

FOUNDER PROFIT AND EQUITY PARTICIPATION AGREEMENT

THIS FOUNDER PROFIT AND EQUITY PARTICIPATION AGREEMENT (this “**Agreement**”) is made and entered into as of the ___ day of _____, 2019 (the “**Effective Date**”), by and between _____ a _____ limited liability company (“**Company**”), with a principal address of _____, Attention: General Counsel, and _____, an individual (“**Talent**”), with a principal address of _____.

RECITALS

WHEREAS, Company owns _____, LLC, a _____ limited liability company (“_____”), and _____ owns that certain restaurant brand doing business as “_____” (the “**Brand**”);

WHEREAS, in consideration for Talent’s promotion of the Brand, Company is willing to share _____ profits with Talent and transfer to Talent equity ownership interest in _____, and;

WHEREAS, Talent is willing to promote the Brand in exchange for profits and equity ownership interest in _____.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Talent Services. During the Term (as hereinafter defined), in consideration for Talent’s profit participation contemplated in Section 2 and equity participation contemplated in Section 3, Talent shall perform and complete the following services (collectively, the “**Services**”):

a. Talent shall use commercially reasonable efforts to promote the Brand, including at a minimum the following:

i. Three (3) Instagram feed posts per month, at least one (1) of which shall be a video, plus a link to “_____” in Talent’s Instagram bio for twenty-four (24) hours after each post; if Talent’s age and following is appropriate, one of Talent’s Instagram feed posts at the discretion of the Brand will feature one of the brand’s wine products if one exists.

ii. Four (4) Instagram stories with at least two (2) frames per month with appropriate tags, hashtags and/or swipe ups; if Talent’s age and following is appropriate, one of Talent’s Instagram story posts at the discretion of the Brand will feature one of the Brand’s wine products if it exists.

iii. For three (3) of the Instagram posts per month contemplated in items i. and ii. above, rebroadcasting thereof on Talent's other social media platforms, including but not limited to Facebook, Twitter and YouTube;

iv. If Talent is active on YouTube, two (2) thirty (30) second or more YouTube posts per month, which posts could be included as part of longer posts with unrelated content; if Talent's age and following is appropriate, one of Talent's You Tube feed posts at the discretion of the Brand will feature one of the brand's wine products if one exists.

v. Descriptor in Talent's Instagram bio and similar for Talent's other social media platforms that Talent is a " _____ Founder";

vi. For items i. through iv. above, submit the proposed posts/content to Company via email in advance for Company's review and approval, and;

vii. During the Term, for items i. through iv. above, once made public, the content shall not be deleted;

viii. Three (3) personal appearances at Brand promotional events per year, and;

ix. For items i. through iv. above, during the first two (2) months following the official launch of the Brand, Talent shall double Talent's promotional efforts. For example, Talent shall post six (6) Instagram feed posts during each of the first two (2) months, at least two (2) of which per month shall be a video, plus a link to " _____ " in Talent's Instagram bio for forty-eight (48) hours after each post.

b. Talent shall routinely and materially confer with Company regarding Talent's promotional activities for the Brand.

c. Talent shall comply with all applicable laws relating to Talent's promotion of the Brand, including Federal Trade Commission regulations in connection with online and social media endorsements.

d. As a " _____ Founder" and public face of the Brand, Talent shall not commit any immoral, deceptive, scandalous or obscene act, or otherwise injure, tarnish, damage or negatively affect the reputation or goodwill of Company, _____ and/or the Brand;

2. Profit Participation. Commencing on the Effective Date and continuing for two (2) years thereafter, Company shall cause _____ to pay Talent Profit (as hereinafter defined) equivalent to **100,000 units** of ownership interest in _____. "**Profit**" shall equal _____ gross revenue less expenses, as reasonably calculated by _____, consistent with _____ operating agreement. Profit shall be calculated on a calendar quarterly basis, following the first full calendar quarter following the Effective Date, and paid within thirty (30) days after the conclusion of the applicable calendar quarter. No Profit payment shall be due and owing to Talent unless this Agreement is in full force and effect on the payment due date. Upon Talent's

reasonable request, Company shall deliver to Talent financial statements regarding _____. At Talent's sole cost and upon reasonable advance notice to Company, Talent shall have the right to audit _____ books and records to confirm the accuracy of all Profit payments. The audit shall not unreasonably interfere with _____'s operations and shall be conducted by an independent, accounting firm of good standing. Talent shall not conduct more than one audit during each calendar year. _____ shall maintain _____'s books and records related to the Profit payments for no less than two (2) years. In the event an audit by Talent reveals an underpayment of more than five percent (5%) between the amount due and the amount actually paid, Company shall pay Talent's reasonable auditing costs.

3. Equity Participation. On the second anniversary of the Effective Date, in the event Talent has complied with the Services and this Agreement is in full force and effect, Company shall transfer to Talent **100,000 units** of ownership interest in _____, thereby entitling Talent to a proportionate allocation of profits, distributions and/or other allocable items as provided for in the operating agreement of _____.

4. License. Talent hereby grants Company and _____ the right to use, and license others to use, Talent's name, nickname, voice, signature, image, likeness, character, endorsements, mannerisms, and biography, for _____'s promotional and commercial purposes (including merchandise), throughout the world, royalty free, during the Term and for one-hundred eighty (180) days thereafter.

5. Intellectual Property Rights. Talent acknowledges and agrees that any and all intellectual property rights of any nature or kind, including, but not limited to, the following rights: patents, copyrights, registered and unregistered designs, registered and unregistered trademarks, service marks, trade names and moral rights (collectively, "**Intellectual Property Rights**"), in any photographs, videos, merchandise, promotional or advertising material, including goodwill associated with such material (collectively, "**Materials**"), created or produced during the Term, whether requested by, produced for or directly relating to _____, are solely owned by _____. Talent hereby assigns and transfers any rights, including copyright, Talent may have in the Intellectual Property Rights and Materials to _____.

6. Term. The "**Term**" of this Agreement shall commence on the Effective Date and expire on the later of two (2) years from the Effective Date or, if applicable, the date Talent is no longer an owner of _____. Notwithstanding the forgoing, during the first two (2) years of the Term, Talent may terminate this Agreement at any time, for any reason, upon advance written notice to Company. During the Term, Company may terminate this Agreement at any time upon (i) Talent's breach of any term or condition of this Agreement which is not cured by Talent within five (5) business days of written notice, or (ii) Talent committing any immoral, deceptive, scandalous or obscene act, or otherwise injuring, tarnishing, damaging or negatively affecting the reputation or goodwill of Company, _____ and/or the Brand, in Company's reasonable discretion.

7. Expenses. Unless otherwise agreed to by Company or _____ in writing, Talent shall be directly responsible for all expenses incurred by Talent in relation to this Agreement and the Services. If Company or _____ incurs any expense on Talent's behalf, Talent shall

promptly reimburse Company or _____, as applicable, upon demand. Alternatively, Company or _____, as applicable, may reimburse itself from any compensation due and owing from _____ to Talent.

8. Exclusivity. During the Term and for one (1) year thereafter, Talent shall not, directly or indirectly, engage in or be employed by or with, or own, invest in, finance, manage, control, operate, promote, provide services, advice or other support to, participate in, enter into any partnership or joint venture with, any other restaurant which includes _____ as a primary menu item.

9. Relationship Between Parties. Talent's relationship to Company under this Agreement is that of an independent contractor. Talent is not an employee of Company. None of the benefits provided by Company to its employees, including without limitation workers' compensation and unemployment insurance, shall be available to Talent. Talent shall assume full responsibility for, and indemnify and hold Company harmless from, the payment of all local, state, and federal taxes and other contributions imposed or required under unemployment, social security, and income tax laws arising out of this Agreement. Likewise, Talent shall be responsible for maintaining any appropriate insurance or licensing related to Talent's provision of the Services.

10. Confidential Information, Trade Secrets, and Work for Hire.

a. For purposes of Section 7 of this Agreement only, all references to "Company" shall include _____ and/or the Brand where appropriate.

b. Any Confidential Information (as hereinafter defined) and/or Trade Secrets (as hereinafter defined) relating to Company's business that Talent develops or developed, or to which Talent has or had access during Talent's relationship with Company, including this Agreement, shall remain confidential and shall not be used to compete unfairly against Company. In addition, information learned and training received by Talent as a result of Talent's relationship with Company shall not be used to unfairly compete against Company.

c. Talent acknowledges that, in the course of Company's business, Company has developed and shall continue to develop Company's considerable goodwill. Talent also acknowledges that, through Talent's relationship with Company, Talent is in a position where Talent has or may have had access to Confidential Information of Company that is of great value to Company and could be used to compete unfairly with Company. Company has expended substantial time, money, and effort to develop and maintain this Confidential Information. Company's continuing ability to successfully engage in Company's business depends, in large part, on this Confidential Information and its protection from unfair competition.

d. "Confidential Information" means any and all data and information, whether disclosed orally, in writing, by observation, or otherwise, relating to Company's business, of which Talent becomes aware as a consequence of, during, or through Talent's relationship with Company that is not generally known to Company's competitors or the public and is subject to reasonable efforts to maintain its secrecy. Confidential Information covered by this Agreement does not have to be marked "Confidential" to be treated as such. Confidential Information may include, without

limitation, information relating to Company's training materials; patents; patent applications; content and prospective content; inventions; engineering; software (including source and object codes); processes; techniques; applications; computer codes; research and development; legal affairs; accounting; finances; actual or potential client information and lists; client and employment candidate contact names and information; pricing practices; marketing, recruiting, and placement strategies; business and product plans; margins; operations; existing and future services and applications; contract expiration dates; and other financial, sales, marketing, services, and operations information, whether written or otherwise, which is not common knowledge in Company's industry or to the public. Confidential Information shall not include any data or information that has been voluntarily disclosed to the public or Company's competitors by Company (except where such public disclosure has been made by Talent or another person or entity without authorization) or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means.

e. **Trade Secrets** shall mean any Confidential Information described above without regard to form that: (i) is not commonly known by or available to the public; (ii) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons or entities who can obtain economic value from its disclosure or use; and (iii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

f. Talent agrees that all Confidential Information and all physical embodiments thereof are confidential to Company and shall remain Company's sole and exclusive property. Talent warrants and agrees that Talent shall not, whether during or after the relationship, reproduce, use, distribute, disclose, publish, misappropriate or otherwise disseminate any Confidential Information and shall not take any action causing, or fail to take any action to prevent, any Confidential Information to lose its character as Confidential Information.

g. Talent agrees that all Trade Secrets are confidential to Company and shall remain Company's sole and exclusive property. Talent warrants and agrees that Talent shall not reproduce, use, distribute, disclose, publish, misappropriate or otherwise disseminate any Trade Secrets and shall not take any action causing, or fail to take any action to prevent, any Trade Secret to lose its character as a Trade Secret until and unless such Trade Secrets lose their status as Trade Secrets through no fault, either directly or indirectly, of Talent.

h. All Confidential Information, Trade Secrets, and other records, files, memoranda, reports, lists, materials, drawings, designs, content, coding, software, materials, proposals, documents, computer programs, computer printouts and the like (together with all copies thereof) belonging to or relating to the business of Company, that Talent used, prepared, or came in contact within the course of, or as a result of, Talent's relationship with Company are the sole property of Company. Talent shall return all such materials, including copies, to Company upon request by Company.

i. Talent acknowledges that the covenants specified herein contain reasonable limitations of activities to be restricted and that such promises do not impose a greater restraint on

Talent than is necessary to protect the goodwill, Confidential Information, Trade Secrets, client and employee relations, and other legitimate business interests of Company. Talent also acknowledges and agrees that any violation of the restrictive covenants set forth herein would bestow an unfair competitive advantage upon any person or entity, which might benefit from such violation, and would necessarily result in substantial and irreparable damage and loss to Company. Accordingly, in the event of a breach or a threatened breach by Talent of the restrictive covenants set forth herein, Company shall be entitled to an injunction restraining Talent from such breach or threatened breach, as well as recovery of Company's costs and reasonable attorneys' fees. Nothing herein shall be construed as prohibiting Company from pursuing any other remedies available to Company for such breach or threatened breach including the recovery of damages from Talent. In the event that Company should seek an injunction hereunder, Talent waives any requirements that Company post a bond or any other security.

j. Talent expressly acknowledges and agrees that all discoveries, inventions, patents, patent applications, processes, designs, plans, writings, creations, applications, programs, product improvements, coding, software, hardware, content, materials, Confidential Information, and Trade Secrets, whether of a technical nature or not, made or developed by Talent alone or in conjunction with any other person or entity during the course of Talent's relationship with Company, which relate to or affect the business of Company ("**Work Made for Hire**"), shall be the sole and exclusive property of Company. Talent expressly agrees to disclose and release all Work Made for Hire and all information regarding the same to Company concurrent with the discovery or development of the same. Talent hereby irrevocably assigns all Work Made for Hire to Company and agrees to execute and deliver promptly to Company such assignments and other written instruments, and to do such other acts as may be required to patent, copyright or otherwise protect Work Made for Hire and to invest the entire right, title and interest in Work Made for Hire in Company.

11. Representations.

a. Talent represents and warrants to Company that: (i) Talent has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; (ii) the performance of the Services do not and shall not violate any applicable law, rule, or regulation or any proprietary or other right of any third party; (iii) Talent shall not use, in the performance of Talent's responsibilities for Company, any materials or documents that would violate an agreement to which Talent is bound; and (iv) Talent has not entered into and shall not enter into any agreement in conflict with this Agreement. Talent hereby acknowledges and agrees that Company and _____ are not liable for or guaranteeing Profit payments except as expressly set forth in this Agreement. Talent acknowledges and agrees that Company is not required to, and shall not, provide legal, accounting, or tax advice to Talent. Talent has been advised to seek legal counsel of Talent's choosing in connection with the negotiation and execution of this Agreement and Talent confirms by Talent's signature on this Agreement that Talent has taken such advice, or Talent has voluntarily waived Talent's right to do so.

b. Company represents and warrants to Talent that: (i) Company has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; (ii) Company shall not materially amend the operating agreement of _____ during the Term without Talent's

approval, which approval shall not be unreasonably withheld, conditioned or delay, and; (iii) Company has not entered into and shall not enter into any agreement in conflict with this Agreement.

12. Miscellaneous.

a. Complete Agreement; Binding Effect. This Agreement contains the final, complete, and exclusive expression of the arrangements between Company and Talent, superseding any prior or contemporaneous agreements or representations, oral or written, by either of them. This Agreement is binding on and shall inure to the benefit of any successor, assignee, or legal representative of Company or Talent. No modification or amendment of this Agreement shall be valid unless embodied in a separate writing signed by both parties.

b. Confidential. The terms of this Agreement shall be kept confidential, except that either party may disclose the terms to its legal and business representatives as reasonably necessary and if required by operation of law.

c. Attorneys' Fees; Jury Trial; Limitation of Liability. In the event of a dispute related to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in resolving such dispute at all levels, including appeals. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY RIGHT THAT EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. Except for liabilities arising from Talent's obligation to indemnify the Company as set forth below, in no event shall either party be liable for any consequential, indirect, exemplary, special or incidental damages, whether in contract, tort, or otherwise.

d. Indemnification. Talent shall indemnify and defend Company, _____ and its/their affiliates, and its/their members, managers, officers, employees, agents, from any and all claims, losses, damages, costs, expenses and/or liabilities (including legal fees) incurred by or threatened against the indemnified parties by reason of Talent's activities hereunder, or by reason of Talent's breach of any obligation hereunder.

e. Non-Disparagement: Neither party hereto shall make any disparaging, false, misleading or otherwise defamatory comments about the other, this Agreement, the Services, _____, the Brand, or any of Company's members, managers, officers, employees, agents, consultants, affiliates, products and/or services.

f. Governing Law; Venue. THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF _____ WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAW AND IRRESPECTIVE OF THE FACT THAT ONE OR MORE PARTIES HERETO IS NOW OR MAY HEREAFTER BE A RESIDENT OF A DIFFERENT STATE, JURISDICTION OR COUNTRY. FOR ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATED TO

THIS AGREEMENT, THE PARTIES AGREE TO EXCLUSIVELY SUBMIT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS IN AND FOR ORANGE COUNTY, FLORIDA, AND THAT VENUE FOR SUCH ACTIONS SHALL LIE EXCLUSIVELY IN SAID COURTS.

g. Force Majeure. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

h. Counterparts. This Agreement may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this Agreement. A facsimile, PDF or similar signature on this Agreement shall be deemed to be an original signature for all purposes.

i. No Implied Waivers. The failure or delay of any party to require the performance by any other party to any provision hereof shall in no way affect the full right to require such performance at any time thereafter. The waiver of any party of a breach of any provision hereof shall not constitute a waiver of any subsequent breach of the same or any other provision, nor shall it constitute a waiver of the provision itself.

j. Interpretation. The parties have agreed to the use of the particular language of this Agreement and any doubt in interpretation shall not be interpreted against Company, nor resolved by any rule of interpretation providing for interpretation against the party who causes an uncertainty to exist, or against the drafter. Headings are for ease of reference only and shall not be given any effect in interpreting this Agreement. If any term or provision of this Agreement is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then to the extent necessary to make such provision or this Agreement legal, valid, or enforceable, such term or provision shall be limited or deleted from this Agreement, and the remaining portion of such term or provision and the remaining other terms and provisions hereof shall remain in full force and effect and continue to be binding, and shall be interpreted to give effect to the intention of the parties hereto insofar as is possible.

k. Time. Time is of the essence in the performance of this Agreement.

l. Notices. Any notice required or permitted hereunder shall be delivered via hand delivery, U.S. mail with proof of delivery, or reputable, national overnight mail service with proof of delivery to the parties at their addresses as set forth on the first page of this Agreement or such other addresses as each of them may provide to one another from time to time by written notice delivered in the manner required herein.

m. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination of this Agreement shall survive any termination of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement shall

survive the termination of this Agreement to the fullest extent necessary to give the parties the full benefit of the bargain expressed herein.

n. Assignment. This Agreement may not be assigned by Talent. This Agreement may be assigned by Company without Talent's approval to an affiliate of Company or to any entity that acquires all or substantially all of the assets or equity of Company or _____. In the event _____ is sold to a third-party, whether an asset sale or equity transaction, this Agreement shall be assigned to the third-party.

[signature page follows]