctually to do so; (III) such liability shall  
not be contingent or conditioned upon pursuit by Rubio's of any remedies against  
Franchisee or any other person; (iv) such liability shall not be diminished,  
relieved or otherwise affected by any amendment of the Agreement, any extension  
of time, credit or other indulgence which Rubio's may from time to time grant to  
Franchisee or to any other person including, without limitation, the acceptance  
of any partial payment or performance or the compromise or release of any  
claims, none of which shall in any way modify or amend this Guarantee, which  
shall be continuing and irrevocable during the term of the Agreement and for so  
long thereafter as there are monies or obligations owing from Franchisee to  
Rubio's or its affiliates under the Agreement; and (V) monies received from any  
source by Rubio's for application toward payment of the obligations under the  
Agreement and under this Guarantee may be applied in any manner or order deemed  
appropriate by Rubio's. In addition, if any of the undersigned ceases to be a  
member of the Control Group, a 10% Owner or an executive officer of Franchisee  
prior to termination or expiration of the Agreement, that person agrees that his  
obligations under this Guarantee shall continue to remain in force and effect  
unless Rubio's in its sole discretion, in writing, releases that person from  
this Guarantee. Notwithstanding the provisions of the previous sentence, unless  
prohibited by applicable law, the obligations contained in Section 15.2. shall  
remain in force and effect for a period of 2 years after any such release by  
Rubio's. A release by Rubio's of any of the undersigned shall not affect the  
obligations of any other Guarantor.  
  
 If Rubio's is required to enforce this Guarantee in a judicial or  
arbitration proceeding, the prevailing party in such proceeding shall be  
entitled to reimbursement of its costs and expenses, including, but not limited  
to, reasonable accountants', attorneys', attorneys' assistants' and expert  
witness fees, cost of investigation and proof of facts, court costs, other  
litigation expenses and travel and living expenses, whether incurred prior to,  
in preparation for or in contemplation of the filing of any such proceeding. The  
prevailing party shall be the party that prevails on its claims regardless of  
whether judgment is entered in its favor. If there are multiple claims, the  
costs and expenses shall be reimbursed accordingly. In any judicial proceeding,  
these costs and expenses shall be determined by the court and not by a jury.  
  
  
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 If Rubio's is required to utilize legal counsel (including in-house  
counsel employed by Rubio's or any Rubio's Affiliate) in connection with any  
failure by the undersigned to comply with this Guarantee, the undersigned shall  
reimburse Rubio's for any of the above-listed costs and expenses incurred by it.  
  
 If any of the following events occur, a default ("Default") under this  
Guarantee shall exist: (a) failure of timely payment or performance of the  
obligations under this Guarantee; (B) breach of any agreement or representation  
contained or referred to in this Guarantee; (C) the death of, appointment of a  
guardian for, dissolution of, termination of existence of, loss of good standing  
status by, appointment of a receiver for, assignment for the benefit of  
creditors of, or the commencement of any insolvency or bankruptcy proceeding by  
or against, any of the undersigned; and/or (D) the entry of any monetary  
judgment or the assessment against, the filing of any tax lien against, or the  
issuance of any writ of garnishment or attachment against any property of or  
debts due any of the undersigned. If a Default occurs, the obligations of the  
undersigned shall be due immediately and payable without notice.  
  
 This Guarantee shall inure to the benefit of and be binding upon the  
parties and their respective heirs, legal representatives, successors and  
assigns. Rubio's interests in and rights under this Guarantee are freely  
assignable, in whole or in part, by Rubio's. Any assignment shall not release  
the undersigned from this Guarantee.  
  
 Sections 21.1. through 21.7. of the Agreement are incorporated by  
reference into this Guarantee and all capitalized terms that are not defined in  
this Guarantee shall have the meaning given them in the Agreement.  
  
  
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 IN WITNESS WHEREOF, each of the undersigned has hereunto affixed his  
signature, under seal.  
  
 GUARANTORS(S):  
  
Date:  
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% Ownership Interest in Print Name:  
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Franchisee:  
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 Address:  
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Date:  
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% Ownership Interest in Print Name:  
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Franchisee:  
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 Address:  
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Date:  
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% Ownership Interest in Print Name:  
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Franchisee:  
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 Address:  
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Date:  
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% Ownership Interest in Print Name:  
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Franchisee:  
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 Address:  
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 EXHIBIT 1  
  
  
1 Premises:  
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2 Franchisee's Control Group is comprised of the following:  
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3 Franchisee's Authorized Agent:  
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4 Franchisee's Existing Restaurant Operations:  
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5 Franchisee's Notice Address and Facsimile Number:  
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FRANCHISEE TO ACKNOWLEDGE RECEIPT OF THIS EXHIBIT BY INITIALING BELOW:  
  
  
  
 YOUR INITIALS: \_\_\_\_\_\_\_\_\_\_ / \_\_\_\_\_\_\_\_\_\_  
  
  
  
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 EXHIBIT 2  
  
 CURRENT FORM OF RELEASING LANGUAGE  
  
 (SUBJECT TO CHANGE)  
  
 RELEASE-GENERAL PROVISIONS. Franchisee(s), jointly and severally,  
hereby release and forever discharge us and each and all of the Rubio's  
Affiliates (as defined below) of and from any and all causes of action, in law  
or in equity, suits, debts, liens, defaults under contracts, leases, agreements  
or promises, liabilities, claims, demands, damages, losses, costs or expenses,  
of any nature whatsoever, howsoever arising, KNOWN OR UNKNOWN, fixed or  
contingent, past or present, that Franchisee(s) (or any of them) now has or may  
hereafter have against us or all or any of the Rubio's Affiliates by reason of  
any matter, cause or thing whatsoever from the beginning of time to the date  
hereof ("Claims"), it being the mutual intention of the parties that this  
release be unqualifiedly general in scope and effect and that any Claims against  
us or any of the Rubio's Affiliates are hereby forever canceled and forgiven.  
  
 FRANCHISEE(S) ACKNOWLEDGE THAT THEY ARE FAMILIAR WITH THE PROVISIONS OF  
CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:  
  
 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES  
 NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS  
 SETTLEMENT WITH THE DEBTOR."  
  
 FRANCHISEE(S), BEING AWARE OF THIS CODE SECTION, HEREBY EXPRESSLY WAIVE  
ALL OF THEIR RIGHTS THEREUNDER AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW  
PRINCIPLES OF SIMILAR EFFECT OF ANY APPLICABLE JURISDICTION, INCLUDING, WITHOUT  
LIMITATION, CALIFORNIA.  
  
 Franchisee(s) expressly assume the risk of any fact or mistake of fact  
of which they may be unaware or that the true facts may be other than any facts  
now known or believed to exist by Franchisee(s), and it is Franchisee(s)  
intention to forever settle, adjust and compromise any and all present and/or  
future disputes with respect to all matters from the beginning of time to the  
date of this document finally and forever and without regard to who may or may  
not have been correct in their understanding of the facts, law or otherwise. All  
releases given by Franchisee(s) are intended to constitute a full, complete,  
unconditional and immediate substitution for any and all rights, claims, demands  
and causes of action whatsoever which exist, or might have existed, on the date  
of this document. Franchisee(s) represent and warrant that they have made such  
independent investigation of the facts, law and otherwise pertaining to all  
matters discussed, referred to or released in or by this document as  
Franchisee(s), in Franchisee(s) independent judgment, believe necessary or  
appropriate. Franchisee(s) have not relied on any statement, promise,  
representation or otherwise, whether of fact, law or otherwise, or lack of  
disclosure of any fact, law or otherwise, by us or any of the Rubio's Affiliates  
or anyone else, not expressly set forth herein, in executing this document  
and/or the related releases.  
  
 NO ASSIGNMENT OR TRANSFER OF INTEREST. Franchisee(s) represent and  
warrant that there has been, and there will be, no assignment or other transfer  
of any interest in any Claims that Franchisee(s) may have against us or any or  
all of the Rubio's Affiliates, all Claims having been fully and finally  
extinguished, and Franchisee(s) agree to forever indemnify and hold us and the  
Rubio's Affiliates harmless from any liability, claims, demands, damages,  
losses, costs, expenses or attorneys' fees incurred by us or any of the Rubio's  
Affiliates as a result of any person asserting any voluntary, involuntary or  
other assignment or transfer, or any rights or claims under such assignment or  
transfer. It is the intention of the parties that this indemnity does not  
require payment by us or any of the Rubio's Affiliates as a condition precedent  
to recovery against Franchisee(s) under this indemnity.  
  
 ATTORNEYS' FEES. If Franchisee(s), or anyone acting for, or on behalf  
of, Franchisee(s) or claiming to have received, by assignment or otherwise, any  
interest in any of the Claims, commence, join in, or in any manner seek relief  
through any suit (or otherwise) arising out of, based upon or relating to any of  
the Claims released hereunder or in any manner asserts against us or all or any  
of the Rubio's Affiliates any of the Claims released hereunder,  
  
  
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Franchisee(s) agree to pay all attorneys' fees and other costs incurred by us or  
any of the Rubio's Affiliates in defending or otherwise responding to said suit  
or assertion directly to us or the Rubio's Affiliates incurring such costs.  
  
 "RUBIO'S AFFILIATES." Each and all of the following, whether past,  
present and/or future: each and all company(ies) and/or person(s) acting by,  
through, under, in concert, affiliated and/or associated in any way with us;  
each and all of the partners, shareholders, officers, directors, agents,  
attorneys, accountants, and/or employees of us; and/or any of the foregoing, as  
well as each and all of the successors and/or assigns of us and/or any of the  
foregoing.  
  
 DATE OF RELEASES, JOINT AND SEVERAL LIABILITY. The releases granted  
hereunder shall be deemed effective as of both the date hereof and the date of  
any transaction in which they are to be issued. The liabilities and obligations  
of each of Franchisee(s) (and any other person/entity providing releases to us  
or the Rubio's Affiliates) shall be joint and several.  
  
FRANCHISEE TO ACKNOWLEDGE RECEIPT OF THIS EXHIBIT BY INITIALING BELOW:  
  
  
 YOUR INITIALS: \_\_\_\_\_\_\_\_\_\_ / \_\_\_\_\_\_\_\_\_\_  
  
  
  
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 RIDER 1  
  
 FRANCHISE AGREEMENT EXPIRATION DATE  
  
  
TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
 The Rubio's Store located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ first  
opened for business on  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The initial term  
of the Franchise Agreement for the Rubio's Store expires on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  
If you desire to remain a franchisee for the First Renewal Term, you must give  
us notice no earlier than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (240 days before the expiration date  
of the Franchise Agreement) and no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (180 days before  
the expiration date).  
  
  
XXXXX'X RESTAURANTS, INC.  
  
  
  
By:  
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Title:  
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Date:  
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