

## BUSINESS MANAGEMENT CONTRACT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, and/or assigns, hereinafter referred to as "Owner", \_\_\_\_\_, a \_\_\_\_\_ corporation, hereinafter referred to as "Management", and \_\_\_\_\_, individually, hereinafter referred to as "Guarantor".

### WITNESSETH

WHEREAS, Owner now owns a certain business currently known as \_\_\_\_\_, hereinafter referred to as "Business", and located in \_\_\_\_\_ County, State of \_\_\_\_\_; and

WHEREAS, Owner desires that Management act as General Operator and Manager of the Business only, and Management desires to operate and manage said business, subject to the terms and conditions of this contract;

NOW, THEREFORE, for and in consideration of the foregoing and of the terms and conditions herein set forth, the parties do agree to the following.

1. OWNER'S AGREEMENT. Owner agrees that Management operate

and manage the business for a period beginning the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and terminating on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, which period is hereinafter referred to as the "Operating Period", with authority, subject to the limitations and conditions set forth herein, to operate, direct, supervise, control and manage the operation of the Business.

2. MANAGEMENT'S RESPONSIBILITIES. During said term,

Management shall use its best efforts in the operation and management of the Business and the services thereof so that the Business and its services will be operated and maintained with maximum profitability and in a first quality manner. In the furtherance of the foregoing, Management shall perform and be solely required to:

a. Submit, at least one month before the beginning of

each business year, an estimated profit and loss statement for the ensuing year, including a budget estimate in detail for repairs, maintenance, replacements and capital expenditures for such ensuing year.

b. Hire, supervise and compensate, from Management's

funds, all employees of the Business. Management shall be responsible for procuring and maintaining adequate workmen's compensation insurance in the name and at the expense of management, covering all of its employees and Management shall provide appropriate accounting and cost control systems and prepare or cause to be prepared and filed all necessary reports with respect to withholding taxes, social security taxes, unemployment insurance, disability insurance and all other statements and reports pertaining to any employee on Management's payroll. All fees for services rendered in connection with any such statements and reports shall be the sole

responsibility of the Management.

- c. Maintain proper and suitable records and books of

account in which there shall be properly recorded all receipts and disbursements connected with the business and its operation. All books and accounts shall at all times be open to the inspection of Owner or his representative and Management shall on a monthly basis provide an accounting to Owner of all receipts and disbursements for the preceding month's operation.

- d. Render to Owner within forty five days of the end of

each operating year, a detailed statement of profit and loss, capital expenditures, adjusted sales of the Business, and assets and liabilities.

- e. Pay all liabilities and obligations incurred by the

Business or by way of its operation, including, but not limited to, all charges for utilities, beverage and liquor purchases (if applicable), sales tax, license fees and rental payments on the Business premises.

- f. File all income tax returns, alcoholic beverage

returns (if applicable), sales tax reports, and any and all other returns and/or reports required in the operation of the Business by any governmental entity.

- g. Maintain insurance in the kinds and amounts deemed

necessary and advisable for the protection of Management against claim(s) for any losses, damages, liability, or expense as a result of any damage or injury to person or property arising out of the operation and management of the Business.

- h. Comply with all statutes, ordinances, laws, rules, regulations, orders, and determinations affecting or issued in connection with the Business by any governmental authority having jurisdiction thereof.
- i. Refuse to use or permit the Business premises or the liquor license (if applicable) to be used for any illegal or immoral purpose.
- j. Share equally in the use and expense related to the jointly used property within the leased premises, including, but not limited to, refrigeration and ice making equipment, air conditioning and heating systems, and utilities.
- k. Maintain on the Business premises, at all times, an inventory valued in an amount equal to or greater than \_\_\_\_\_ (\$ \_\_\_\_\_ ) Dollars.

3. FINANCIAL GUARANTEE.

- a. Management shall pay to Owner the sum of (\$ \_\_\_\_\_ ) Dollars per month on the fifth day of each of the first six (6) months of operation by Management under this Agreement. Beginning with the seventh (7th) month and continuing through the twelfth (12th) month of operation under this Agreement, Management shall pay to Owner on the fifth day of each of said months, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_ ) Dollars. Beginning with the thirteenth (13th) month of operation under this Agreement and continuing until termination of this Agreement, Management shall pay to Owner the sum of \_\_\_\_\_ (\$ \_\_\_\_\_ ) Dollars per month on the fifth of each month together with \_\_\_\_\_ ( \_\_\_\_\_ %) percent of the gross sales, before sales tax, of the Business.

- b. For purposes of this Agreement, the term "gross sales" shall be defined as the following:

DEFINITION OF GROSS SALES: The phrase Gross Sales, as used herein shall mean the dollar aggregate of:

- i. The entire amount of the price charged for all goods, wares and merchandise sold, leased, licensed or delivered, and all charges for all services sold or performed by Management from all business conducted at, upon or from the Business Premises by Management, whether made for cash, by check, on credit, charge accounts or otherwise, without reserve or deduction for inability or failure to collect the same, including, but not limited to, transactions (1) where the orders therefore originate at or are accepted by Management in the Business Premises, but delivery or performance thereof is made and completed therein, even though the payment of account may be transferred to another office for collection, and all orders which result from solicitation off the Business Premises but which are conducted by personnel operating from or reporting to or under the control or supervision of any employee of Management shall be deemed part of Gross Sales; (2) pursuant to mail, telephone, telegraph or other similar orders received or billed at or from the Business Premises; (3) by means of mechanical or other vending devices; (4) originating from whatever source, and which Management in the normal and customary course of Management's operations would credit or attribute to Management's business conducted in the Business Premises, and
- ii. All monies or other things of value received by Management from Management's operations at, upon or from the Business Premises which are neither included in nor excluded from Gross Sales by the other provisions of this definition, but without any duplication, including, without limitation, finance charges, cost of gift or merchandise certificates and all deposits not refunded to customers;
- iii. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale is made, irrespective of the time when Management shall receive payment (whether full or partial) therefor. No deduction shall be allowed from Gross Sales for uncollectible credit accounts. Each lease or rental of merchandise shall be treated as a sale in the month during which such lease or rental is made for a price equal to the total rent payable.

#### 4. PERSONAL GUARANTEES.

a. \_\_\_\_\_, individually, shall,

simultaneously with the execution of this Agreement, post a fidelity bond in the amount of

( \$ \_\_\_\_\_ ) Dollars to

insure the full protection of Owner's interest in the Business and said bond shall be obtained from a

surety company approved upon by Owner.

b. \_\_\_\_\_, individually, shall,

simultaneously with the execution of this Agreement, execute in favor of and deliver to Owner a

non-interest bearing promissory note payable on demand in the principal amount of \_\_\_\_\_ ( \$ \_\_\_\_\_ ) Dollars, for the purpose of guaranteeing the payment of funds to Owner under this Agreement. Demand for payment thereof shall only be made in the event of Management's default under this Agreement in the faithful performance of its obligations hereunder. A copy of said note is attached hereto and made a part hereof as Exhibit "A".

5. TERMINATION. Upon the termination of this Agreement,

Management shall return to Owner all property of Owner presently located in the business premises, together with

an inventory identical to the inventory on the premises as of the date of this Agreement, according to the inventory marked Exhibit "B", attached hereto and made a part hereof, reasonable charges and replacements thereto excepted, provided that said charges and replacements do not diminish the value of the inventory returned to owner.

6. EARLY TERMINATION OF THIS AGREEMENT. This Agreement shall be terminated, except as to liabilities or claims which shall have accrued or arisen prior to such termination, and all obligations hereunder shall cease upon the happening of any of the following events.
- a. If there shall be filed by Management in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency, or for a reorganization, or for the appointment of a receiver or trustee of all or a substantial portion of Management's property, or if Management shall make an assignment or petition for or enters into an arrangement for the benefit of creditors, or if a petition in bankruptcy is filed against Management which is not discharged within ninety (90) days thereof.
  - b. Taking of the entire or a substantial portion of the entire Business premises through lawful condemnation proceedings by any governmental authority.
  - c. The loss by the Owner of the Lease or of the right or possession of the Business premises.
  - d. The giving of notice by the Lessor, within six (6) months after substantial damage or destruction of the premises by fire or other casualty, that it has elected not to rebuild or restore the Business premises.
  - e. The serving of notice by the Owner that Management has committed a material breach of this agreement and Management not having cured, within thirty (30) days after the mailing of such notice, such breach. Any such termination shall be without prejudice, however, to any and all rights and remedies of Owner.
7. PROHIBITION OF ASSIGNMENT. Management may not assign this agreement or any of its rights hereunder; nor shall this agreement or any of Management's rights or obligations hereunder be transferable by Management by operation of law or otherwise.

8. AGREEMENT NOT AN INTEREST IN REAL PROPERTY. This

Agreement shall not be deemed at any time to be an interest in real estate, a lien of any nature against the Business or the land upon which it is erected, or to convey a beneficial interest in Owner's business.

9. NOTICES. Any and all notices, consents, or directives by

either party intended for the other shall be sent by certified mail, return receipt requested, to the Owner at

\_\_\_\_\_, and to Management at \_\_\_\_\_, unless either party shall have designated different addresses by serving written notice of change of address on the other party by registered or certified mail.

10. APPLICATION OF REVENUE CODE. In the event any provision

of this agreement shall cause Management to be deemed other than an "independent contractor", as defined in the Regulations of the Internal Revenue Code, or in the event that there is any change in the affairs of the Management which would terminate its status as an "independent contractor" as so defined, then, in that event, this agreement shall be deemed immediately amended to remove or modify the provisions which give rise to such disqualification, or, if such is not possible, this agreement shall be immediately terminated without notice. Notice shall be given to Management within a reasonable time after such termination occurs.

11. BINDING EFFECT. Except as herein otherwise provided this Agreement shall inure to the benefit of and be binding upon the parties, their successors or assigns.

12. MISCELLANEOUS.

a. In the event of the sale of the Business, this

agreement may be assigned by the Owner to the purchaser, and upon such assignment and the written assumption by the purchaser of the

obligations of the Owner hereunder, the Owner shall be fully released and relieved of all obligations hereunder.

b. Any consent required of the Owner shall be ineffective

unless it is in writing and signed by the Owner.

c. The Owner has made no representation of any nature in

connection with the design or facilities of the Business, and Management shall have the right to construct, equip, and furnish the Business in any manner it desires, at Management's expense.

d. This Agreement contains the entire agreement of the

parties and may be changed, modified, extended or renewed only by an Agreement in writing and signed by the parties.

e. Management indemnifies and holds harmless Owner as to

any claim or demand arising from the operation and management of the Business.

13. GOVERNING LAW. This agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of \_\_\_\_\_. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in \_\_\_\_\_ County, State of \_\_\_\_\_. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of

competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

14. SEVERABILITY. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision



of this Agreement, and this Agreement shall continue in full force and effect and be construed and enforced as if such provision had not been included or had been modified as above provided as the case may be.

15. CONTRACTUAL PROCEDURES. Unless specifically disallowed by law, should litigation arise hereunder, service of process therefore may be obtained through certified mail, return receipt requested; the parties hereto waiving any and all rights they may have to object to the method by which service was perfected.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed on the day and year first above written.

Signed, sealed and delivered in the presence of:

"OWNER"

\_\_\_\_\_ Witness  
\_\_\_\_\_ Witness

\_\_\_\_\_ By: \_\_\_\_\_  
Witness      It's President

\_\_\_\_\_ Attest: \_\_\_\_\_  
Witness      Secretary

"MANAGER":

\_\_\_\_\_ Witness  
\_\_\_\_\_ Witness

\_\_\_\_\_ By: \_\_\_\_\_  
Witness      It's President

\_\_\_\_\_ Attest: \_\_\_\_\_  
Witness      Secretary

"GUARANTOR":

\_\_\_\_\_ \_\_\_\_\_  
Witness  
\_\_\_\_\_

Witness

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me personally appeared \_\_\_\_\_,

to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL) State of \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me well known and known to be the President and Secretary, respectively, of \_\_\_\_\_, a \_\_\_\_\_ corporation,

and acknowledged to and before me that they executed said instrument and that they had full authority to execute the same for the purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL) State of \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

EXHIBIT "A"

PROMISSORY NOTE