

# RESTAURANT MANAGEMENT AGREEMENT

## Table of Contents

1.	RETENTION OF MANAGER.....	2
2.	TERM .....	2
3.	DUTIES OF MANAGER.....	2
4.	OPERATION OF RESTAURANT .....	4
5.	MANAGEMENT FEE & EXPENSES OF MANAGER .....	4
6.	OPERATING ACCOUNT.....	4
7.	DISPOSITION OF ACCOUNTS PAYABLE .....	5
8.	DISBURSEMENT OF FUNDS .....	5
9.	REPORTING.....	5
10.	INSURANCE .....	5
11.	STAFFING & LABOR ISSUES .....	7
12.	LIQUOR AND OTHER LICENSES .....	7
13.	MAINTENANCE AND REPAIR OF RESTAURANT .....	7
14.	ENVIRONMENTAL MATTERS .....	8
15.	MARKETING .....	10
16.	TERMINATION EVENTS; EVENTS OF DEFAULT.....	10
17.	DAMAGE OR DESTRUCTION .....	12
18.	ASSIGNMENT BY MANAGER .....	12
19.	REPRESENTATIONS AND WARRANTIES.....	13
20.	NO PARTNERSHIP .....	13
21.	INDEMNITY .....	13
22.	REIMBURSEMENT OF OWNER.....	14
23.	MISCELLANEOUS PROVISIONS.....	14

Schedule - Owner's Operating Standards

# RESTAURANT MANAGEMENT AGREEMENT

THIS AGREEMENT made effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

BETWEEN:

[NAME OF RESTAURANT OWNER]

[address]  
(the "Owner")

- and -

[NAME OF MANAGER]

[address]  
(the "Manager")

RECITALS:

WHEREAS the Owner is the owner of a restaurant called \_\_\_\_\_ and located at \_\_\_\_\_ (the "Restaurant");

AND WHEREAS the Owner desires to retain the Manager, and the Manager desires to be so retained, on the terms and conditions which are set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises which are set forth herein, the parties hereby agree as follows:

## 1. RETENTION OF MANAGER

Owner hereby engages Manager and Manager agrees to operate and manage the Restaurant under the name "\_\_\_\_\_" for the account of, and on behalf of, Owner on an exclusive basis, in accordance with the terms of this Agreement.

## 2. TERM

This Agreement shall remain in effect for a period of \_\_\_\_ years, commencing on the date hereof, and ending on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ unless terminated earlier as provided below (the "Term").

## 3. DUTIES OF MANAGER

3.1 *Duties and Responsibilities.* Subject to the provisions of this Agreement, Manager shall have decision-making authority in the day-to-day operation, direction, management and supervision of the Restaurant. Manager's authority and obligations shall include:

- (a) hiring, training, compensation, supervision and termination of Restaurant personnel, and determining the number of staff required;
- (b) the creation of food and beverage menus, wine lists, and the pricing of the same and the setting of dress codes for the Restaurant, all of which shall, prior to being implemented by Manager, be approved by Owner, such approval not to be unreasonably withheld or delayed;
- (c) maintaining and operating the Restaurant in accordance with the operating standards ("Operating Standards") set by Owner (a copy of which are attached to this Agreement as Schedule \_\_\_\_). As to matters relating to the operation or management of the Restaurant which are not provided for in this Agreement, Manager shall consider in good faith Owner's reasonable observations and requests with respect thereto, provided that Owner shall not make any such

requests which would be inconsistent with the Operating Standards. At Owner's request, Manager shall meet with Owner to discuss such observations and requests;

- (d) establishing and supervising all advertising, public relations and promotional policies with respect to the Restaurant with the costs thereof not exceeding the applicable amounts set forth in the annual operating budget;
- (e) purchasing and maintaining the Restaurant's inventory of food, beverages (including, without limitation, wines and liquors) and operating supplies;
- (f) obtaining, and keeping in full force and effect, in the name of Owner or Manager, as appropriate (or as expressly provided herein), with preference to be in the name of the Owner if legally possible to do so, all necessary licenses and permits (including the liquor license and other bar, restaurant, sign and occupancy licenses and permits) as may be required by law to operate the Restaurant from time to time. Manager shall not take any actions which could jeopardize or otherwise adversely affect any of such licenses or permits. Manager shall comply with the conditions set forth in any such licenses and permits and at all times shall manage and operate the Restaurant in accordance with such conditions and other applicable laws;
- (g) applying sound administrative, accounting, cash management, budgeting, operational, sales, advertising, legal, personnel and purchasing policies and practices in accordance with the terms of this Agreement to the end of optimizing the aggregate amount of cash flow generated by the Restaurant. The parties acknowledge that Manager shall prepare the annual operating budget consistent with the goal of optimizing cash flow; and
- (h) notifying Owner if it has actual knowledge relating to, and promptly forwarding to Owner any notices or other communications it delivers or receives with respect to: (i) the occurrence of damage or destruction to the Restaurant; (ii) any litigation, claim or proceeding affecting Owner, Manager or the operation of the Restaurant in which the amount claimed or in controversy is \$\_\_\_\_\_ or more or otherwise which is material to the operation of the Restaurant, and any written threat to institute any of the same which is likely to give rise to any such litigation, claim, or proceeding; (iii) any notice of violation (or alleged violation) of any law relating to the ownership or operation of the Restaurant which could expose Owner or Manager to any criminal penalty or to any civil penalty or which is otherwise material to the ownership or operation of the Restaurant; and (iv) any strikes or other material labor unrest relating to the Restaurant.

3.2 *Limitation on Manager's Authority.* In addition to any other limitations on Manager's authority set forth in this Agreement, Manager shall not, without Owner's written approval (which written approval, solely with respect to items (a) and (c) below, shall not be unreasonably withheld or delayed), take any of the following actions with respect to the Restaurant (except as otherwise expressly permitted by the terms hereof and except if the specific terms of such action shall have been expressly provided for in the annual operating budget or otherwise approved in writing by Owner):

- (a) enter into any contract or other agreement which could require payment of more than \$\_\_\_\_\_ per year or having a term longer than one year (unless such contract is terminable after one year upon not more than thirty (30) days notice without penalty) or so modify or amend any such contract or agreement, subject to the further limitation that Manager shall not enter into any contract or other agreement for more than \$\_\_\_\_\_ unless the same shall contain provisions unconditionally exculpating Owner; or
- (b) enter into any lease, license, concession or other occupancy agreement; or
- (c) enter into any arrangement for the employment of any professional firm (other than attorneys and accountants) except as set forth in the annual operating budget; or
- (d) enter into, renew, modify, amend or terminate any union contract or collective bargaining agreement affecting the Restaurant; or

- (e) settle any litigation or claims for more than \$\_\_\_\_\_ unless the settlement solely involves the payment of an amount in cash which is covered by insurance proceeds for which the deductible amount does not exceed \$\_\_\_\_\_; or
- (f) extend more than \$\_\_\_\_\_ of credit to any single customer or group of related customers; or
- (g) borrow money, issue any guarantees or incur any interest or contingent obligation, except ordinary trade debt;
- (h) sell, transfer or otherwise dispose of all or any portion of the Restaurant, except for the sale of inventory as approved in writing by Owner; or
- (i) provide complimentary services to any patrons of more than \$\_\_\_\_\_ in any calendar year without the written approval of Owner; or
- (j) acquire any capital assets or interest therein; or
- (k) finance, refinance or otherwise encumber the Restaurant or any portion thereof; or
- (l) take any other action that is prohibited under the terms of this Agreement or requires the approval of Owner.

#### **4. OPERATION OF RESTAURANT**

Manager agrees to open the Restaurant for business seven (7) days a week for breakfast service from \_\_\_\_ AM to \_\_\_\_ AM, seven (7) days a week for lunch service from \_\_\_\_ AM to \_\_\_\_ PM and seven (7) days a week for dinner service from \_\_\_\_ PM to \_\_\_\_ PM, unless Owner and Manager otherwise mutually agree. Manager may eliminate one breakfast seating and one lunch seating per week to the extent that Manager reasonably determines that providing seven-day-a-week breakfast and/or lunch service is commercially unfeasible.

#### **5. MANAGEMENT FEE & EXPENSES OF MANAGER**

5.1 *Management Fee.* So long as this Agreement is in full force and effect, and Manager is not in default hereunder, Manager shall be entitled to a management fee [option 1: of \$\_\_\_\_\_ per [month/year] OR [option 2: in the aggregate amount of \_\_\_\_% of gross revenues] as compensation for the services provided by Management hereunder (the "Management Fee"). The Management Fee shall be payable monthly, in arrears, subject to year-end audit and adjustment.

Manager agrees that the Management Fee is intended to cover all of Manager's general and administrative overhead, and all salary and other compensation of Manager, Manager's Affiliates and Manager's employees above the level of Restaurant manager. Notwithstanding the foregoing, the Management Fee shall be payable on a current basis only to the extent there is sufficient cash flow (prior to deduction of the Management Fee) after all operating expenses (other than the Management Fee) have been accrued. To the extent there is not sufficient cash flow to pay the Management Fee on a current basis, payment thereof shall be carried forward without interest from one year to the next during the Term, but Owner shall have no liability therefor.

5.2 *Expenses of Manager.* All of the following expenses are part of the Management Fee and are the sole expense of the Manager: payroll processing fees, messenger service, money transport and change fees, health plan and benefit plan maintenance fees, all operating expenses other than the Management Fee.

#### **6. OPERATING ACCOUNT**

Gross revenues or funds supplied by Owner or Manager, exclusive of working capital, shall be deposited in an account (the "Operating Account") at a bank selected by Manager and approved by Owner. Title to the Operating Account shall be in Owner's name. Owner shall be a co-signatory on the Operating Account. Checks or other documents of withdrawal therefrom shall be signed by

\_\_\_\_\_. *[if manager has signing authority, add:* Owner shall also be authorized to sign such checks or documents of withdrawal, but Owner shall exercise this authority only in the event of default by Manager under the terms of this Agreement or upon termination of this Agreement. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, all checks or other documents of withdrawal from the Operating Account in excess of \$\_\_\_\_\_ shall require the signature of Owner.

## **7. DISPOSITION OF ACCOUNTS PAYABLE**

Manager shall pay or cause to be paid, within \_\_\_\_ days after receipt thereof, all invoices for goods or services provided to Manager or in respect of the Restaurant, unless Manager is disputing, in good faith, the amount or validity of any such invoice. If Manager is disputing any such invoice, Manager shall deposit with Owner in reserve the amount of such invoice, which amount shall be released to Manager upon final disposition of such dispute and payment in full of the then agreed amount of such invoice. Manager shall not permit any such dispute to interfere with the operation of the Restaurant in accordance with the Operating Standards and the annual operating budget. In addition, if any mechanic's or materialmen's lien is filed against the Restaurant or any interest therein by reason of any claim relating to the Restaurant, then within 30 days after the filing thereof Manager shall cause the same to be discharged of record by filing the necessary bond or otherwise.

## **8. DISBURSEMENT OF FUNDS**

After the Manager deducts all authorized expenses relating to the operation and management of the Restaurant (including the Management Fee) from the revenues generated by Restaurant operations, as well as all reserves set by the Owner for working capital and capital expenditures, the Manager shall disburse any remaining funds as agreed between the Manager and the Owner.

## **9. REPORTING**

9.1 On or prior to the twentieth (20th) day of each calendar month during the Term, Manager shall deliver to Owner detailed statements (collectively, the "Monthly Statements") of profit and loss, gross revenues, operating expenses, cash flow, payments of the Management Fee, payments on account of working capital contributions and distributions to Owner, statements of the amounts deposited in or withdrawn from the Operating Account, accounts receivable (including aging) and accounts payable (including aging) for the Restaurant, and such operating statements and other information as Owner shall reasonably request in respect of the immediately preceding calendar month and on a year-to-date basis and a comparison with the prior year. Such statements shall also provide for re-forecasts, showing any anticipated deviations from the annual operating budget.

9.2 Owner shall have the right, at any time during the Term, through its employees, accountants or other representatives, to audit Manager's books and records relating to the Restaurant. Manager shall cooperate with Owner in connection with any such audits in all reasonable respects, including, without limitation, making available for review and copying by Owner, Owner's employees, accountants or other representatives, all of Manager's books and records relating to the Restaurant. If any such audit shall indicate that additional amounts are due to Owner under the Agreement, Manager shall pay such amounts within 30 days after notice, with interest thereon at the rate of \_\_\_\_% per annum from the date of the overpayment until the date of payment, and if the additional amounts due are greater than \$\_\_\_\_\_, Manager shall also pay for the cost of the audit.

## **10. INSURANCE**

10.1 At all times during the Term hereof, Manager shall maintain the following insurance with respect to the Restaurant:

- (a) "all-risk" insurance covering the Restaurant, against loss or damage from normal property perils, in aggregate amounts which shall be not less than 100% percent of replacement cost thereof (without depreciation or coinsurance) and as required to meet then-current building, health and safety codes and other applicable laws (notwithstanding the foregoing, "all-risk" insurance

covering the furniture, equipment and decoration within the Restaurant shall be maintained by Manager throughout the Term);

- (b) business interruption insurance covering loss of income to both Owner and Manager for a period of twenty-four (24) months resulting from interruption of business caused by the occurrence of any of the risks insured against under the property damage insurance referred to in this Section;
- (c) commercial general liability insurance in an amount not less than a combined single limit of \$10,000,000 for each occurrence in or about the Restaurant, for personal injury and death and property damage, as well as coverage for products and completed operations, in such amount against all claims arising out of alleged:
  - (i) bodily injury,
  - (ii) death,
  - (iii) property damage,
  - (iv) assault or battery,
  - (v) false arrest, detention or imprisonment or malicious prosecution,
  - (vi) libel, slander, defamation or violation of the right of privacy,
  - (vii) wrongful entry or eviction,
  - (viii) liquor law or dram shop liability, or
  - (ix) food poisoning;
- (d) worker's compensation and \_\_\_\_\_ State long-term disability coverage insurance in amounts not less than the amounts prescribed by applicable laws and employer's liability insurance in an amount equal to not less than \$1,000,000 (and scheduled under the commercial general liability insurance policy); and
- (e) comprehensive crime insurance, including fidelity bond coverage (including but not limited to computer theft coverage) in an amount equal to not less than \$2,000,000.

10.2 During the Term, Owner may change the above-described insurance (including requiring that the limits of any of the above-described insurance be increased) and may require that other or additional insurance be maintained, and the cost thereof shall be an operating expense; provided that such changes are consistent with the insurance being maintained for comparable restaurants in \_\_\_\_\_. All insurance shall be primary and non-contributory.

10.3 All insurance required by this Section shall be in such form and with such companies as shall be reasonably satisfactory to Owner. Any insurance may be provided under blanket policies of insurance. All property damage insurance maintained pursuant to this Section shall be in the name of Owner (it being agreed that Manager shall have no interest therein and shall not be named as a loss payee thereunder). The liability and business interruption insurance described in Section 10.1 shall be in the name of Manager with Owner named as an additional insured and loss payee as their interests may appear. The workmen's compensation, \_\_\_\_\_ State disability insurance, and crime insurance hereinbefore described shall be in the name of Manager with Owner as an additional insured and loss payee. The property damage insurance policy shall provide, if available at reasonable cost, that the insurance company will have no right of subrogation against Owner, Manager or any of their respective affiliates or the agents or employees thereof, unless there is gross negligence on the part of Manager.

10.4 The cost of insurance set forth above shall be paid as an operating expense. To the extent any such insurance shall cover property in addition to the Restaurant, the expense of such insurance shall be allocated equitably. Rebates, reductions and other such items shall also be allocated.