

## Special Risks to Consider About *This Franchise*

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement and the area development agreement require you to resolve disputes with us by arbitration or litigation in California. Out-of-state arbitration or litigation may force you to accept a less favorable settlement for disputes. It also may cost more to arbitrate or litigate with us in California than in your home state.
2. **Short Operating History.** The franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.
3. **Spousal Liability.** At the franchisor's request, your spouse must sign a document making your spouse liable for all financial obligations under the Franchise Agreement, even if your spouse has no ownership interest in the franchise. This Guarantee will place both your and your spouse's marital and personal assets (perhaps including your house) at risk if your franchise fails.
4. **Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.
5. **Unopened Franchises.** The franchisor has signed a significant number of franchise agreements with franchisees who have not yet opened their outlets. If other franchisees are experiencing delays in opening their outlets, you may also experience delays in opening your own outlet.
6. **Supplier control.** You must purchase all or nearly all of the inventory or supplies that are necessary to operate your business from the franchisor, its affiliates, or suppliers that the franchisor designates, at prices the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchise business.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

1. The following language is added to the end of Item 5:

Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

2. The following language is added at the end of Item 17.

The Development Agreement and Franchise Agreement provide for termination upon bankruptcy. This provision might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101 et seq.) but we will enforce it to the extent enforceable.

3. The following is added to the end of Item 17(c) and Item 17(m):

However, any release required as a condition of renewal and/or assignment/transfer will not apply to claims arising under the Maryland Franchise Registration and Disclosure Law.

4. The following language is added at the end of Item 17(u):

The Development Agreement and Franchise Agreement provide that disputes are resolved through arbitration. Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable

5. The following language is added at the end of Item 17(v):

A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

#### **FOR THE STATE OF MINNESOTA**

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

1. [The following language is added to the end of Items 5 and 7:](#)

[The Minnesota Department of Commerce \(Securities Section\) has required us to defer payment of all initial franchise fees and development fees until we have completed all of our pre-opening obligations and your business opens.](#)

2. ~~1.~~ The following is added to the “Remarks” column of the “Non-Sufficient Funds Fee” in Item 6:

Minnesota Statute 604.113 caps service charges at \$30 per incurrence.

3. ~~2.~~ The following is added at the end of the chart in Item 17:

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) of the Franchise Agreement and Development Agreement and 180 days' notice for non-renewal of the Franchise Agreement and Development Agreement.

Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibits us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial or requiring the Developer or Franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Disclosure Document, Development Agreement or Franchise Agreement can abrogate or reduce any of Developer's or Franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or Developer's or Franchisee's rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

Any release required as a condition of renewal or transfer/assignment will not apply to the extent prohibited by Governing Law with respect to claims arising under Minn. Rule 2860.4400D.

### **FOR THE STATE OF NEW YORK**

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005.**

**WE MAY, IF WE CHOOSE, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE DEVELOPER OR FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS DISCLOSURE DOCUMENT.**

4. The following is added to the end of end of the “Summary” sections of Item 17(c), entitled Requirements for franchisee to renew or extend, and Item 17(m), entitled Conditions for franchisor approval of transfer:

Notwithstanding the foregoing, all rights enjoyed by you and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force to the extent required by the non-waiver provisions of GBL Sections 687.4 and 687.5, as amended.

5. The following is added to the end ~~of~~ of the “Summary” section of Item 17(d), titled Termination by franchisee:

You may terminate the Franchise Agreement on any grounds available by law.

6. The following is added to the end of the “Summary” section of Item 17(j), titled Assignment of contract by franchisor:

However, to the extent required by applicable law, no assignment will be made except to an assignee who, in our good faith judgment, is willing and financially able to assume our obligations under the Franchise Agreement.

7. The following is added to the end of the “Summary” sections of Item 17(v), titled Choice of forum, and Item 17(w), titled Choice of law:

However, the governing choice of law and choice of forum shall not be considered a waiver of any right conferred upon you by the provisions of Article 33 of the General Business Law of the State of New York.

8. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

#### **FOR THE STATE OF NORTH DAKOTA**

1. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**RIDER TO THE RUSTY TACO FRANCHISING, LLC  
DEVELOPMENT AGREEMENT  
FOR USE IN MARYLAND**

**THIS RIDER** (this “**Rider**”) is made and entered into by and between **RUSTY TACO FRANCHISING, LLC**, a Delaware limited liability company with its principal business address at 3191 Red Hill, Suite 200, Costa Mesa, California 92626 (“us”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Development Agreement dated \_\_\_\_\_, 20\_\_ (the “**Development Agreement**”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Development Agreement, and the Development Agreement is amended only as set forth below. In the event of conflict between the terms of the Development Agreement and this Rider, this Rider shall govern such inconsistency. This Rider is being signed because (a) you are a resident of the State of Maryland; or (b) the Development Area is located in the State of Maryland; or (c) the offer to sell the Development Rights was made in the State of Maryland; or (d) the offer to buy the Development Rights was accepted in the State of Maryland.

2. **ACKNOWLEDGMENT.** No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

3. **FINANCIAL ASSURANCE.** The following is added to the end of Section [32.1](#) of the Development Agreement:

In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

4. **INSOLVENCY.** The following is added to the end of Section 7.1 of the Development Agreement:

The provision which provides for termination upon your bankruptcy might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101 et seq.).

5. **VENUE.** Sections 11.2 and 11.9 of the Development Agreement is supplemented by adding the following to the end of the Section:

A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

A Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Registration and Disclosure Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.

**RIDER TO THE RUSTY TACO FRANCHISING, LLC  
DEVELOPMENT AGREEMENT  
FOR USE IN MINNESOTA**

**THIS RIDER** (this “**Rider**”) is made and entered into by and between **RUSTY TACO FRANCHISING, LLC**, a Delaware limited liability company with its principal business address at 3191 Red Hill, Suite 200, Costa Mesa, California 92626 (“us”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Development Agreement dated \_\_\_\_\_, 20\_\_ (the “**Development Agreement**”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Development Agreement, and the Development Agreement is amended only as set forth below. In the event of conflict between the terms of the Development Agreement and this Rider, this Rider shall govern such inconsistency. This Rider is being signed because (a) the Development Area is in the State of Minnesota; (b) you are a resident of the State of Minnesota; and/or (c) any of the offering or sales activity relating to the Development Rights occurred in the State of Minnesota.

2. **ACKNOWLEDGMENT.** No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

3. **FINANCIAL ASSURANCE.** The following is added to the end of Section 2.1 (“Development Fee”) of the Development Agreement:

Notwithstanding anything to the contrary, all development fees payable by us to you shall be deferred until the first franchise under this Agreement opens.

4. ~~3.~~ **INJUNCTIVE RELIEF.** The following language is added to the end of Section 11.6 of the Development Agreement:

Notwithstanding the foregoing, a court will determine if a bond is required.

5. ~~4.~~ **LIMITATIONS OF CLAIMS.** The following is added to the end of Section 11.8 of the Development Agreement:

; provided, however, that Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than 3 years after the cause of action accrues.

6. ~~5.~~ **MINNESOTA LAW.** Notwithstanding anything to the contrary contained in the Development Agreement, Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring you to waive your rights to a jury trial or to waive your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties or judgment notes.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the parties have executed and delivered this Rider to be effective as of the effective date of the Development Agreement.

**RUSTY TACO FRANCHISING, LLC**

**[DEVELOPER]**

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

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

**RIDER TO THE RUSTY TACO FRANCHISING, LLC  
DEVELOPMENT AGREEMENT  
FOR USE IN NEW YORK**

**THIS RIDER** (this “**Rider**”) is made and entered into by and between **RUSTY TACO FRANCHISING, LLC**, a Delaware limited liability company with its principal business address at 3191 Red Hill, Suite 200, Costa Mesa, California 92626 (“us”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Development Agreement dated \_\_\_\_\_, 20\_\_ (the “**Development Agreement**”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Development Agreement, and the Development Agreement is amended only as set forth below. In the event of conflict between the terms of the Development Agreement and this Rider, this Rider shall govern such inconsistency. This Rider is being signed because (a) an offer to sell the Development Rights is made in the State of New York; (b) an offer to buy the Development Rights is accepted in New York, (c) if you are domiciled in the State of New York and the Development Area is or will be located in the State of New York.

2. **TRANSFER BY US.** The following language is added to the end of Section 6.1 of the Development Agreement:

However, to the extent required by applicable law, no transfer will be made except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under this Development Agreement.

3. **DEFAULT AND TERMINATION.** The following language is added to the end of Section 7 of the Development Agreement:

You also may terminate this Development Agreement on any grounds available by law under the provisions of Article 33 of the General Business Law of the State of New York.

4. **CHOICE OF LAW.** The following language is added to the end of Section 11.1 of the Development Agreement:

This Section shall not be considered a waiver of any right conferred upon you by the provisions of Article 33 of the New York State General Business Law, as amended, and the regulations issued thereunder.

5. **CONSENT TO JURISDICTION.** The following language is added to the end of Section 11.9 of the Development Agreement:

This Section shall not be considered a waiver of any right conferred upon you by the provisions of Article 33 of the New York State General Business Law, as amended, and the regulations issued thereunder.

*[Signature Page to Follow]*

**RIDER TO THE RUSTY TACO FRANCHISING, LLC  
FRANCHISE AGREEMENT  
FOR USE IN MINNESOTA**

**THIS RIDER** (this “Rider”) is made and entered into by and between **RUSTY TACO FRANCHISING, LLC**, a Delaware limited liability company with its principal business address at 3191 Red Hill, Suite 200, Costa Mesa, California 92626 (“us”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Development Agreement dated \_\_\_\_\_, 20\_\_ (the “**Franchise Agreement**”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Franchise Agreement, and the Franchise Agreement is amended only as set forth below. In the event of conflict between the terms of the Franchise Agreement and this Rider, this Rider shall govern such inconsistency. This Rider is being signed because (a) you are a resident of the State of Minnesota; (b) the Restaurant that you will develop is or will be located in the State of Minnesota; or (c) any of the offering or sales activity relating to the Franchise Agreement occurred in the State of Minnesota.

2. **FINANCIAL ASSURANCE.** The following is added to the end of Section 4.1 (“**Initial Franchise Fee**”) of the Franchise Agreement:

Notwithstanding anything to the contrary, all initial fees and other payments owed by you to us or our affiliates will be deferred until your Restaurant opens and we have completed our pre-opening obligations under this Agreement.

3. **INTEREST ON LATE PAYMENTS.** The following language is added to the end of the first paragraph of Section 4.10 of the Franchise Agreement:

Notwithstanding the foregoing, you and we acknowledge that under Minnesota Statute 604.113 your penalty for an insufficient funds check will be limited to \$30 per occurrence.

4. **RELEASES.** The following is added to the end of Sections 2.1, 3.7, and 12.2.5 of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

5. **RENEWAL AND TERMINATION.** The following is added to the end of Sections 2 and 13 of the Franchise Agreement:

However, with respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice of non-renewal of this Agreement.

6. **LOST REVENUE DAMAGES.** The following language is added to the end of Section 14.7 of the Franchise Agreement

We and you acknowledge that certain parts of this provision might not be enforceable

under Minn. Rule Part 2860.4400J. However, we and you agree to enforce the provision to the extent the law allows.

7. ~~6.~~ **INJUNCTIVE RELIEF.** Section 19.7 of the Franchise Agreement is deleted and replaced with the following:

Notwithstanding the foregoing, a court will determine if a bond is required.

8. ~~7.~~ **LIMITATIONS OF CLAIMS.** The following is added to the end of Section 19.8 of the Franchise Agreement:

; provided, however, that Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than 3 years after the cause of action accrues.

9. ~~8.~~ **MINNESOTA LAW.** Notwithstanding anything to the contrary contained in the Franchise Agreement, Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring you to waive your rights to a jury trial or to waive your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties or judgment notes.

*[Signature Page to Follow]*

6. **CONSENT TO JURISDICTION**. The following language is added to the end of Section 19.9 of the Franchise Agreement:

This Section shall not be considered a waiver of any right conferred upon you by the provisions of Article 33 of the New York State General Business Law, as amended, and the regulations issued thereunder.

*[Signature Page to Follow]*