

## FRANCHISE DISCLOSURE DOCUMENT

Wine and Design Franchise LLC  
A North Carolina Limited Liability Company  
510 W Martin Street, Suite 300  
Raleigh, NC 27603  
(919) 803-3343  
[hq@wineanddesign.com](mailto:hq@wineanddesign.com)  
[www.wineanddesign.com](http://www.wineanddesign.com)

# WINE & DESIGN

The Franchisee will own and operate an art studio offering art classes and other customer experiences (such as splatter rooms) where patrons bring their food and beverages of choice to their class and enjoy a relaxing and a pressure free creative environment. Franchisor, Wine and Design Franchise LLC, provides services to Franchisees including assistance with training, operations, and staffing, advertising and marketing, purchasing and promotional techniques.

The total investment necessary to begin operation of a Wine & Design Studio is between \$69,950 to \$271,700. This includes initial fees of \$25,000 to \$26,020 that must be paid to us. In addition, we offer development rights for a minimum of two Wine & Design Studios. The total investment necessary for development rights is between \$139,900 to \$545,400. This includes development and initial franchise fees of \$50,000 that must be paid to us. If the Area Development Agreement is for more than 2 Studios, you will pay us the development fee of \$12,500 multiplied by the number of additional Studios you commit to develop.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, us or our affiliate in connection with the proposed franchise sale. **Note however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss availability of disclosures in different formats, contact our Franchise Administration Department, Wine and Design Franchise LLC at 510 W Martin Street, Suite 300, Raleigh, NC 27603, Telephone: (919) 803-3343, or at [hq@wineanddesign.com](mailto:hq@wineanddesign.com).

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "[A Consumer's Guide to Buying a Franchise](#)," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

**Issuance Date: April 29, 2024**

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

<b>QUESTION</b>	<b>WHERE TO FIND INFORMATION</b>
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit B.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor’s direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit C includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Wine and Design business in my area?</b>	Item 12 and the “territory” provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What’s it like to be Wine and Design franchisee?</b>	Item 20 or Exhibit B lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit E.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## 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 requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in North Carolina. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in North Carolina than in your own state.
2. **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.
3. **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.

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### EXHIBITS

- A. Wine and Design Franchise Agreement
- B. List of Current and Former Franchisees
- C. Financial Statements
- D. State-specific Disclosures and Agreement Amendments
- E. List of State Administrators and Agents for Service of Process
- F. General Release
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- I. Area Development Agreement
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## **ITEM 1 THE FRANCHISOR, PARENTS, PREDECESSORS, AND AFFILIATES**

For ease in comprehension of this Franchise Disclosure Document (“Disclosure Document”), the following definitions will apply: “We” or “Our” or “Us” refers to the Franchisor, Wine and Design Franchise LLC. “You” and “Your” refers to the franchisee, whether a person or legal entity, purchasing the franchise, including, if any, such legal entities owners, partners, members, controlling shareholders, and guarantors.

### **THE FRANCHISOR**

We are a North Carolina limited liability company, organized in June 2011. Our principal business address is 510 W Martin Street, Suite 300, Raleigh, NC 27603. We conduct business under the name Wine and Design Franchise LLC and WINE AND DESIGN®. We do not conduct business under any other name and we have not offered franchises in any other line of business. Our agents for service of process are disclosed in Exhibit E.

### **PARENTS, PREDECESSORS, AND AFFILIATES**

Our predecessor, Wine and Design, LLC, a limited liability company was formed in North Carolina in June 2010, granted WINE & DESIGN franchises from 2010 to May 2011. In June 2011, Wine and Design, LLC ceased selling franchises and assigned all existing franchise agreements to us. In June 2011, under a licensing agreement with Wine and Design, LLC, we were granted the worldwide franchise development rights and use of all trademarks, intellectual property, and designs to operate and grant third parties the right to operate franchised WINE & DESIGN Studios. In September 2014, the WINE & DESIGN trademarks, intellectual property, and designs were assigned from Wine and Design, LLC to us. Wine and Design LLC was not engaged in any other business and did not offer franchises other than in connection with this concept. In January 2016, Wine and Design LLC was administratively dissolved.

We have no parents or affiliates that must be disclosed in this Item 1.

### **THE FRANCHISE OFFERED**

As a WINE & DESIGN franchisee, you will own and operate a paint and sip studio offering fun art classes and other customer experiences such as splatter rooms. Our franchisees have access to 5 divisions: “Art Buzz Kids” for children, “On Wheels” for mobile events, “Paint it Forward” for fundraising, “Team Building” for businesses, Do it Yourself (D.I.Y.)” for craft projects, and “Virtual Classes” for online classes. These programs offer painting parties at or from the studios operated by our franchisees. We have a distinctive system for the operation of WINE & DESIGN Studios that includes: copyrighted artwork and designs; distinctive design, décor, color scheme, and furnishings; integrated website; standards, specifications, and procedures for operations; training and assistance; and advertising and promotion programs; all of which we may improve, amend, and further develop from time-to-time. The typical Wine & Design franchise is operated in leased space (freestanding or otherwise) located in the commercial areas of neighborhoods or more densely populated commercial areas.

In addition to single franchises, we offer Area Development Agreements under which franchises pay us an area development fee in exchange for the rights to develop Wine & Design studios in a specific area. See Item 5 and Exhibit I of this Franchise Disclosure Document. For each future unit franchise, the area developer may be required to sign a form of franchise agreement that is different from the form of franchise agreement in this offering. You will be required to open each unit franchise on, or before, the expiration of 3 months from the date that you sign a Unit Franchise Agreement whether it is for one unit or incident to an Area Development Agreement.

Art instruction as entertainment is a fragmented industry. You will compete with other Franchisees, art studios and other institutions offering art classes, splatter rooms, and other customer experiences with the same, similar or different concepts, as well as other businesses in the entertainment industry. These include national and regional chains as well as local operations. Your ability to succeed with this franchise will in part be determined by your ability to compete with these other business providing art classes and other entertainment options.

### **APPLICABLE REGULATIONS**

We are not aware of any regulations specific to the operation of an instructional art studio. You must make consumption of wine available at your studio either through obtaining a license for sale of alcoholic beverages or through a permitted Bring your own bottle (“BYOB”) program. If you sell alcoholic beverages, you must obtain the required permits and licenses. Even if you will not be selling or providing alcoholic beverages to your customers, state and/or local authorities may regulate the consumption of alcohol brought to your premises by customers, and you should investigate any such regulations in your geographic area to ensure compliance with those regulations, if any, prior to purchasing your franchise or commencing operation of your franchised business. STATE ALCOHOL CONTROL LAWS MAY PLACE RESTRICTIONS ON OR PROHIBIT BYOB EVENTS. You should investigate whether there are regulations and requirements that may apply to the geographic area in which you are interested in locating your franchise and should consider both the effect and cost of compliance.

### **ITEM 2 BUSINESS EXPERIENCE**

#### **President and Chief Executive Officer: Harriet E. Mills**

Ms. Mills has been our President and Chief Executive Officer since September 2014 in Raleigh, North Carolina.

#### **Director of Franchise Operations – Claudia Wooten Outlaw**

Ms. Outlaw has been a Director of Franchise Operations since September 2021 in Raleigh, North Carolina. She was Assistant Manager at Chicos FaS, Inc. in Denver, Colorado from August 2020 to September 2021. Ms. Outlaw was an Outside Sales Manager at Blockade Runner Resort in Wilmington, North Carolina from August 2016 to April 2020.

### **ITEM 3 LITIGATION**

#### ***Concluded Matters***

*Emily N. Preiss and Wine and Design, LLC, v. Wine and Design Franchise, LLC, Harriet E. Mills, Patrick Mills and Capital Sign Solutions, LLC, 17-CVS-11895, Wake County, North Carolina Business Court, filed September 28, 2017.* Emily N. Preiss, is a current business partner of the CEO of Wine and Design, Harriet Mills. The two principals entered into an agreement in 2014 in which Ms. Preiss reduced her equity interest in Franchisor in exchange for taking over the then company Wine and Design studio in Raleigh, North Carolina. Ms. Preiss filed a lawsuit based on that agreement and the relationship of the parties alleging claims for breach of fiduciary duty, coercion, duress, undue influence, conversion, misappropriation, waste of corporate assets, conspiracy in restraint of trade or commerce, unfair or deceptive trade practices, constructive trust and accounting, civil conspiracy and derivative claims. Ms. Preiss sought an unspecified amount of damages. The parties entered a settlement agreement dated November 19, 2018 under which Wine and Design purchased Ms. Preiss's remaining ownership interest in the business for

\$280,000, and the parties agreed to terminate the franchise agreement for the Raleigh Studio, enter a mutual release, and dismiss the case with prejudice.

*Jenny Edmondson Ragsdale and Magnolia Design, LLC v. Wine and Design, LLC*, 13 CVS 011307, Superior Court of Wake County, North Carolina filed August 13, 2013. Ms. Ragsdale and Magnolia Designs, LLC filed a cause of action in which they alleged claims for (i) breach of the Franchise Agreement; (ii) violation of the Business Opportunity Sales Act (“BOSA”) for allegedly failing to provide certain disclosures in connection with the Franchise Agreement; (iii) violation of the North Carolina Unfair and Deceptive Trade Practices Act based on the alleged violation of BOSA and other alleged acts; and (iv) breach of the implied duty of good faith and fair dealing arising from the Franchise Agreement. The plaintiffs sought rescission of the contract and damages. In May 2014, the parties entered into a settlement agreement whereby we agreed to pay the plaintiffs a one-time settlement payment of \$25,000 without any admission of liability. The settlement agreement provided for a mutual release between the parties. The case was dismissed.

### **Franchisor Initiated Litigation in 2023**

1. Breach of Contract, Demand for Damages: *Wine and Design Franchise, LLC v. Southern Chic, LLC and Millicent Harrison*, 23CV007287-910, State of North Carolina Wake County District Court. Settlement agreement signed on 8/18/23 with payment of \$12,000 to Franchisor, case dismissed.
2. Breach of Contract, Violation of Non-Compete: *Wine and Design Franchise, LLC v. Kylene Kiah and Kiah Arts and Entertainment, LLC*, 23CV020130-910, State of North Carolina Wake County Superior Court. Complaint filed on June 26, 2023. Settlement agreement signed 10/5/23 with payment of \$5,000 to Franchisor, stipulated permanent injunction against former franchisee, case dismissed.
3. Breach of Contract, Violation of Post Term Obligations, Demand for Damages. *Wine and Design Franchise, LLC v. Robert Farman and Tina Farman*, Civil Action No. 5:23-CV-693 (ED NC, Western Div.). Filed on 12/1/23. Settlement agreement pending discussion.

Other than these 5 actions, no litigation is required to be disclosed in this Item.

### **ITEM 4 BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

### **ITEM 5 INITIAL FEES**

#### **Initial Franchise Fee**

The initial franchise fee for a Wine & Design franchise is \$25,000, and is due when you sign the Franchise Agreement.

We may offer discounts to our existing franchisees for each additional franchise that they wish to open. The current discount is 50% off of the initial franchise fee, which is only available if you are a then existing Wine & Design franchisee that: (a) has an operating studio that has been continuously open for at least 12 months, (b) has been in full compliance with your Franchise Agreement for at least 12 consecutive months, (c) meets our qualifications for expansion as set forth in our operations manual, and (d) the new franchise is for a studio outside of the exclusive or protected area granted to you in your previous franchise.

If you purchase a Wine and Design franchise to be opened in a state where we do not have an operating franchise and the purchase is your first Wine and Design franchise, we will discount initial franchise fee by 10%. If you are a U.S. veteran and the purchase is your first Wine and Design franchise, we will discount initial franchise fee by 15%.

**Development Fee**

The development fee for each Studio developed under the Area Development Agreement is \$12,500; so for the minimum of 2 Studios, the development fee is \$25,000 which must be paid when you sign the Area Development Agreement. In addition, when you sign the Area Development Agreement, you must pay us the remaining balance of the initial franchise fee of \$12,500 for the first Studio under the Area Development Agreement. The remainder of the initial franchise fee of \$12,500 for the second Studio (and each additional Studio) is due when you sign the Franchise Agreement for that Studio.

**Pre-Opening Technology Fees**

We will provide you an email address prior to opening; the cost is \$12 - \$18 per email address per month. We may provide other technology and related services that you will be required to pay us for.

**Artist Training Fee**

The Artist Training Fee up to \$1,000 and in some cases may need to be paid prior the opening of your Studio.

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All of the fees described in this Item are uniformly imposed, payable in lump-sum, deemed fully earned when paid, and are non-refundable under any and all circumstances.

**ITEM 6 OTHER FEES**

<b>TYPE OF FEE (See Note 1)</b>	<b>AMOUNT</b>	<b>DUE DATE</b>	<b>REMARKS</b>
Royalty Fees	6% of monthly gross sales	5th day of each month	See Note 2. No royalties are paid until the franchise begins operations. The royalties will be electronically drafted from your bank account.
Local or Regional Cooperative Fees	Currently, not collected	When designated by cooperative.	This fee is not paid to us. Cooperative payments are determined by majority vote of the cooperative members. See Note 3.
Advertising Fees and Expenses	2% of monthly gross sales	5th day of each month	Can be raised-up to 4% of gross sales
Renewal Fee	\$2,500	Upon signing a new Franchise Agreement.	We may reduce this fee in certain limited circumstances.
Transfer Fee	\$7,500	When we approve franchise transfer.	

<b>TYPE OF FEE (See Note 1)</b>	<b>AMOUNT</b>	<b>DUE DATE</b>	<b>REMARKS</b>
Audit Costs	Cost of audit, reasonable legal and accounting fees, plus the amount of any deficiency & interest.	Immediately	If there is a 3% or more understatement, you must reimburse us for these costs. We pay for the audit if underpayment is 3% or less.
Interest Charges	18% or highest lawful rate if lower.	Immediately if payments not made when due.	This charge is in addition to other remedies such as late payment fees.
Initial Training	Initial franchise fee includes pre-opening training for all people trained in a single session.	Upon signing Franchise Agreement. For pre-opening, this is included in the initial franchise fee. For extra people not attending pre-opening training, payment is due before training class commences.	The business must be managed by a person approved by us, who has completed to our satisfaction, or based on experience been relieved of, our training program. You pay lodging, transportation, and food expenses incurred by persons attending training. All of your staff who we require to be trained must attend the same training session.
Remedial Training	\$500 per day limited to 3 days of training	Upon 30 days' notice to you.	We may require you to attend remedial training in such cases where we determine that you are not operating your franchised business in accordance with our system standards.
Additional Training (for extra people on outset at Franchisees option or later if desired at Franchisee's option)	Standard rate of \$250 per person per day plus your out-of-pocket expenses for travel & lodging. A day of training generally consists of 8 hours of training. Travel costs will include reimbursement for mileage at the then-current IRS published rate.	30-day notice of additional training with payment due before training class begins.	There is no charge to Franchisee for additional training which we require.

TYPE OF FEE (See Note 1)	AMOUNT	DUE DATE	REMARKS
Additional Artist Training	Standard rate of \$500 per day plus out-of-pocket expenses for travel & lodging. A day of training generally consists of 8 hours of training. Travel costs will include reimbursement for mileage at the then-current IRS published rate. The training will be for a maximum of 2 days.	30-day notice of additional training with payment due before training class begins.	
New Supplier/ Product Evaluation Fee	All fees and costs	On Demand	If requested by you, you will pay all fees and costs incurred by us to obtain the necessary information to evaluate suppliers prior to giving approval for new suppliers and products.
Survey Fee	\$140 per visit	Upon conclusion of follow-up Survey.	If we require a customer survey be taken of your Studio, you shall pay us the cost of such survey.
Indemnification & Hold Harmless	If any, will depend on unknown factors.	Defense cost when suit occurs. Indemnification when payment required.	You agree to defend, indemnify, and hold us harmless should we be sued as a result of something you do or fail to do.
Attorneys' Fees and Costs, and Arbitration	Depends on what we spend.	When court or arbitrator orders, if we win.	
Insurance Premium Reimbursement	Varies according to plan and provider.	Reimbursement to us due immediately on notice.	If you do not purchase insurance, we can purchase and you must reimburse us.
Enforcement Costs	Will vary.	As incurred	You must pay our costs of enforcement (including attorneys' fees and costs) if you do not comply with the Franchise Agreement. We will collect reimbursement from you by EFT for their fees.
Enforcement Fines	\$1,000 per incident or royalty increase of 1% for up to one year.	As incurred	
Insufficient Funds Fee	\$50 plus any fee charged us for uncollected funds, or the maximum legal rate allowed by law (See Note 4).	Upon notice	

TYPE OF FEE (See Note 1)	AMOUNT	DUE DATE	REMARKS
Annual Franchise Conference	Registration fee will vary.	As incurred	Plus out-of-pocket expenses for travel, food & lodging while attending, which you pay to third parties. If you fail to attend the annual franchise conference, we will either raise your royalties by 1% for the balance of the calendar year, or charge you \$1,000, whichever is greater.
Liquidated Damages	Payment of future royalties based on the last 12 months of business for the greater of 2 years or the number of years you have left on your Franchise Agreement	Upon Notice by us	Resulting from termination of your franchise for other than resale or contract expiration.
Additional Fees for System-wide Technology, Marketing and Similar services	Reasonable fees, currently up to \$350, but we can increase this amount	Monthly	We have arrangements with third vendors to provide services to all Wine and Design Studios for newsletters and email addresses. We pay the bill in full (requested by the vendors) and then we invoice you monthly.

NOTE 1: All fees and expenses described in this Item are non-refundable and, unless otherwise indicated, are imposed uniformly by, and are payable to, us. Unless we have noted differently, we may increase these amounts based upon changes in market conditions, our cost of providing services and future policy changes, but we have no present plans to increase any fees. During our last fiscal year, we charged franchisees less transfer and renewal fees than noted above; except as noted, all fees are uniformly applied to all franchisees.

The renewal fees incident to an Area Development Agreement are the same as that for a unit franchise agreement.

NOTE 2: “Gross Sales” means the total of gross sales that are derived from or related to your Wine & Design Studio or business, but not limited to, revenue from services rendered by the Franchised Business and from the sale of products, food and beverages (including alcoholic beverages), whether from sales for cash or credit and regardless of the collection thereof. Gross Sales does not include sales taxes or gift card or certificate redemptions. Royalties on gift cards or certificates are assessed when the gift card or certificate is sold. If group buying services are used, royalty is due 3 business days from receipt of the check.

NOTE 3: If a local or regional advertising cooperative is established, you will be required to contribute your share of the cooperative’s budget as determined by the cooperative’s members. Each local advertising cooperative must adopt written governing documents. Each cooperative may determine its own voting procedures; however, each company-

owned Studio will be entitled to vote on a basis proportionate to the franchisees in any local advertising cooperative.

**ITEM 7 ESTIMATED INITIAL INVESTMENT**

<b>FRANCHISE AGREEMENT YOUR ESTIMATED INITIAL INVESTMENT</b>					
<b>TYPE OF EXPENDITURE</b>	<b>LOW AMOUNT</b>	<b>HIGH AMOUNT</b>	<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAYMENT IS TO BE MADE</b>
Initial Franchise Fee (Note 1)	\$25,000	\$25,000	One payment	Upon Signing Franchise Agreement.	Us
Leasehold deposit plus first month's rent (Note 2)	\$1,800	\$9,000	Monthly Rent or landlord terms	Varies depending on landlord.	Landlord
Leasehold Improvements (Note 3)	\$5,000	\$130,000	Lump sum or (possibly) amortized by landlord	Varies depending on your contract with supplier.	Supplier or Landlord
Signage	\$3,000	\$15,000	Lump sum	Varies depending on contract with vendor.	Approved Vendor
Furniture and fixtures	\$3,000	\$10,000	Progressive payments or lump sum incurred	Varies depending on contract with vendor.	Approved Vendor
Equipment and Supplies	\$3,500	\$6,000	Progressive payments or lump sums incurred	At time of purchase or varies depending on contract with vendor or supplier.	Various Vendors and Suppliers
Deposits and Licenses (Note 4)	\$2,000	\$15,000	Lump sum	Before Opening.	Landlord, utilities, phone company, business license, alcohol license
Training Living Expenses	\$500	\$5,000	As incurred	Before Opening.	Air travel, hotels, meals, incidentals
Insurance (Note 5)	\$650	\$2,000	Lump sum or terms of provider	Varies depending on contract with provider.	Approved Provider
Liquor License / Permit (Note 6)	(Note 6)	(Note 6)	Lump sum or installments	Upon application or transfer of license / permit	Government Agency or Prior License Holder
Accounting Software & Legal Services (Note 7)	\$2,500	\$3,000	Paid monthly or as invoiced by vendor in lump sum	Varies depending on vendor.	Approved Vendor
Technology and Related Fees (Note 8)	\$1,000	\$2,500	As incurred	Varies depending upon vendor.	Us, Various Vendors

FRANCHISE AGREEMENT YOUR ESTIMATED INITIAL INVESTMENT					
TYPE OF EXPENDITURE	LOW AMOUNT	HIGH AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Computer, Printer & Telephone/ Internet Fees (Note 9)	\$500	\$1,700	Lump Sum or Progressive payments	Before Opening	Various vendors & phone company
Studio Manager/ Assistant Salary	\$10,000	\$30,000	Paid to employee	Depends on whether Franchisee hires a studio manager or assistant.	Employee
Artist Training	\$1,000	\$1,000	Lump sum. Plus travel and accommodations.	Prior To Grand Opening	Us
Grand Opening Fees	\$3,000	\$5,000	Lump sum or as incurred	As incurred.	Various Suppliers
Additional Funds - 3 Months (Note 10)	\$7,500	\$11,500	As incurred	As incurred	Vendors, employees, utilities, landlord, suppliers, insurers, tradesmen, city, county
<b>TOTAL:</b>	<b>\$69,950</b>	<b>\$271,700</b>			

All fees and payments are non-refundable unless otherwise noted or allowed by third-party vendor.

NOTE 1: **Initial Franchise Fee.** See Item 5 for more detailed information about the initial franchise fee.

NOTE 2: **Leasehold deposit plus first month's rent.** This range assumes you will lease the space for the Studio and is based on leasehold deposit and first month's rent. If you purchase the space, you will incur additional costs that we cannot estimate. The space will generally be around 1000 to 2000 square feet. The rent and square footage varies considerably based upon location. Market conditions will dictate whether landlord can obtain last month's rent and security deposit up front.

NOTE 3: **Leasehold improvements.** This range assumes the space has not been built-out. Typically every space will need some buildout (adding utility sink, update flooring, paint, etc.)

NOTE 4: **Deposits and Licenses.** You will need to check with your local Alcohol Beverage Board to determine if a license is required to offer BYOB or to serve drinks. Any license will require a license fee which will vary by state jurisdiction.

NOTE 5: **Insurance.** The figures in the chart represent estimated annual insurance premiums for the insurance that we require and costs may vary from state to state. Depending on your insurance company's practices, you may have to pay the entire annual premium in a lump

sum; generally you pay your premiums quarterly or semi-annually. See Item 8 for additional information about the insurance you must have for your Studio.

- NOTE 6: **Alcohol Licensing.** You should review the licensing requirement if your jurisdiction. You are required to permit customers to bring alcoholic beverage into the Franchised Studio; but you are not required to sell alcoholic beverages. If you sell alcoholic beverages, you must company with all license / permit requirements. The cost of obtaining liquor licenses is not included in the chart above. This cost varies greatly depending on the state and the licensing authority involved.
- NOTE 7: **Accounting & Legal Software and Services.** The startup cost for software is \$175. There is an ongoing monthly fee. These fees include amounts paid to third parties for professional services.
- NOTE 8: **Technology and Related Amounts.** The range includes costs for email and related services.
- NOTE 9: **Computer, Printer, Telephone, Internet.** You will need to buy or lease a computer and a printer and have internet service as well as a dedicated telephone line. See Item 11 of this FDD for more specific details about computer hardware requirements.
- NOTE 10: **Additional Funds – 3 Months.** We have assumed a 3 month startup phase and this estimate is for the additional funds you should have on hand for that period. This estimate assumes you will lease the space for the Studio. You will need additional funds for real estate lease payments, employee wages and related costs, amounts due to artists, costs to purchase supplies, fees due to us (including royalty and advertising fees) and other expenses. These amounts do not include any estimates for debt service. These figures are estimates and we cannot assure you that will not have additional expenses. Your actual costs will depend on factors like your management skills, experience and business acumen. You should base your estimated start-up expenses on the anticipated costs in your market and consider whether you will need additional cash reserves.

We relied upon the experience of our franchisees for the estimated costs above. You should review these figures carefully with your business advisor.

**YOUR ESTIMATED INVESTMENT-AREA DEVELOPMENT AGREEMENT**

If you become an Area Developer, you will pay us a Development Fee as described in Item 5. The Development Fee is fully earned by us when received and is non-refundable. For example, if you sign an Area Development Agreement for the minimum 2 Wine and Design Studios under separate Franchise Agreements, the following shows your estimated initial investment.

AREA DEVELOPMENT AGREEMENT					
YOUR ESTIMATED INITIAL INVESTMENT FOR DEVELOPMENT OF 2 STUDIOS					
TYPE OF EXPENDITURE	LOW AMOUNT	HIGH AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS MADE
Development Fee (Note 1) (\$12,500 per Studio)	\$25,000	\$25,000	Lump Sum	Upon Signing Area Development Agreement	Us

<b>AREA DEVELOPMENT AGREEMENT</b>					
<b>YOUR ESTIMATED INITIAL INVESTMENT FOR DEVELOPMENT OF 2 STUDIOS</b>					
<b>TYPE OF EXPENDITURE</b>	<b>LOW AMOUNT</b>	<b>HIGH AMOUNT</b>	<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAYMENT IS MADE</b>
Remainder of Initial Franchise Fees (Note 2) (Additional \$12,500 per Studio)	\$25,000	\$25,000	Lump Sum	For 1 <sup>st</sup> Studio, fee is due when the Area Development Agreement is signed; for 2 <sup>nd</sup> Studio, fee is due when the Franchise Agreement is signed	Us
Professional Fees	\$0	\$2,000	As incurred	As incurred	Lawyers, accountants, etc.
Initial Investment Range for 2 Studios from Above Chart (minus Initial Franchise Fee)	\$89,900	\$493,400			
<b>TOTAL:</b>	<b>\$139,900</b>	<b>\$545,400</b>			

NOTE 1: The development fee in the chart above is for 2 Studios, or \$12,500 for each Studio. If you and we agree that you can develop more than two Studios under the Area Development Agreement, you will pay an additional Development Fee of \$12,500 for each additional Studio. The Development Fee is a one-time lump sum payment that is not refundable for any reason.

NOTE 2: For the first Studio, you pay the remainder of the initial franchisee (\$12,500) when you sign the Development Agreement. For each additional Studio, you pay the remainder of the initial franchise fee to us when you sign the franchise agreement.

## **ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

### **Specifications and Standards**

You must operate the Studio through strict adherence to our standards, specifications and policies as they now exist, and as they may be modified. Such standards and policies include, without limitation: (i) specifications and standards for art classes, splatter rooms, and other customer experiences; (ii) services offered; and (iii) use of specified emblems and Marks. In order to maintain the high quality standards that we expect of our System, we may commission customer surveys, customer interviews, and other customer service initiatives (“Surveys”). If any of these surveys show deficiencies in the operation of your Studio, then we may require follow-up surveys that are directed specifically at your Studio, in which case, you will be required to pay for the cost of such Surveys.

All personnel employed by you in connection with the operation of your Studio must maintain standards of sanitation, cleanliness, demeanor and appearance as may be established by us. Your personnel while working at a Wine and Design Studio or a Wine and Design on Wheels should wear Wine and Design apparel of such color, designs, and other specifications as we may designate. In addition, you must ensure

that all employees whose duties include customer service have sufficient literacy and fluency in the English language (or such other language that is the primary language in your market) to adequately serve the public at your Studio.

### **Approved Suppliers & Distributors**

You must purchase all supplies and equipment you use in the Franchised Business from us or a source we approve or designate. Where we have designated an approved supplier, you must use that supplier. While we may in the future designate ourselves or an affiliate as a supplier or the sole supplier of products and services for your Franchised Business, you are not currently required to purchase or lease any goods, services, supplies, fixtures, equipment, inventory or real estate from us or our affiliate. While we are not restricted by the franchise agreement to do so, it is our current company policy that we only limit your choice of suppliers for those products or services where: (i) the items are proprietary, (ii) the items utilize our trademarks and commercial symbols, (iii) we can negotiate a better price, and/or (iv) we believe using our designated suppliers allows franchisees to benefit from the expertise developed by those suppliers in servicing our franchisees. Even though a supplier may be approved, we may choose to approve only certain items that they provide. We have the right to change our business relationship with our approved supplier as well as the right to add and/or remove approved suppliers from the approved supplier list.

For example, you must purchase art supplies (including paints, brushes and canvases), bookkeeping and accounting services, and marketing and promotional services or supplies from our approved suppliers. The supplier for bookkeeping and accounting services will generate your accounting reports and may, at our request, deliver reports directly to us and communicate directly with us. You must pay the approved supplier for bookkeeping and accounting services and reporting services, which is currently \$175 per month and may increase. You must also pay us for certain technology, marketing and other services that we pay third parties to provide to you. The current cost of those services is \$150-\$180 per month for newsletter creation and related services and \$12-\$18 per month for each email address. We do not retain those payments; we pay them directly to the third party on your behalf. You may only use approved forms contained in the Operations Manual, from our Intranet, or that have been approved by us in writing.

Currently, none of our affiliates, officers or owners owns any interest in any supplier of goods or services to franchisees; however, we have the right to do so in the future.

### **Method of Approving Suppliers & Distributors**

If you want to use a supply or equipment source that we have not approved, you must first submit to us information including product specifications, product components, product performance history, product samples, and any other relevant information. If available through our Operations Manual, or otherwise, we will provide you, at your request, our criteria and specifications for certain products. We reserve the right to modify our specifications at any time without notice to you or our approved suppliers. We will evaluate the proposed product by considering the technical and performance properties of the item. We may also consider other factors including design, appearance, product reliability, durability, the manufacturer's warranties, quality control methods, impact on the franchise system at large, and financial ability of the product's producers and distributors. Our review is generally completed in 90 days. You will reimburse us for any expenses incurred by us to obtain the necessary information or evaluate the source prior to giving approval, but we do not charge a fee for our review of a supply or equipment source. We will advise you in writing of our decision. If the supply or equipment source is not approved within 90 days, the supply or equipment source is deemed rejected.

## **Computer Hardware and Software**

You must, at your own expense, purchase or lease the computer hardware and software and related services and components such as broadband, DSL or other form of high-speed internet service, active e-mail account, and power lines, email and facsimile use, modem(s) printer(s), and other computer-related accessories or peripheral equipment for the purpose of, among other functions, recording sales and other record keeping and central functions as well as training and promotion or compliance with system standards. In terms of hardware, we currently do not require you to have a specific computer/POS System, or any POS System, other than a computer, printer, dedicated telephone and power lines, and high-speed internet access which are all selected by you, at your expense, from a supplier or vendor of your choosing. In terms of Software, you are required to use our certain required software. You must use our specified forms and submit all sales through our website. You must install any software and/or hardware as may be necessary in order to facilitate data mining and you agree to connect your POS System to the internet and pay all expenses including hardware and software licenses to facilitate data mining. Although we currently do not have any proprietary software, we may develop some in the future and grant you a license to use the software upon signing a licensing agreement and payment of a license fee. We have the right to impose a monthly maintenance fee for such proprietary software and you must pay the monthly maintenance fee if you wish to use the proprietary software. You expressly agree to strictly comply with our standards, specifications and policies for all item(s) associated with your Computer Hardware and Software used to operate your Business. We have the right at any time in our sole discretion to require you to utilize a particular Hardware or Software package. You may incur costs for maintenance, support, and upgrading the Hardware and Software, which we expect will cost between \$500 and \$2000 on annual basis.

## **Required Purchase Percentage of Revenue**

We estimate that approximately 90% to 95% of your total purchases and leases in establishing and in operating a Wine and Design Studio will be subject to at least one of the restrictions described in this item.

## **Revenue Derived from Franchisee Purchases**

During our fiscal year ending December 31, 2023, we received \$18,694.83 or 2.8% of our revenue of \$667,166.94 from franchisee purchases from approved suppliers. Other than the revenue we received from our approved suppliers set forth above, neither we nor our affiliate derive revenue from the sale of products, supplies, equipment to you. In the future, we may derive revenue from the sale of products, supplies, equipment to you by our other approved suppliers.

## **Signs**

You are responsible for ordering all required signage, at your own expense, including an exterior sign for your Franchised Studio from an approved vendor. You shall prominently display, at your own expense, both on the interior and exterior of the Premises, advertising signs in such form, color, number, location and size, and containing such Proprietary Marks, logos and designs as we shall designate. We may, on your behalf and at your expense, direct and control placement of the exterior sign on your location. You must obtain, at your own expense, all permits and licenses required for such signs and shall also be responsible for ensuring that all signs comply with all laws and ordinances. You shall not display in or upon the premises any sign or advertising of any kind which we have not approved or to which we object.

## **Material Benefits**

We do not provide franchisees with any material benefits based upon the use of approved or designated suppliers. We may negotiate purchase agreements with suppliers, including price terms, for the benefit of

the franchisees; however, we are not required to do so. Additionally, our agreements in the future may provide us with the right to receive revenue from your required purchases from other suppliers. We will have no obligation to share such revenue received with you.

### **Telephone Number**

You are required to establish a local telephone number for your Studio. You shall keep us notified as to the current telephone number for the Studio. In no event shall you use such number for any other business. You agree that in the event you obtain any additional or substitute telephone service or telephone number at the Studio, you will promptly notify us of such additional or substitute number. You must provide continuous telephone answering coverage by an employee whenever your Franchised Business is open for business. All telephone listings and directory listings for your Studio are our property, and we have the right to transfer or terminate such telephone listings and directory listings on termination or expiration without renewal of the Franchise Agreement. We may as we deem necessary, amend your telephone listing or put it on a remote call forwarding or other answering service. A copy of our Telephone Listing and Internet Authorization Agreement is attached to this Disclosure Document as Exhibit A-Schedule E.

### **Warranty and Customer Service Requirements**

If a customer complains about their experience, we have established certain procedures you are required to follow to resolve the concern, which could result in not charging the customer for the service you provided or providing discounts for future services.

### **Purchasing or Distribution Cooperatives**

Currently you are not required to participate in a purchasing or distribution cooperative. However, we have the right to require you to participate in a local or regional advertising purchasing cooperative in the future.

### **Insurance Specifications**

You are obligated to obtain and maintain at your own expense, such insurance that we require from time to time from an insurance company approved by us, and at all times during the term of this Agreement maintain in force and pay the premiums for all types of public liability insurance with complete operations coverage, with limits of liability for bodily injury, personal injury and advertising injury of not less than One Million Dollars (\$1,000,000) with limits of liability for property damage of not less than One Million Dollars (\$1,000,000) in each occurrence, One Million Dollars (\$1,000,000) of public and product liability coverage, non-owned vehicle coverage of at least Five Hundred Thousand Dollars (\$500,000), and liquor liability/dram shop insurance with a minimum limit of One Million Dollars (\$1,000,000). We may increase the required limits at our discretion. You are currently required to maintain, in the amounts we prescribe from time to time, cyber liability coverage in the amount we specify in the Franchise Agreement, including, but not limited to, property damage, fraud, and business interruption. The franchise agreement further outlines the types, amounts, terms and conditions of insurance coverage required for your Studio, including, but not limited to standards for underwriters of policies providing required insurance coverage; our protection and rights under such policies as an additional named insured; required or impermissible insurance contract provisions; assignment of policy rights to us; periodic verification of insurance coverage that must be furnished to us; our right to obtain insurance coverage at your expense if you fail to obtain required coverage; our right to defend a claim; and similar matters relating to insured and uninsured claims. You are currently required to maintain, in the amounts we prescribe from time to time, comprehensive liability insurance coverage, including, but not limited to, property damage, bodily injury, business interruption, automobile liability, cyber security, and workers' compensation insurance coverage. The cost

of this coverage will vary depending on the insurance carrier's charges, terms of payments and your history. All insurance policies must name us as an additional insured party.

## ITEM 9 FRANCHISEE'S OBLIGATIONS

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.**

OBLIGATION	SECTION IN FRANCHISE AGREEMENT	DISCLOSURE DOCUMENT ITEM
a. Site Selection and Acquisition/Lease	Franchise Agreement §§ 1, 6, Site Selection Addendum; Lease Rider	Items 7, 8 & 11
b. Pre-opening Purchases/Leases	Franchise Agreement §§ 10, 16	Item 8
c. Site Development and Other Pre-opening Requirements	Franchise Agreement §§ 1, 6, 8(a)(i), 10, 11(a)(ii), 11(d); Site Selection Addendum  Area Development Agreement §§ 3.01, 3.02, 3.04	Items 7 & 11
d. Initial and Ongoing Training	Franchise Agreement § 11(a)(ii) and (d)	Item 11
e. Opening	Franchise Agreement §§ 8(a)(i), Area Development Agreement § 3.01	Items 5, 7 & 11
f. Fees	Franchise Agreement §§ 2(b)(vii), 3, 8, 10, 11(d), 11(m)(v), 11(q)(ii)(v), 13(d)(vii), 16(e), 18(f), 18(g), 21(c), 23(o) Area Development Agreement §§ 6.01, 6.02, 6.03	Items 5, 6, 7 & 17
g. Compliance with Standards and Policies/Operations Manual	Franchise Agreement §§ 10 and 11	Items 13 & 15
h. Trademarks and Proprietary Information	Franchise Agreement §§ 7 and 11(e)	Items 13 & 14
i. Restrictions on Products/Services Offered	Franchise Agreement §§ 11(c) and (f), and 12	Item 16
j. Warranty and Customer Service Requirements	Franchise Agreement §§ 11 (i) and (j), and 17(b)(ix)	Item 15
k. Territorial Development and Sales Quotas	Franchise Agreement § 5 Area Development Agreement §3.01	Item 12
l. Ongoing Product/Service Purchases	Franchise Agreement § 12	Item 7 and 8
m. Maintenance, Appearance & Remodeling Requirements	Franchise Agreement §§ 10, 11 (b) - (c)	Item 11
n. Insurance	Franchise Agreement § 16	Items 6 & 8
o. Advertising	Franchise Agreement §§ 8, and 9	Items 6 & 11
p. Indemnification	Franchise Agreement § 19	Item 6
q. Owner's Participation/Management/Staffing	Franchise Agreement §11 (a)-(b) Area Development Agreement §§ 7.01, 7.02	Items 11 and 15

<b>OBLIGATION</b>	<b>SECTION IN FRANCHISE AGREEMENT</b>	<b>DISCLOSURE DOCUMENT ITEM</b>
r. Records and Reports	Franchise Agreement § 11(m)	Items 6
s. Inspections and Audits	Franchise Agreement § 11(n)	Item 6 and 11
t. Transfer	Franchise Agreement § 13  Area Development Agreement §§9.01, 9.02, 9.03	Item 17
u. Renewal	Franchise Agreement § 2(b)-(c)  Area Development Agreement §4.03	Item 17
v. Post-termination Obligations	Franchise Agreement §§ 14(b), 15, and 18	Item 17
w. Non-competition Covenant	Franchise Agreement § 14	Item 17
x. Dispute Resolution	Franchise Agreement § 21 Area Development Agreement §10.01, 10.02	Item 17

**ITEM 10 FINANCING**

We do not offer direct or indirect financing. We do not guarantee your note, lease or obligation.

**ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, OPERATIONS MANUAL, WEBSITE, AND TRAINING**

**Except as listed below, we are not required to provide you with any assistance.**

**Pre-Opening Obligations**

Before you open your business, we will:

1. Designate your Protected Territory (FA, §5(a));
2. If you are a Developer, we will designate your specific exclusive Territory (ADA, §1.01);
3. Approve or disapprove the site which you must locate. We may provide you with general site information to assist you in the site selection. It is your responsibility to select and outfit your own location. If you intend to own the site, we must approve the site prior to you commencing construction, build-out or remodeling of the site. If we do not disapprove a proposed site by written notice to you within 15 days, such site shall be deemed approved by us. Some factors we consider in approving sites include general location and neighborhood, traffic patterns, size and lease terms (FA, §§1, 6, and Schedule B);
4. Within 90 days of signing your Franchise Agreement and within 30 days of site approval, you must sign a lease that is coterminous with your Franchise Agreement, including our standard Studio Lease Rider. (FA, §6, Schedule B). We do not negotiate or review your lease. Failure by you to obtain or lease an Approved Site within the time requested shall

constitute a default under your Franchise Agreement and we may, in our sole discretion, terminate your Franchise Agreement (FA, §§1, 17(c)(i), Schedule B(1)).

5. If available, provide you with written plans, layouts, and certain specifications (Standard Plans & Spec. Sheet) for the construction, remodel, design and layout of your Studio and related facilities to be used in the operation of your Studio. We will review and approve in advance any plans and specifications that are developed for your Studio, which then, cannot be changed without our prior written consent, and we will provide them to you at no cost (FA, §§ 4, 10(a)). It is your responsibility, at your own expense, to promptly construct, remodel, and decorate the Premises in compliance with any local ordinances, building codes, and permitting requirements (FA, §§6(d), 10(a)-(c), 11(h));
6. Provide you with our website that contains our Reservation System which you are required to use for posting and booking studio sessions and payments (FA, §8(i));
7. Provide at no expense to you, a list (which we reserve the right to amend and/or modify) of approved equipment and supplies including initial store fixtures, furnishings, decor, signs and equipment (including telephone), supplies and computer system, etc., necessary to open your Studio in a timely manner, as well as standards and specifications for all art supplies and canvases and other products, services, and materials used in connection with the operation of the Studio (FA, §§4(b-d), 10, 12(a) and (b));
8. Provide to you a copy of our list of approved vendors, which may include us or our affiliate(s), and suppliers for all required forms, supplies, equipment, signage, décor and other goods and services (FA, §§4(d), 12(a) and (b));
9. Provide you with our Intranet (Wine & Design University) address that contains our forms and other franchisee resources (FA, §11(m)(vi));
10. Provide you and your Operations Manager with an initial 4-Day training program at no cost, however, you are responsible for all travel, lodging, food and living expenses for you and any other employees attending the training (FA, §4(e));
11. Lend you one set of our Operations Manuals (FA, §11(e)); and
12. Provide you with our bookkeeping and accounting requirements. We have an approved supplier for bookkeeping and accounting services that you are required to use to generate your accounting reports, prepare all financial statements, reports and tax returns for your Studio, and you are required to authorize them to deliver all requested reports directly to us. (FA, §11(m)).
13. Provide 2-Day Artist Training for your team of artists at your studio location for up to \$500/day ( up to \$1,000).

### **Typical Length of Time Before Operation**

We estimate that the typical length of time between the signing of the Franchise Agreement or Area Development Agreement (or first paying us money) and the opening of a WINE AND DESIGN studio is 2 to 6 months. Prior to opening your business, you must perform the following tasks and we may assist you in this effort:

TASK	TIME FRAME	FORM OF HELP
Complete Business Plan	3-6 mos. before opening	Guidance from us
Sign Franchise Agreement	3-6 mos. before opening	Guidance from us
Conduct Site Research	3-6 mos. before opening	Guidance from us
Research ABC Laws & Health Department Requirements (in your state)	3-6 mos. before opening	Guidance from us and your local attorney
Complete Lease Negotiations	3-4 mos. before opening	Guidance from us
Build out space	2-3 mos. before opening	Guidance from us
Submit Opening Orders	1-2 mos. before opening	Guidance from us
Pre-opening marketing plan	0-3 mos. before opening	Guidance from us
Attend Training	0-3 mos. before opening	Lectures and Manuals

The factors that may increase or decrease the time periods discussed above are: the amount of time and effort you commit to the site selection process and the construction of your Studio; the availability of acceptable sites within the geographical area you choose; your ability to obtain a lease, financing and building permits; your credit and personal financials, and zoning and licensing requirements (FA, §§6, 10, 11, 16, 20(a)(d)(L), Schedule B). Delays or a lack of effort by you, your contractors or your prospective landlord will increase these time periods.

If you sign an Area Development Agreement you will be required to open the number of studios listed on the development schedule attached to the Area Development Agreement within the time set forth on that development schedule (FA, §3(a); ADA, §§1, 3).

### **Continuing Obligations**

After opening your Studio and during the operation of your Franchised Business, we will:

1. Information Relating to the Operation of Your Studio. Communicate to you information relating to the operation of a WINE AND DESIGN Studio, and to the extent necessary or pertinent to the operation of the Studio, our know-how, new developments, techniques and improvements in the areas of management, employee training, marketing, art classes, customer experiences (such as splatter rooms) and customer service (FA, §4(h));
2. Wine & Design Divisions. Provide procedures and rules governing the operation of our Wine & Design On Wheels, DIY, Virtual Classes, Art Buzz Kids, Paint it Forward and Team Building divisions, which may include training, ongoing updates, marketing, which rules may include specifying service areas for servicing mobile engagements and how to handle conflicts overlapping with other territories. We reserve the right to change these procedures at any time (FA, §5(a));
3. System Improvements. We will, as we deem necessary, make available to you any improvements, additions or deletions to the Franchise System, services and products offered, to which you agree to comply, at your own expense, with all such modifications and requirements needed to implement them (FA, §12(d));
4. Advertising Materials. Make available to you, as we deem necessary, advertising materials we prepare. You may use such materials in any local advertising. You will pay for all associated costs. (FA, §8);

5. Additional Training. Make available to you and may require you and your employees to attend additional training as we may deem necessary. (FA, §§4(f), 11(d));
6. Conferences and Conventions. We may, under no obligation and as we deem necessary, offer conferences and other training courses relating to our industry and to the conduct of the Franchised Business. You are required to attend all conferences and other required training courses. These courses may be conducted by our employees and/or by other trainers and will address various aspects of our business and other topics of interest to franchisees. We have the right to charge a tuition fee for each attendee, whether or not the attendee is required to attend. Additionally, you are responsible for all transportation, lodging, food and other costs incurred for each attendee attending such seminar. If you do not attend a required event, we reserve the right to require you to attend an equivalent amount of additional training in our Raleigh offices. You will be charged the then current rate of such additional training. In addition, not attending the annual franchise convention/conference, we will result in an increase of your royalty rate by 1% for the remainder of the year or \$1,000, whichever is greater (FA, §§4(f), 24(p));
7. Periodic Inspections and Evaluations. Provide supervision, conduct periodic inspections and evaluations and/or audits (with or without notice) as we deem advisable in our sole discretion of your operation (FA, §§4(g), 11(n) and 11(v));
8. Surveys. We may, in order to maintain the high quality standards that we expect of our system, commission customer surveys, customer interviews, and other customer service initiatives. If any survey shows deficiencies in the operation of your Studio we may require follow-up surveys that are directed specifically at your Studio, in which case, you will be required to pay for the cost of such Surveys (FA, §11(c));
9. Pricing. Through our Operations Manual we will recommend pricing for various services that you will supply your customers with respect to adult classes and we may mandate a minimum price in which you are to offer these classes. In other cases, our pricing is based on pricing recommendations and are not mandatory (FA, §12(c)).

### Advertising

You may develop advertising materials for your own use at your own cost provided the form and content is approved by us. We encourage the exchanging and sharing by Franchisees of advertising ideas and materials. We require you to submit advertising and promotional materials to us in advance and to obtain our approval before using them. You are required to follow our instructions in connection with any advertising or promotional materials we provide for your use (FA, Recital (E) and §8(f)).

Grand Opening Initial Launch Advertising Package. In conjunction with the opening of your Studio, we require you to participate in an Initial Launch Advertising to publicize the existence and opening of your Studio, in such forms as we approve. The amount that you are required to spend will be between \$3,000 and \$5,000. You are required to send proof of your advertising expenditures to us. You will pay these costs either directly to the media or marketing supplier as we may require. You will need to spend these monies as early as 60 days before you open your Studio and up to 90 days after you open your Studio. The Initial Launch advertising can include a number of different advertising venues, including, but not limited to, social media, media publication, and special events (FA, §8(c)). If you do not spend the required amount, we have the right (but not the obligation) to EFT the Account for the maximum amount noted and spend that amount for grand-opening or launch advertising.

Advertising Fund (“WAF”). We have established an advertising fund to pay, as we determine, for national, regional, and local advertising to increase and enhance the goodwill associated with the Marks, to promote the sale of any or all of the authorized products and services associated with the Wine and Design System, and to maintain a favorable image of Wine and Design for the benefit of all Wine and Design studios. The Advertising Fund is called the “Wine & Design Advertising Fund” or “WAF”. It is administered by our accounting and marketing personnel under our direction. The WAF is not a trust fund and we have no fiduciary duty with respect to the WAF or the advertising program. Currently, all advertising funds are payable to us and all Funds paid by you into the WAF are maintained in an account separate from our general operating account. You agree to make Fund contributions by electronic funds transfer (“EFT”) or in such other manner as we may require, on the 5<sup>th</sup> of each month or such other dates identified by us within 60 days prior written notice. The current contribution is 2% of monthly gross sales from your Studio. The Advertising Fund contribution may be raised by us, but not to higher than 4%. We may at our discretion defer Advertising Fund contributions for you or another franchisee for a period of time we deem appropriate at the outset of yours or their respective Studio(s) (FA, §8(a)(ii)). Other franchisee’s Advertising Fund contributions may be calculated at a different rate or on a different basis and, under limited circumstances, certain franchisees may not be required to pay Advertising Fund fees. We have the sole discretion to settle or forgive any accrued and unpaid Advertising Fund contributions owed by a franchisee (FA, §8(a)(ii)(iii)(A)(E)(F)(H)).

The Fund contributions shall be used exclusively to meet all costs of maintaining, administering, or directing and preparing promotional and/or advertising activities, including among other things the cost of personnel, both in-house and outside for creating and implementing advertising, promotional, and marketing programs and the costs of any and all advertising audits and reconciliations. We have the sole right to determine how, when, and where we spend Fund money, including sole control over the creative concepts, materials and media used in the programs, the placement and allocation of advertising and the selection of promotional programs. Additionally, we may use the Advertising Fund to pay for expenses incurred in developing and maintaining non-franchise sales portion of the Website. We are not required to spend any advertising funds in your specific area or territory. Materials provided by the Advertising Fund to all Franchisees may include video and audio tapes, mats, posters, banners, and miscellaneous point-of-sale items. You will receive one sample of each at no charge. If you want additional copies, you must pay duplication costs (FA, §8(a)(iii)(A)(D)(E)).

We may provide for placement of advertising on behalf of the entire franchise system, including Franchisees. We may also make placements on a local or regional basis, typically by local or regional advertising agencies. We have the right in the future to use advertising fees paid by our Franchisees to place advertising in national media (including broadcast, print or other media). Advertising funds are used to promote the products and services sold by Franchisees and will not be used directly to promote franchise sales (FA, §8).

Use of advertising funds in most recent fiscal year: (percentage of total fund expenditures and we spent more monies that were in the fund last year)

<b>USE</b>	<b>PERCENTAGE</b>
Advertising	4
Technology	65
Payroll	27
Administrative	4
<b>TOTAL</b>	<b>100%</b>

We expect to use all Fund contributions in the taxable year which they are made. Any excess money remaining in the Fund at the end of each fiscal year, will carry over to the next year (FA, §8(iii) (F)). We will have an unaudited accounting of the Fund prepared annually with the cost borne by the Fund and will provide a copy to you upon written request to us at our principal place of business (FA, §8(iii)(G)). Also, upon written request to us at our principal place of business, we will make available for inspection by you the Funds financial statements and records (FA, §8(iii)(G)).

Local Advertising. In addition to the grand opening requirements, we require that you spend at least \$100 per week to promote your Studio through local advertising initiatives that are intended to promote your Wine and Design Studio in the local market. This form of local advertising may take the form of direct advertising placements or indirect methods such as sponsorships and the like. You are not required to submit any receipts of advertising placements to us. All such local advertising shall be conducted in accordance with our approval (FA, §8(c)).

Local & Regional “Cooperative” Advertising. Although we are not obligated to do so, we may establish a local or regional advertising Cooperative (the “Cooperative”) in and around an applicable geographic area. Each Cooperative will be organized for the purposes of producing and conducting, subject to our approval, general advertising programs and activities for use in and around the applicable geographic area and developing standardized promotional materials for use by its Members. It shall be organized and governed in a form and manner, and shall commence operation on a date approved by us in advance in writing (FA, §8(b)).

We will determine the boundaries, geographic territorial, and market areas for each Cooperative program. If a Cooperative has been established applicable to your Studio at the time you commence operations, you shall immediately become a member of such Cooperative. If one is established at a later time during your Term, you shall become a member of such Cooperative no later than 30 days after the date the Cooperative commences business. We may require, at any time, Cooperatives to change, merge, sub-divide or dissolve. No promotional or advertising plans, programs, activities or materials may be used by a Cooperative or furnished to its Members without our prior written approval. All plans, samples and advertising and promotional materials to be used should be submitted to us for approval within 90 days preceding their intended use (FA, §8(b)). You shall make contributions to each Cooperative of which you are a member on the same basis as required by comparable franchisees within the System on the date and manner and in such amounts as determined by the Cooperative’s governing body. You will not be required to contribute to more than one Cooperative and the amount of your contribution, if applicable, will be described in Item 6 of this FDD under the heading “Local or Regional Cooperative Fees.” We may in our sole discretion, upon written request by a franchisee stating reasons supporting such request, grant any franchisee an exemption from requirement of membership in a Cooperative. If an exemption is granted, that Franchisee may be required to expend on local advertising the full amount that would otherwise be payable to the Cooperative (FA, §8(b)).

The Cooperative is not a trust fund. We shall have no fiduciary duty to you in connection with the collection or use of the Cooperative monies or any aspect of the operation of the Cooperative. Each Cooperative must adopt written governing documents. Each Cooperative may determine its own voting procedures; however, each company-owned Franchisee will be entitled to vote on a basis proportionate to the franchisees in any local advertising cooperative. The Members and their elected officials are responsible for administration of the Cooperative. Each Cooperative must prepare quarterly and annual financial statements prepared by an independent CPA. Upon written request, we will provide to you the Cooperative’s accounting and make available for inspection by you the Cooperative’s financial statements and records (FA, §8(b)).

We also may require you to engage in push marketing initiatives, which by way of example can include sending to customers, flyers, organizing table tents, and other marketing initiatives. If these initiatives are

not covered by the advertising fund then you will be responsible to pay for them out of your local advertising expenditures (FA, §8(e)).

We currently do not have an advertising council but we reserve the right, at any time, to create one in the future.

### **Computer/Point-of-Sale System**

We have the right at any time in our sole discretion to specify or require that you use certain brands, types, makes and/or modes of communications, computer systems, and hardware and software. In terms of Hardware, we currently do not require you to have a specific Computer/POS System, or any POS System, other than a computer, printer, dedicated telephone and power lines, and high-speed internet access which are all selected by you, at your expense, from a supplier or vendor of your choosing. We estimate that your expenses for computer Hardware will be between approximately \$500 and \$1,700 (see Item 7 “Computer, Printer & Telephone/Internet Fees”). In terms of Software, we have approved bookkeeping and accounting services. The current monthly charge is \$175 per month (which may increase) (see Item 7 “Accounting & Legal Software and Services”). We have the right, at any time as we deem necessary or appropriate, to connect to your computer system to retrieve data and information (“Data Mining”) (FA, §§11(o), 19(c)).

You must keep your Computer System in good maintenance and repair. You are solely responsible for the payment of all bills which result from the use and/or maintenance of all computer hardware and software used in your franchise business (FA, §11(p)).

We have the right to require you to connect to our computer system, if applicable. If required, you shall provide such assistance, as may be required, to connect your computer/POS system with our computer system. We shall thereafter have the right, at any time, to retrieve and use for any purpose such data and information from your computer/POS system as we, in our sole and exclusive discretion, deem necessary or desirable. In view of the contemplated interconnection of computer/POS systems and the necessity that such systems be compatible with each other, you expressly agree that you will strictly comply with our standards and specifications for all item(s) associated with your computer/POS systems. We will have unlimited independent access to your Computer System. We shall have no liability to you as a result of our access or failing to access the computer/POS system (FA, §11(o)).

### **Training (“Initial and Remedial”)**

Initial Training. We provide you with an “initial” 4-day training program which you are required to attend and complete prior to opening your studio. The “initial” 4-day training program is conducted at our corporate headquarters in Raleigh, North Carolina, or such other location as we may designate. We hold the “initial” 4-day training program monthly, usually the last week of the month, Tuesday through Friday. If we approve your franchise to operate with an Operations Manager, you and the Operations Manager must successfully complete, to our satisfaction, the training program, unless we waive this requirement with respect to him or her (FA, §11(a)(ii)). Other managers may attend. We plan to conduct the training program on an as-needed basis. It is conducted at our corporate headquarters in Raleigh, North Carolina, or such other location as we may designate, and it is generally three days in duration. You and your Operations Manager, if utilized, must complete the training program to our satisfaction before we will authorize you to open your Franchised Business (FA, §§4(e), 11(d)).

There is a charge for this training program. However, if you buy the franchise from us, or have been approved by us as the new franchisees of a transferred franchise, your initial franchise fee includes the cost of initial training for up to 3 people (franchisees, guarantors or managers) provided they all attend a single training course at the same time. You bear the cost of training anyone beyond this number or outside the

group training course at \$250 per day. With respect to all training, you bear all indirect training costs and expenses, such as salary expenses of your employees and all expenses of travel, lodging, meals, and other living expenses you and your designee incur (FA, §§4(f), 11(d)).

Remedial Training. In addition to your initial training, if you are not operating your franchise in accordance with our system standards, we may require you to attend a remedial training session at our corporate headquarters in Raleigh, North Carolina. The remedial training session is different from additional training set forth later in this disclosure document. For such remedial training we reserve the right to charge you a remedial training fee of \$500 per day for such training, and where such training shall not be for more than 3 days. As with the initial training course you are responsible for all of your personal expenses in attending such remedial training such as travel, food, lodging, and other personal expenses well as all salary and other wage costs for the operation of your Studio in your absence (FA, §11(d)).

The training program covers the following information:

- Stage One: Financials, Operations and Services
- Stage Two: Marketing
- Stage Three: Website and Technology
- Stage Four: Artist Training/Studio Management

The exact amount of time spent on each part of the training will depend on the time required for mastery by the students participating in the training. All of the training is provided by our corporate team, field consultants and artists. We use various trainers throughout the training program, but all trainers are required to be certified by us as having mastered the subject matter they are teaching and are trained by members of our team. Harriet Mills oversees our training programs, she has been with us since 2010 and has been involved with training since 2010. Any field consultants utilized in training are required to be certified by us as having sufficient experience and mastered the subject matter they are teaching. Artists used by our affiliate-owned Studios are required to be certified by us as having mastered the subject matter they are teaching and will be incorporated into our training program to instruct with regard to the holding of art classes and other customer experiences (such as splatter rooms).

#### TRAINING PROGRAM

SUBJECT	HOURS OF CLASSROOM TRAINING	HOURS OF ON-THE-JOB TRAINING	LOCATION
Interviewing and Hiring Artist	4	8	Corporate headquarters in Raleigh, North Carolina, or such other location as we may designate.
Business Operations and Management (including website and reservation system)	12	8	Corporate headquarters in Raleigh, North Carolina, or such other location as we may designate.
Marketing & Best Practices	8	2	Corporate headquarters in Raleigh, North Carolina, or such other location as we may designate.
Art Classes & Artist Training	4	16	Corporate headquarters in Raleigh, North Carolina, or such other location as we may designate.

<b>SUBJECT</b>	<b>HOURS OF CLASSROOM TRAINING</b>	<b>HOURS OF ON-THE-JOB TRAINING</b>	<b>LOCATION</b>
Additional Training	15-25	15-25	Franchise Studio location, virtual, or such other location as we may designate.
Accounting & Business Goals	2-4	2-4	Corporate headquarters in Raleigh, North Carolina, or such other location as we may designate.
<b>Total:</b>	<b>47-57</b>	<b>51-63</b>	

### **Confidential Operations Manual**

We will lend to you one set of our Operations Manual. These manuals contain mandatory and suggested specifications, standards, and procedures. They are confidential and remain our property. Your employees are to see them only on a need-to-know basis and subject to confidentiality agreements. We may modify this material, as we deem necessary, and its modified terms are binding on you, whether modified in paper or electronically. Most, if not all of the volumes of the Operations Manual are provided electronically and not in paper format. The Wine & Design Operations Manuals (also referred to as Wine & Design University) currently contains a total of three main subcategories; classes (commonly referred to as divisions), resources, and studio basics. Each subcategory is comprised of ever increasing lesson plans, tutorials, and guides. If there is a conflict between what is in your manual and what is in our "Master Manual" the provisions in the Master Manual shall control. If there is a conflict between what is in the paper manual or the electronic manual that which is in the electronic manual shall control (FA, §11(e)).

As stated above, our Wine and Design Operations Manual may be integrated into our Wine and Design University.

The Table of Contents for our Operations Manual has 6 sections and a total of 448 pages and is as follows:

<b>SECTION</b>	<b>TITLE</b>	<b>NO. OF PAGES</b>
I	Start Up & Supplies	79
II	Operations & Services	176
III	Website & Reservation System	52
IV	Marketing & Advertising	70
V	Resources	51
VI	Brand Standards	20
<b>Total</b>		<b>448</b>

### **Website & Social Media**

Website. We will maintain a website at [www.wineanddesign.com](http://www.wineanddesign.com) (the "Website"), which may include any account, page, or other presence on a social and business networking media site (such as Facebook, Twitter, LinkedIn) and online blogs and forums ("Networking Media Site") in order to promote the Marks, or any or all of the Franchised Businesses within the System. You are required to use our website/reservation system to book studio sessions, Wine & Design on Wheels sessions and payment. You are required to post and maintain a monthly calendar on your website which shall list all studio classes available to the public. The calendar must be visible to potential customers at least 45 days in advance of such class offerings. We will maintain, in our sole discretion, an Intranet System (Wine & Design University) at

<https://sites.google.com/wineanddesign.com/wanddu/home> to provide you with our approved forms and other resources. We will have the sole right to control all aspects of the Website, including its design, content, functionality, links to other websites, legal notices, and policies and terms of usage. We will also have the right to discontinue operation of the Website at any time without notice to you. We may require that you maintain and utilize a specific e-mail account in connection with the franchised business. You may not establish or operate a website, web page, domain name, Internet address, blog, forum or email address that in any way concerns, discusses or alludes to us, the System or your Studio without our written consent. The Marks may not be used as part of, in conjunction with, to establish, or to operate any domain names, Internet addresses, blogs, forums or Networking Media Sites, unless specifically approved by us. You may not post, and must take such steps as necessary to ensure that your employees do not post, any information to a Networking Media Site relating to us, the System, the Marks, or the Studio that (a) does not comply with our social networking guidelines described in the Operating Manuals, (b) is derogatory, disparaging, or critical of us, the System, or the Marks, (c) is offensive, inflammatory or indecent, or (d) harms the goodwill and/or public image of the System and/or the Marks. You may not establish or permit or aid anyone else to establish any links to any website or any other electronic or computer generated advertising or communication arrangement which we may create. Subject to the terms of the Franchise Agreement and Operations Manual, we may make available to you a sub-page on the Website that will be located at a sub-domain of the Website to be specified by us (the "Subpage"). You will be permitted to upload content onto the Subpage solely to promote, and provide customers information related to your Studio. You may only upload content onto the Subpage in accordance with terms of the Franchise Agreement and any guidelines, directives or specifications (collectively, "Subpage Standards") issued by us. The Subpage may not contain content which references any other Studios other than your Studio. You may not upload, publish, display, or otherwise include or use any content on the Subpage without receiving our approval. Once we approve the initial content of the Subpage, you must submit any changes to us before you make any changes. We may, at any time, cease to make the Subpage available to you or the public. Upon the termination or expiration of the Franchise Agreement for any reason or a default under the Franchise Agreement for any reason, you may not upload, content, onto, or otherwise use, the Subpage shall immediately cease and we may cease to make the Subpage available to you (FA, §8(i)).

Social Media. We also may permit you to use one or more social media sites (e.g., [www.twitter.com](http://www.twitter.com); [www.facebook.com](http://www.facebook.com), or such other social media sites). Except as provided in our social media policy, you may not establish or maintain any social media sites utilizing any user names, or otherwise associating with the Marks, without our advance written consent. We may designate, as we deem necessary, regional or territory-specific user names/handles to be maintained by you. You must adhere to the social media policies established by us and you will require all of your employees to adhere to the social media policy as well (FA, §8(k)).

## **ITEM 12 TERRITORY**

The territory granted depends upon whether a Franchise Agreement is signed. A description of the rights granted under a Franchise Agreement is provided below.

You will not receive an exclusive territory. You may face competition from other franchises, from outlets that we own, or from other channels of distribution or competitive brands that we control.

Franchise Agreement. Upon your signing of the Franchise Agreement and the payment of the Initial Franchise Fee, you will receive a protected area, consisting of a radius around your Studio of 2 miles. In addition, we will not open or license others to open a Wine & Design Studio more than one (1) for every 50,000 persons residing within the Metropolitan Statistical Area ("MSA") in the market where you wish to locate your Wine & Design Studio ("Protected Area"). We will use maps and statistical information deemed reliable by us in determining the market in which we will place Wine & Design Studios. You may lose your

Protected Area if you fail to open your Studio in a timely fashion or fail to operate it for any period of 14 days or more, excluding “Acts of God,” without our prior written permission or if your Franchise Agreement is terminated due to defaults by you that are not timely cured. Opening the Studio in a timely fashion means within 3 months of signing the Franchise Agreement, plus such extensions, if any, as we may agree to in writing. You may not relocate the business premises without our written approval. In addition, you must offer classes at least 5 days a week, including offering classes on Friday and Saturday evenings, in order to maintain your Protected Area. If you fail to do so, then we have the right to locate additional locations within your Protected Area. Other than timely opening your Studio within 3 months of signing your Franchise, failing to open your Studio during any 14 day consecutive period, or the failure to the offering of classes on at least 5 days per week, the continued protection of the territories granted under the Franchise Agreement are not contingent upon achieving a certain sales volume, market penetration, or any other contingency and cannot be altered other than by both our written agreement. Your Protected Area is protected only to the extent that no one may locate a Studio within its geography.

All Studios may accept business from any customer regardless of their geographic location, but you may only solicit to customers located within your Protected Territory. The Franchised Business must operate only as an art studio; you cannot sell products or services through any other channel of distribution. We solely retain the right to sell any products in any channel of distribution except for operating a franchised Studio within the Protected Area. For example, although we do not do so at the present time, we can sell products and services using the trademarks by wholesale, mail order, telemarketing, delivery sales, internet sales, and catalog sales. Although we do not presently sell or license products or services, other than via franchise arrangements such as those described in this disclosure statement under the trademarks, we reserve the right to do so. If we decide in the future to exercise these rights, we will not be obligated to compensate you for such sales made inside your territory. Furthermore, although neither we nor our affiliate currently does so, we have the right to operate or franchise a business under a different trademark that sells the same, similar, or different products or services.

Further, we reserve the right to establish procedures governing the Wine & Design on Wheels or future mobile or similar party programs (such as DIY, Virtual Classes, Art Buzz Kids, Paint it Forward and Team Building divisions). The Protected Area granted to you does not restrict us in any way in how we operate programs. Your right to participate in these programs will be determined by our then-current policies and your service territory for these program may be different than your Protected Area.

If your landlord terminates your right to possession of your approved business premises before the Franchise Agreement's term expires, then you and we must determine a new location within 60 days. You may not relocate the site of the original Franchised Business without our express written permission. Should you relocate the Franchised Business without such permission we reserve the right to treat the new location as an entirely new franchise sale subject to new initial franchise fees as provided in Section 3.1 of the Franchise Agreement and to such other provisions as would apply to new franchise sales.

You may service customers at your Studio, and through Wine & Design on Wheels in an unsold territory adjacent to your Protected Area (“Adjacent Territory”). For purposes of clarity, if there is already an operating Studio or there has been an award of a Studio in an Adjacent Territory you may not service that Adjacent Territory. You must agree that when you go into an Adjacent Territory that has not yet been developed, when the Adjacent Territory is granted to another franchisee you will, upon receipt of written notice from us, cease all solicitation efforts within the Adjacent Territory and return to us within 10 days of the notice, all customer and prospect information related to the Adjacent territory, and assign to us or our designee all customers in the Adjacent Territory. Any advertising that you directed to the Adjacent Territory must stop after we have sent you the notice of a new franchisee opening in the Adjacent Territory. After you receive notice from us, you may no longer provide your services through Wine & Design Wheels in the Adjacent Territory.

You may purchase additional franchises from us on the then current terms, if the following conditions are satisfied: (a) You must then be not in default under any provision of this agreement; (b) you must satisfy us that you are capable of successfully staffing, financing, and operating the additional Studio; (c) you must satisfy us that adding the new Studio will be in the best interests of the franchise System; and (d) you have paid an initial franchise fee equal to the initial franchise fee charged less any discounts we may choose to give to existing franchisees at that time. Other than the rights listed in this Disclosure Document, you have no other rights of first refusal or option rights to an additional territory.

Area Development Agreement. If you sign an Area Development Agreement with us you will be granted a specific territory to open a series of Wine & Design Studios. The designation of the territory and the time frame to open each of the Wine & Design Studios specified in the Area Development Agreement will be agreed to by you and us before you sign the Area Development Agreement. Your territory will be exclusive and we reserve no rights in the territory, subject only to franchisees or developers who may have pre-existing contracts with us.

Continuation of your territory depends on you meeting the Development Schedule. The failure to adhere to the Development Schedule shall result in the termination of the Area Development Agreement and you will lose your exclusive right to develop the territory designated in that agreement.

However, the Wine & Design Studios already opened under the Area Development Agreement will not lose their protected territory specified in the individual franchise agreement that you must sign in conjunction with each Wine & Design Studio that you will open under the Area Development Agreement.

Exhibit I to the FDD is an Area Development Agreement that sets forth the terms of the Area development rights provided to a franchisee. No franchisee has signed an Area Development Agreement as of the date of this Franchise Disclosure Document.

### ITEM 13 TRADEMARKS

We own the following federal trademark registrations that have been filed with the United States Patent and Trademark Office:

Mark	Mark Type	Registration No.	Registration Date	Register
WINE & DESIGN	Service Mark - Word Mark	4145524	05/22/2012	Principal
	Service Mark – Design Only	5190887	04/25/2017	Principal
ART BUZZ	Service Mark - Word	3999427	07/19/2011	Principal
GET YOUR ART BUZZ ON	Trademark. Service Mark- Word	3999426	07/19/2011	Principal

We intend to file all necessary affidavits of use and renewal applications when they become due. There are no currently effective material determinations of the Patent and Trademark Office, the Trademark Trial and

Appeal Board, or the Trademark Administrator of any state or any court; nor are there any pending infringement, opposition, or cancellation proceedings or material litigation, involving any of the above Proprietary Marks. In 2012, we entered into a settlement agreement with Wine and Designs, Incorporated, a Georgia corporation whereby we agreed not to provide or offer franchises that provide live classes in which customers paint items such as kitchenware, bake ware, stemware, earthenware, drink ware, pottery or related goods. You are prohibited from offering classes or parties for your patrons in which kitchenware, bake ware, stemware, earthenware, drink ware, pottery or related goods are painted.

You must follow our rules and regulations with respect to the use of the Proprietary Marks. You cannot use any of the Proprietary Marks or any other marks, names, or indicia of origin that are or may be confusingly similar to the Proprietary Marks as part of a corporate name or other legal name.

You must promptly notify us of any unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, right to use and to license others to use, or your right to use, the Proprietary Marks. We have the right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement. We have the right, but not the obligation, to take action against uses by other that may constitute infringement of the Proprietary Marks. We have no obligation to defend you against any third-party claim, suit, or demand arising out of your use of the Proprietary Marks. If there is any litigation relating to your use of the Proprietary Marks, you must sign all documents and do all things as may be necessary to carry out a defense or prosecution, including becoming a nominal party to any legal action.

We reserve the right to substitute different proprietary marks for use in identifying the System and the business operating under it if we, in our sole discretion, determine that substitution of different marks as Proprietary Marks will be beneficial to the System. You must comply with such change, revision, or substitution and bear all expenses associated with them.

#### **ITEM 14 PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION**

We do not have any patents or copyrights that are material to operation of your Studio. We do claim common law copyright protection for our Operations Manual, our proprietary painting designs, our business method, and business processes all of which are trade secrets owned by us. We utilize artwork for use in our classes that we claim a copyright for, but for which we have not filed for a copyright registration. The Franchise Agreement gives you the right to use such artwork in the classroom setting in you Studio. You will receive no other rights with respect to the artwork for which we claim copyrights. There are significant copyrights and trademarks that are material to this franchise and we will protect the proprietary nature of those items to the full extent of the law.

If you or your Principals, officers, managers, or employees conceive, invent, create, design and/or develop any ideas, techniques, methods, processes or procedures, designs, formulae, products, packaging or other concepts and features relating to Studio operations, business practices, or related goods in connection with the Franchised Business (the “Innovations”), you (or they) will be deemed to have assigned all of your (or other) rights, title and interests in the Innovations, including any intellectual property rights, to us. You and your Principals, officers, managers and employees also must cooperate with us in connection with protecting the Innovations.

If you reproduce any items or materials suitable for copyright protection, you must make sure that each item bears a copyright notice in the form specified by us. You must use the proprietary information only in the manner required by us and in no other manner. This information is strictly confidential. And you may not disclose to any person, or use any of that information for any purposes, except disclosure to a person who has signed and delivered to us a confidentiality agreement and use as necessary in connection with the

operation of your Studio. In addition, you must fully and strictly comply with all security measures required by us for maintaining the confidentiality of all information designated by us as trade secrets.

You will not have the exclusive right to use the Innovations or any of our patents or patent applications, copyrights or proprietary information, nor will you acquire, by use or otherwise, any right, title or interest in or to the Innovations, the copyrights or the proprietary information, other than as expressly contained in, and limited by, the Franchise Agreement. Your right to use the Innovations, the claimed subject matter of any patents or patent applications, the copyrights and the proprietary information is limited and temporary. Upon expiration or termination of the Franchise Agreement, you may not, directly or indirectly, use the Innovations, the claimed subject matter of any patents or patent applications, the copyrights or the proprietary information in any manner or for any purpose whatsoever.

You must immediately notify us of any conduct that could constitute infringement of or challenge to the Innovations, the patents or patent applications, the copyrights and the proprietary information. We will decide, in its sole discretion, whether to institute any action in connection with infringement of or challenge to the Innovations, the patents or patent applications, the copyrights and the proprietary information, and will control and proceedings and litigation. We are not required to protect your right to use the Innovations, the patents or patent applications, the copyrights or the proprietary information. We will indemnify you for all damages for which you are held liable in any lawsuit arising out of your use of our Innovations, claimed subject matter of any patents or patent applications, copyrights and proprietary information in compliance with the Franchise Agreement.

We may, in its sole discretion, modify or discontinue use of the Innovations, the claimed subject matter of any patents or patent applications, the copyrights and the proprietary information and/or use other information and/or rights in their place. If it decides to do so, you must do so also, at your expense. However, if we required you to modify or discontinue use of any material Innovation, the claimed subject matter of any patents or patent applications, the copyrights or proprietary information and/or use other information and/or rights in their place at any time other than upon renewal of the franchise, and that requirement is a direct result of proceedings or litigation that determined that we and our franchisees' use of such Innovation, claimed subject matter of any patents or patent applications, copyright or preparatory information infringed upon a third party's rights, we will bear the cost of those modifications or discontinuances.

During the term of the Franchise Agreement, you must maintain, to the extent collected, a current list of the names, home addresses, work addresses, e-mail addresses and telephone numbers of the customers who supply you this information (the "Customer List"). You must provide the Customer List to us upon request. The Customer List will be our property at all times, and you must not disclose the Customer List to any person or entity other than us, or sell the Customer List (or any portion of it) to any person or entity without our express written consent.

The franchisee and each Principal, officer, manager and employee will be bound by certain provisions protecting our proprietary rights.

#### **ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

Either you or your manager shall personally devote full time and best efforts to the management and operation of your Studio, including direct full-time supervision, in order to ensure compliance with and to maintain our high standards. If you use an on-premises supervising manager, that manager must successfully complete our training program unless we waive this requirement based on their experience, and they must be approved by us. We prefer to have franchisees who are committed to a "hands on" and

well-informed approach to the business. Franchisees that do not devote their full time and efforts to the establishment and operation of their Studios may have lower gross sales, higher operating costs and lesser name recognition in their areas than those franchisees that do devote their full efforts to the business. Examples of the types of functions which you might perform include supervisions of employees, staffing, inventory checks, review of sales and costs, bookkeeping and all reasonable efforts to ensure smooth and efficient operations. If you choose to use an on-premises supervisor, that supervisor is not required to have any equity interest in the franchise or, if you are a business entity, in that business entity.

If you enter into an Area Development Agreement, you must devote its full-time to the business of the development of Wine and Design Studios.

If you qualify to become a franchisee based on the financial statement of you and your spouse, then both you and your spouse will be required to sign guarantees of the obligations due to us. We recommend that, if you have a Studio manager, you require the Studio manager to sign a Nondisclosure and Confidentiality Agreement (see Schedule D to the Franchise Agreement). In addition, you must have each artist that you contract with sign both an Artist Agreement on form that we require, which among other things insures that the artwork that the artist provides to you is original and not copied from another artist.

You may organize your business as a sole proprietorship, partnership, corporation or limited liability company. All owners of the business must sign a personal guaranty of performance of the type that is attached to the Franchise Agreement as Schedule C.

Your personnel at the Studio must maintain standards of sanitation, cleanliness, demeanor and appearance as may be established by us. In order to maintain a sense of community within System, all employed personnel while working at a Wine and Design Studio or a Wine and Design on Wheels should wear Wine and Design apparel of such color, designs, and other specifications as we may designate. In addition, you must ensure that all employees whose duties include customer service have sufficient literacy and fluency in the English language (or such other language that is the primary language in your market) to adequately serve the public at your Studio.

#### **ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You are limited to providing services related to offering fun and relaxed art classes and customer experiences such as splatter rooms, unless otherwise authorized by us. You may sell approved products and services to any customer. However, you must operate the Franchised Business solely as a service business. We have the right to add, delete, or change the types of authorized goods and services offered by you in operation of your Franchised Business. You will be obligated to offer and sell those new products and to participate in all local, regional and promotional program initiatives and campaigns adopted by us in which we require you to participate. We reserve the right to designate which of its franchisees may, or will be required to, participate in new product or service tests, new or modified product or service offerings and other programs and initiatives that we may, from time to time, develop. If we designate you for participation in any such program, initiative or campaign, you must participate when and as required by us. There are no limits on rights to require you to offer and sell those new products or to participate in those programs, initiatives and campaigns.

**ITEM 17 RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

**This table lists certain important provisions of the franchise, and related agreements. You should read these provisions in the agreements attached to this Disclosure Document.**

<b>PROVISION</b>	<b>SECTION IN FRANCHISE AGREEMENT</b>	<b>SUMMARY</b>
a. Length of the franchise term	Franchise Agreement § 2(a)	10 years.
b. Renewal or extension of the term	Franchise Agreement § 2(b)	One 5-year renewal term.
c. Requirements for you to renew or extend	Franchise Agreement § 2(b)	You must: (i) not be in default, (ii) give us written notice; (iii) make all required upgrades and/or renovations to your Studio; (iv) have possession of the Studio; (v) sign a general release (the current form of the general release is attached as Exhibit F); (vi) pay renewal fee of \$2,500; (vii) be current on payments to us and affiliates; (viii) not have had multiple defaults in prior 12 months; and (ix) sign the then current Franchise Agreement. The new agreement that you must sign at renewal may contain terms and conditions that are <i>materially different</i> than your original contract. The royalty rate and protected territory could be different, but will be no greater than the royalty and protected territory we then impose on similarly situated renewing franchises.
d. Termination by you	Not applicable	
e. Termination by us without cause	Not Applicable	
f. Termination by us with cause	Franchise Agreement §§ 17(a) and 17(b).	Section 17(a) describes causes for termination upon notice, including your cure rights. Section 17(b) deals with automatic termination.
g. "Cause" defined – defaults that can be cured	Franchise Agreement §§ 17(a), 17(b) and 17(c)	Non-compliance, non-payment, late reporting, non-willful under-reporting, and the like. Unless we have been through this 2 times already within 12 months, you have 15 (or perhaps more if truly required) days to totally cure after we deliver you a notice of default.

PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
h. “Cause” defined – defaults that cannot be cured	Franchise Agreement §§ 17(a), 17(b) and 17(c)	Two otherwise curable defaults within 12 months; willful and material falsification, Material underpayment of royalties, multiple occurrences of same event of default in 6 months, willful and repeated customer deception; non-complying purported or attempted assignment; default under a security interest; loss of right to possess Studio premises; bankruptcy, receivership, attachment and the like. A provision in the Franchise Agreement that terminates the franchise upon the bankruptcy of the franchise may not be enforceable under Title 11, U. S. Code Section 101.
i. Your obligations on termination/non-renewal	Franchise Agreement §§ 11(e), 14, 15 and 18	Pay us sums due without set-off; return our property including Operations Manuals and business data; discontinue use of Licensed Marks and copyrighted artwork; cooperate with our lease assignment rights, if any; unless we take over the premises, remove all signs with Marks immediately; cease representing self as a present or past Franchisee; destroy or surrender marks, names, indicia; discontinue ads; assign us phone numbers; sell us such inventory and other business assets as we request. You are also required to pay us liquidated damages, which are future royalties due for the greater of 2 years or the remaining term of your contract. These damages are based on the gross revenues derived at your studio during the previous 12 months before termination.
j. Assignment of contract by us	Franchise Agreement § 13(a)	We may freely assign our rights and duties under the Agreement without restriction.
k. “Transfer” by you – definition	Franchise Agreement § 13(b) - (g)	Include bequests, fractional interests, shares, death, incapacity etc.
l. Our approval of transfer by you	Franchise Agreement § 13(c)	Our prior written agreement is required for all transfers.
m. Conditions for our approval of transfer	Franchise Agreement § 13(d)	Transferee must assume your obligations under the Franchise Agreement, attend and successfully complete our training program, and sign franchise and collateral agreements in the then current form; and you must release us of all claims. Guarantees and share restriction agreements are required if to a corporation or LLC. If a sale is involved, you must offer us a 45-day right of first refusal and a transfer fee of \$7,500 must be paid. A

PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
		purchaser must have a credit rating, moral character, reputation and business qualifications satisfactory to us, and meet all then current requirements of new Franchisees.
n. Our right of first refusal to acquire your business	Franchise Agreement § 13(c)	We may assign it to another.
o. Our option to purchase your business	Franchise Agreement: § 13(c) or none, § 18(i) and (k)	None except a right of first refusal should you sell or terminate your business. Upon termination you may, at our option, have to assign your lease and phone numbers to us without compensation and allow us to purchase your other assets at their current published prices with us offsetting.
p. Your death or disability	Franchise Agreement § 13(g)	Your qualifying heirs may take the franchise by assignment under normal rules; or estate may sell; the business must be kept open. No transfer fee.
q. Non-competition covenants during the term of the franchise	Franchise Agreement § 14(b) and (c)	You must not own or otherwise engage in any other business that performs services similar to that of a Studio. You will be required to get your managerial staff and artists/instructors to agree to follow this same non-competition covenant.
r. Non-competition covenants after the franchise is terminated/expires	Franchise Agreement § 14(a) and (b)	For 2 years after termination or expiration of the franchise, you must not own or engage in any other similar business located within 30 miles of your Studio or any business location licensed by us that sells the same or similar services as those sold by Studios.
s. Modification of the agreement	Franchise Agreement § 11(e) and 24(f)	No modifications to the Agreement other than in writing and signed by both parties.
t. Integration/merger clause	Franchise Agreement § 24(c)	Only the terms of the Franchise Agreement are binding (subject to State and Federal laws). Any representations or promises outside of the disclosure document and franchise agreement may not be enforceable. Also, your agreement terms automatically change if 75% of the then-current franchises agree with the change and we approve the change. No provision in any franchise agreement is intended to disclaim the express representations made in this Franchise Disclosure Document.
u. Dispute resolution by arbitration or mediation	Franchise Agreement § 21(a)	Except for certain claims, all disputes not first settled informally must be arbitrated in

<b>PROVISION</b>	<b>SECTION IN FRANCHISE AGREEMENT</b>	<b>SUMMARY</b>
		Raleigh, North Carolina, under rules of the American Arbitration Association.
v. Choice of forum	Franchise Agreement §§ 21(a) and 21(b)	AAA, Raleigh, North Carolina; North Carolina courts (if any), which provision is subject to the subjectivity of individual state laws (subject to applicable state law).
w. Choice of law	Franchise Agreement § 21(h)	North Carolina law applies generally, except Federal Lanham Act and Federal Arbitration Act, which choice of law is subject to the subjectivity of individual state laws (subject to applicable state law).

<b>PROVISION</b>	<b>SECTION IN DEVELOPMENT AGREEMENT</b>	<b>SUMMARY</b>
a. Length of the franchise term	Area Development Agreement §4.01	Until the development of the last studio, but in no event more than the date specified in the Area Development Agreement.
b. Renewal or extension of the term	Area Development Agreement §4.03	To extend the term of the Area Development Agreement by one year for each additional Studio over and above the number specified in the Development Schedule.
c. Requirements for you to renew or extend	Area Development Agreement §4.03	(i) be in good standing and compliance with the terms and obligations under current Area Development Agreement and all of its Unit Franchise and Trademark Agreements; (ii) agree to and sign an Extension Agreement; and (iii) pay a Successor Development Fee of \$2,500 for each studio covered in the term extension.
d. Termination by you	Area Development Agreement §4.01	If franchisee does not wish to renew the Area Development Agreement.
e. Termination by us without cause	Not Applicable	
f. Termination by us with cause	Area Development Agreement § 8.02	Agreement can be terminated if a Franchise Agreement is terminated or there is an uncured default.
g. "Cause" defined – defaults that can be cured	Area Development Agreement §§ 8.01 and 8.02	.
h. "Cause" defined – defaults that cannot be cured	Area Development Agreement §8.01	

<b>PROVISION</b>	<b>SECTION IN DEVELOPMENT AGREEMENT</b>	<b>SUMMARY</b>
i. Your obligations on termination/non-renewal	Not Applicable	
j. Assignment of contract by us	Area Development Agreement § 9.02	We may freely assign our rights and duties under the Agreement without restriction.
k. “Transfer” by you – definition	Area Development Agreement §9.01	The sale of more than one unit franchise within a one year period constitutes an assignment of the Area Development Agreement.
l. Our approval of transfer by you	Area Development Agreement §§ 9.01 and 9.02	Our prior written agreement is required for all transfers.
m. Conditions for our approval of transfer	Area Development Agreement §9.01	
n. Our right of first refusal to acquire your business	Area Development Agreement §9.03	We may purchase the interests to be sold in the Area Development Agreement.
o. Our option to purchase your business	Area Development Agreement §9.03	
p. Your death or disability	Not Applicable	
q. Non-competition covenants during the term of the franchise	Not Applicable.	Not Applicable.
r. Non-competition covenants after the franchise is terminated/expires	Not Applicable.	
s. Modification of the agreement	Area Development Agreement § 12.03	
t. Integration/merger clause	Area Development Agreement §12.03	The terms of the Area Development Agreement constitute the entire agreement between the parties relative to the matters covered in those agreements. No provision in any development agreement is intended to disclaim the express representations made in this Franchise Disclosure Document.
u. Dispute resolution by arbitration or mediation	Area Development Agreement §10.01	The disputes arising out of the Area Development Agreement are to be resolved first by mediation and then by arbitration.
v. Choice of forum	Area Development Agreement §10.01, 11.01	Arbitration in Raleigh, North Carolina; North Carolina courts (if any), which provision is subject to the subjectivity of individual state laws (subject to applicable state law).

<b>PROVISION</b>	<b>SECTION IN DEVELOPMENT AGREEMENT</b>	<b>SUMMARY</b>
w. Choice of law	Area Development Agreement §11.02	North Carolina law applies generally, except Federal Arbitration Act, which choice of law is subject to the subjectivity of individual state laws (subject to applicable state law).

**ITEM 18 PUBLIC FIGURES**

We have an agreement with Kevin O’Leary, he is paid \$400 for each franchise we sell in exchange for him consulting with us and promoting franchise sales on social media platforms. He has no position or investment with us and is not involved in our management.

**ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC’s Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing Studio you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

We do not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing Studio, however, we may provide you with the actual records of that Studio. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting our President, Harriet E. Mills, in writing, at Wine and Design Franchise LLC, 510 W Martin Street, Suite 300, Raleigh, NC 27603, 919-803-3343, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20 LIST OF OUTLETS AND FRANCHISE INFORMATION**

**Table 1  
System-wide Outlet Summary  
For Fiscal Years Ending 2021, 2022 and 2023**

<b>OUTLET TYPE</b>	<b>YEAR</b>	<b>OUTLETS AT THE START OF THE YEAR</b>	<b>OUTLETS AT THE END OF THE YEAR</b>	<b>NET CHANGE</b>
<b>Franchised</b>	2021	68	57	-11
	2022	57	52	-5
	2023	52	51	-1
<b>Company Owned</b>	2021	1	1	0
	2022	1	1	0
	2023	1	1	0
<b>Total Outlets</b>	2021	69	58	-11
	2022	58	53	-5
	2023	53	52	-1

**Table 2**  
**Transfers from Franchisees to New Owners (Other than Franchisor)**  
**For Fiscal Years Ending 2021, 2022 and 2023**

STATE	YEAR	NUMBER OF TRANSFERS
New Jersey	2021	0
	2022	1
	2023	1
New York	2021	0
	2022	0
	2023	1
North Carolina	2021	5
	2022	1
	2023	2
South Carolina	2021	2
	2022	0
	2023	0
<b>Totals</b>	2021	7
	2022	2
	2023	4

**Table 3**  
**Status of Franchised Outlets**  
**For Fiscal Years Ending 2021, 2022 and 2023**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
AL	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
AZ	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
CA	2021	7	0	1	0	0	0	6
	2022	6	0	2	0	0	0	4
	2023	4	0	0	0	0	0	4
CO	2021	1	0	1	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
GA	2021	1	0	0	0	0	0	1
	2022	1	1	1	0	0	0	1
	2023	1	0	0	0	0	0	1
HI	2021	1	0	1	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
ID	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
MD	2021	3	0	1	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	1	0	0	0	1	2
MO	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
NC	2021	22	0	2	0	0	0	20*
	2022	20	0	1	0	0	0	19
	2023	19	1	0	0	0	0	20
NJ	2021	3	0	0	0	0	0	3
	2022	3	1	0	0	0	0	4
	2023	4	0	0	0	0	0	4
NY	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	1	1
OH	2021	1	0	1	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
PA	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
SC	2021	9	0	4	0	0	0	5
	2022	5	1	1	0	0	1	4
	2023	4	0	0	0	0	0	4
TN	2021	2	0	0	0	0	0	2
	2022	2	0	1	0	0	0	1
	2023	1	0	0	0	0	0	1
TX	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
VA	2021	7	0	1	0	0	0	6
	2022	6	1	0	0	0	1	6
	2023	6	0	0	0	0	1	5
WA	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
WI	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
<b>Totals</b>	2021	<b>68</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>56*</b>
	2022	<b>56</b>	<b>4</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>52</b>
	2023	<b>52</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>51</b>

\*Satellite location in Emerald Isle, North Carolina, not included. No separate franchise agreement was signed for this satellite location. This location closed in 2022.

**Table 4  
Status of Company-Owned Outlets  
For Fiscal Years Ending 2021, 2022 and 2023**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
NC	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
<b>Totals</b>	<b>2021</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
	<b>2022</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
	<b>2023</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

Notes for Tables 1 – 4: States not listed had no activity. The numbers for 2020, 2021 and 2022 are as of our fiscal year end with which is December 31.

**Table 5  
Projected Openings as of the end of Fiscal Year 2023**

STATE	FRANCHISE AGREEMENTS SIGNED BUT OUTLET NOT OPENED	PROJECTED NEW FRANCHISED OUTLETS IN THE NEXT FISCAL YEAR	PROJECTED NEW COMPANY- OWNED OUTLETS IN THE NEXT FISCAL YEAR
North Carolina	2	1	0
Virginia	1	1	0
<b>TOTALS</b>	<b>3</b>	<b>2</b>	<b>0</b>

Exhibit B-1 lists the franchised Studios including franchisee name, Studio address and telephone number as of December 31, 2023 and denotes area developers. Exhibit B-2 lists the name, city, state and telephone number or, if unknown, the last known home telephone number of every franchisee who had a studio terminated, canceled, transferred, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during 2023, or who has not communicated with us within 10 weeks of the issuance date of this disclosure document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. Exhibit B-3 lists the Franchise Agreements that have been signed but the Studios have not yet opened.

In some instances, current or former franchisees sign provisions restricting their ability to speak openly about their experience with us. You may wish to speak with current or former franchisees, but be aware not all such franchisees will be to communicate with you.

There is no trademark-specific franchisee organization associated with the franchise system.

**ITEM 21 FINANCIAL STATEMENTS**

Attached to this disclosure document as Exhibit C are our audited financial statements for years ending on December 31, 2021, December 31, 2022 and December 31, 2023.

**ITEM 22 CONTRACTS**

The following contracts are attached as Exhibits to the Disclosure Document:

- A. Wine and Design Franchise Agreement
- F. General Release
- G. ACH/EFT Transfer Agreement
- I. Area Development Agreement

**ITEM 23 RECEIPT**

You will find copies of a detachable Receipt in **Exhibit J** at the end of this disclosure document. Please sign and date both acknowledging receipt of this disclosure document and return one of them to us for our files.

**EXHIBIT A**

**WINE AND DESIGN**  
**FRANCHISE AGREEMENT**

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### **SCHEDULES**

Schedule A Franchise Information

Schedule B Site Selection Addendum/Lease Rider/Territory Identification

Schedule C Personal Guaranty from Owners

Schedule D Nondisclosure and Confidentiality Agreement

Schedule E Telephone Listing and Internet Authorization Agreement

## WINE AND DESIGN FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** (the “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between WINE AND DESIGN FRANCHISE LLC, a North Carolina limited liability company (“Franchisor” “we” or “us”), with its principal office located at 510 W Martin Street, Suite 300, Raleigh, NC 27603, and \_\_\_\_\_ a \_\_\_\_\_ (“Franchisee” “you” or “your”), with its principal office located at \_\_\_\_\_.

### RECITALS:

A. Franchisor has expended time, money and effort to develop a distinctive system for operating an art studio offering art classes and other customer experiences such as splatter rooms during which patrons enjoy a relaxing and pressure free creative environment and food and beverages of their choosing as well as children’s art programs. (The methods of operation are referred to herein as the “System”; the chain of current and future **WINE AND DESIGN** Studios are referred to herein as the “Chain”.)

B. The distinguishing characteristics of the System include the name “**WINE AND DESIGN**,” copyrighted artwork and designs, and integrated website, and consistency and uniformity of products and services, all of which may be improved, amended and further developed by Franchisor from time-to-time.

C. Franchisor identifies its goods and services with certain service marks, trade names and trademarks, including, but not limited to, “**WINE AND DESIGN**”, “**ART BUZZ KIDS**” and “**GET YOUR ART BUZZ ON**”, as well as certain other trademarks, service marks, slogans, logos and emblems which have been and which may hereafter be designated by Franchisor for use in connection with the System (the “Marks”).

D. Franchisee desires to obtain a license from Franchisor for use of the Marks and the System solely for the operation of a business at the Approved Location (the “Franchised Studio”), and Franchisee desires to use the Marks and the System, and to obtain and use the methods, know how, experience and form of operation acquired, devised and/or established by Franchisor and other benefits derived from this license relationship strictly in accordance with this Agreement. As a Wine and Design franchisee, in addition to our general paint and sip concept, you have access to the 5 different programs that are part of our system, which include: “Art Buzz Kids” for children, “On Wheels” for mobile events, “Paint it Forward,” “for fundraising,” “Team building” for business, “Do it Yourself” (DIY) for craft projects.

NOW, THEREFORE, in consideration of the recitals and the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### **1 Grant**

Franchisor hereby grants to Franchisee, on the terms and conditions contained in this Agreement, and Franchisee accepts from Franchisor, a license to establish, own, and operate under the System, one Studio in the Metropolitan Statistical Area (“MSA”) set forth on Schedule A and at the location within the MSA (“Approved Location”) specified in the Site Selection Addendum (“Site Selection Addendum”) attached hereto as Schedule B. Franchisee agrees to identify the Franchised Studio and all of the items Franchisee sells or offers for sale only by the Marks. Franchisee has no right to use the System or the Marks for any purpose other than expressly provided herein. You may not conduct the business of your Franchised

Studio or use the System anywhere other than at the Approved Location and the right granted to use our Wheels program without our consent.

Pursuant to this grant, Franchisee, at its own expense, shall construct or remodel, and equip, staff, open and operate the Franchised Studio at the Approved Location, in accordance with this Agreement. Franchisee shall commence operating the Franchised Studio within one (1) year after the execution of this Agreement, and shall diligently operate such business in accordance with this Agreement for the Initial Term stated herein. Failure to timely open the Franchised Studio shall constitute an event of default under the Agreement.

From time-to-time, we may offer you the opportunity to purchase an additional Wine and Design franchise. In order to be option eligible to purchase an additional Wine and Design franchise from us you must: (a) have an operating studio that has been continuously open at least 12 months; (b) has been in full compliance with your Franchise Agreement for at least 12 consecutive months; (c) the franchise is for a studio outside of the exclusive or protected area granted to you in your previous franchise; and, (d) you have paid an initial franchise fee equal to the initial franchise fee charged less any discounts we may choose to give to existing franchisees at that time.

## **2 Term, Expiration, and Additional License Period**

- a) Initial Term. The initial term shall expire on the expiration date set forth on Schedule A, which will be the 10th anniversary of the Opening Date (the “Initial Term”) unless this Agreement has been sooner terminated in accordance with the terms and conditions herein.
- b) Additional License Period. Upon expiration of the Initial Term, Franchisee will have the right, subject to the conditions stated in this Section 2(b), to a successor License (“Successor License”) for one (1) additional consecutive period of five (5) years from date of expiration on the Initial Term (the “Renewal Term”), whether or not you sign the Successor License agreement before or after the actual expiration date of your License Agreement provided the following conditions have been met:
  - i. Franchisee has given Franchisor written notice of its intent to acquire a Successor License not less than six (6) months nor more than nine (9) months prior to the expiration of the Initial Term;
  - ii. Franchisee is not in default of any of the provisions of this Agreement both at the time Franchisee gives notice of its intent to acquire a Successor License under the terms of this Section 2(b) and at the commencement of the Renewal Term;
  - iii. All debts and obligations of Franchisee to us under this Agreement, and any obligations to us or any of our affiliates, shall be current;
  - iv. Franchisee has not received more than three (3) notices of default during any consecutive twelve-month (12) month period during the Initial Term;
  - v. Franchisee executes and delivers to Franchisor, as and when required the then current form of the WINE AND DESIGN Franchise Agreement, which agreement shall supersede this Agreement in all respects, and the terms and conditions of which may substantially differ from this Agreement;

- vi. Franchisee secures the right to continue possession of the Premises (as defined herein) for a period at least equal to the Renewal Term, or alternatively Franchisee secures premises at another location approved by Franchisor for the same period;
  - vii. Franchisee has paid to Franchisor a Successor License fee equal to Two Thousand Five Hundred Dollars (\$2,500.00) on or before the execution date of the agreement under Section 2(b)(v);
  - viii. Franchisee executes and delivers to Franchisor a general release, in the form prescribed by us, releasing any and all claims that Franchisee may have against Franchisor and its affiliates and subsidiaries, and their respective officers, directors, stockholders, and employees, agents, successors and assigns in both their corporate and individual capacities; and
  - ix. Franchisee makes such renovation and re-equipping of the Studio as Franchisor may require, including, without limitation, renovation or replacement of signs, equipment, furnishings, fixtures and decor, to reflect the then-current standards and image of the System.
- c) Expiration. The acquisition of a Successor License after the Initial Term shall not constitute a renewal or extension of this Agreement, but shall be conditioned upon satisfaction of the above provisions and shall, upon expiration of the Initial Term, be governed by the Franchise Agreement then executed by Franchisee. If Franchisee fails to meet any of the conditions under Section 2 with respect to the acquisition of a Successor License, or you have not advised us in writing that you do not wish to acquire a Successor License, then the License shall, at our discretion, either expire at the end of the Initial Term upon written notice to you by us, or be treated as a month-to-month License, in which case you must continue to comply with the ongoing obligations created by this Agreement until the expiration of 30 days after we provide you with written notice that your License Agreement will terminate thirty (30) days from the date of such notice to you.

### **3 Franchise Fees and Payments**

- a) Initial Franchise Fee and Royalties. Simultaneously with signing this Agreement, you shall pay us an initial franchise fee (“Initial Franchise Fee”) in the amount set forth in Schedule A. This fee is deemed fully earned when paid and is non-refundable under any circumstances.

If you are interested in purchasing the development rights for a specific territory or market, we offer an Area Development Agreement (Exhibit J) that will provide you the exclusive right to develop multiple Wine and Design franchises within a specified market or region provided that you open the number of Wine and Design studios referenced in the Area Development Agreement within the time frame specified in that agreement. You also will be required to pay to us a Development Fee set forth in the Area Development Agreement.

If you are purchasing your first Wine and Design franchise and it will be located in a State where we do not already have a Wine and Design studio then you will receive a 10% off the Initial Franchise Fee set forth in this Agreement.

If you are a United States veteran and this is the purchase of your first Wine and Design franchise then you will receive a 15% discount off of the Initial Franchise Fee set forth in this Agreement.

- b) Continuing Monthly Royalty. You shall pay to us continuing monthly royalties (“Continuing Royalty”) in the amount of six percent (6%) of the monthly Gross Sales. The term “Monthly Gross Sales” means all of the gross sales derived from or related to the operation of your Franchised Studio (includes amounts received for any food or beverages, including alcoholic beverages sold), whether payment is evidenced by cash, credit, check, gift certificate, gift card, script, or other property or services and whether collected or not from your monthly gross sales calculation (i.e., bank or credit card company fees and gift card vendor fees, excluding any sales tax amounts) (including the face amount of all gift cards or certificates, which are included at the time of sale of the gift card or certificate), for the month immediately preceding the due date of the Continuing Royalty. The Continuing Royalty is due and payable on or before the fifth (5th) day of each calendar month, or such other date as we may determine upon written notice to you upon sixty (60) days’ advanced written notice to you (“Due Date”).

If, due to federal, state or local laws, Franchisor is prohibited from receiving a percentage royalty based on alcoholic beverage sales or other similar percentage payouts, Franchisee shall pay Franchisor a Royalty Fee on all Gross Sales except these alcoholic beverage sales and/or other revenues in the same dollar amount as would have been paid if Franchisee paid the specified Royalty Fee percentage on all Gross Sales.

- c) Continuing Royalty Fee and Other Fee Administration. Notwithstanding anything stated in Section 3(b) of this Agreement:
- i. On each Due Date, Franchisor will transfer (“EFT”) from the Franchisee’s bank operating account (“Account”) the amount due Franchisor as reported to Franchisor in Franchisee’s sales report or determined by Franchisor by the records obtained by Franchisor, as well as any other amounts due to Franchisor under this Agreement or any other agreement between Franchisor and Franchisee. If a transfer from Franchisee’s Account is refused, an administrative fee of Fifty (\$50) Dollars will be assessed, as well as reimbursement to Franchisor of any fee its bank charges for uncollected deposit funds. If Franchisee has not reported Gross Sales to Franchisor for any period, Franchisor will transfer from the Account an amount calculated in accordance with its estimate of the Gross Sales during the fiscal period. If, at any time, Franchisor determines that Franchisee has underreported its Gross Sales, or underpaid the royalty fee or other amounts due to Franchisor under this Agreement, or any other agreement, Franchisor shall initiate an immediate transfer from the Account in the appropriate amount in accordance with the foregoing procedure, including interest as provided in this Agreement. Any overpayment will be credited to the Account effective as of the first reporting date after, Franchisor and Franchisee determine that such credit is due. Alternatively, the Franchisor shall have the right in lieu of the royalty report submission procedure outlined above to obtain Gross Sales data derived directly from electronic communication with any point of sale system established by Franchisee.
- ii. In connection with payment by EFT, Franchisee shall: (1) comply with procedures specified by Franchisor in the Manual; (2) perform those acts and sign and deliver those documents as may be necessary to accomplish payment by EFT as described

in this Section; (3) give Franchisor an authorization in the form designated by Franchisor to initiate debit entries and/or credit correction entries to the Account for payments under this Agreement, including any interest charges; and (4) make sufficient funds available in the Account for withdrawal by EFT no later than the Due Date for payment thereof; and (5) maintain a single bank account to make all payments required by this Agreement. Franchisee must advise Franchisor at least fifteen (15) business days prior to any change in Franchisee's bank account or financial institution; no such change will be permitted without the prior written authorization of Franchisor.

- iii. If Franchisee fails to pay any fee when due or Franchisee has insufficient funds to cover the electronic transfer when initiated by Franchisor, Franchisee shall pay interest on the amount due and unpaid at an interest rate equal to the lower of eighteen percent (18%) per annum or the maximum interest rate allowed by law. Failure by Franchisee to have sufficient funds in the Account shall constitute a default of this Agreement and may subject this Agreement to termination for cause as hereinafter set forth. Franchisee shall not be entitled to set off, deduct or otherwise withhold any royalty fees, advertising contributions, interest charges or any other monies payable by Franchisee under this Agreement on grounds of any alleged non-performance by Franchisor of any of its obligations or for any other reason.
  - iv. At Franchisor's discretion, Franchisor may also deduct Franchisee's Continued Royalty directly from customer payments made through Franchisor's website before remitting any such payment to Franchisee.
  - v. If Franchisee utilizes group buying services, including, but not limited to, Living Social, Groupon, or Twongo, Franchisee shall submit the Continuing Royalty to Franchisor derived from use of the group buying service within three (3) business days of receiving a check from the group buying service along with a statement from the group buying service listing the amount of units sold through the service and an electronic copy of the check received from the group buying service. Franchisor reserves the right at any time to modify and/or discontinue Franchisee's right to use group buying services.
- d) Technology and Advertising Support Fees. Franchisee is required to use the technology and advertising support services that Franchisor may specify or require from time to time and pay any then-current up front or ongoing fees or costs for such services to Franchisor or the vendor. Franchisor pays the third party vendors on behalf of Franchisee for each service.

#### **4 Franchisor Services**

During the Term, Franchisor agrees to provide to Franchisee the following services:

- a) specifications for the design of the Franchised Studio and related facilities to be used in the operation of the Franchised Studio;
- b) specifications for fixtures, furnishings, decor, signs and equipment;

- c) Franchisor will provide, at no expense to Franchisee, a list of equipment and supplies for the Franchised Business, and Franchisor reserves the right to amend and/or modify such list(s);
- d) specifications for initial store fixtures, furniture, equipment, supplies and computer system, etc., necessary to open your Franchised Studio according to standards and specifications; specifically, standards and specifications for all art supplies and canvases used in the operation of the Studio, as well as other products and materials used in connection with the operation of the Studio;
- e) a single pre-opening initial training course that is required by you and/or your manager. The training is available for your Manager(s) (as defined in Section 11(a) of this Agreement) provided that they sign a Nondisclosure and Confidentiality Agreement in a form acceptable to us. While there is no tuition charge for this initial training, you are responsible for all expenses incurred by you and or any others that attend this training, including, without limitation, all cost of travel, lodging, meals and wages. The initial training set forth in this section shall be conducted in such places and at such times that we shall determine from time-to-time;
- f) such other additional training for employees of Franchisee or you at the locations and for such periods as may be designated by Franchisor from time-to-time; provided that Franchisee shall be responsible for all expenses incurred by such persons in connection with training, including, without limitation, all cost of travel, lodging, meals and wages. If we require you to attend such training or we require you to attend a Wine and Design Franchisee convention, which will not be held more than one time each calendar year, and you should fail to attend such training or convention, we may consider you to be in default of your Franchise Agreement. All costs of attending any franchisee convention that we may have shall be borne by you;
- g) Franchisor's supervision and periodic inspections and evaluations of Franchisee's operation as described more fully in Section 11(n), which supervision, inspections and evaluations shall be conducted at such times and in such manner as shall be reasonably determined by Franchisor;
- h) Franchisor shall communicate to Franchisee information relating to the operation of a WINE AND DESIGN Studio, and to the extent necessary or pertinent to the operation of the Studio, Franchisor's know-how, new developments, techniques and improvements in the areas of management, employee training, marketing, art classes, customer experiences such as splatter rooms, and customer service; and
- i) Provide 2-Day Artist Training for your team of artists at your studio location for the then-current fee.

## **5 Territorial Provisions**

- a) **Territory.** Subject to the provisions of this Section 5, we will not during the Initial Term operate, or grant others the right to operate, (a) a Wine and Design Studio within a radius of 2 miles from the Approved Location (the "Protected Territory"), or (b) more than one Wine and Design Studio for every 50,000 people located within the designated metropolitan statistical area ("MSA") as determined by the United States, government, or country if there is no MSA or equivocal designation. Franchisee expressly acknowledges

that all WINE AND DESIGN Studios (whether owned by Franchisor, Franchisee or other franchisees) may accept business from customers without regard to the customers' geographic location, but Franchisee may only solicit to customers located within the Protected Territory. Franchisee hereby expressly acknowledges and agrees that such sales may occur within the Territory. Franchisee recognizes and acknowledges that (i) it will compete with other WINE AND DESIGN Studios which are now, or which may in the future be, located near or adjacent to Franchisee's Territory, and (ii) that such Studios may be owned by Franchisor or third parties, or both.

Franchisee may submit a request in writing to Franchisor for permission to solicit to customers in an unsold territory adjacent to the Protected Territory ("Adjacent Territory"). If Franchisor consents to such request, Franchisor retains the right to revoke its consent at any time.

Franchisee must offer classes at least 5 days per week to maintain Franchisee's Territory rights. If Franchisee fails to do so, then Franchisor has the right to locate additional studios within Franchisee's Territory. Your Protected Territory is not based on your achieving any threshold of sales at your Franchised Studio.

Franchisor reserves the right to establish procedures governing the Wine and Design On Wheels or future mobile or similar party programs (such as DIY, Virtual Classes, Art Buzz Kids, Paint it Forward and Team Building divisions). Franchisee's Territory grant does not restrict Franchisor in any way in how Franchisor operates programs. Franchisee's right to participate in these programs will be determined by our then-current policies and Franchisee's service territory for the programs may be different than your Protected Area. We reserve the right to change these procedures at any time.

- b) Other Businesses. Franchisee understands and agrees that Franchisor has the right, either directly or through affiliated entities, to operate or franchise or license others to operate businesses other than WINE AND DESIGN Studios, whether similar or dissimilar to the business operated under the WINE AND DESIGN concept, and Franchisee agrees that Franchisor and its affiliates may do so within the Territory.
- c) Other Methods of Distribution. Franchisee understands and agrees that Franchisor has the right, directly or through third parties, to manufacture or sell, or both, within the Protected Territory, services and products which are the same as or similar to those sold or provided by WINE AND DESIGN using brand names which are the same as or similar to the Marks, provided that such items are not sold through art Studios located within the Protected Territory.

## **6 Premises**

- a) Leased Premises. Franchisor is not obligated to assist Franchisee in locating a site location. If Franchisee intends to lease the premises for the Franchised Studio, Franchisee shall submit its site locations for Franchisor's approval, which approval shall not be unreasonably withheld. Franchisee shall submit to Franchisor an executed copy of the lease immediately after execution and at such other times as Franchisor may request. The term of the lease plus all options for Franchisee to renew shall together equal or exceed the Initial Term. The lease shall also include an Addendum in the form of Exhibit 1 to Schedule B attached, or shall contain terms and conditions substantially similar to those contained in Exhibit 1 to Schedule B.

- b) Owned Premises. If Franchisee intends to own the location, Franchisee shall obtain approval of the location from Franchisor and furnish Franchisor proof of ownership prior to the date Franchisee commences any construction, build-out or remodeling of the location. In the event that the Franchisee proposes to lease the location from any owner, member, manager, partner, director, officer or other Principal of Franchisee, or from any person or entity related to or affiliated with Franchisee or one or more of Franchisee's owners, partners, directors, officers or other Principals (the "Related Party"), Franchisor may require the Related Party to sign this Agreement and/or separate agreements for the purpose of binding the Related Party to applicable provisions of this Agreement, as determined by Franchisor. Franchisee shall also execute a written lease agreement with the Related Party and deliver a copy to Franchisor.
- c) Premises Identification. Regardless of whether the location is owned or leased, Franchisee shall remove all signs and other items and indicia which serve, directly or indirectly, to identify the location as a WINE AND DESIGN Studio within 10 days of the expiration or termination of this Agreement. In the event Franchisee does not comply with this requirement, Franchisor may enter the location, without being guilty of trespass and without incurring any liability to Franchisee, to remove all signs and other items identifying the location as a WINE AND DESIGN Studio and to make such other modifications as are reasonably necessary to protect the Marks and WINE AND DESIGN, and to distinguish the Premises from WINE AND DESIGN Studios. Provided, however, that this obligation of Franchisee shall be conditioned upon Franchisor giving Franchisee prior written notice of the modifications to be made and the items to be removed.
- d) Suitability of Premises. Regardless of whether the Premises are owned or leased, it shall be the responsibility of Franchisee to determine that the Premises can be used, under all applicable laws and ordinances, for the purposes provided herein and that the Premises can be constructed or remodeled in accordance with the terms of this Agreement. Franchisee shall obtain all permits and licenses that may be required to construct, remodel and operate the Studio, including any necessary alcoholic beverage licenses. Franchisee agrees that the Premises will not be used for any purpose other than the operation of the Studio in compliance with this Agreement.
- e) Relocation: Assignments. Franchisee shall not, without first obtaining Franchisor's written consent, which shall not be unreasonably withheld: (i) relocate the Studio; or (ii) renew or materially alter, amend or modify any lease, or make or allow any transfer, sublease or assignment of its rights pertaining to the Premises.

## **7 Proprietary System and Marks; Franchisor Property Rights**

- a) Ownership; Use by Others. Franchisor and its affiliates shall have and retain all rights associated with the Marks other than those expressly licensed herein, including, but not limited to the following: (a) to use the Marks in connection with selling products and services; (b) to grant licenses to others for the Marks, in addition to those licenses already granted to existing franchisees; and (c) to develop and establish other systems using the Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to Franchisee. Franchisee acknowledges that any unauthorized use of the System or the Marks is and shall be deemed an infringement of Franchisor's rights. Franchisee shall execute any documents deemed necessary by Franchisor or its counsel for the protection of the System and the Marks or to maintain their validity or enforceability, or to aid Franchisor in acquiring rights in or in

registering any of the System and the Marks or any trademarks, trade names, service marks, slogans, logos and emblems subsequently adopted by Franchisor. Franchisee shall give notice to Franchisor of any knowledge that Franchisee acquires of use by others of the same or similar names or marks or of any claim or litigation instituted by any person or legal entity against Franchisee involving the System or any of the Marks. Franchisee shall cooperate with Franchisor in any suit, claim or proceeding involving the System or the Marks or their use to protect Franchisor's rights and interest in the System and the Marks. In the event of any settlement, award or judgment rendered in favor of Franchisor relating to the use or ownership of the System or the Marks, such settlement, award or judgment shall be the sole property of Franchisor and Franchisee shall not be entitled to or make any claim for all or any part of it.

- b) Use of Marks. During the term of this Agreement or thereafter, directly or indirectly, Franchisee shall not commit any act of infringement or contest or aid in contesting the validity or ownership of the System or the Marks, or take any other action to disparage them. Franchisee shall use the Marks only in connection with the operation of the Studio at the Location specified herein, and shall use them only in the manner authorized by Franchisor. Franchisee shall prominently display the Marks in the manner prescribed by Franchisor on all signs, plastic and paper products, and other supplies and packaging materials designated by Franchisor. Franchisee shall not fail to perform any act required under this Agreement, or commit any act which would impair the value of the Marks or the goodwill associated with the Marks. Franchisee shall not at any time engage in any business or market any products or service under any name or mark which is confusingly or deceptively similar to any of the Marks. Franchisee shall not use any of the Marks as part of its corporate or trade name and shall not use any trademark, trade name, service mark, logo, slogan or emblem in connection with the Studio that has not been authorized by Franchisor. Franchisee shall obtain such fictitious or assumed name registrations as may be required by Franchisor or applicable state law. Franchisee shall not attempt to register or otherwise obtain any interest in any Internet domain name, website or URL containing or utilizing any of the Marks or any other word, name, symbol or device which is likely to cause confusion with any of the Marks. Franchisee also acknowledges that its use of the Marks pursuant to this Agreement does not give Franchisee any ownership or other interest in or to the Marks, except the license granted by this Agreement.
- c) Designation as Franchisee. Franchisee shall take such additional action as may be necessary under the laws of the state in which the Franchised Studio is operated to make clear to the public that Franchisee is an independently owned and operated franchise of Franchisor and not owned by Franchisor. Franchisee shall post in a conspicuous location at the business premises, as well as on invoices, purchase orders, marketing materials and the like that "This WINE AND DESIGN Franchise is independently owned and operated by Franchisee under license from Wine and Design Franchise LLC."
- d) Discontinuance of Use. Additional Marks. Franchisor has the right to change, revise, or substitute different Marks for use in identifying the System, the Franchised Studio, and the products or services sold or offered for sale through the Franchised Studio. In such circumstances, the use of the substitute proprietary marks shall be governed by the terms of this Agreement. Franchisee shall comply with each such change, revision, or substitution and bear all expenses associated therewith. In the event that a court of competent jurisdiction should order, or if Franchisor in its sole discretion should deem it necessary or advisable, Franchisee shall modify or discontinue use of any Mark. Franchisee shall comply with the Franchisor's directions regarding any such Mark within 30 days after

receipt of notice from Franchisor or, if such modification or discontinuance is court-ordered, immediately. Franchisor shall not be obligated to compensate Franchisee for any costs or expenses incurred by Franchisee in connection with any such modification or discontinuance. Franchisee shall also use such additional or substitute Marks as Franchisor shall direct.

- e) Changes in Law Affecting Marks. In the event that the trademark law is amended so as to render inapplicable any of the provisions of this Agreement, Franchisee shall sign any documents and do such other act and thing as in the opinion of Franchisor may be necessary to effect the intent and purpose of the provisions of this Agreement.
- f) Copyrights. Franchisee acknowledges that as between Franchisee and Franchisor, any and all present or future copyrights relating to the System or the WINE AND DESIGN concept, including, but not limited to, artwork and designs, the Manuals, construction plans and specifications and marketing materials, (collectively, the "Copyrights") belong solely and exclusively to Franchisor. Franchisee has no interest in the Copyrights beyond the nonexclusive License granted in this Agreement.
- g) Ideas and Innovations. All inventions, ideas, applications, trademarks, service marks, enhancements, modifications, improvements or other processes, methods and designs, technologies, computer software, electronic code, original works or authorship, formulas, patents, copyrights, marketing and business plans and ideas, and all improvements and enhancements thereto that Franchisee may develop, invent, discover, conceive or originate, alone or in conjunction with any other person or persons during the Term that relate in any way, either directly or indirectly, to the Franchised Studio and/or the System (collectively referred to as "Inventions and Ideas") developed by the Franchisee and/or any personal guarantors, either in whole or in part during the Term, shall be the exclusive property of Franchisor. Franchisee must promptly disclose the existence of any and all Inventions and Ideas to Franchisor. Franchisee and all guarantors of this Agreement hereby assign to Franchisor, without compensation, all right, title and interest in such Inventions and Ideas, and agree that they will execute any and all instruments and do any and all acts necessary or desirable to establish and perfect in Franchisor the entire right, title and interest in such Inventions and Ideas.
- h) Customer and Other Data. Subject to any applicable laws, Franchisee shall maintain a current list of the names, home addresses, work addresses, e-mail addresses and telephone numbers of the customers and past customers who have provided such information to the Franchised Studio (the "Client List"). Franchisee shall provide the Client List to the Franchisor upon request. The Client List shall be the property of Franchisor. Franchisee shall not disclose such information to any person or entity other than Franchisor, or sell such list(s) or any portions thereof to any person or entity without the express written consent of Franchisor. Likewise, other data collected by Franchisee or Franchisee's information technology system (Customer Data and the other data collectively referred to herein as "Franchisee Data") is deemed to be owned by Franchisor, and Franchisee agrees to furnish the Franchisee Data to Franchisor at any time that Franchisor requests it. Franchisor hereby grants Franchisee a limited license to use Franchisee Data while this Agreement is in effect, but only in accordance with the policies that Franchisor establishes periodically and applicable law. Franchisee shall not be due any compensation based upon Franchisor use of the Franchisee Data. Franchisee may not sell, transfer, or use Franchisee Data for any purpose other than marketing WINE AND DESIGN products and services.

## 8 Advertising

- a) Contributions and Expenditures. Recognizing the value of advertising and the importance of the standardization of advertising to the further hence of the goodwill and public image of the System, Franchisor and Franchisee agree as follows:
- i. Grand-Opening Advertising. Franchisee shall expend for grand-opening or launch advertising to publicize the existence and opening of the Franchised Studio such amounts as Franchisor may reasonably require, which advertising shall be in such form as approved by Franchisor. You are required to spend for grand-opening or launch advertising between \$3,000 and \$5,000 during the period 60 days before and 90 days after you open your Franchised Studio. Franchisee may expend additional amounts on such advertising, provided the form and content is approved by Franchisor as provided in Section 8(f). If Franchisee does not spend the required amount, Franchisor shall have the right (but not the obligation) to EFT the Account for the maximum amount noted in this Section and spend that amount for grand-opening or launch advertising.
  - ii. Monthly Contributions and Expenditures. Each month, you must contribute to the Wine and Design Advertising Fund (“WAF”) 2% of your Gross Sales from your Franchised Studio. You agree that we may enforce your obligations to contribute to the WAF. We may increase the WAF contribution rate, but we will not increase to more than 4% of Gross Sales.
  - iii. Wine and Design Advertising Fund (“WAF”). Franchisor shall establish and maintain a bank account for the purpose of administering the WAF, as described herein. Franchisee shall make contributions to the WAF as set forth in this Section 8.
    - (A) Franchisee agrees and acknowledges that while the disbursements from WAF are intended to increase and enhance the goodwill associated with the Marks, to promote the sale of any or all of the authorized products and services associated with the Wine and Design System, and to maintain a favorable image of Wine and Design for the benefit of all Wine and Design Studios, we cannot assure you that any particular Wine and Design Studio, or Wine and Design Studios in any particular local market area will benefit directly or pro-rata from any marketing, advertising, or related program. Neither Franchisor nor any of its respective officers, directors, agents or employees, shall be liable to Franchisee with respect to the maintenance, direction or administration of the WAF, including without limitation, with respect to contributions, expenditures, investments or borrowing, except for acts constituting willful misconduct.
    - (B) Franchisor shall make contributions to the WAF for each Studio that it owns.
    - (C) As long as Franchisee is in compliance with this Section 8, Franchisee will be furnished with advertising materials which were produced by means of expenditures from the WAF for distribution to licensees of the System on the same terms and conditions as such materials are furnished to other franchisees.

- (D) Franchisee shall make its monthly contribution to the WAF on the date and in the manner as Franchisor may designate from time-to-time, including bank drafting. Franchisee agrees to make such contributions by electronic funds transfer (“EFT”) or in such other manner as the Franchisor may require, on the 5th of each month or such other date(s) identified by Franchisor with 60 days prior written notice. Contributions to the WAF may be used to defray expenses of Franchisor only to the extent of the administrative costs and overhead that Franchisor may reasonably incur in administering the marketing and advertising program for the System, including, without limitation, among other things, the cost of personnel, both in-house and outside for creating and implementing advertising, promotional, and marketing programs, and the costs of any and all advertising audits or reconciliations.
- (E) Other than stated in the preceding paragraph, the contributions to the WAF, all contributions thereto, and any earnings thereon shall be used exclusively to meet all costs of maintaining, administering, or directing, and preparing promotional and/or advertising activities. Franchisor has the sole discretion how and where the WAF contributions are spent to promote, enhance, or further the growth of the System, including, without limitation, promotional marketing, public relationships, and advertising expenses, hiring marketing, public relations, advertising agencies and in-house personnel to assist in developing the WINE AND DESIGN brand name and average studio volumes, expenses associated with listings in online or similar directories, travel expenses in connection with promotions and marketing meetings, training, development of trademarks and trademarked materials, production of circulars, media (including digital), advertisements, coupons, and promotional materials (including point of purchase materials), and for any other use we determine. Additionally, Franchisor can use the WAF to pay for expenses incurred in developing and maintaining non-franchise sales portion of the WINE AND DESIGN website. All sums paid by Franchisee into the WAF shall be maintained in an account separate from the other monies of Franchisor, and they shall be accounted for separately from other funds and will not, except for the recovery of administrative expenses referenced in paragraph 8(a)(iv)(D), in conjunction with creation placement, and distribution of advertising and marketing, be used to defray our general operating expenses. Any advertising agency commissions and discounts granted to us for media purchases from the WAF will be contributed to the WAF or netted against the invoice for such purchases.
- (F) It is anticipated that all contributions to and earnings from the WAF shall be expended for promotional and/or advertising purposes during the taxable year wherein which the contributions and earnings are received. If, however, excess amounts remain in the WAF at the end of such taxable year, all expenditures for the following taxable year(s) shall be made first out of accumulated earnings from the previous year, next out of earnings in the current year, and finally from contributions. Any money remaining in the WAF at the end of each fiscal year, will carry over to the next year. Notwithstanding anything stated to the contrary in this Section 8 we have

the right to charge a proportionate amount of the collection costs against contributions we recover.

(G) The WAF is not and shall not be an asset of Franchisor or its designee. An unaudited statement of the operation of the WAF as shown on the books of the WAF shall be prepared annually by an independent certified public accountant selected by us and shall be made available to Franchisee. The cost of such statement of operations shall be borne by the WAF. Upon request, Franchisor shall make available for inspection by Franchisee the books and records of the WAF. At Franchisor's option, Franchisor can create a separate entity to be the recipient of Franchisee's WAF contributions and Franchisee agrees, upon Franchisor's request, to tender WAF payments to said entity.

(H) The WAF is not a trust fund, and we do not act as a trustee of the WAF. Franchisor shall have no fiduciary duty to Franchisee in connection with the collection or use of the WAF monies or any aspect of the operation of the WAF. Except as otherwise stated in the Section 8 of the Agreement we assume no direct or indirect liability or obligation with respect to the maintenance, direction, or administration of the WAF.

b) Regional Cooperative Advertising. Franchisee agrees that Franchisor shall have the right, in its sole discretion, to designate from time-to-time a geographical area in which the Franchised Studio is located for the purpose of establishing an advertising cooperative (the "Cooperative"). If a Cooperative has been established applicable to the Franchised Studio at the time Franchisee commences operations hereunder, Franchisee shall immediately become a member of such Cooperative. If a Cooperative applicable to the Studio is established at any later time during the Term, Franchisee shall become a member of such Cooperative no later than 30 days after the date on which the Cooperative commences operation. In no event shall the Studio be required to contribute to more than one Cooperative. The following provisions shall apply to each Cooperative:

- i. Each Cooperative shall be organized and governed in a form and manner, and shall commence operation on a date, approved in advance by Franchisor in writing. We will determine the boundaries of each regional Cooperative. We may also require that one regional Cooperative merge with another regional Cooperative servicing an adjacent advertising market or we may sub-divide a regional Cooperative into smaller groupings. We may also dissolve a regional Cooperative.
- ii. Each Cooperative shall be organized for the purposes of producing and conducting general advertising programs and activities for use in and around the applicable geographic area and developing standardized promotional materials for use by the members.
- iii. Franchisee shall make contributions to the Cooperative of which it is a member as required by the Cooperative.
- iv. No advertising programs or materials may be used by the Cooperative or furnished to its members, and no advertising or promotional activities may be conducted by the Cooperative, without the prior written approval of Franchisor. All such

programs, materials and planned activities shall be submitted to Franchisor for approval in accordance with the procedure set forth in Section 8(f).

- v. Each cooperative shall have the right to require its members to make contributions to the Cooperative in such amounts as are determined by the governing body of the Cooperative.
  - vi. Franchisee shall make its contributions to the Cooperative on the date and in the manner designated by the Cooperative. Franchisee shall also submit such statements and reports as may be designated from time-to-time by the Cooperative. The Cooperative shall submit to Franchisor such statements and reports as Franchisor may designate from time-to-time.
  - vii. Notwithstanding the foregoing, Franchisor, in its sole discretion, may, upon written request of a franchisee stating reasons supporting such request, grant to any franchisee an exemption from the requirement of membership in a Cooperative. Such an exemption may be for any length of time and may apply to one or more Studio owned by such franchisee. If an exemption is granted to a franchisee, such franchisee may be required to expend on local advertising the full amount that would otherwise be payable to the Cooperative.
  - viii. The Cooperative is not a trust fund. Franchisor shall have no fiduciary duty to Franchisee in connection with the collection or use of the Cooperative monies or any aspect of the operation of the Cooperative.
- c) Local Advertising. In addition to the grand opening requirements of Section 8(a)(i), we require that you spend at least \$100 per week to promote your Franchised Studio through local advertising initiatives that are intended to promote your Franchised Studio in the local market. This form of local advertising may take the form of direct advertising placements or indirect methods such as sponsorships. Unless we request, you are not required to submit any receipts of advertising placements to us. All such local advertising shall be conducted in accordance with the approval of the Franchisor pursuant to Section 8(f).
- d) Directory and Related Advertising. You shall, at your expense, arrange for the listing of the Studio's information in any online or similar directory designated by Franchisor under the name "Wine and Design" or such other name as the Franchisor may designate. All advertising and promotion in such media (beyond a simple listing of name, address, and telephone number) shall be subject to Franchisor's approval. Franchisor has the right to arrange for directory listings for franchisees under the System and, at Franchisee's expense, for Franchisee; in which case Franchisee shall pay Franchisor as Franchisor may designate. Franchisee's rights to retain its assigned telephone number, local directory listing and advertisements and Internet listings are subject to the provisions of Section 8(i) of this Agreement.
- e) Pull Marketing. From time-to-time we may require you to engage in Pull Marketing, which are promotional strategies that are designed to further the interest of your potential customers to take advantage of the services offered at your Franchised Studio. Examples of this type of marketing would include, but are not limited to, customer flyers, organizing table-tents and other marketing initiatives. If these initiatives are not covered by the WAF, then you will be responsible to pay for them out of your local advertising expenditures.

- f) Approval by Franchisor. Prior to their use by the Cooperative or by Franchisee, samples of all advertising and promotional materials not prepared or previously approved by Franchisor within the 90-day period preceding their intended use shall be submitted to Franchisor for approval. If disapproval is not received within 20 days from the date of receipt by Franchisor of such materials, Franchisor shall be deemed to have given the required approval. Neither the Cooperative nor Franchisee shall use, and shall cease using, any advertising or promotional materials that Franchisor may at any time disapprove, regardless of whether any such items had been previously approved by Franchisor.
- g) Franchisor Advertising. Franchisor will from time-to-time offer to provide to Franchisee such approved advertising and promotional plans and materials as Franchisor deems desirable. In any advertising conducted solely by or for Franchisor, Franchisor shall have the sole discretion to determine the products and geographical markets to be included, and the medium employed and Franchisor shall not have any duty or obligation to supply Franchisee with any advertising or promotional materials produced by or for Franchisor at its sole expense.
- h) Ownership of Advertising. Franchisor shall be the sole and exclusive owner of all materials and rights which result from advertising and marketing program produced and conducted, whether by Franchisee, Franchisor, the Cooperative or the WAF. Any participation by Franchisee in any advertising, whether by monetary contribution or otherwise, shall not vest Franchisee with any rights in the Marks employed in such advertising or in any tangible or intangible materials or rights, including, copyrights, generated by such advertising. If requested by Franchisor, Franchisee shall assign to Franchisor any contractual rights or copyright it acquires in any advertising.
- i) Use of Website. Franchisee will not, directly or indirectly, establish or operate a website, web page, domain name, internet address, blog, forum or email address that in any way concerns, discusses or alludes to the Franchisor, the System or the Franchisee's Franchised Studio without Franchisor's written consent, which Franchisor is not obligated to provide. Franchisee will not post, and will take such steps as necessary to ensure that its employees do not post, any information to a social media relating to the Franchisor, the System, the Marks, or the Franchised Studio that (a) does not comply with the Franchisor's then-current social networking guidelines described in the Manuals, (b) is derogatory, disparaging, or critical of the Franchisor, the System or the Marks, (c) is offensive, inflammatory or indecent, (d) harms the goodwill and/or public image of the System and/or the Marks, or (e) post on your website any material (including text, video, clips, photographs, images and sound bites) in which any third party has any direct or indirect ownership interest. Franchisee shall not establish or permit or aid anyone else to establish any links to any website or any other electronic or computer generated advertising or communication arrangement which Franchisor may create. Franchisee specifically acknowledges and agrees that, except for social media site postings (which will be subject to this Section), any Website will be deemed "advertising" under this Agreement, and will be subject to (among other things) Franchisor's approval under this Agreement. In order to ensure that the customers patronizing your Franchised Studio know when classes and art sessions are available, you will be required to post on your website a monthly schedule 45 days out from the class scheduled, the public classes available to the Studio customer. You are required to use our website to book and pay for all studio sessions, including Wine & Design Wheel sessions.

- j) Online Use of Marks. Franchisee shall not use the Marks or any abbreviation or other name associated with Franchisor and/or the System as part of any e-mail address, domain name, and/or other identification of Franchisee in any electronic medium. Franchisee agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail or other electronic media without Franchisor's prior written consent as to Franchisee's plan for transmitting such advertisements.
- k) Social Media. Franchisor may from time-to-time maintain one or more social media sites (e.g., www.twitter.com; www.facebook.com, or such other social media sites). Franchisee shall not establish or maintain any social media sites utilizing any user names, or otherwise associating with the Marks, without Franchisor's advance written consent. Franchisor may designate from time-to-time regional or territory-specific user names/handles to be maintained by Franchisee. Franchisee must adhere to the social media policies established from time-to-time by Franchisor and Franchisee will require all of Franchisee's employees to do so as well.

## **9 Telephone Number**

Franchisee shall establish a local telephone number for the Franchised Studio. Franchisee shall keep Franchisor notified as to the current telephone number for the Franchised Studio. In no event shall Franchisee use such number for any other business. Franchisee further covenants that in the event it obtains any additional or substitute telephone service or telephone number at the Studio, it will promptly notify Franchisor and such additional or substitute number shall be subject to the terms of this Section 9. All telephone listings and directory listings for your Studio are our property, and we have the right to transfer or terminate such telephone listings and directory listings only on termination or expiration without renewal of this Agreement. We may as we deem necessary amend your telephone listing or put it on a remote call forwarding or other answering service. If we take any action pursuant to this Section 9 the telephone company and all listing agencies may accept this Agreement as conclusive evidence of our authority to direct their amendment, termination or transfer of such listing without any liability to you.

## **10 Construction, Design and Appearance: Equipment**

- a) Construction. Franchisee is solely responsible for the construction of the Franchised Studio. Franchisee will commence any required construction promptly after execution of a lease for or closing on the purchase of the Premises. Franchisee shall maintain continuous construction of the Franchised Studio until completion. Franchisee will complete construction in accordance with the plans and specifications for the Franchised Studio which have been approved in advance by Franchisor and will not deviate, except as permitted below, from such plans and specifications without the prior written consent of Franchisor. Franchisee agrees that it will construct or remodel the Approved Location in accordance with Franchisor's construction or remodel plans and design, layout and other physical characteristics, rentals, lease terms including duration, and general conditions for use as a WINE AND DESIGN Franchise ("Standard Plans") or in accordance with plans approved by Franchisor. Additionally, Franchisor may provide Franchisee with Franchisor's specifications for the construction and design of the Studio ("Spec. Sheet"). The Standard Plans, if provided, will be provided by Franchisor at no cost to Franchisee. Franchisee shall purchase or lease all equipment, displays, fixtures, and furnishings that Franchisor designates. Such Standard Plans shall not contain the requirements of any federal, state or local law, code or regulation, including those concerning the Americans With Disabilities Act ("ADA") or similar rules governing public accommodations for persons with disabilities, nor shall such plans contain the requirements of, or be used for,

construction drawings or other documentation as may be necessary to obtain permits or authorization to build a specific Studio (“Applicable Law”). It is Franchisee’s sole responsibility to make sure that the design and construction of the Franchised Studio and the Premises are in compliance with all Applicable Laws including without limitation, the Americans with Disabilities Act. Franchisee shall indemnify and hold Franchisor harmless against any and all claims, actions, causes of action, costs, fees, fines and penalties, of every kind and nature, should the design and/or construction of the Franchised Studio fail in any way to comply with any Applicable Laws, including, without the limitation, the Americans with Disabilities Act. If provided, Franchisee shall make no changes to any building plan, design, layout or decor, Spec Sheet, or any equipment or signage except as necessary to comply with Applicable Law without the prior written consent of Franchisor. Franchisee shall maintain the interior and exterior decor in such manner as may be prescribed from time-to-time by Franchisor. Franchisee acknowledges the specifications on the Spec. Sheet may exceed the requirements of Applicable Law.

- b) Signs. Franchisee shall prominently display, at its own expense, both on the interior and exterior of the Premises, advertising signs in such form, color, number, location and size, and containing such Marks, logos and designs as Franchisor shall designate. Franchisee will be responsible for ordering any required signage, including an exterior sign, for the Franchised Studio from an approved vendor at Franchisee’s expense. Franchisor may, on your behalf and at your expense, direct and control placement of the exterior sign on your location, working with your landlord or tenant association, if necessary. Franchisee shall obtain all permits and licenses required for such signs and shall also be responsible for ensuring that all signs comply with all laws and ordinances. Franchisee shall not display in or upon the premises any sign or advertising of any kind to which Franchisor objects.
- c) Remodeling and Re-equipping. Franchisor reserves the right to require Franchisee to generally refurbish the Franchised Studio and/or the Premises at Franchisee’s expense, in order to conform to the building design, trade dress, color schemes and presentation of the Marks in a manner consistent with the then-current image for WINE AND DESIGN franchises and may include, without limitation, structural changes, installation of new materials and equipment, remodeling, redecoration, changing color schemes, and modifications and/or repairs to existing improvements. Notwithstanding, Franchisor shall not request, and the Franchisee shall not be obligated to perform such refurbishment, if the Franchisor’s request is made either prior to the start of the sixth year of the Term or within five (5) years from the last date the Franchisee refurbished the Franchised Studio and/or the Premises pursuant hereto.

## **11 Operations, Standards of Quality, Inspections**

- a) Manager. Franchisee shall designate an individual to serve as the “Manager” for the Franchised Studio who shall be able to bind the Franchisee with respect to all decisions regarding the franchise. The Manager shall meet the following qualifications:
  - i. The Manager shall devote full time and best efforts to the supervision and conduct of the development and operation of the Franchised Studio and shall agree to keep the information that is designated as Confidential Information confidential. If your Manager has an ownership in your Studio, such person also must be a sign a guarantee.

- ii. The Manager shall be approved by Franchisor and either you or your Manager shall complete Franchisor's initial training requirements and shall participate in and complete to Franchisor's satisfaction all additional training as may be reasonably required by Franchisor.
  
- b) Management of the Studio. Either you or your Manager shall personally devote their full time and best efforts to the management and operation of the Studio in order to ensure compliance with this Agreement and to maintain Franchisor's high standards. Management responsibility shall include, without limitation, presence of you or your Manager at the Studio during all hours of operation; maintaining the highest standards of service and product quality and consistency; maintaining the Studio in the highest condition of sanitation, cleanliness and appearance; and supervising employees to ensure that the highest standard of service is provided and to ensure that Franchisee's employees deal with customers, suppliers, Franchisor, and all other persons in a courteous and polite manner. Franchisor shall receive advanced written notice of any change in the manager.
  
- c) Compliance with Franchisor's Standards. Franchisee shall operate the Studio through strict adherence to Franchisor's standards, specifications and policies as they now exist, and as they may from time-to-time be modified. Such standards and policies include, without limitation: (i) specifications and standards for art classes and customer experiences such as splatter rooms; (ii) services offered; and (iii) use of specified emblems and Marks. Franchisee agrees to follow the instructions of Franchisor as well as Franchisor's employees, agents, and representatives. In order to maintain the high quality standards that we expect of our System we may commission customer surveys, customer interviews, and other customer service initiatives ("Surveys"). If any of these surveys show deficiencies in the operation of your Studio then we may require follow-up surveys that are directed specifically at your Studio, in which case, you will be required to pay for the cost of such Surveys.

All personnel employed by you in connection with the operation of your Studio must maintain standards of sanitation, cleanliness, demeanor and appearance as may be established by us. In order to maintain a sense of uniformity and community within the franchise system, all employed personnel while working at a Wine and Design Studio or a Wine and Design On Wheels should wear Wine and Design apparel of such color, designs, and other specifications as we may designate. In addition, you must ensure that all employees whose duties include customer service have sufficient literacy and fluency in the English language (or such other language that is the primary language in your market) to adequately serve the public at your Studio.

- d) Training. Should any employee, prospective employee or independent artist of Franchisee perform work which in Franchisor's judgment requires additional training, skills or knowledge, then we shall recommend to you that such employee shall take part in such training and instruction as shall be offered by us. Franchisee shall be solely responsible for all wages, travel and living expenses, and all other costs incurred by Franchisee and Franchisee's employees in connection with such additional training or instruction provided by Franchisor, which amount shall be the then-current fee per day per trainee, plus all of your costs for you and/or your partner, manager, artist, or employee to attend such training courses. Franchisee shall also, at its own expense, conduct at the Studio such training and instruction, using such materials, equipment and supplies, as Franchisor may require from time-to-time.

If we believe that the operation of your Studio does not meet our operations and customer standards then we may require you to attend a remedial training class at our corporate offices in Raleigh, North Carolina at a cost to you of the then-current fee per day, with such training limited to 3 days. In addition to the costs of training, you will be required to pay for all of your personal costs including travel, food, and lodging, and wages and salaries due to your absence from the Studio during such training.

- e) Manuals. Franchisor will provide Franchisee with one or more manuals which shall contain (i) the mandatory and suggested specifications, standards and operating procedures prescribed from time-to-time by Franchisor and (ii) information relative to other obligations of Franchisee hereunder and the operation of the Studio, which manual includes the Wine and Design Operating Manuals (the “Manuals”). The Manuals shall at all times remain the sole property of Franchisor and shall promptly be returned to Franchisor upon the expiration or other termination of this Agreement. To the extent that Franchisor shall deem it necessary or appropriate, Franchisor will provide Franchisee with policy and procedure statements or other written notice of specifications standards and procedures, policies, and other standards and specifications contained in the Manuals, policy and procedure statements and other written notices as issued from time-to-time by Franchisor. Franchisee acknowledges and agrees that all information in the Manuals, policy and procedure statements and other notices constitute confidential information and trade secrets, and shall not be disclosed at any time by Franchisee. Franchisee shall not copy, disclose, duplicate, record or otherwise reproduce, in whole or in part, for whatever reason, the Manuals or any other communication or information provided by Franchisor. We may change the Manual(s) from time-to-time, and you are required to comply with those changes. The Manuals may also consist of bulletins, emails, audio tapes, compact discs, computer diskettes and CD-ROMs. If there is a dispute relating to the contents of the Manuals, our master copy will be controlling, which either may be on paper or electronic.
- f) Variations in Standards. Franchisor specifically reserves the right, in its sole discretion, to vary standards within the Studio or any other Studio in the Chain based upon peculiarities of particular locations or circumstances, including, but not limited to, density of population and other demographic factors, size of any territory, business practices or customs, or any other condition which Franchisor deems to be of importance to the operation of such Studio or the Chain. Franchisee acknowledges that because of these factors and others, there may be variations from standard specifications and practices throughout the Chain and that Franchisee shall not be entitled to require Franchisor to grant like or similar variations or privileges to Franchisee.
- g) Franchisee Developments. Franchisor shall be deemed the owner and have the right to use and incorporate into the System for the benefit of other franchisees and Franchisor any Inventions or Ideas, in whole or in part, developed or discovered by Franchisee or Franchisee’s employees or agents, without any liability or obligation to Franchisee or the developer thereof.
- h) Compliance with Laws. Franchisee shall at all times comply with all laws, ordinances, rules and regulations of all applicable governmental bodies, and pay any and all taxes, assessments, fines and penalties arising out of the operation of the Studio, including state and federal unemployment taxes and sales taxes.

- i) Courtesy, Cooperation, Fair Dealing. In all dealings with customers, suppliers, Franchisor and others, Franchisee will act according to the highest standards of honesty, integrity, fair dealing and ethical conduct. At all times and under all circumstances, Franchisee and its employees shall treat all customers and other persons, including Franchisor's agents, officers, and employees with the utmost respect and courtesy, and shall fully cooperate with Franchisor and its agents, officers, and employees in all aspects of the franchise relationship.
- j) Business Relations. Franchisee shall at all times operate the Studio in a financially sound, prudent and business-like manner and, without limiting the generality of the foregoing, pay all its bills and accounts promptly when due and shall take no action, or omit to take any action, the result of which would be to tend to disrupt, damage or jeopardize Franchisee's relationship with suppliers or customers, Franchisor's good reputation, or the good reputation of Franchisor's other licensees. Franchisee will not engage in any trade practice or other activity which is harmful to the goodwill or reflects unfavorably on the reputation of Franchisee, Franchisor, the Franchised Studio, the Marks, the services and/or products sold at the Franchised Studio, or constitutes deceptive or unfair competition or otherwise is in violation of any applicable laws.
- k) Crisis Situations. Franchisee shall notify Franchisor immediately upon the occurrence of any situation that may have a material impact on the Franchisee, Franchisor, Franchised Studio, or which could have a deleterious effect on the WINE AND DESIGN brand, Marks or System. Franchisee shall follow all of Franchisor's policies, procedures, and instructions in every such situation, including, without limitation, managing public relations and communications, as directed by the Franchisor or as specified in the Manuals, whether or not Franchisee has retained outside counsel or a public relations firm to assist with such matters.
- l) Agreement signed by your spouse. In the event that you own your Wine and Design franchise as a corporation or limited liability company with your spouse, then both of you will be required to sign a personal guaranty attached as Schedule D to this Agreement.
- m) Books and Records; Financial Reporting.
  - i. Books and Records. Franchisee shall maintain during the term of this Agreement, and shall preserve for at least 5 years from the dates of their preparation, and shall make available to Franchisor at Franchisor's request and at Franchisee's expense, full, complete and accurate books, records, and accounts in accordance with generally accepted accounting principles.
  - ii. Submission of Performance Reports. Franchisee shall submit to Franchisor, for review or auditing, financial statements, including a balance sheet and income statement prepared on a monthly basis, Gross Sales reports and performance reports for monthly periods, and such forms, reports, records, information, and data as Franchisor may reasonably designate, in the form and at the times and places reasonably required by Franchisor, including without limitation, by electronic telecommunications data transmission methods, upon request and as specified from time-to-time in the Manuals or otherwise in writing. If Franchisee prepares and submits to Franchisor monthly profit and loss statements, Franchisor may require Franchisee to have a certified public accountant review such statements on a quarterly basis, the expense of which shall be borne entirely by the Franchisee,

and then submit such quarterly reviews to the Franchisor. Franchisee also shall immediately notify Franchisor in writing when one or more liens or judgments are filed against the Franchisee, the Franchised Studio and/or any of the personal guarantors (if any) under this Agreement.

- iii. Submission of Financial Statements and Tax Returns. Franchisee shall submit, within sixty (60) days following the close of business of Franchisee's fiscal year, copies of a balance sheet, profit and loss statement and cash flow report prepared in accordance with GAAP, which cover the previous 12 months of operations of the Franchised Studio. The statements shall include a statement of income and a balance sheet certified by Franchisee as true and correct. The fiscal year of the Studio must coincide with the calendar year. Franchisee also shall submit, within 5 days of their filing, its federal and state tax returns for each year during the term of this Agreement; provided, however, that if Franchisee is not a corporation or partnership, Franchisee may, at its option, submit only those schedules to its personal tax filings which reflect the revenues and expenses of the Studio.
- iv. Franchisee is required to use the approved supplier of bookkeeping and accounting services to generate Franchisee's financial statements, reports and tax returns for the Studio and Franchisee is required to authorize that supplier to deliver all requested reports directly to Franchisor. Franchisee agrees that the supplier can communicate directly with Franchisor.
- v. Audit of Franchisee's Records. Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the books, records, and tax returns of the Studio and remove copies thereof from the Studio premises. Franchisor shall also have the right at any time, at Franchisor's expense, to have an independent audit made of the Studio books, records and accounts. If any inspection or audit reveals that an underpayment exists, Franchisee shall immediately pay to Franchisor the amount owing to Franchisor, as determined by the inspection or audit. Upon discovery of an understatement of 3% or more, Franchisee shall reimburse Franchisor for any and all expense connected with such inspections or audits, including by not limited to reasonable accounting and legal fees as well as interest as provided for in Section 3(c)(iii) of this Agreement. Such payments shall be without prejudice to any other remedies Franchisor may have under this Agreement or otherwise at law.
- vi. Forms. Franchisee will use only such forms, including, without limitation, those used in and generated by the Required Software, as are approved by Franchisor in the Manuals or otherwise in writing. Franchisee will obtain all forms specified by Franchisor and/or the Required Software, at Franchisee's expense, from suppliers approved by Franchisor. Franchisor may maintain and make available to the Franchisee all or a portion of such forms on the Intranet System (Wine & Design University), if any exists, in addition to, or in lieu of, providing hard copies to the Franchisee.
- n) Inspections. Franchisor and its agents shall be permitted, with or without notice, to enter the Franchised Studio before and after the Opening Date in order to inspect, photograph, and/or videotape on-going new construction or leasehold improvements, equipment and operations, and the performance of any and all services provided in and around the Franchised Studio and/or the Premises to ensure compliance with all requirements of this

Agreement. Upon written notification from Franchisor of a scheduled inspection, Franchisee must be present during such inspection. Franchisee will cooperate with Franchisor's representatives in those inspections by rendering whatever assistance Franchisor may reasonably request, including assistance necessary to enable Franchisor to contact and interview contractors, vendors and suppliers, as well as the Franchisee's customers and former customers. Upon reasonable notice from Franchisor, and without limiting Franchisor's other rights under this Agreement, Franchisee will take such steps as may be necessary to correct the deficiencies detected during any such inspection, including without limitation immediately correcting any problems with construction or leasehold improvements, and immediately desisting from the further use of any equipment, advertising materials, products, or materials that do not conform to Franchisor's then-current plans and specifications, the Manuals, or other standards or requirements, and to repair or replace anything in the Franchised Studio that does not so conform. Franchisee acknowledges and agrees that any and all inspections by Franchisor and all demands made by Franchisor to correct deficiencies and conform to Franchisor's standards and specifications will not constitute a representation or warranty by Franchisor that the Franchised Studio or its Premises comply with applicable laws, codes, ordinances, regulations or governmental standards.

- o) Computer/POS System. If required by Franchisor, Franchisee, at its expense, shall purchase or lease and thereafter maintain such computer hardware and software, broadband high-speed internet service, active e-mail account, required dedicated telephone and power lines, modem(s) printer(s), and other computer-related accessories or peripheral equipment as Franchisor specifies, for the purpose of, among other functions, recording sales and other record keeping and central functions as well as training and promotion or compliance with system standards. While Franchisor does not currently require any specific computer/POS systems, but Franchisor has the right to do so in the future. Franchisor has the right to require Franchisee to connect to its computer/POS system to Franchisor's system. If required, Franchisee shall provide such assistance as may be required to connect its computer/POS system with Franchisor's system. Franchisor shall thereafter have the right from time-to-time and at any time to retrieve and use for any purpose such data and information from Franchisee's computer/POS system as Franchisor, in its sole and exclusive discretion, deems necessary or desirable. In view of the contemplated interconnection of computer/POS systems and the necessity that such systems be compatible with each other, Franchisee expressly agrees that it will strictly comply with Franchisor's standards and specifications for all item(s) associated with Franchisee's computer/POS systems. Franchisor shall have no liability to Franchisee as a result of Franchisor access or failing to access the computer/POS system.
  
- p) Maintenance of Telephone/Computer/POS System. Franchisee will secure and maintain separate business telephone lines for telephone, email and facsimile use at the Franchised Studio as specified by Franchisor in the Manuals or otherwise. Franchisee will also secure and maintain cable, DSL or other form of high speed Internet connection at the Franchised Studio as specified by Franchisor in the Manuals or otherwise. Franchisee will provide continuous telephone answering coverage by an employee whenever the Franchised Studio is open for business. Franchisee will be solely responsible for the payment of all bills which result from the use and/or maintenance of the telephone lines and Internet connections at the Franchised Studio and the operation of all computer hardware and software associated with the computer/POS System. Franchisee will additionally acquire and maintain a computer system, as well as all software and telecommunications infrastructure as required by the Manuals, for maintaining the computer/POS System.

q) PCI Standards.

- i. Directive. Franchisee shall comply with, abide by, or as applicable adopt policies consistent with the then-current version of Franchisor's policies as described in Franchisor's Information Privacy and Security Directive for Franchisees (the "Directive"). Franchisee acknowledges that Franchisor may supplement, modify or amend the Directive from time-to-time in its sole discretion, and that Franchisee shall comply with such modifications or amendments within 30 days of notice from Franchisor. Franchisor may provide Franchisee with certain other model privacy and information security policies as necessary for consideration by Franchisee from time-to-time.
- ii. Security Breach. If Franchisee becomes aware of any actual or suspected unauthorized processing, loss, use, disclosure, alteration, destruction or other compromise or acquisition of or access to any information (i) that can be used to identify, locate or contact an individual (collectively, "Personal Information"); (ii) that is subject to any of the Privacy Laws and/or PCI-DSS (as defined below) (iii) that might reasonably expose Franchisor to any harm or prejudice of any type or actual or suspected intrusion by an unauthorized third party into Franchisee's or Franchisor's computers, networks, servers or IT resources (a "Security Breach") Franchisee shall immediately notify the Franchisor's President via telephone of such matter and shall thereafter cooperate with Franchisor to investigate and remedy such matter. Except to the extent required by applicable law, no public disclosure of any instance of such unauthorized access or breach shall be made by Franchisee unless Franchisor has authorized the provision of notice and the form of such notice in writing. Franchisee shall reimburse Franchisor for all reasonable Notification Related Costs (hereinafter defined) incurred by Franchisor arising out of or in connection with any such Security Breach that is directly or indirectly caused by Franchisee or its personnel. "Notification Related Costs" shall include Franchisor's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (i) preparation and mailing or other transmission of legally required notifications; (ii) preparation and mailing or other transmission of such other communications to customers, agents or others as Franchisor deems reasonably appropriate; (iii) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (iv) public relations and other similar crisis management services; (v) legal and accounting fees and expenses associated with Franchisor's investigation of and response to such event; and (vi) costs for commercially reasonable credit reporting services that are associated with legally required notifications or are advisable under the circumstances.

Franchisee warrants and represents and covenants that it shall comply with applicable prevailing industry standards concerning privacy, data protection, confidentiality and information security, including, without limitation, (i) the then-current Payment Card Industry Data Security Standard of the PCI Security Standards Council (the "PCI-DSS"), (ii) the Directive, (iii) all applicable federal, state, and local laws, rules, and regulations, as the same may be amended or supplemented from time-to-time, pertaining in any way to the privacy, confidentiality, security, management, disclosure, reporting, and any other obligations related to the possession or use of Personal Information. Franchisee warrants and represents and not to transmit or cause any other party to transmit

advertisements or solicitations by e-mail or other electronic media without first obtaining Franchisor's written consent as to: (a) the content of such e-mail advertisements or solicitations; and (b) Franchisee's plan for transmitting such advertisements. In addition to any other provision of this Agreement, Franchisee shall be solely responsible for compliance with all laws pertaining to e-mails, including, but not limited to, the U.S. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "CAN-SPAM Act of 2003").

## 12 Products; Services

- a) Products and Supplies. Franchisee agrees that it will use only those products, supplies, and other materials in the operation of the Studio as Franchisor shall have specifically designated or approved. Franchisee may be required to purchase from Franchisor certain products that involve trade secrets or that have been specially prepared by Franchisor or at Franchisor's direction or that Franchisor considers integral to the System. Franchisor may designate one or more designated suppliers, which may be the Franchisor or an affiliate, for any services, products, including, but not limited to, art canvases, equipment, or supplies used in the operation of the Studio, in which event Franchisee must purchase every item exclusively from the designated supplier, which may be us or our affiliate. Franchisor or its affiliates may receive payments or other compensation from suppliers on account of the suppliers' dealings with Franchisor, Franchisee, or other Studios in the System. Franchisor may use any amounts that it receives from suppliers for any purpose that Franchisor deems appropriate. Franchisor and its affiliates may negotiate supply contracts with its suppliers under which Franchisor is able to purchase products, equipment, supplies, and services at a price lower than that at which our franchisees are individually able to purchase the same items. Products other than those required to be obtained from Franchisor or a designate supplier may be purchased from any source provided that the particular supplier and products have been approved by Franchisor in accordance with Section 12 (e). Franchisor may, from time-to-time, amend the list and this section of approved products and suppliers.
- b) Services. Franchisee agrees that it will only offer those products and services specifically designated or approved by Franchisor.
- c) Pricing. Franchisee shall have right during the Term to set prices provided that, subject to applicable antitrust laws, such pricing: (1) complies with any minimum or maximum prices that may be set by Franchisor; and (2) conforms to any bona fide promotional programs or national or regional accounts programs periodically established by the Franchisor. Any pricing policies established by Franchisor will apply to all franchisees within Franchisee's market. Franchisor retains the right to modify its pricing policies from time-to-time in its sole discretion. Franchisee must provide to Franchisor a price list containing all of the prices charged for the products supplied by the Franchised Studio. The price list must be updated and supplied to Franchisor every time Franchisee alters its prices and, in any event, at least annually.
- d) System Changes. Franchisee acknowledges that the System, the services, and products offered by the Studio may be modified (such as, but not limited to, the addition, deletion, and/or modification of operating procedures, products, and services) from time-to-time by Franchisor; and Franchisee agrees to comply, at its expense, with all such modifications,

including, without limitation, all requirements needed to implement the modifications. Franchisee agrees there is no limit to Franchisor's ability to modify the System.

- e) Supplier Review Process. If you wish to purchase the item from a supplier that we have not approved, you may submit a written request for approval of the supplier. We have no obligation to review or approve a greater number of suppliers for an item than the number we deem reasonable, and any proposed supplier relationship must not jeopardize the availability of any special pricing or other benefits offered by our existing suppliers based on system-wide purchases. We will provide our standards and specifications to you or to the proposed supplier, subject to the supplier's execution of a confidentiality agreement in a form acceptable to us. We have the right to inspect the proposed supplier's facilities and to require delivery of product samples either to us or to an independent laboratory designated by us for testing. Upon completion of our analysis, we will notify you in writing of approval or disapproval of the proposed supplier. You agree to pay a charge not to exceed our reasonable costs incurred in evaluating the supplier, regardless of whether or not we approve the supplier. You may not purchase, sell, or offer for sale any products or services of the proposed supplier until you receive our written approval of the proposed supplier. We have the right to re-inspect the facilities and products of any approved supplier and to revoke approval upon the supplier's failure to meet any of our then-current criteria. If you receive a notice of revocation of approval, you agree to cease purchasing products from the disapproved supplier and, in the case of revocation based on the failure of the supplier's products to meet our standards, you agree to dispose of your remaining inventory of the disapproved supplier's products as we direct.

### **13 Transfer; Franchisor's Right of First Refusal**

- a) Transfers by Franchisor. Franchisor may transfer or assign this Agreement or any of its rights, interest, benefits or obligations arising hereunder without restriction. Upon transfer or assignment of this Agreement by Franchisor, Franchisor shall be released from all obligations and liabilities arising or accruing in connection with this Agreement after the date of such transfer or assignment, and Franchisee's obligations and duties shall be and remain the same notwithstanding any such assignment. In addition, and without limiting the foregoing, we may sell our assets; may merge with or acquire other corporations, or be acquired by another entity; may sell our securities in a public offering or in a private placement; and may undertake any refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring.
- b) Transfers by Franchisee. The rights and interest of Franchisee under this Agreement are and shall remain personal to Franchisee. Franchisee recognizes that Franchisor has granted the franchise in reliance on the business and financial capacity and other attributes of Franchisee, the personal skill, qualifications and representations of equity owners of Franchisee (the "Owner(s)") and in reliance upon Section 13, 14, and 15 of this Agreement, and any guarantees made. Therefore, neither Franchisee's interest, rights or privileges in the Agreement, the franchise or the Studio, nor the Owner's interest in Franchisee or the Owner(s), in whole or in part, voluntarily or involuntarily, by operation of law or otherwise may be transferred, in any manner, except as provided in this Section 13. Notwithstanding the foregoing, an Owner may transfer all or a portion of his interest in Franchisee to another Owner or to Franchisee (such person or entity being referred to as a "Permitted Transferee") and such a transfer shall not be subject to the restrictions of this Section 13, including but not limited to the transfer fee set forth herein; provided, however, Franchisee shall promptly notify Franchisor of any such transfer. For purposes of this Agreement, the

term “transfer” shall mean any issuance, sale, assignment, gift, pledge, mortgage or any other encumbrance (other than a lien against Franchisee’s assets to secure a loan for the construction, remodeling, equipping or operation of the Studio), transfer by bankruptcy, transfer by judicial order, merger, consolidation share exchange, transfer by operation of law or otherwise, whether direct or indirect, voluntary or involuntary.

- c) Franchisor’s Right of First Refusal. Franchisee shall give Franchisor 45 days’ prior written notice of any intended transfer of any of its rights or interest in the Studio or Franchisee. Such notice shall set forth the name of the proposed transferee and a detailed statement of all the terms and conditions of such intended or proposed transfer. Irrespective of the qualifications or acceptability of any prospective transferee, Franchisor shall have the first right and option to purchase the interest at a price equal to the fair market value of such non-cash consideration plus the amount, if any, of cash consideration using fair and reasonable methods. Franchisor shall make such determination by no event later than 30 days after it has received the notice of the intended transfer. If Franchisee disagrees with the value as determined by Franchisor, then Franchisee and Franchisor shall each hire an appraiser (or a single appraiser, if they so agree) to value the non-cash consideration. If the appraisals are within 20% of each other, then the difference between the two shall be equally divided to establish the price at which Franchisor may exercise its first right and option. If the difference between the appraisals is greater than 20%, then the issue of the fair market value of such consideration shall be determined by a third appraiser selected by the other two appraisers and whose decisions shall be final, except that it may not be lower or higher than the lowest appraisal and highest appraisal, respectively, determined by the first two appraisers. Within 30 days after Franchisor receives notice of a proposed transfer solely for cash, or if the proposed transfer will not be solely for cash, within 10 days after a determination is made of the fair market value of the non-cash consideration, Franchisor will notify Franchisee and the Owner, if applicable, in writing that it is (a) exercising its right of first refusal, (b) approving the transfer pursuant to Section 13(c)(i) or (c) denying approval of the transfer pursuant to Section 13(c)(i).
- i. Approval of Transfers. If Franchisor decides not to exercise its right of refusal, Franchisor shall have the right to approve or disapprove the proposed transfer; provided, however, Franchisor’s consent shall not be unreasonably withheld as provided in Section 13(d). If Franchisor approves the transfer in writing, Franchisee (or Owner, as applicable) may make the proposed transfer on the exact terms and conditions specified in Franchisee’s notice to Franchisor within sixty (60) days after the expiration of Franchisor’s right of first refusal. If the transfer is not consummated within such 60-day period, Franchisee may not thereafter transfer such interest without again complying with this Section 13.
- d) Conditions on Transfer. Franchisor agrees that it will not unreasonably withhold its consent to a proposed transfer if all the following conditions are satisfied:
  - i. Franchisor shall have decided not to exercise its right of first refusal as provided in Section 13(c).
  - ii. Franchisee is in full compliance with this Agreement and there are no uncured defaults by Franchisee hereunder, and all debts and financial obligations of Franchisee under this Agreement are current, including Franchisee’s obligations to the WAF, each Cooperative of which Franchisee is a member, and all vendors, including, if applicable, Franchisor.

- iii. The proposed transferee executes such documents as Franchisor may reasonably require to evidence that it has assumed the obligations of Franchisee under this Agreement, including, but not limited to, the then current version of the Franchise Agreement, and if required by Franchisor, the proposed transferee executes, and in appropriate circumstances, causes such other parties as Franchisor may require to execute, Franchisor's then-current ancillary agreements to this Agreement, which documents may be substantially different than those executed contemporaneously with the execution of this Agreement. The franchise agreement between Franchisor and Franchisee will terminate once an approved transfer is completed;
- iv. Prior to the date of the proposed transfer, the proposed transferee's principal operator, partners, and artist(s) undertake and complete, to the satisfaction of Franchisor, such training and instruction as Franchisor shall deem necessary;
- v. Franchisor is satisfied that the proposed transferee (and if the proposed transferee is an entity, all owners of any interest in such entity) meets all of the requirements for Franchisor's new franchisees applicable on the date Franchisor receives notice of the proposed transfer and including, but not limited to, good reputation and character, business experience, management experience, and financial strength and liquidity;
- vi. The Owner transferring an interest in Franchisee acknowledges and agrees in writing that it is bound by Section 14 and 15 of this Agreement;
- vii. Franchisee or the Owner, as applicable, pays to Franchisor a transfer fee of Seven Thousand Five Hundred (\$7,500) Dollars.
- viii. The proposed transferee and all owners of any interest in a transferee that is an entity provided Franchisor, at least 45 days prior to the proposed transfer date, copies of financial statements for the preceding three years, and where applicable, its certificate of incorporation and bylaws (and any amendments or modifications thereof), minutes and resolutions and all other documents, records and information pertaining to the transferee's existence and ownership.
- ix. Within the time specified by Franchisor, Franchisee, at its expense, shall refurbish the Franchised Studio, as necessary, to conform the Franchised Studio to Franchisor's then-current standards and specifications, including, without limitation, specifications regarding, size, color, trade dress, presentation of the Marks, fixtures, flooring, carpeting, and installed equipment.
- x. Franchisee and its owners execute a general release in favor of Franchisor on the form required by Franchisor.
- xi. Franchisor's consent to a Transfer of any interest in Franchisee or the Franchised Studio granted through this Agreement will not constitute a waiver of any claims it may have against the transferring party, nor will it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferee.

- e) Ownership and Structural Changes. Except for transfers between Permitted Transferees, any ownership or structural changes in Franchisee including but not limited to, any merger, reorganization, issuance of additional shares or classes of stock or additional partnership interests, shall constitute and be deemed a transfer and shall be subject to the provisions of Section 13(d). If Franchise consists of one or more individual(s), Franchisee may Transfer its interest under this Agreement to a corporation, limited liability company or other legal entity so long as: (1) the legal entity is owned entirely by all of the original individual franchisees or personal guarantors hereof; (2) each and all of the obligations of Franchisee and the new legal entity are personally guaranteed by the original individual franchisees or personal guarantors hereof; (3) Franchisor receives prior written notice of the Transfer along with a complete set of the new legal entity's filed, date stamped formation documents; and (4) Franchisee and the new legal entity enter into a written assignment and assumption agreement in a form prescribed by Franchisor pursuant to which the new legal entity assumes and agrees to discharge all of Franchisee's obligations under this Agreement.
- f) Death/Incapacity/Dissolution. Franchisor shall have the right to determine, in its reasonable business judgment, the mental or physical incapacity of Franchisee or of any individual holding an interest in Franchisee. In the event of such a determination of mental or physical incapacity, the holder of such interest or any duly appointed guardian must promptly decide whether to retain the interest in the Franchised Studio and, if necessary, select a qualified manager or partner to direct its operation. The persons with such interest or such guardian may then apply to Franchisor for the right to retain that interest for the duration of the Term and any renewals of this Agreement. Likewise, if Franchisee is a corporation, partnership or other entity, upon the death or incapacity, determined at Franchisor's discretion, of an Owner or dissolution of Franchisee, the executor, administrator, conservator, trustee or other representative of such person or entity shall comply with the right of first refusal and consent provision set forth in this Section 13; provided that if the transferee is a Permitted Transferee, Franchisor's right of first refusal and right to consent shall not apply and no transfer fee shall be payable. Further, if the transferee is required to be approved and is approved, and the transfer involves less than 25% of the ownership of Franchisee, no transfer fee shall be payable. If a Franchisee is one or more individual and any such person dies or becomes permanently incapacitated, and if the law of the jurisdiction where the Studio is located so provides, nothing contained in this Section 13(f) shall deny the spouse, heirs or personal representative of such a Franchisee the opportunity to participate in the ownership of the Studio for a reasonable time after the death or incapacity of Franchisee, provided that the spouse, heirs or personal representative execute an acknowledgement that this Agreement is valid and in effect. If the transfer fails to occur within 9 months of the date of death, incapacity, or dissolution, then the license to operate the Studio shall terminate.

## **14 Non-Competition**

- a) Franchisee's Non-Compete – In-Term. Franchisee acknowledges that it will receive valuable, specialized training and proprietary information regarding the manufacturing, operational, sales, promotional, and marketing methods of the WINE AND DESIGN concept that we have developed through monetary and other resource expenditures that are intended to provide competitive advantages to the franchisees in our System. During the Term, Franchisee and its owners, the undersigned shareholders, and guarantors will not, without our prior written consent, either directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any other person or Entity:

- i. own, manage engage in, be employed by, advise, make loans to, or have any other interest in, as a partner, owner, officer, executive, managerial employee, director, sales person or consultant for, any business that performs services or offers products that are the same as those offered by WINE AND DESIGN Studios, including, offering art and/or painting classes for adults as well as art classes, summer camps, and/or after school programs for children involving art instruction (“Competitive Business”);
  - ii. divert or attempt to divert any business or customer that had done business with or been a customer of the Studio, to any Competitive Business, by inducement or otherwise, as you agree that all goodwill associated with your operation under the Marks and the System, and all business and customer information associated therewith, inure to us;
  - iii. perform any other act injurious or prejudicial to the goodwill associated with the Marks and the System; or
  - iv. use any vendor relationship established through your association with us for any purpose other than to purchase products for use or retail sale in the Studio.
- b) Franchisee’s Non-Compete – Post-Termination. In partial consideration for Franchisor allowing Franchisee to license Franchisor’s trademark and confidential information, Franchisee and its owners, the undersigned shareholders, and guarantors will not, without our prior written consent, either directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any other person or Entity for a period of two (2) years after the transfer, termination or expiration of this Agreement (“Termination Period”) within a thirty (30)-mile radius of (i) your Studio, (ii) any other franchised location, or (iii) any business location at which the Franchisor or an Affiliate (as defined in Section 24(d) then conducts a WINE AND DESIGN business), engage in any of the following activities:
- i. own, manage engage in, be employed by, advise, make loans to, or have any other interest in, as a partner, owner, officer, executive, managerial employee, director, sales person or consultant for, any business that performs services or offers products that are the same as those offered by WINE AND DESIGN Studios, including, offering art and/or painting classes for adults as well as art classes, summer camps, and/or after school programs for children involving art instruction (“Competitive Business”);
  - ii. divert or attempt to divert any business or customer that had done business with or been a customer of the Studio, to any Competitive Business, by inducement or otherwise, as you agree that all goodwill associated with your operation under the Marks and the System, and all business and customer information associated therewith, inure to us;
  - iii. perform any other act injurious or prejudicial to the goodwill associated with the Marks and the System; or
  - iv. use any vendor relationship established through your association with us for any purpose other than to purchase products for use or retail sale in the Studio.

During the term of this Agreement, Franchisee agrees the restrictions set forth above shall apply anywhere in the United States of America. You and each of your Owners acknowledge that we have a protectable legal interest in the System and that these non-competition covenants contained in this Agreement are necessary elements to their protection and are an integral part of this Agreement. The franchisee's Post-Term Covenants shall be tolled, and it shall be extended by one day for each day that the Franchise Post-term covenant against completion is breached.

- c) Managerial and Supervisory Employees. Franchisee covenants that it shall cause all persons who are involved in managerial or supervisory positions with Franchisee to enter into an agreement to be bound by Section 14 of this Agreement. Franchisee agrees to provide Franchisor with copies of such executed agreement upon request. If Franchisee has reason to believe that any person has violated any such provisions of this Agreement, Franchisee shall promptly notify Franchisor and cooperate with Franchisor to protect it against unfair competition, infringement, or other unlawful use of the Marks, trade secrets, recipes, or System of the Franchisor. Franchisee further grants Franchisor the right, but not the obligation, to prosecute any such lawsuits at Franchisor's expense in the name of Franchisee.

## **15 Confidential Information**

Franchisee understands and agrees that Franchisor has disclosed or will hereafter disclose to Franchisee certain confidential or proprietary information. Except as necessary in connection with the operation of the Studio and as approved by Franchisor, Franchisee shall not, during the Term or at any time after the expiration or termination of this Agreement, regardless of the cause of termination, directly or indirectly, use for its own benefit or communicate or divulge to, or use for the benefit of any other person or entity, any, confidential information, knowledge or know-how concerning the services, products, advertising, marketing, designs, copyrighted artwork, or methods of operation of the Studio or the System. Franchisee shall disclose to its employees only such confidential, proprietary or trade secret information as is necessary to operate its business hereunder and then only while this Agreement is in effect. Any and all information, knowledge, or know-how, including without limitation, drawings, artwork, materials, equipment, marketing, and other data which Franchisor designates as secret or confidential shall be deemed secret and confidential for purposes of this Agreement.

All ideas, concepts, techniques or materials concerning Franchised Studio, whether or not protectable intellectual property and whether created by or for Franchisee or its owners or employees, must be promptly disclosed to Franchisor and will be deemed the exclusive property of Franchisor, and no compensation will be due to Franchisee or its owners or employees therefor. Franchisor may incorporate such items into the System. With respect to all art or art work created for Franchisee's use in the operation of its Studio. Franchisee hereby assigns ownership of those items, and all related rights to that item, to Franchisor and shall sign any assignment or other document as Franchisor reasonably requests to assist Franchisor in obtaining or preserving intellectual property rights in the item. Franchisor shall disclose to Franchisee concepts and developments of other franchisees that are made part of the System. As Franchisor may reasonably request, Franchisee shall, at Franchisor's expense, take all actions reasonably necessary to assist Franchisor's efforts to obtain or maintain intellectual property rights in any item or process related to the System, whether developed by Franchisee or not. Franchisee and all guarantors of this Agreement will divulge Confidential Information only to personnel, if any, who must have access to it in order to operate the Franchised Studio. Further, Franchisee will require all personnel having access to any Confidential Information from Franchisor to execute an agreement, of the form attached as Schedule D, requiring them to maintain the confidentiality of information they receive in connection with their employment at the Franchise.

16 **Insurance**

- a) **Types and Extent of Coverage.** Franchisee shall obtain and maintain throughout the Term such insurance coverages with such limits as specified below (or such greater amounts of insurance as may be required by the terms of any lease or mortgage relating to the Premises):
- i. fire, extended coverage, vandalism, malicious mischief and special extended peril insurance at not less than 90% of the actual replacement value of the building (if owned), and contents, and improvement.
  - ii. workers' compensation and other insurance required by law;
  - iii. comprehensive general liability insurance on an occurrence basis naming Franchisor and its officers, directors and employees as an additional insured as follows:
    - A. Bodily injury to or death of one or more persons with minimum coverage of One Million Dollars (\$1,000,000);
    - B. property damage or destruction with minimum coverage of One Million Dollars (\$1,000,000) per occurrence;
    - C. public and product liability with minimum coverage of One Million Dollars (\$1,000,000); and
    - D. non-owned vehicle coverage with minimum coverage of Five Hundred Thousand Dollars (\$500,000).
    - E. cyber security insurance coverage with minimum coverage of One Million Dollars (\$1,000,000).
    - F. Liquor liability/dram shop insurance with a minimum limit of One Million Dollars (\$1,000,000).
- b) **Other Insurance Requirements.** Franchisee shall obtain from a nationally recognized insurance company and at all times during the term of this Agreement maintain in force and pay the premiums for all types of insurance listed above with complete operations coverage. From time-to-time in its discretion, Franchisor can increase or modify such limits of liability or require additional types of coverage. Said policies of insurance shall name Franchisor as an "additional insured" and shall expressly protect both Franchisee and Franchisor and shall require the insurer to defend both Franchisee and Franchisor in any action while reserving Franchisor's right to involve counsel of its own choosing in protection of its own and system wide interests. Additionally, Franchisee's insurance policy must waive on behalf of its insurer any right of subrogation by the insurance company against Franchisor, its officers, shareholders, and employees. Franchisee shall furnish to Franchisor a certified copy or certificate of insurance for each such policy, naming Franchisor as an additional insured and providing that such policies shall not be canceled, amended or modified without 10 days prior written notice thereof to Franchisor. By doing the above, Franchisee will satisfy Franchisor's insurance mandate. Franchisee understands that doing so does not necessarily furnish Franchisee with protection levels

adequate to its needs and that its obligation to indemnify Franchisor as set forth above in this Agreement may exceed the amount of insurance Franchisee is required to obtain or does obtain.

- c) Franchisee will acquire and maintain in force cyber liability insurance coverage with single occurrence limits of not less than as set forth in Franchisor's pre-opening manual (it being understood that such policy will be in place within 30 days following the Agreement Effective Date); all policies of insurance required to be maintained hereunder shall: (i) be written as primary policy coverage and not "excess over" or contributory with any other applicable insurance; (ii) contain a "separation of insureds" clause.
- d) Franchisor, or its insurer, shall have the right to participate in discussions with Franchisee's insurance company or any claimant (in conjunction with Franchisee's insurance company) regarding any claim of liability, and Franchisee agrees to adopt our reasonable recommendations to its insurance carrier regarding the settlement of any such claims.
- e) Should Franchisee for any reason fail to procure or maintain the insurance required by this Agreement, Franchisor will have the right and authority to immediately procure such insurance deemed to be necessary and to charge the amount of the cost to procure and maintain such insurance to Franchisee, along with a reasonable fee for Franchisor's expenses in procuring the insurance, Franchisor is authorized to collect from Franchisee all insurance related expenses paid on behalf of Franchisee through automatic electronic bank transfers as provided for in Section 3(i) of this Agreement.

## 17 **Termination**

- a) **Automatic Termination.** Franchisee shall be in default under this Agreement, and this Agreement and all rights granted to Franchisee herein shall automatically terminate without notice to Franchisee in the event, (i) Franchisee makes a general assignment for the benefit of creditors or a petition in bankruptcy is filed by Franchisee; (ii) a petition in bankruptcy is filed against and not opposed by Franchisee; (iii) Franchisee is adjudicated as bankrupt or insolvent; (iv) a bill in equity or other proceeding is filed for the appointment of a receiver or other custodian for Franchisee's business or assets if filed and consented to by Franchisee; (v) a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; (vi) proceeding for a composition with creditors under any state or federal law should be instituted by or against Franchisee; (vii) a final judgment remains unsatisfied or of records for 30 days or longer (unless an appeal or supersedes bond is filed); (viii) Franchisee is dissolved; (ix) any portion of Franchisee's interest in the Studio becomes subject to an attachment, garnishments, levy or seizure by any credit or any other person claiming against or in the rights of Franchisee; (x) execution is levied against Franchisee's business or property; or (xi) the real or personal property of Franchisee's Studio shall be sold after levy thereupon by any sheriff, marshal, or constable.
- b) **Termination without Opportunity to Cure.** Franchisee shall be in default and Franchisor may, at its option, terminate this Agreement and all rights granted herein, without affording Franchisee any opportunity to cure the default, effective upon the earlier of receipt of notice of termination by Franchisee, or 5 days after mailing of such notice by Franchisor, upon the occurrence of any of the following events:

- i. Franchisee at any time ceases to operate or otherwise abandons the Studio or forfeits the right to do or transact business in the jurisdiction where the Studio is located or loses the right to possession to the Premises for a period of 14 days; provided, however, that if any such loss of possession results from the governmental exercise of the power of eminent domain, or if, through no fault of Franchisee the Premises are damaged or destroyed, the Franchisee shall have 45 days after either such event in which to apply for Franchisor's approval to relocate or reconstruct the premises (which approval shall not be unreasonably withheld), provided, Franchisee shall either relocate or commence and diligently pursue reconstruction of the Studio within 60 days after the event;
- ii. Except as otherwise permitted in this Agreement, any owner of more than 5% interest in Franchisee transfers all or part of such interest or Franchisee transfers any interest in the Studio, a material portion of the assets of the Studio or Franchisee;
- iii. Franchisee is proven to have engaged in fraudulent conduct, or is convicted of, or pleads guilty or no contest to a felony or a crime involving moral turpitude, a crime harming children, or any other crime or offense that is reasonably likely to have an adverse effect on the Chain, the Marks or the goodwill associated therewith;
- iv. An approved transfer is not affected within 9 months of the death or incapacity of any individual Franchisee; or the death, incapacity or dissolution of any owner of an interest in Franchisee;
- v. Franchisee receives two (2) or more notices of being in default under any of the terms or requirements of this Agreement within any twelve-month (12-month) period, whether or not such defaults are timely cured after notice;
- vi. Franchisee fails to comply with any of the covenants of Franchisee set forth in this Agreement, or makes any material misrepresentation to Franchisor or breaches any warranty of representation made to Franchisor, whether in this Agreement or otherwise;
- vii. Franchisee knowingly or intentionally maintains false books or records or submits any false records, statement or report to Franchisor; or
- viii. Franchisee, by act or omission, materially impairs the value of, or the goodwill associated with, the Chain, any of the Marks or the System.
- ix. Franchisee takes, withholds, misdirects, or appropriates for Franchisee's own use any funds from Franchisee's employees' wages for employees' taxes, FICA, insurance or benefits, or generally fails to deal fairly and honestly with Franchisee's employees or customers.
- x. Franchisee loses or is denied any federal, state or local license the Franchisee must possess in order to operate the Studio.
- xi. Franchisee is convicted of or pleads guilty or nolo-contendere to a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes

is injurious to the System, the Marks, or the goodwill associated therewith, or if Franchisor has proof Franchisee has committed such a felony, crime or offense.

- xii. Franchisee is found liable by any judicial, administrative, or arbitral body for violation of federal, state, or local laws barring discrimination on the basis of race, sex, national origin, age or sexual orientation, or is found liable for any common law civil claim the facts of which are grounded in allegations of discrimination on the basis of race, sex, national origin, age, or sexual orientation; or
  - xiii. A threat or danger to public health or safety results from the construction, maintenance, or operation of the Studio;
  - xiv. Franchisee submits to Franchisor on 2 or more separate occasions at any time during the Term or any renewal hereof, any reports or other data, information or supporting records which understate the Gross Revenues of the Franchised Studio, the royalty fees and/or any other sums owed to Franchisor for any period of, or periods aggregating, 3 or more weeks, and Franchisee is unable to demonstrate that such understatements resulted from inadvertent error.
- c) Termination after Opportunity to Cure. Except for those defaults provided for under Section 17(a) or 17(b), Franchisee shall be in default hereunder for any failure to maintain or comply with any of the terms, covenants, specifications, standards, procedures or requirements imposed by this Agreement or in any Manual, policy and procedure statement or other written document provided by Franchisor, or to carry out the terms of this Agreement in good faith. For such defaults, Franchisor will provide Franchisee with written notice and 15 days to cure or, if a default cannot reasonably be cured within 15 days, to initiate within that time substantial and continuing action to cure such default and to provide Franchisor with evidence of such actions. If the defaults specified in such notice are not cured within the 15 day period, or if substantial and continuing action to cure has not been initiated, Franchisor may, at its option, terminate this Agreement upon written notice to Franchisee. Such defaults shall include, without limitation, the occurrence of any of the following events:
- i. Franchisee fails to construct or remodel, or to commence operating the Studio in accordance with this Agreement;
  - ii. Franchisee fails, refuses, or neglects to promptly pay any monies owing to Franchisor, its affiliates of the WAF when due or to submit the financial or other information required under this Agreement;
  - iii. Any person or entity owning 5% or less of Franchisee makes a transfer of such interest in violation of this Agreement; provided, however, that Franchisee's right to cure such a default shall be conditioned upon Franchisee immediately notifying Franchisor of the improper transfer and taking all actions necessary to either (a) obtain Franchisor's approval thereof, or (b) if approval is not desired or the transfer or transferee is not approved by Franchisor, to re- acquire the interest so transferred;
  - iv. Franchisee misuse or makes any unauthorized use of the System or the Marks; or

- v. Franchisee, after curing a default pursuant to Sections 2 or 17 of this Agreement, commits the same act of default again within 6 months.
- d) Relief in Equity. Franchisee agrees that neither termination of this Agreement, nor an action at law, nor both, would be an adequate remedy for a breach or default by Franchisee, or by any other persons bound by this Agreement, in the performance of any obligation relating to Franchisor's Marks or indicia, the trade secrets revealed to Franchisee in confidence pursuant to this Agreement or the obligations of Franchisee and such other persons upon and after termination of this Agreement. The parties therefore agree that in the event of any such breach or default, in addition to all other remedies provided elsewhere in this Agreement or by law, Franchisor shall be entitled to relief in equity from a judge or arbitrator, at its option, (including a temporary restraining order, temporary or preliminary injunction and permanent mandatory or prohibitory injunction) to restrain the continuation of any such breach or default or to compel compliance with such provisions of this Agreement.
- e) Limitation of Services or Benefits. The Franchisor shall have the right, but not the obligation, to temporarily or permanently limit or remove certain services or benefits provided or required to be provided to Franchisee hereunder in lieu of exercising its right to terminate this Agreement pursuant to the terms hereof, including, without limitation, eliminating Franchisee's right to use the Franchisor's Web site free of charge, restricting or removing Franchisee's right to purchase products directly or indirectly from the Franchisor or its affiliates, limiting the Franchisor's advertising and promotional assistance, and restricting or removing Franchisee's right to use the Franchisor's proprietary computer software, if any. Nothing in this Section constitutes a waiver of any other right or remedy of the Franchisor under this Agreement. Franchisee acknowledges that the Franchisor's exercise of its rights pursuant to this Section shall not be deemed a constructive termination. Any services or benefits removed or limited pursuant to this Section may be reinstated at any time in the Franchisor's sole discretion.

## **18 Obligations upon Termination or Expiration**

Upon termination or expiration of this Agreement, all rights granted hereunder to Franchisee shall terminate and revert to Franchisor, and Franchisee shall have the following obligations with respect to the Studio franchised under this Agreement:

- a) Franchisee shall immediately cease to operate the business licensed under this Agreement, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a WINE AND DESIGN franchisee with respect to such business;
- b) Franchisee shall immediately and permanently cease to use, in any manner whatsoever, all confidential information, methods, procedures and techniques used by or associated with the System, and the proprietary Marks WINE AND DESIGN and all other Marks and distinctive forms, slogans, signs, symbols, logos and devices associated with the WINE AND DESIGN Chain;
- c) Franchisee shall immediately return to Franchisor any property held or used by Franchisee which is owned by Franchisor and shall cease to use, and either destroy or convey to Franchisor, all signs, advertising materials, copyrighted artwork displays, stationery, forms and any other materials that bear or display the Marks;

- d) Franchisee shall take such actions as may be necessary to cancel any assumed name or similar registration which contains the mark WINE AND DESIGN or any other Marks of Franchisor, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with its obligation within 30 days after termination or expiration of this Agreement;
- e) Franchisee shall, if Franchisor so requests, assign to Franchisor any interest which Franchisee has in any lease for the Premises. In the event Franchisor does not elect to exercise its option to acquire any lease for the Premises, and unless otherwise directed by Franchisor, Franchisee shall, within 10 days after termination or expiration of this Agreement, make such modifications and alterations to the Premises as may be necessary to distinguish the appearance of the Premises from that of other WINE AND DESIGN Studios and shall make such specific additional changes thereto as Franchisor may reasonably request;
- f) Franchisee shall promptly pay all sums owed to Franchisor. Such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default and the termination. Any outstanding obligations to Franchisor shall give rise to and remain, until paid in full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures and inventory owned by Franchisee located on the Premises on the date this Agreement is terminated;
- g) Franchisee shall pay to Franchisor all damages, costs and expenses including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any term, covenant or provision of this Agreement;
- h) Franchisee shall immediately deliver to Franchisor all Manuals, policy and procedure statements, instructions, and other materials related to operating the Studio, including, without limitation, copyrighted artwork and designs, brochures, charts and any other materials provided by Franchisor and all copies thereof, and shall neither retain nor convey to another any copy or record of any of the foregoing;
- i) Franchisor shall have the option, to be exercised within 30 days of termination, to assume, separately or in the aggregate, Franchisee's assumed name or equivalent registration and business licenses, telephone numbers, white and online or similar listings and advertisements (whether in print or part of an Internet directory), and e-mail addresses and/or Internet domain names which contain the Mark of Franchisor or its affiliates, and Franchisee shall sign all documents necessary to permit Franchisor to assume Franchisee's rights in such items. If Franchisor elects not to exercise this option, Franchisee shall take all action necessary to cancel each of the items listed above and shall furnish Franchisor with evidence satisfactory to prove its compliance within 15 days after receiving notice of Franchisor's termination or expiration of this Agreement and the expiration of the option granted herein. In the event Franchisee fails to timely do so, Franchisor shall have the right, for which purpose Franchisee hereby appoints Franchisor as its attorney-in-fact, to obtain such cancellation on Franchisee's behalf and at Franchisee's expense.
- j) Franchisee shall comply with the covenants contained in this Agreement, including, but not limited to, the covenants, not to compete and the covenants not to disclose trade secrets or confidential information.

- k) Sell to Franchisor the Studio and all or such part of inventories of products bearing Franchisor's Marks or indicia on hand as of the date of termination as Franchisor may request in writing prior to, or within the 30 days following the date of termination. Such sale will be at the current published prices then being charged by Franchisor, its affiliates or approved suppliers to authorized franchisees, not including costs of storage or transportation paid by Franchisee to bring the goods initially to the store, and less those costs incurred or to be incurred by Franchisor to restore such goods or packaging thereof to a salable condition, and less a reasonable allowance for physical deterioration, obsolescence or damage. Franchisor shall have the right to set off and apply any amounts due to Franchisee pursuant to this Subparagraph against any and all other amounts which may be due from Franchisee to Franchisor.
- l) Upon termination of this Agreement according to its terms and conditions, but for reasons other than the expiration or termination of this Agreement because of the transfer or resale of your franchise to another that will operate it as a Wine and Design studio, you agree to pay to us within fifteen (15) days after the effective date of this Agreement's termination, in addition to the amounts owed hereunder for business generated at or through your franchised location prior to the date of termination, liquidated damages equal to the average monthly Royalty Fees you paid or owed to us during the twelve (12) months of operation preceding the effective date of termination multiplied by (a) twenty-four (24) (being the number of months in two (2) full years), or (b) the number of months remaining in the Agreement had it not been terminated, whichever is higher.

The parties hereto acknowledge and agree that it would be impracticable to determine precisely the damages we would incur from this Agreement's termination and the loss of cash flow from Royalty Fees due to, among other things, the complications of determining what costs, if any, we might have saved and how much the Royalty Fees would have grown over what would have been this Agreement's remaining term. The parties hereto consider this liquidated damages provision to be a reasonable, good faith pre-estimate of those damages.

The liquidated damages provision only covers our damages from the loss of cash flow from the Royalty Fees. It does not cover any other damages, including damages to our reputation with the public and landlords and damages arising from a violation of any provision of this Agreement other than Section 3. You and each of your owners agree that the liquidated damages provision does not give us an adequate remedy at law for any default under, or for the enforcement of, any provision of this Agreement other than Section 3.

## **19 Independent Contractor; Indemnification**

- a) Independent Contractor. It is understood and agreed by the parties that this Agreement creates only a contractual relationship between the parties subject to the normal rule of contract law. This Agreement does not create a principal/agency, employer/employee, master/servant or a fiduciary relationship between the parties and Franchisee is and shall remain an independent contractor. Franchisee agrees to hold itself out to the public as an independent contractor, separate and apart from Franchisor. Franchisee agrees that it shall not make any contract, agreement, warranty, or representation on the Franchisor's behalf without Franchisor's prior written consent, and Franchisee agrees that it shall not incur any debt or other obligation in Franchisor's name. This Agreement shall not be deemed to confer any rights or benefits to any person or entity not expressly named herein.

- b) Indemnification. Franchisor shall not be liable by reason of any act or omission of Franchisee in its conduct of the Studio or for any claim, cause of action or judgment arising therefrom against Franchisee or Franchisor. Franchisee agrees to hold harmless, defend and indemnify Franchisor, its parent, affiliates, subsidiaries and all of their respective officers, directors, managers, shareholders, agents, and employees (“Indemnified Parties”) from and against any and all losses, expenses, judgments, claims, attorney fees and damages arising out of or in connection with any claim or cause of action in which any Indemnified Party shall be a named defendant and which arises, directly or indirectly, out of the operation of, or in connection with, the Studio, other than a claim resulting directly from Franchisor’s negligence.
- c) Data Mining. All data provided by Franchisee, uploaded to Franchisor’s system from Franchisee’s system, and/or downloaded from Franchisee’s system to Franchisor’s system, is, and will be owned exclusively by Franchisor and Franchisor will have the right to use such data in any manner that Franchisor deems appropriate without compensation to Franchisee. In addition, all other data created or collected by Franchisee in connection with the System, or in connection with Franchisee’s operation of the Franchised Studio (including but not limited to consumer and transaction data), is and will be owned exclusively by Franchisor during the term of, and following termination or expiration of, this Agreement. Copies and/or originals of such data must be provided to Franchisor upon Franchisor’s request. Franchisor hereby licenses use of such data back to Franchisee, at no additional cost, solely for the term of this Agreement and solely for Franchisee’s use in connection with the establishment and operation of the Franchised Studio pursuant to this Agreement.
- d) Privacy. Subject to commercial standards of reasonableness based upon local business practices, Franchisor may, from time-to-time, specify in the Operating Manual (or otherwise in writing) the information that Franchisee shall collect and maintain on the Required Software, and Franchisee shall provide to Franchisor such reports as Franchisor may reasonably request from the data so collected and maintained. All data pertaining to or derived from the Franchised Studio (including, without limitation, data pertaining to or otherwise about customers) is and shall be the exclusive property of Franchisor, and Franchisor hereby grants a royalty-free nonexclusive license to Franchisee to use said data during the term of this Agreement. Franchisee shall abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information. Franchisee shall not publish, disseminate, implement, revise, or rescind a data privacy policy without Franchisor’s prior written consent as to said policy.
- e) Payment of Taxes. Franchisee shall promptly pay to Franchisor an amount equal to all taxes levied or assessed, including, but not limited to, unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipt taxes, taxes on royalties, any similar taxes or levies, imposed upon or required to be collected or paid by Franchisor or Franchisor’s affiliates by reason of the furnishing of products, intangible property (including trademarks and trade names) or services by Franchisor to Franchisee through the sale, license, or lease of property or property rights provided by this Agreement other than taxes on Franchisor’s net income.

## 20 Franchisee Representations

- a) **FRANCHISEE ACKNOWLEDGES THAT IT HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE PROPOSED FRANCHISE AND**

**RECOGNIZES THAT THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS AND THAT ITS SUCCESS WILL BE LARGELY DEPENDENT UPON THE ABILITY OF FRANCHISEE AS AN INDEPENDENT BUSINESSMAN OR BUSINESS. FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND FRANCHISEE ACKNOWLEDGES THAT IT HAS NOT RECEIVED, ANY WARRANTY, OR GUARANTEE, OR REPRESENTATION OTHER THAN AS SET FORTH IN THE DISCLOSURE DOCUMENT, EXPRESS OR IMPLIED, FROM ANY EMPLOYEE OR AGENT OF THE FRANCHISOR AS TO THE POTENTIAL SALES VOLUMES, PROFITS, OR LEVEL OF SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT OR THE SUITABILITY OF THE APPROVED LOCATION OF THE STUDIO. FRANCHISOR HAS NOT REPRESENTED THAT (I) FRANCHISEE WILL EARN, CAN EARN, OR IS LIKELY TO EARN A GROSS OR NET PROFIT, (II) FRANCHISOR HAS KNOWLEDGE OF THE RELEVANT MARKET, OR (III) THE MARKET DEMAND WILL ENABLE FRANCHISEE TO EARN A PROFIT FROM THE STUDIO;**

- b) FRANCHISEE ACKNOWLEDGES THAT IT RECEIVED A COPY OF THE COMPLETE FRANCHISOR'S DISCLOSURE DOCUMENT, THE ATTACHMENTS THERETO, AND THE AGREEMENTS RELATED THERETO, IF ANY, AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO THE DATE ON WHICH THIS AGREEMENT WAS SIGNED.**
- c) FRANCHISEE ACCEPTS THE TERMS, CONDITIONS AND COVENANTS CONTAINED IN THIS AGREEMENT AS BEING REASONABLE AND NECESSARY TO MAINTAIN FRANCHISOR'S STANDARDS OF QUALITY, SERVICE AND UNIFORMITY AND IN ORDER TO PROTECT AND PRESERVE THE GOODWILL OF THE MARKS. FRANCHISEE ACKNOWLEDGES THAT OTHER FRANCHISEES OF FRANCHISOR HAS BEEN OR WILL BE GRANTED FRANCHISES AT DIFFERENT TIMES AND IN DIFFERENT SITUATIONS. FRANCHISEE FURTHER ACKNOWLEDGES THAT THE PROVISION OF THE FRANCHISE AGREEMENTS PURSUANT TO WHICH SUCH FRANCHISES WERE GRANTED MAY VARY MATERIALLY FROM THOSE CONTAINED IN THIS AGREEMENT AND THAT FRANCHISEE'S OBLIGATION ARISING HEREUNDER MAY DIFFER SUBSTANTIALLY FROM OTHER FRANCHISEES; AND**
- d) CHANGE OVER TIME AND THAT THE LICENSE AND OPERATION OF THE STUDIO INVOLVE AN INVESTMENT OF SUBSTANTIAL RISK AND ITS SUCCESS IS DEPENDENT PRIMARILY UPON THE BUSINESS ACUMEN AND EFFORTS OF FRANCHISEE AND OTHER FACTORS BEYOND FRANCHISOR'S CONTROL. FRANCHISEE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE FRANCHISE AND HAD AMPLE TIME AND OPPORTUNITY TO CONSULT WITH INDEPENDENT PROFESSIONAL ADVISORS, INCLUDING BUT NOT LIMITED TO LAWYERS AND ACCOUNTANTS, AND HAS NOT RELIED UPON ANY EXPRESS OR IMPLIED GUARANTEE AS TO POTENTIAL VOLUMES, REVENUES, PROFITS OR SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY FRANCHISEE. EVEN THOUGH THIS AGREEMENT CONTAINS PROVISIONS REQUIRING FRANCHISEE TO OPERATE THE FRANCHISED STUDIO IN COMPLIANCE WITH FRANCHISOR'S SYSTEM: (1) WINE AND DESIGN OR**

**WINE AND DESIGN AFFILIATES DO NOT HAVE ACTUAL OR APPARENT AUTHORITY TO CONTROL THE DAY-TO-DAY CONDUCT AND OPERATION OF FRANCHISEE'S BUSINESS OR EMPLOYMENT DECISIONS; AND (2) FRANCHISEE AND FRANCHISOR DO NOT INTEND FOR FRANCHISOR OR FRANCHISOR'S AFFILIATES TO INCUR ANY LIABILITY IN CONNECTION WITH OR ARISING FROM ANY ASPECT OF FRANCHISOR'S SYSTEM OR FRANCHISEE'S USE OF THE FRANCHISOR SYSTEM OR THE OPERATION OF THE FRANCHISED STUDIO, WHETHER OR NOT IN ACCORDANCE WITH THE REQUIREMENTS OF THE MANUAL.**

- e) IF FRANCHISEE IS A CORPORATION, A LIMITED LIABILITY COMPANY OR A PARTNERSHIP, FRANCHISEE MAKES THE FOLLOWING REPRESENTATIONS AND WARRANTIES: (1) FRANCHISEE IS DULY ORGANIZED AND VALIDLY EXISTING UNDER THE LAWS OF THE STATE OF ITS FORMATION; (2) FRANCHISEE IS QUALIFIED TO DO BUSINESS IN THE STATE OR STATES IN WHICH THE FRANCHISED STUDIO IS LOCATED; (3) EXECUTION OF THIS AGREEMENT AND THE DEVELOPMENT AND OPERATION OF THE FRANCHISED STUDIO IS PERMITTED BY ITS GOVERNING DOCUMENTS; AND (4) FRANCHISEE'S ARTICLES OF INCORPORATION, ARTICLES OF ORGANIZATION OR WRITTEN PARTNERSHIP AGREEMENT SHALL AT ALL TIMES PROVIDE THAT FRANCHISEE'S ACTIVITIES ARE LIMITED EXCLUSIVELY TO THE DEVELOPMENT AND OPERATION OF THE WINE AND DESIGN FRANCHISED STUDIO.**
- f) IF FRANCHISEE IS AN INDIVIDUAL, OR A PARTNERSHIP COMPRISED SOLELY OF INDIVIDUALS, FRANCHISEE MAKES THE FOLLOWING ADDITIONAL REPRESENTATIONS AND WARRANTIES: (A) EACH INDIVIDUAL HAS EXECUTED THIS AGREEMENT; (B) EACH INDIVIDUAL SHALL BE JOINTLY AND SEVERALLY BOUND BY, AND PERSONALLY LIABLE FOR THE TIMELY AND COMPLETE PERFORMANCE AND A BREACH OF, EACH AND EVERY PROVISION OF THIS AGREEMENT; AND (C) NOTWITHSTANDING ANY TRANSFER FOR CONVENIENCE OF OWNERSHIP, PURSUANT TO THIS AGREEMENT, EACH INDIVIDUAL SHALL CONTINUE TO BE JOINTLY AND SEVERALLY BOUND BY, AND PERSONALLY LIABLE FOR THE TIMELY AND COMPLETE PERFORMANCE AND A BREACH OF, EACH AND EVERY PROVISION OF THIS AGREEMENT. IF FRANCHISEE VIOLATES A TERM OR CONDITION CONTAINED WITHIN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, WITHHOLDING ANY MONIES OWED TO FRANCHISOR IN THE ABSENCE OF A COURT ORDER PERMITTING THE WITHHOLDING OF SUCH MONIES, FRANCHISEE SHALL REIMBURSE FRANCHISOR FOR ALL REASONABLE COSTS INCURRED BY FRANCHISOR IN PURSUING THE ENFORCEMENT OF THIS AGREEMENT. THESE COSTS SHALL INCLUDE, BUT NOT BE LIMITED TO, COURT COSTS AND FEES, ACCOUNTING COSTS AND FEES, EXPERT WITNESS COSTS AND FEES, REASONABLE ATTORNEYS' FEES, THE REASONABLE VALUE OF FRANCHISOR'S EMPLOYEES' TIME, WITNESS FEES AND TRAVEL EXPENSES INCURRED BY FRANCHISOR. THE RECOVERY OF THE COSTS AND FEES SPECIFIED ABOVE SHALL INCLUDE THE RECOVERY OF ALL COSTS AND FEES INCURRED BY FRANCHISOR RELATING TO OR ARISING FROM ANY AND ALL DEFENSES,**

**COUNTERCLAIMS AND/OR CROSSCLAIMS ASSERTED BY FRANCHISEE OR THE PERSONAL GUARANTORS UNDER THIS AGREEMENT. THIS OBLIGATION WILL GIVE RISE TO AND REMAIN A LIEN IN FAVOR OF FRANCHISOR AGAINST ANY AND ALL OF THE PERSONAL PROPERTY, GOODWILL, CASH, FURNISHINGS, EQUIPMENT, SIGNS, FIXTURES AND INVENTORY OWNED BY FRANCHISEE AND LOCATED ON AND AROUND THE PREMISES OPERATED PURSUANT TO THIS AGREEMENT UNTIL FRANCHISEE IS IN FULL COMPLIANCE WITH THIS AGREEMENT AND ANY AMOUNTS OWED ARE PAID IN FULL. ALL COSTS TO BE COLLECTED BY FRANCHISOR PURSUANT TO THIS PROVISION SHALL BE COLLECTED VIA ELECTRONIC BANK TRANSFER AS SPECIFIED IN THIS AGREEMENT.**

- g) IF FRANCHISEE IS A CORPORATION, A LIMITED LIABILITY COMPANY OR A PARTNERSHIP, FRANCHISEE HAS PROVIDED TO FRANCHISOR A CURRENT LIST OF ALL OWNERS AND FRANCHISEE AGREES THAT FRANCHISEE WILL ADVISE FRANCHISOR OF ANY AND ALL CHANGES IN OWNERSHIP.**
- h) IF FRANCHISEE IS A CORPORATION, FRANCHISEE SHALL MAINTAIN STOP-TRANSFER INSTRUCTIONS AGAINST THE TRANSFER ON ITS RECORDS OF ANY VOTING SECURITIES, AND EACH STOCK CERTIFICATE OF THE CORPORATION SHALL HAVE CONSPICUOUSLY ENDORSED UPON ITS FACE THE FOLLOWING STATEMENT: “ANY ASSIGNMENT OR TRANSFER OF THIS STOCK IS SUBJECT TO THE RESTRICTION IMPOSED ON ASSIGNMENT BY FRANCHISOR, FRANCHISE AGREEMENT(S) TO WHICH THE CORPORATION IS A PARTY.” IF FRANCHISEE IS A LIMITED LIABILITY COMPANY, EACH MEMBERSHIP OR MANAGEMENT CERTIFICATE OR OTHER EVIDENCE OF INTEREST IN FRANCHISEE SHALL HAVE CONSPICUOUSLY ENDORSED UPON ITS FACE THE FOLLOWING STATEMENT: “ANY ASSIGNMENT OR TRANSFER OF AN INTEREST IN THIS LIMITED LIABILITY COMPANY IS SUBJECT TO THE RESTRICTIONS IMPOSED ON ASSIGNMENT BY THE FRANCHISOR, FRANCHISEE AGREEMENT(S) TO WHICH THE LIMITED LIABILITY COMPANY IS A PARTY.” IF FRANCHISEE IS A PARTNERSHIP, ITS WRITTEN AGREEMENT SHALL PROVIDE THAT OWNERSHIP OF AN INTEREST IN THE PARTNERSHIP IS HELD SUBJECT TO, AND THAT FURTHER ASSIGNMENT OR TRANSFER IS SUBJECT TO, ALL RESTRICTIONS IMPOSED ON ASSIGNMENT BY THIS AGREEMENT.**
- i) FRANCHISEE ACKNOWLEDGES THAT UNDER APPLICABLE U.S. LAW, INCLUDING, WITHOUT LIMITATION, EXECUTIVE ORDER 13224, SIGNED ON SEPTEMBER 23, 2001 (THE “ORDER”), FRANCHISOR IS PROHIBITED FROM ENGAGING IN ANY TRANSACTION WITH ANY SPECIALLY DESIGNATED NATIONAL OR BLOCKED PERSON. “SPECIALLY DESIGNATED NATIONAL” OR “BLOCKED PERSON” SHALL MEAN (1) THOSE PERSONS DESIGNATED BY THE U.S. DEPARTMENT OF TREASURY’S OFFICE OF FOREIGN ASSETS CONTROL FROM TIME-TO-TIME AS A “SPECIALLY DESIGNATED NATIONAL” OR “BLOCKED PERSON” OR SIMILAR STATUS, (2) A PERSON ENGAGED IN, OR AIDING ANY PERSON ENGAGED IN, ACTS OF TERRORISM, AS DEFINED IN THE ORDER, OR (3) A PERSON OTHERWISE IDENTIFIED BY GOVERNMENT OR**

**LEGAL AUTHORITY AS A PERSON WITH WHOM FRANCHISOR IS PROHIBITED FROM TRANSACTING BUSINESS. CURRENTLY, A LISTING OF SUCH DESIGNATIONS AND THE TEXT OF THE ORDER ARE PUBLISHED AT THE INTERNET WEBSITE ADDRESS, [WWW.USTREAS.GOV/OFFICES/ENFORCEMENT/OFAC](http://WWW.USTREAS.GOV/OFFICES/ENFORCEMENT/OFAC). ACCORDINGLY, FRANCHISEE REPRESENTS AND WARRANTS TO FRANCHISOR THAT AS OF THE DATE OF THIS AGREEMENT, NEITHER FRANCHISEE NOR ANY PERSON HOLDING ANY OWNERSHIP INTEREST IN FRANCHISEE, CONTROLLED BY FRANCHISEE, OR UNDER COMMON CONTROL WITH FRANCHISEE IS A SPECIALLY DESIGNATED NATIONAL OR BLOCKED PERSON, AND THAT FRANCHISEE (1) DOES NOT, AND HEREAFTER SHALL NOT, ENGAGE IN ANY TERRORIST ACTIVITY; (2) IS NOT AFFILIATED WITH AND DOES NOT SUPPORT ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST ACTIVITY; AND (3) IS NOT ACQUIRING THE RIGHTS GRANTED UNDER THIS AGREEMENT WITH THE INTENT TO GENERATE FUNDS TO CHANNEL TO ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST ACTIVITY, OR TO OTHERWISE SUPPORT OR FURTHER ANY TERRORIST ACTIVITY. FRANCHISEE AGREES THAT FRANCHISEE SHALL IMMEDIATELY PROVIDE WRITTEN NOTICE TO FRANCHISOR OF THE OCCURRENCE OF ANY EVENT WHICH RENDERS THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION INCORRECT.**

- j) Franchisee covenants that during the Term, it will at all times faithfully, honestly and diligently perform its obligations under this Agreement, and that it will continuously exert its best efforts to promote and enhance the business of the Franchised Studio and other Franchised Studios established and operated by Franchisee under the System.
- k) Franchisee and all guarantors hereof acknowledge and agree that the obligations regarding the use of Confidential Information and trade secrets set forth in this Agreement will apply throughout the Term and after the expiration or termination of this Agreement, without limitation as to time or geographic scope. Franchisee covenants that upon termination or expiration, Franchisee will immediately and permanently cease to use, in any manner whatsoever, any Confidential Information, trade secrets, methods, procedures and techniques associated with the System.
- l) Franchisee hereby acknowledges and agrees that Franchisor's approval of a site does not constitute an assurance, representation or warranty of any kind, express or implied, as to the suitability of the site for the Franchised Studio or for any other purpose. Franchisor's approval of a site indicates only that Franchisor believes the site complies with acceptable minimum criteria established by Franchisor solely for its purposes as of the time of the evaluation. Both Franchisee and Franchisor acknowledge that application of criteria that may have been effective with respect to other sites and premises may not be predictive of potential for all sites and that, subsequent to Franchisor's approval of a site, demographic and/or economic factors, such as competition from other similar businesses, included in or excluded from Franchisor's criteria could change, thereby altering the potential of a site or lease. Such factors are unpredictable and are beyond Franchisor's control. Franchisor shall not be responsible for the failure of a site approved by Franchisee to meet Franchisee's expectations as to revenue or operational criteria. Franchisee further acknowledges and agrees that its acceptance of a franchise for the operation of the Franchised Studio at the site is based on its own independent investigation of the suitability of the site.

## 21 Governing law, Jurisdiction and Venue

- a) Arbitration. Franchisee acknowledges that it has and will continue to develop a substantial and continuing relationship with Franchisor at its principal offices in the State of North Carolina, where Franchisor's decision-making authority is vested, franchise operations are conducted and supervised and where the Agreement was rendered binding. Therefore, the parties agree that, to the extent that any disputes cannot be resolved directly between Franchisee and Franchisor, any action arising out of or relating to this Agreement or the making, performance, or interpretation thereof shall upon 30 days' written notice by either party be resolved, except as elsewhere expressly provided in this Agreement, upon application by any such party by binding arbitration in the City of Raleigh, North Carolina, in accordance with the Federal Arbitration Act under the Commercial Arbitration Rules then prevailing of the American Arbitration Association, including without limitation the Optional Rules for Emergency Measures of Protection ("AAA"), and not under any state arbitration laws, and judgment on the arbitration award may be entered in any court of competent jurisdiction. Franchisee and Franchisor agree that arbitration shall be conducted on an individual -- not a class-wide basis. The Federal Arbitration Act shall apply to all arbitration and arbitration venue questions. Any award by the arbitrator(s) shall be final, binding and non-appealable, except for errors of law. Unless the parties agree in writing at the time an arbitration proceeding is commenced to have a single arbitrator, the matter shall be heard by 3 arbitrators, with each party selecting 1 arbitrator and the third arbitrator to be selected by the AAA. The arbitrator selected by the AAA shall have at least 10 years' experience in practicing franchise law during which franchise law is or has been their primary area of practice and shall have substantial experience in the preparation of franchise agreements and franchise disclosure documents. Franchisee understands that by agreeing to arbitrate it gives up jury and appeal and other rights it might have in court.
- b) Injunctive Relief. Notwithstanding the provisions of Section 21(a) above, Franchisee agrees that Franchisor, at its option, will have the right to seek preliminary injunctive relief from a court of competent jurisdiction, or in the first instance from an Arbitrator, to restrain any conduct by Franchisee in the development or operation of the Studio that could materially damage the goodwill associated with the Marks and the Chain, provided that if Franchisee counters, as Franchisee may, by initiating arbitration, Franchisor agrees to arbitrate the entire dispute thereafter except preliminary injunctive relief (and permanent injunctive relief also, if Franchisee will not agree that the preliminary injunction shall remain effective indefinitely until the arbitrator shall dissolve it), leaving the court action pending, if it chooses, to facilitate enforcement. Franchisee agrees Franchisor will not be required to post a bond to obtain any injunctive relief with respect to use of the Marks.
- c) Attorneys' Fees and Costs. Franchisee agrees to reimburse us for all expenses we reasonably incur (including attorneys' fees): (i) to enforce the terms of this Agreement or an obligation owed to Franchisor by Franchisee; and (ii) in the defense of any claim Franchisee assert against Franchisor on which Franchisor substantially prevails in court or other formal legal proceedings; or (iii) in the defense of any claim Franchisor asserts against Franchisee on which Franchisee substantially prevails in court or other formal legal proceedings.

- d) **JURY TRIAL AND CLASS ACTION WAIVER. FRANCHISOR AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY FRANCHISOR AND FRANCHISEE. NOTHING IN THIS PARAGRAPH SHALL AFFECT THE APPLICATION OF SECTION 21(b). NEITHER FRANCHISEE NOR FRANCHISOR SHALL SEEK TO LITIGATE OR ARBITRATE AGAINST THE OTHER PARTY TO THIS AGREEMENT OR SUCH PARTY'S AFFILIATES, EITHER AS A REPRESENTATIVE OF, OR ON BEHALF OF, ANY OTHER PERSON, CLASS, OR ENTITY ANY DISPUTE, CONTROVERSY, OR CLAIM OF ANY KIND ARISING OUT OF, OR RELATING TO, THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES, THE SALE OF THE FRANCHISE, OR OTHER CLAIMS OR CAUSES OF ACTION RELATING TO THE PERFORMANCE OF EITHER PARTY TO THIS AGREEMENT. NO LITIGATION, ARBITRATION OR OTHER ACTION OR PROCEEDING UNDER THIS AGREEMENT SHALL ADD AS A PARTY, BY CONSOLIDATION, JOINDER, OR IN ANY OTHER MANNER, ANY PERSON OR PARTY OTHER THAN FRANCHISEE AND FRANCHISOR AND ANY PERSON IN PRIVITY WITH, OR CLAIMING THROUGH, IN THE RIGHT OF, OR ON BEHALF OF, FRANCHISEE OR FRANCHISOR, UNLESS BOTH FRANCHISEE AND FRANCHISOR CONSENT IN WRITING. FRANCHISOR HAS THE ABSOLUTE RIGHT TO REFUSE SUCH CONSENT. FRANCHISEE AGREES AND ACKNOWLEDGES THAT ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES, OR ANY AGREEMENT OR RELATIONSHIP BETWEEN FRANCHISEE AND ANY AFFILIATE OF FRANCHISOR WILL BE CONSIDERED UNIQUE ON ITS FACTS AND MAY NOT BE BROUGHT AS A CLASS OR GROUP ACTION.**
- e) **WAIVER OF PUNITIVE DAMAGES. FRANCHISOR AND FRANCHISEE (AND FRANCHISEE'S OWNERS AND GUARANTORS, IF APPLICABLE), HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN FRANCHISOR AND FRANCHISEE EACH SHALL BE LIMITED SOLELY TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY THE NON-BREACHING PARTY.**
- f) Remedies Cumulative. All rights and remedies conferred upon Franchisee and Franchisor by this Agreement and by law shall be cumulative of each other, and neither the exercise nor the failure to exercise any such right or remedy shall preclude the exercise of any other such right or remedy.
- g) Nonwaiver. No failure by Franchisor or Franchisee to take action on account of any default by the other, whether in a single instance or repeatedly shall constitute a waiver of any such default or of the performance required of Franchisee. No express waiver by Franchisee or Franchisor of any provision or performance hereunder or of any default by the other shall be construed as a waiver of any other or future provision, performance or default.

- h) Governing Law. This Agreement and any claim or controversy arising out of or relating to rights and obligations of the parties under this Agreement and any other claim or controversy between the parties shall be governed by and construed under the laws of the State of North Carolina, without regard to the application of the North Carolina conflict of law principles, and any dispute between the parties shall be governed by and determined in accordance with the substantive law of the State of North Carolina and the Federal Arbitration Act, which laws shall prevail in the event of any conflict of law. The venue for any arbitration concerned with the enforcement and interpretation of this Agreement shall be the Raleigh, North Carolina. Nothing in this subparagraph is intended, or shall be deemed, to make any North Carolina law regulating the offer or sale of franchises or the franchise relationship applicable to this Agreement if such law would not otherwise be applicable. Any and all claims and actions arising out of or relating to this agreement, the relationship of franchisee and franchisor, or franchisee's operation of the Franchised Studio, brought by franchisee against franchisor, shall be commenced within 1 year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred.

## 22 Notices

All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be given (i) by personal delivery, or (ii) by registered or certified mail, return receipt requested, postage prepared, or (iii) by delivery to a nationally-recognized overnight courier service, in each case, addressed as follows, or to such other person or entity as either party shall designate by notice to the other in accordance herewith:

Franchisor: WINE AND DESIGN FRANCHISE LLC  
Attn: Director of Franchise Operations  
510 W Martin Street, Suite 300,  
Raleigh, NC 27603

Franchisee: Address Identified on Schedule A.

Notice shall be deemed given and effective upon the first to occur of receipt, when proper delivery is refused, or 2 days after deposit in registered or certified U.S. Mail as described above, or 1 day after deposit with overnight courier.

## 23 Miscellaneous

- a) Severability. The invalidity or unenforceability of any one or more provision of this Agreement shall in no way affect any other provision. If any court of competent jurisdiction determines any provision of this Agreement to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable portion had never been a part of this Agreement.
- b) Construction. All references herein to the masculine, neuter, or singular shall be construed to include the masculine, feminine, neuter, or plural, as the case may require. All acknowledgements, warranties, representations, covenants, agreements, and obligations herein made or undertaken by Franchisee shall be deemed jointly and severally undertaken by all those executing this Agreement as Franchisee.

- c) Entire Agreement. This Agreement, the documents incorporated herein by reference and the schedules attached hereto, comprise the entire agreement between the parties and all prior understandings or agreements concerning the subject matter hereof are canceled and superseded by this Agreement. Nothing in the Agreement or in any related agreement is intended to disclaim the representations we made in the franchise disclosure document.
- d) Affiliate. As used in this Agreement, the term “Affiliate” shall mean any person or entity that directly or indirectly owns or controls referenced party that is directly or indirectly owned or controlled by the referenced party, or which is under common control with the referenced party.
- e) Assignees. This Agreement shall be binding upon the heirs, successors, permitted assigns and legal representatives of the parties.
- f) Amendments. Except for those permitted to be made unilaterally by Franchisor, no supplement, amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.
- g) Waivers. No failure of Franchisor to exercise any right given to it hereunder, or to insist upon strict compliance by Franchisee with any obligation, agreement or undertaking hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Franchisor’s right to demand full and exact compliance by Franchisee and shall not affect or impair Franchisor’s rights with respect to any subsequent default of the same or of a different nature, nor shall any delay or omission of Franchisor to exercise any right arising from such default affect or impair Franchisor’s rights as to such default or any subsequent default.
- h) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. One or more counterparts can be delivered by facsimile or .pdf file transmission.
- i) Headings. The headings used in the Agreement are for convenience only, and the paragraphs shall be interpreted as if such headings were omitted.
- j) Time of Essence. Franchisee agrees and acknowledges that time is of the essence with regard to Franchisee’s obligations hereunder, and that all of Franchisee’s obligations are material to Franchisor and this Agreement.
- k) Territory Boundaries. Territory boundaries are as described in the Site Selection Addendum, which is Schedule B.
- l) Agreement Binding Upon Signature of Franchisor. Franchisee acknowledges that this Agreement shall not take effect until its acceptance and execution by an officer of Franchisor.
- m) Delegation. Franchisor shall have the right to delegate Franchisor’s duties under this Agreement to any affiliated or non-affiliated entity, agent, or employee and Franchisee agrees to such assignment without any right to approve such actions.

- n) Security Interests. Franchisee agrees to give no security interests, pledges or encumbrances in Franchisee’s inventory, leasehold, fixtures, securities or franchise agreement without the prior written approval of Franchisor, which shall not be deemed a consent to assignment. Franchisor will not unreasonably withhold approval but is legitimately concerned to ensure: (a) that you not lose the business; (b) that the business not be lost to the franchise system; (c) any grant of a security interest will not impede or threaten Franchisor’s security interest granted in the attached Security Agreement, hereby incorporated by reference, and (d) that Franchisor not have to defend a claim to franchisee rights by anyone it shall not have agreed to accept as a franchisee.
  
- o) Fines. For each instance where Franchisee fails to obtain prior written approval for advertisements, fails to attend required training or franchisor sponsored conventions, or offers unauthorized products or services, Franchisor shall, at Franchisor’s option, have the right to levy a fine in an amount up to \$1,000 per occurrence. Alternatively, in the case of failure to attend required training or franchisor sponsored conventions, Franchisee’s royalty fee for the balance of the calendar year shall increase by 1%. This is to say that the Continuing Royalty Fee shall change from 6% to 7%.The imposition of a fine pursuant to this paragraph shall not act as a waiver of any of Franchisor’s other remedies under this Agreement. Furthermore, we have the right to collect any such fines by means of EFT.
  
- p) Final Act. The last signature applied to this Agreement shall be the signature of Franchisor’s president or Vice President at Franchisor’s headquarters in North Carolina. The Agreement shall not be binding on Franchisor until signed by Franchisor.

**IN WITNESS WHEREOF**, parties hereto have duly executed this Agreement on the day, month and year first written above.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_  
 Harriet E. Mills, President and CEO

**FRANCHISEE:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE A TO FRANCHISE AGREEMENT**

The expiration of the Franchise Agreement is: \_\_\_\_\_, 10th anniversary of the Opening Date.

The following address is Franchisee's address under Paragraph 23 of the Franchise Agreement.

Franchisee's Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_

Metropolitan Statistical Area ("MSA") is: \_\_\_\_\_ State of \_\_\_\_\_

The Location for the Wine and Design Studio is: \_\_\_\_\_

Initial Franchise Fee is \$25,000, unless a discount applies. If a discount applies, the fee is \$\_\_\_\_\_.

## SCHEDULE B TO FRANCHISE AGREEMENT

### SITE SELECTION ADDENDUM

WINE AND DESIGN FRANCHISE LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) have this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ entered into a WINE AND DESIGN Franchise Agreement (“Franchise Agreement”) and desire to supplement its terms as set out below in this Site Selection Addendum (“Addendum”). The parties hereto agree as follows:

#### AGREEMENT

- Time to Locate Site:** Within 90 days after the Effective Date of the Franchise Agreement (as defined herein), Franchisee shall acquire or lease, at Franchisee’s expense, commercial real estate that is properly zoned for the use of the business to be conducted by Franchisee under the Franchise Agreement (a “Studio”) at a site approved by Franchisor as hereinafter provided. Failure by Franchisee to acquire or lease a site for the Franchised Studio within the time required in Section 1 hereof shall constitute a default under Section 17(c)(i) of the Franchise Agreement and under this Addendum, and Franchisor, in its sole discretion, may terminate the Franchise Agreement and this Addendum pursuant to the terms of Section 18 of the Franchise Agreement.
- Site Selection Assistance:** Franchisor may provide Franchisee with general site information to assist Franchisee in its site selection.
- Site Selection Package Submission and Approval:** Franchisee shall submit to Franchisor, in the form specified by Franchisor, a copy of the site plan and such other information or materials as Franchisor may reasonably require, together with an option contract, letter of intent or other evidence satisfactory to Franchisor which confirms Franchisee’s favorable prospects for obtaining the site along with the Site Selection Fee provided for in the Franchise Agreement. Franchisor shall have 15 days after receipt of such information and materials from Franchisee to approve or disapprove, in its sole discretion, the proposed site as the location for the Studio. In the event Franchisor does not disapprove a proposed site by written notice to Franchisee within said 15 days such site shall be deemed approved by Franchisor.
- Lease Responsibilities:** Within 30 days of site approval by Franchisor, Franchisee shall sign a lease which shall be coterminous with the Franchise Agreement, or a binding agreement to purchase the site. The lease must include the standard Studio Lease Rider attached hereto as Exhibit 1 to Schedule B. Franchisor shall not be responsible for review of the lease for any terms other than those contained in the Studio Lease Rider.
- Site Evaluation Services:** Franchisor shall have the right, but not the obligation, to perform any on-site evaluation as Franchisor may deem advisable. If on-site evaluation is deemed necessary and appropriate by Franchisor (on its own initiative or at Franchisee’s request) for any Studio to be established, Franchisee shall reimburse Franchisor for all reasonable expenses incurred by Franchisor in connection with such on-site evaluation, including, without limitation, the cost of travel, lodging and meals.
- Approved Location:** After the location is approved by Franchisor pursuant to Sections 1 and 3 hereof and leased or acquired by Franchisee pursuant to Section 4 hereof, the location shall constitute the Approved Location described in Section 1 of the Franchise Agreement. The Approved Location shall be

specified on a separate piece of paper and be attached hereto as Exhibit 2 hereto, which shall become a part of the Franchise Agreement.

7. This Site Selection Addendum shall be considered an integral part of the Franchise Agreement between the parties hereto, and the terms of this Site Selection Addendum shall be controlling with respect to the subject matter hereof. Except as modified or supplemented by this Site Selection Addendum, the terms of the Franchise Agreement are hereby ratified and confirmed. To the extent that there is a conflict between this agreement and the Franchise Agreement, the terms of the Franchise Agreement shall control.

IN WITNESS WHEREOF, each party hereto has caused its duly authorized representative to duly sign and deliver this Site Selection Addendum on the date first above written.

FRANCHISEE:

WINE AND DESIGN FRANCHISE LLC

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 1 TO SCHEDULE B TO FRANCHISE AGREEMENT**

**STUDIO LEASE RIDER**

WINE AND DESIGN FRANCHISE LLC  
STUDIO LEASE RIDER  
TO THAT CERTAIN LEASE

DATED \_\_\_\_\_, 20\_\_

(THE "FORM LEASE")

BETWEEN

A(N) \_\_\_\_\_

AS LANDLORD

AND

A(N) \_\_\_\_\_

AS TENANT

FOR THE PREMISES ("PREMISES") KNOWN AS

---

In the event of a conflict between the terms and conditions set forth within this Rider and the terms and conditions set forth in the Form Lease to which this Rider is attached, the terms and conditions set forth within this Rider shall govern and control.

1. **Permitted Use.** The Premises are leased to Tenant for the operation of a franchised Studio which operate an art studio offering art classes and customer experiences such as splatter rooms where adult patrons bring their food and beverages and art classes, summer camps, and after school programs for children involving art instruction. The Tenant may also use the Premises for promotions, celebrations, meetings, and other group functions where Tenant's services and products will be offered or sold.

2. **Signage.** Notwithstanding anything contained within the Form Lease to the contrary, Tenant shall, subject to the requirements of local law, have the right to utilize its standard signage and other proprietary marks and identification on both the exterior and within the interior of the Premises as approved by WINE AND DESIGN FRANCHISE LLC, a North Carolina limited liability company and franchisor of the WINE AND DESIGN concept ("Franchisor").

3. **Assignment and Subletting.** Landlord's consent to an assignment of the Form Lease or subletting of the Premises shall not be required in connection with an assignment or subletting as a part of a merger, reorganization or sale of all or substantially all of Tenant's assets or business or an assignment or sublet to the Franchisor, any parent, subsidiary or affiliated limited liability company of Tenant or Franchisor, or another WINE AND DESIGN franchisee. Landlord shall approve as an assignee or sublessee any tenant who has become a transferee of the Franchise Agreement as a result of a merger, reorganization or sale of all or substantially all of Tenant's assets. Tenant shall also have the right, without the consent of Landlord, to assign this Lease to a company incorporated or to be incorporated by Tenant or a partnership formed or to be formed by Tenant, provided that Tenant owns or beneficially controls a majority of the issued and outstanding shares of capital stock of the company or is the managing general partner of the partnership.

4. **Notices; Opportunity to Cure.** Copies of any demand letters, default notices or other similar notices of non-compliance (“Notice”) sent by Landlord to Tenant shall also be sent to Franchisor at the following address:

Harriet E. Mills  
WINE AND DESIGN FRANCHISE LLC  
510 W Martin Street, Suite 300,  
Raleigh, NC 27603

In the event Tenant fails to cure or otherwise remedy the subject matter of the Notice, Landlord shall grant Franchisor the identical period of time in which to cure same (said cure period to commence immediately upon written notice from Landlord to Franchisor (at the address set forth herein) that Tenant has failed to cure in a timely manner) and Landlord agrees to accept the performance of Franchisor within said period of time as performance by Tenant pursuant to the terms of the Form Lease.

5. **Option to Lease.** Landlord hereby agrees that, in the event of (a) the termination or expiration of the Franchise Agreement by and between Tenant and Franchisor; (b) the termination of the Form Lease for any cause whatsoever including, without limitation, a default by Tenant under the Form Lease after expiration of any applicable notice and cure periods; or (c) Tenant’s failure to exercise any extension option contained in the Form Lease, Franchisor shall have the option to lease the Premises pursuant to the same terms and conditions as are contained in the Form Lease, in accordance with the following:

- (a) Landlord agrees to promptly give written notice to Franchisor (at the address set forth herein) in the event the Form Lease is terminated as the result of a default by Tenant or in the event Tenant fails to exercise any remaining options to extend the term of the Form Lease;
- (b) If Franchisor elects to lease the Premises, Franchisor shall notify Landlord in writing of its election to exercise this option to lease within 30 days after (1) termination or expiration of the Franchise Agreement; (2) Franchisor’s receipt of notice from Landlord that the Form Lease has been terminated; or (3) receipt of notice from Landlord that Tenant has failed to exercise an option to extend the term of the Form Lease;
- (c) If Franchisor elects to lease the Premises, Franchisor shall sign and deliver to Landlord a lease containing all of the same terms and conditions (including rental rates, terms and remaining options to extend the term of the Lease) as are contained in the Lease; provided, however, that Franchisor’s leasehold interest shall not be subject to any defaults or claims that may exist between Landlord and Tenant and any such lease shall permit Franchisor to assign the lease or sublease the Premises to a franchisee of Franchisor for use as a WINE AND DESIGN franchised location; and
- (d) Nothing contained herein shall affect Landlord’s right to recover any and all amounts due under the Form Lease from Tenant or to exercise any right of Landlord against Tenant as provided under the Form Lease.

6. **De-identification.** Landlord and Tenant hereby acknowledge that in the event the Franchise Agreement expires or is terminated, Tenant is obligated under the Franchise Agreement to take certain steps to de-identify the location as a WINE AND DESIGN franchise location operated by Tenant. Landlord agrees to cooperate fully with Franchisor in enforcing such provisions of the Franchise Agreement against Tenant, including allowing Franchisor, its employees and agents to enter and remove signs, decor and

materials bearing or displaying any marks, designs or logos of Franchisor; provided, however, that Landlord shall not be required to bear any expense thereof. Tenant agrees that if Tenant fails to de-identify the Premises promptly upon termination or expiration as required under the Franchise Agreement, Franchisor may cause all required de-identification to be completed at Tenant's sole cost and expense.

7. **Assignment of Interest.** This Rider is binding and shall inure to the benefit of Landlord, Tenant, and Franchisor, their assigns, and successors-in-interest. The Franchisor is an intended beneficiary of this Rider.

LANDLORD:

TENANT:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT 2 TO SCHEDULE B TO FRANCHISE AGREEMENT**

**SITE SELECTION ADDENDUM**

The Franchisee is awarded a Wine and Design franchise to be located in the  
Metropolitan Statistical Area (“MSA”) of  
\_\_\_\_\_ State of \_\_\_\_\_

The Approved Location will be at:

\_\_\_\_\_

IN WITNESS WHEREOF, each party hereto has caused its duly authorized representative to duly sign and deliver this Exhibit 2 to the Site Selection Addendum on the date first above written.

FRANCHISEE:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FRANCHISOR:

WINE AND DESIGN FRANCHISE LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE C TO FRANCHISE AGREEMENT**

**PERSONAL GUARANTY FROM OWNERS  
OF AN INTEREST IN FRANCHISEE**

As an inducement to WINE AND DESIGN FRANCHISE LLC (“Franchisor”) to sign the Franchise Agreement with \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (“Franchise Agreement”), and in consideration of Franchisor, executing the Franchise Agreement, Guarantors jointly and severally agree as follows:

1. Guarantors shall pay or cause to be paid to Franchisor all monies payable by Franchisee under the Franchise Agreement on the days and times in the manner therein appointed for payment thereof.

2. Guarantors shall unconditionally guarantee full performance and discharge by Franchisee of all the obligations of Franchisee under the Franchise Agreement at the times and in the manner therein provided.

3. Guarantors shall indemnify and save harmless Franchisor and its affiliates against and from all losses, damages, costs, and expenses which Franchisor and its affiliates may sustain, incur, or become liable for by reason of:

(a) the failure for any reason whatsoever of Franchisee to pay the monies payable pursuant to the Franchise Agreement or to do and perform any other act, matter or thing pursuant to the provisions of the Franchise Agreement; or

(b) any act, action, or proceeding of or by Franchisor for or in connection with the recovery of monies or the obtaining of performance by Franchisee of any other act, matter or thing pursuant to the provisions of the Franchise Agreement.

4. Franchisor shall not be obligated to proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any remedy, including any legal or equitable relief against Franchisee, before proceeding to enforce the obligations of the Guarantors herein set out, and the enforcement of such obligations may take place before, after, or contemporaneously with enforcement of any debt or obligation of Franchisee under the Franchise Agreement.

5. Without affecting the Guarantors’ obligations under- this Guarantee, Franchisor, without notice to the Guarantors, may extend, modify, or release any indebtedness or obligation of Franchisee or settle, adjust, or compromise any claims against Franchisee. Guarantors waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by Franchisee.

6. Guarantors’ obligations hereunder shall remain in full force and effect, and shall be unaffected by: (i) the unenforceability of the Franchise Agreement against Franchisee; (ii) the termination of any obligations of Franchisee under the Franchise Agreement by operation of law or otherwise; (iii) the bankruptcy, insolvency, dissolution, or other liquidation of Franchisee, including, without limitation, any surrender or disclaimer of the Franchise Agreement by the trustee in bankruptcy of Franchisee; (iv) Franchisor’s consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor’s proceedings of or against Franchisee, or the winding-up or dissolution of Franchisee, or any other event or occurrence which would have the effect at law of terminating the existence of Franchisee’s obligations prior

to the termination of the Franchise Agreement; or (v) by any other agreements or other dealings between Franchisor and Franchisee having the effect of amending or altering the Franchise Agreement or Franchisee's obligations hereunder or by any want of notice by Franchisor to Franchisee of any default of Franchisee or by any other matter, thing, act, or omission of Franchisor whatsoever.

7. The provisions of Section 21 of the Franchise Agreement shall apply as to any interpretation or enforcement of this Guarantee, and the provisions of Section 22 of the Franchise Agreement shall apply to any notice to either party, except that notice to Guarantors shall be as follows:

**NOTICE TO GUARANTORS**

_____	_____
NAME	ADDRESS

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee from Owners of an Interest in Franchisee as of the date of the Franchise Agreement.

**GUARANTORS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

## **SCHEDULE D TO FRANCHISE AGREEMENT**

### **NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT**

This Nondisclosure and Confidentiality Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ a Wine and Design franchisee ("Company"), \_\_\_\_\_ ("Associate"), who resides at \_\_\_\_\_ . All initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Franchise Agreement.

#### **RECITALS**

A. The Company is a franchisee in the business of operating an art studio offering art classes and customer experiences such as splatter rooms where adult patrons bring their food and beverage of choice to their class and enjoy a relaxing and a pressure free creative environment, and art classes, summer camps, and after school programs for children involving art instruction ("Franchise Business"). The Franchise Businesses are operated under the franchisor's trademark which the Company is licensed to use and is known as "WINE AND DESIGN" and other service marks, trademarks, logo types, architectural designs, trade dress and other commercial symbols (collectively, the "Marks");

B. The Company has been granted the right to use methods for establishing, operating and promoting Franchise Businesses pursuant to the franchisor's distinctive business format, plans, methods, data, processes, supply systems, marketing systems, techniques, designs, layouts, operating procedures, Marks and information and know-how of the franchisor ("Confidential Information" and "Trade Secrets") and such Confidential Information and Trade Secrets as may be further developed from time-to-time by the franchisor ("System"), and as a franchisee within the System it is obligated to protect all of the Confidential Information;

C. The franchisor and its affiliates have established substantial goodwill and an excellent reputation with respect to the quality of art studio services available, which goodwill and reputation have been and will continue to be of major benefit to the franchisor, which enables the Company to better operate its business;

D. Associate desires to become involved with the Company in the capacity of a director, agent, Manager, employee or as a beneficial owner of the Franchise Business, or is an immediate family member or domestic partner of a principal owning a Franchise Business, and will become privileged as to certain Confidential Information and Trade Secrets. Associate has not signed the Franchise Agreement or Guaranty and Assumption of Franchisee's Obligations form; and

E. Associate and the Company have reached an understanding with regard to nondisclosure by Associate of Confidential Information and Trade Secrets by Associate with the Company and other franchisees of the Company. Associate agrees to the terms of this Agreement as partial consideration for the Company's willingness to allow Associate to engage in a business relationship with Company using the Company's Confidential Information and Trade Secrets.

NOW THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Associate and the Company, intending legally to be bound, agree as follows:

1. Definitions.

(a) "Associate" shall mean the individual or entity described in the first paragraph of this Agreement and the Associate's managers, officers, beneficial owners, directors, employees, shareholders, partners, members, principals, immediate family members and domestic partners.

(b) "Authorized Territory" shall have the meaning defined in the Franchise Agreement.

(c) "Confidential Information" shall mean without limitation, all knowledge, know-how, standards, methods and procedures related to the establishment and operation of the Franchise Business and includes all records pertaining to customers, suppliers, and other service providers of, and/or related in any way to, the Franchise Business including, without limitation, all databases (whether in print, electronic or other form), all names, addresses, phone numbers, e-mail addresses, customer purchase records, mail lists, manuals, promotional and marketing materials, marketing strategies and any other data and information that the Company or its affiliates designates as confidential including all information contained in the Company's Operations Manual, which may be provided as one or more separate manuals, written instructional guides, CD Rom, or other communications from the Company or its affiliates, which may be changed or supplemented from time-to-time.

(d) "Authorized Territory" shall have the meaning defined in the Franchise Agreement.

(e) "Term" shall have the meaning defined in the Franchise Agreement.

(f) "Trade Secret(s)" shall mean information, including a customer lists, pattern, compilation, program, device, method, technique or process related to the Franchise Business that both derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

2. Confidential Information and Trade Secrets. Associate and the Company acknowledge that the Confidential Information and Trade Secrets that are developed and utilized in connection with the operation of the Franchise Business is unique and the exclusive property of the franchisor and which is licensed to the Company. Associate acknowledges that any unauthorized disclosure or use of the Confidential Information and Trade Secrets would be wrongful and would cause irreparable injury and harm to the franchisor or its affiliates. Associate further acknowledges that the franchisor has expended a great amount of effort and money in obtaining and developing the Confidential Information and Trade Secrets, that the Company or its affiliates has taken numerous precautions to guard the secrecy of the Confidential Information and Trade Secrets as required by its franchisor, and that it would be very costly for competitors to acquire or duplicate the Confidential Information and Trade Secrets.

3. Nondisclosure of Confidential Information. During the Term and any renewal Term of the Franchise Agreement and for all periods after the Term and any renewal Term of the Franchise Agreement, Associate shall not at any time, publish, disclose, divulge or in any manner communicate to any person, firm, corporation, association, partnership or any other entity whatsoever or use, directly or indirectly, for its own benefit or for the benefit of any person, firm, corporation or other entity other than for the use of

the Company or the Franchise Business, any of the Confidential Information of the Company or its affiliates.

4. Exceptions to Disclosing Confidential Information. Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to the following: (a) information that was in the public domain prior to being communicated to Associate through no fault of Associate; (b) information that entered the public domain after it was Communicated to Associate through no fault of Associate; (c) information that was in Associate's possession free of any obligation of confidence at the time it was communicated to Associate; or (d) the disclosure of the Confidential Information in judicial or administrative proceedings to the extent that Associate is legally compelled to disclose the information, if Associate has notified the Company before disclosure and used Associate's best efforts, and afforded the Company the opportunity, to obtain an appropriate protective order or other assurance satisfactory to the Company of confidential treatment for the information required to be so disclosed.

5. Nondisclosure of Trade Secrets. During the Term and any renewal Term of the Franchise Agreement and for as long as such information constitutes a Trade Secret, Associate shall not at any time, publish, disclose, divulge or in any manner communicate to any person, firm, corporation, association, partnership or any other entity whatsoever or use, directly or indirectly, for its own benefit or for the benefit of any person, firm, corporation or other entity other than for the use of the Company in the Franchise Business, any of the Trade Secrets of the Company or its affiliates.

6. Injunction. Associate hereby acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, the Company shall be authorized and entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief in addition to any other rights or remedies to which the Company may be entitled. Associate agrees that the Company may obtain such injunctive relief, without posting a bond, but upon due notice, and Associate's sole remedy in the event of the entry of such injunctive relief shall be dissolution of such injunctive relief, if warranted, upon a hearing duly had; provided, however, that all claims for damages by reason of the wrongful issuance of any such injunction are hereby expressly waived by Associate.

7. Reasonableness of Restrictions. Associate acknowledges and agrees that the restrictions set forth in this Agreement are reasonable and necessary for the protection of the Confidential Information and Trade Secrets and that any violation of this Agreement would cause substantial and irreparable injury to franchisor and the Company, and that Company would not have entered into a business relationship with Associate or enter into this Agreement without receiving Associate's unrestricted promise to preserve the confidentiality of the Confidential Information and Trade Secrets. In any litigation concerning the entry of any requested injunction against Associate, Associate, for value, voluntarily waives such defenses as Associate might otherwise have under the law of the jurisdiction in which the matter is being litigated relating to any claimed "prior breach" on the part of the Company; it being specifically understood and agreed between the parties that no action or lack of action on the part of the Company will entitle or permit Associate to disclose any such Confidential Information or Trade Secrets in any circumstances.

8. Effect of Waiver. The waiver by Associate or the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Associate and the Company and their respective heirs, executors, representatives, successors and assigns.

10. Entire Agreement. This instrument contains the entire agreement of Associate and the Company relating to the matters set forth herein. It may not be changed verbally, but only by an agreement

in writing, signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

11. Governing Law. This instrument shall be governed by and construed under the laws of the State of North Carolina.

12. Jurisdiction and Venue. In the event of a breach or threatened breach by Associate of this Agreement, Associate hereby irrevocably submits to the jurisdiction of the state and federal courts of North Carolina, and irrevocably agrees that venue for any action or proceeding shall be in the state and federal courts of North Carolina. Both parties waive any objection to the jurisdiction of these courts or to venue in the state and federal courts of North Carolina. Notwithstanding the foregoing, in the event that the laws of the state where Associate resides prohibit the aforesaid designation of jurisdiction and venue, then such other state's laws shall control.

13. Severability. If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason, by any court of competent jurisdiction, government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement that shall otherwise remain in full force and effect.

14. Attorneys' Fees. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including without limitation such costs, expenses and fees on any appeals), and if such successful party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included as part of such judgment.

15. Acknowledgment. The Franchisor is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. Associate is aware that a violation of this Agreement will cause the Franchisor and the Franchisee irreparable harm; therefore, Associate acknowledges and agrees that the Franchisor and/or the Franchisee may apply for the issuance of an injunction preventing Associate from violating this Agreement in addition to any other remedies it may have hereunder, at law or in equity; and Associate agrees to pay the Franchisor and the Franchisee all the costs it/they incur/s, including without limitation attorneys' fees, if this Agreement is enforced against Associate. Due to the importance of this Agreement to the Franchisor and the Franchisee, any claim Associate has against the Franchisor or the Franchisee is a separate matter and does not entitle Associate to violate, or justify any violation of, this Agreement. If any part of this Agreement is held invalid by a court or agency having valid jurisdiction, the rest of the Agreement is still enforceable and the part held invalid is enforceable to the extent found reasonable by the court or agency. Associate agrees that all the words and phrases used in this Agreement will have the same meaning as used in the Franchise Agreement, and that such meaning has been explained to Associate.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

**COMPANY:**

**ASSOCIATE:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**SCHEDULE E TO FRANCHISE AGREEMENT**

**TELEPHONE LISTING AND INTERNET AUTHORIZATION AGREEMENT**

THIS AGREEMENT is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between WINE AND DESIGN FRANCHISE LLC, a North Carolina limited liability company with principal place of business and headquarters located at 510 W Martin Street, Suite 300,, Raleigh, NC 27603, and \_\_\_\_\_, a \_\_\_\_\_ corporation or individual with principal place of business located at \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as "Franchisee").

**WITNESSETH THAT:**

WHEREAS, WINE AND DESIGN FRANCHISE LLC has developed and refined an art studio business known as "WINE AND DESIGN" which uses distinctive innovations and marketing features (such business is referred to herein as the "WINE AND DESIGN System"); and

WHEREAS, WINE AND DESIGN FRANCHISE LLC is the franchisor of the WINE AND DESIGN System and the owner of the trademarks, service marks, copyrights and other intellectual property used in the WINE AND DESIGN System, including without limitation, the mark WINE AND DESIGN (collectively referred to herein as the "WINE AND DESIGN Intellectual Property"); and

WHEREAS, WINE AND DESIGN FRANCHISE LLC and Franchisee have entered into a Franchise Agreement (the "Franchise Agreement") pursuant to which WINE AND DESIGN FRANCHISE LLC granted to Franchisee the non-exclusive limited right to use the WINE AND DESIGN Intellectual Property and related commercial symbols (the "Franchised Studio") in Franchisee's business listings, whether online or otherwise, marketing the Franchised Studio and otherwise identifying Franchisee; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Franchisee is authorized to obtain separate telephone service, and/or participate in a central telephone service for Franchisee's Franchised Studio as created by or on behalf of WINE AND DESIGN FRANCHISE LLC. Such service shall not be used in conjunction with any other business or residential telephone service at Franchisee's home and/or principal place of business.

2. Franchisee is authorized and agrees to secure white pages, Yellow Pages and directory assistance listings only as "WINE AND DESIGN". No other names or modifications of "WINE AND DESIGN" may be used in conjunction with the WINE AND DESIGN Intellectual Property, and no additional listings may be used with the telephone number so assigned to Franchisee unless approved in writing in advance by WINE AND DESIGN FRANCHISE LLC.

3. All telephone, online or similar listings, layout and copy desired to be used by or requested by Franchisee shall be approved in advance in writing by WINE AND DESIGN FRANCHISE LLC, and Franchisee agrees not to deliver to any company placements of any such copy unless written approval by WINE AND DESIGN FRANCHISE LLC is attached.

4. Franchisee shall be responsible for the timely and complete payment of all service charges for telephone service, directory or online listings and similar advertising and/or all service charges for the Franchisee's reasonable share of central numbers, associated listings and advertising.

5. Franchisee agrees such telephone number(s), listings and advertisements shall be considered to be the sole and exclusive property of WINE AND DESIGN FRANCHISE LLC. Upon termination of the Franchise Agreement for whatever reason, Franchisee agrees to immediately cease all use of such telephone number(s), cell phone number(s), email addresses, social networking logins and passwords, Twitter handles, listings and advertisements ("Property") and Franchisee agrees to take all actions necessary to immediately transfer all such Property to WINE AND DESIGN FRANCHISE LLC, and to the extent allowed by applicable law, Franchisee shall take all actions necessary to ensure the same shall become the sole and exclusive property of WINE AND DESIGN FRANCHISE LLC, at its option, subject to WINE AND DESIGN FRANCHISE LLC's obligation to pay all fees due therefor becoming due and payable after the date of cessation of use by Franchisee. Franchisee shall immediately deliver all information related to such Property to WINE AND DESIGN FRANCHISE LLC.

6. Franchisee, by this Agreement, hereby releases and forever discharges WINE AND DESIGN FRANCHISE LLC and its successors or assigns and any service provider from liability of any kind or character which results or may result directly or indirectly from WINE AND DESIGN FRANCHISE LLC's exercise of its rights hereunder or from such service provider's cooperation with WINE AND DESIGN FRANCHISE LLC in effecting the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

FRANCHISOR:

FRANCHISEE:

WINE AND DESIGN FRANCHISE LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B**

**WINE AND DESIGN**

**LIST OF CURRENT AND FORMER FRANCHISEES**

**EXHIBIT B-1**  
**List of Open and Operating Franchises as of December 31, 2023**

<b>City</b>	<b>State</b>	<b>Zip Code</b>	<b>Franchise Owner</b>	<b>Address</b>	<b>Phone</b>
Madison	AL	35756	Maria & Dexter Troupe	12060 County Line Road Suite G	256-262-4194
Montgomery	AL	36117	Monica Virgil & Imani Whitehead	7732 Eastchase Parkway	334-245-3387
Queen Creek	AZ	85142	Anita Lopez	21148 E Rittenhouse Road, Suite 102	602-510-0742
Burbank	CA	91505	Lisa Flette	3208 1/2 W Magnolia Boulevard	818-861-7046
Los Altos	CA	94024	Maryam Shakernia	630 Fremont Avenue	650-880-7872
Orcutt	CA	93455	Julie Jorge	3420 Orcutt Road Suite 105	805-868-1746
Stanton	CA	90680	Yvonne Paredes-Alexander	7143 Katella Avenue Suite B	657-298-3015
Augusta	GA	30907	Letisha Winfield	229 Furys Ferry Road, Suite 113	706-364-0454
Boise	ID	83702	Hannah & Evan Jones	1009 West Bannock Street	208-906-1806
Leonardtown	MD	20650	Anne Ryan	41610 Fenwick Street	240-925-7464
Kansas City	MO	64151	Denise Naggi	6052 Northwest 63rd Terrace	816-944-0644
Apex	NC	27502	Shelly Rickloff	5456 Apex Peakway	919-355-2855
Cary	NC	27513	Rosyln Sloop-Troutman and Katherine Hansen	483 James Jackson Avenue	919-535-8695
Chapel Hill**	NC	27517	Dawn and John Wagner	1201 Raleigh Road Hwy 54, Suite D	919-455-0749
Charlotte	NC	28203	Kevin & Jeanette Weisner	1419 East Boulevard Suite J	704-951-5916
Clayton	NC		Brooke Benton	12817 US-70 Bus	910-650-3484
Durham**	NC	27707	Dawn & John Wagner	4810 Hope Valley Road Suite 109	919-391-8359
Fayetteville	NC	28301	Michael Sargent	113 Donaldson Street	910-574-4186
Gastonia	NC	28056	Sheretta & Lendell Wright	4024 E. Franklin Blvd Unit #150	980-329-8009
Goldsboro	NC	27534	Lon Horton	2808 Cashwell Drive	919-273-8007
Greensboro	NC	27408	Meredith Scott	1852 Banking Street, Suite 9522	336-500-8728
Greenville**	NC	27834	Joshua Wade and Cameron Wade	808 Dickinson Avenue	252-227-4622

<b>City</b>	<b>State</b>	<b>Zip Code</b>	<b>Franchise Owner</b>	<b>Address</b>	<b>Phone</b>
High Point	NC	27265	Tony and Carly Blevins	2401 Penny Road	336-392-3200
Leland	NC	28451	Gia & Michael Long	1109 New Pointe Boulevard, Unit #6	910-599-6026
Morehead City	NC	28557	Joshua Wade	412 Evans Street Suites A & B	252-646-7378
Raleigh	NC	27603	Harriet Mills	510 W Martin Street Suite 300	919-803-3343
Wilmington	NC	28405	Debbie Reynolds & Gene Fiorivante	1319 Military Cutoff Road, Suite JJ	910-679-4750
Winston Salem	NC	27101	Rosie Samad	321 S Liberty Street	919-720-1132
Howell	NJ	07731	Lindsay Truszkowski	2214 US Route 9 South	732-742-0690
Montclair	NJ	07042	Rachel Moehl	1 Greenwood Ave/Suite 101	973-630-1960
Rahway	NJ	07065	Josh & Dan Lucero	88 NJ-27	732-943-7334
Weehawken	NJ	07086	Josh & Dan Lucero	4700 Park Avenue	201-643-7948
Rockville Centre	NY	11570	Dwayne Chin	21 N. Village Avenue	516-442-0330
Williamsport	PA	17701	Stefanie Allison	357 Market Street	570-846-0993
Hilton Head	SC	29926	Erin Christofoli	1536 Fording Island Road Suite 102	843-683-9101
Greenville	SC	29607	Timothy Cunningham	1175 Woods Crossing Suite 1B	864-288-1260
Myrtle Beach	SC	29577	Chris & Bailey Wilkinson	1620 Farrow Parkway Suite A-4	803-468-0223
Spartanburg	SC	29307	Timothy Cunningham	1023 Fernwood-Glendale Road, Suite C	864-288-1260
Montgomery	TX	77316	Rachel Anderson & Rachel Jahn	202 McCown Street Suite A	936-463-1902
Alexandria	VA	22307	Katharina Rothweiler	1506 Belle View Boulevard, Suite D	571-882-9463
Culpeper	VA	27701	Shannon Armstrong	219 Waters Place Unit 109	540-661-8409
Fredericksburg	VA	22405	Michelle Flynn	709 Caroline Street	540-809-0899
Newport News	VA	23601	Brandon Gist	882 J. Clyde Morris Boulevard	757-771-9905
Richmond	VA	23220	Jessie Ewald	2707 W Broad Street	804-359-9149
Snohomish	WA	98290	Melody Buchanan	2701 Bickford Avenue Suite B	425-583-8240
Madison	WI	53704	Heather & Andy Reed	167 South Fair Oaks Avenue	608-575-7838

\*Denotes area developers

\*\* Transferred in calendar year 2024.

**EXHIBIT B-2**

**List of Franchisees Who Were Terminated, Canceled, Transferred, Not Renewed or  
Voluntary/Involuntary Ceased To Do Business  
in the Fiscal Year Ended December 31, 2023**

<b>CITY</b>	<b>STATE</b>	<b>NAME</b>	<b>ADDRESS</b>	<b>PHONE</b>	<b>REASON FOR LEAVING</b>
Oakland	CA	Tina & Bob Farman	204 Broadway	510-863-1260	Terminated or Ceased Operations
Annapolis	MD	Sherrie Ward, Scott Ward, & Charlotte Faraci	32 West Street	240-925-7464	Ceased Operations
Gaithersburg	MD	Monica Cross	20316 Bell Bluff Road	202-520-3779	Terminated
Charlotte	NC	Ophelia Burwell	14211 Plantation Park Blvd, Unit 1031 Charlotte, NC 28277	919-332-4750	Never Opened
Greensboro	NC	Missy Griffin Fields & Jenny Ragsdale	1821 Pembroke Road	336-500-8728	Transfer
Hickory**	NC	Jessica Johnson	2440 N Center Street	813-842-2300	Ceased Operations
Jacksonville	NC	Cathy & Steven Daigle	521 Yopp Road Suite 113	910-219-3943	Ceased Operations
New Bern	NC	Amber Williams	1910 S Glenburnie Road	252-633-4555	Ceased Operations
Southern Pines	NC	Jessica Flechsenhaar	220 W Pennsylvania Ave	91-557-2846	Ceased Operations
Howell	NJ	Hali Crystall & Thomas Ciminello	2214 US Route 9 South	732-742-0690	Transfer
Corning	NY	Kylene Kiah	90 E Market Street	607-738-6884	Ceased Operations
Rockville Centre	NY	Pam & Juan Parades	21 N. Village Avenue	516-442-0330	Transfer
Charleston	SC	Logan Martin	Not available in the chart	919-906-0453	Never Opened
Franklin	TN	Nicole Jackson	101 Holiday Court	615-224-8082	Terminated
Christiansburg	VA	Terri Welch	438 Peppers Ferry Rd NW	540-381-6964	Ceased Operations

\*\*Will be transferred in calendar year 2024.

Other than as described above, no other Franchisees have left the system or otherwise failed to communicate with us during 2023, or have failed to communicate with us within the last 10 weeks.

**EXHIBIT B-3**

**Franchise Agreement Signed But Outlet Not Open**

<b><u>City</u></b>	<b><u>Stat e</u></b>	<b><u>Zip Code</u></b>	<b><u>Franchise Owner</u></b>	<b><u>Address</u></b>	<b><u>Phone</u></b>
Jacksonville	NC	28546	Joshua Wade and Cameron Wade	1210 Country Club Road	252-622-9328
Leesburg	VA	20175	Avinash Tripathi & Nisha Kaushik	1607 Village Market Blvd SE, #118	703-309-0039

**EXHIBIT C**

**WINE AND DESIGN**  
**FINANCIAL STATEMENTS**

# **WINE AND DESIGN FRANCHISE LLC**

FINANCIAL REPORT  
AS OF DECEMBER 31, 2023

# WINE AND DESIGN FRANCHISE LLC

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## **Independent Auditor's Report**

To the Member  
Wine and Design Franchise LLC  
Raleigh, North Carolina

### **Report on the Audit of the Financial Statements**

#### ***Opinion***

We have audited the accompanying financial statements of Wine and Design Franchise LLC which comprise the balance sheets as of December 31, 2023, and 2022, and the related statements of operations, changes in member's equity (deficit) and cash flows for the years ended December 31, 2023, and 2022, and the related notes to the financial statements.

In our opinion, the financial statements referred to in the first paragraph above present fairly, in all material respects, the financial position of Wine and Design Franchise LLC as of December 31, 2023, and 2022, and the results of its operations and its cash flows for the years ended December 31, 2023, and 2022, in accordance with accounting principles generally accepted in the United States of America.

#### ***Basis for Opinion***

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Wine and Design Franchise LLC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### ***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Wine and Design Franchise LLC's ability to continue as a going concern for one year after the date that the financial statements are issued.

#### ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.



In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Wine and Design Franchise LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Wine and Design Franchise LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*Reese CPA LLC*

Ft. Collins, Colorado  
April 13, 2024

**WINE AND DESIGN FRANCHISE LLC**  
**BALANCE SHEET**  
**AS OF DECEMBER 31, 2023 AND 2022**

	<b>2023</b>	<b>2022</b>
<b>ASSETS:</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 116,670	\$ 182,707
Franchisee receivable, net	119,871	134,645
Related party receivable, net	-	1,653
Prepaid expense and other assets	6,227	6,227
<b>TOTAL CURRENT ASSETS</b>	242,768	325,232
<b>NON-CURRENT ASSETS</b>		
Property and equipment, net	17,050	30,244
Right to use asset	99,342	155,309
Other assets	9,900	9,900
<b>TOTAL ASSETS</b>	\$ 369,060	\$ 520,685
<b>LIABILITIES AND MEMBER'S (DEFICIT):</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable and accrued expenses	\$ 51,057	\$ 41,527
Related party accounts payable	15,592	
Non-refundable deferred franchise fees, current maturities	33,613	37,278
Lease payable, current maturities	71,194	66,685
Notes payable, current maturities	10,238	9,704
<b>TOTAL CURRENT LIABILITIES</b>	181,694	155,194
<b>LONG-TERM LIABILITIES</b>		
Non-refundable deferred franchise fees	164,890	175,715
Lease payable	17,429	88,624
Notes payable	226,205	236,443
<b>TOTAL LIABILITIES</b>	590,218	655,976
<b>MEMBER'S (DEFICIT)</b>	(221,158)	(135,291)
<b>TOTAL LIABILITIES AND MEMBER'S (DEFICIT)</b>	\$ 369,060	\$ 520,685

The accompanying notes are an integral part of these financial statements.

**WINE AND DESIGN FRANCHISE LLC**  
**STATEMENT OF OPERATIONS**  
**FOR THE YEARS ENDED DECEMBER 31, 2023, and 2022**

	<b>2023</b>	<b>2022</b>
<b>REVENUES</b>		
Royalty fees	\$ 414,309	\$ 401,293
Franchise fees	85,390	159,748
Advertising fees	138,103	133,764
Other revenue	28,895	86,731
<b>TOTAL REVENUES</b>	<b>666,697</b>	<b>781,536</b>
 <b>OPERATING EXPENSES</b>		
Payroll and related costs	300,047	343,227
General and administrative	130,220	135,512
Professional fees	104,716	83,907
Franchise related costs	15,151	55,964
Occupancy costs	63,963	51,127
Advertising expenses	4,822	22,882
Depreciation	13,194	5,613
<b>TOTAL OPERATING EXPENSES</b>	<b>632,113</b>	<b>698,232</b>
 <b>OPERATING INCOME</b>	<b>34,584</b>	<b>83,304</b>
 <b>OTHER INCOME (EXPENSE)</b>		
Other income	50,839	58,632
Interest expense	(10,676)	(17,910)
<b>OTHER INCOME</b>	<b>40,163</b>	<b>40,722</b>
 <b>NET INCOME</b>	<b>\$ 74,747</b>	<b>\$ 124,026</b>

The accompanying notes are an integral part of these financial statements

**WINE AND DESIGN FRANCHISE LLC**  
**STATEMENT OF CHANGES IN MEMBER'S EQUITY (DEFICIT)**  
**FOR THE YEARS ENDED DECEMBER 31, 2023 AND 2022**

	<u><b>Total Member's Equity (Deficit)</b></u>
<b>BALANCE, DECEMBER 31, 2021</b>	<b>34,261</b>
Member (distributions)	(293,578)
Net income	<u>124,026</u>
<b>BALANCE, DECEMBER 31, 2022</b>	<b>(135,291)</b>
Member (distributions)	(160,614)
Net income	<u>74,747</u>
<b>BALANCE, DECEMBER 31, 2023</b>	<u><b>\$ (221,158)</b></u>

The accompanying notes are an integral part of these financial statements.

**WINE AND DESIGN FRANCHISE LLC**  
**STATEMENT OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31, 2023, and 2022**

	<b>2023</b>	<b>2022</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income	\$ 74,747	\$ 124,026
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	13,194	5,613
Amortization of right to use asset	55,967	-
Recognition of non-refundable deferred franchise sales	(67,990)	(111,248)
Change in assets and liabilities		
Franchisee receivables	14,774	(63,141)
Prepaid expenses and other assets	-	5,612
Accounts payable	9,530	(26,651)
Lease payable	(66,686)	-
Non-refundable deferred franchise fees	53,500	78,500
Net cash provided by operating activities	87,036	12,711
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchases of property and equipment	-	(3,644)
Net cash provided (used) by investing activities	-	(3,644)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Payments on note payable	(9,704)	(3,753)
Advances to related parties	17,245	81,587
Member distributions	(160,614)	(293,578)
Net cash (used) by financing activities	(153,073)	(215,744)
<b>NET INCREASE (DECREASE) IN CASH</b>	(66,037)	(206,677)
<b>CASH, beginning of year</b>	182,707	389,384
<b>CASH, end of year</b>	\$ 116,670	\$ 182,707
<b>SUPPLEMENTAL CASH FLOW INFORMATION</b>		
Cash paid for interest	\$ 10,782	\$ 4,624

The accompanying notes are an integral part of these financial statements.

**WINE AND DESIGN FRANCHISE LLC  
STATEMENT OF CASH FLOWS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2023, and 2022**

	<u>2023</u>	<u>2022</u>
<b>SCHEDULE OF NON-CASH ACTIVITIES</b>		
<b>INVESTING ACTIVITIES</b>		
Recognition of right to use asset	\$ -	\$ (211,175)
<b>FINANCING ACTIVITIES</b>		
Recognition of lease liability	\$ -	\$ 211,175

The accompanying notes are an integral part of these financial statements.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 1 - NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Wine and Design Franchise LLC (“Company”) is a North Carolina limited liability company with its home office in Raleigh, North Carolina. The Company was formed in June 2011.

The Company offers franchises for the right to own and operate an art studio offering art classes where patrons bring their food and beverages of choice to their class and enjoy a relaxing and a pressure free creative environment. The Company provides services to Franchisees including assistance with training, operations, and staffing, advertising, and marketing, purchasing and promotional techniques.

Outlets in Operation

Changes in the number of operating outlets for the year ended December 31, 2023, and 2022 consist of the following:

	<u>2023</u>	<u>2022</u>
Outlets in operation, beginning	53	57
Outlets opened	6	4
Outlets terminated or closed		(8)
Outlets in operation, ending		<u>53</u>
		53
Franchised outlets		1
Related party owned outlets		

A summary of significant accounting policies follows:

Basis of Presentation

The accompanying financial statements have been prepared on an accrual basis in accordance with accounting principles generally accepted in the United States of America (“GAAP”).

Use of Estimates

Preparation of the Company's financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of any contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of three months or less at the time of purchase to be cash equivalents. The Company had no cash equivalents as of December 31, 2023, and 2022.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 1 - NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

Franchisee Receivables

The Company's franchisee receivables primarily result from initial franchise fees, royalty fees, brand development contributions and training fees charged to franchisees. Timing of revenue recognition may be different from the timing of invoicing to customers. The Company records an accounts receivable when revenue is recognized prior to invoicing, or unearned revenue when revenue is recognized after invoicing. The Company reports these receivables at net realizable value.

Management determines the allowance for doubtful accounts based on historical losses, current expectations, and economic conditions. On a continuing basis, management analyzes delinquent accounts receivable and, once these accounts receivable are determined to be uncollectible, they are written off through a charge against an existing allowance account. The allowance account is reviewed regularly and adjusted against earnings as appropriate. The Company determined that an allowance on outstanding franchisee receivables of \$25,000, and \$25,000 was necessary as of December 31, 2023. And 2022. Franchisee bad debt expense was \$0 and \$0 for the years ended December 31, 2023, and 2022. Franchisee amounts written off were \$0, and \$0 for the years ended December 31, 2023, and 2022

Property and Equipment

The Company has adopted ASC 360 – Property, Plant and Equipment. Property and equipment are stated at historical cost. Depreciation is provided using straight-line method based on the estimated useful lives of the related assets (generally two to seven years). Routine expenditures for repairs and maintenance are expensed as incurred and are charged to operations and major improvements are capitalized. Upon retirement, sale, or other disposition of property and equipment, the cost and accumulated depreciation are eliminated from the accounts and a gain or loss is included in operating expenses.

Property and equipment consist of the following as of December 31:

	<u>2023</u>	<u>2022</u>
Furniture, fixtures, and equipment	\$ 31,244	\$ 31,244
Website	46,834	46,834
Vehicles	44,156	44,156
Property and equipment	122,234	122,234
Less accumulated depreciation	(105,184)	(91,990)
	<u>\$ 17,050</u>	<u>\$ 30,244</u>

Depreciation expense was \$13,194, and \$5,613 for the years ended December 31, 2023, and 2022.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 1 - NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

*Franchisee Revenue and Non-refundable Deferred Franchise Fee Revenue*

The Company recognizes revenues under the guidance of ASC 606, “Contracts with Customers”. The Company’s revenue is principally generated through franchise agreements executed with the Company’s franchisees.

Each franchise agreement is comprised of several performance obligations. The Company identifies those performance obligations, determines the contract price for each obligation, allocates the transaction price to each performance obligation and recognizes revenue when the Company has satisfied the performance obligation by transferring control of the good or service to the franchisee.

When a qualified party purchases a franchise, the Company grants the franchisee the right to operate the franchised business in a specific territory and to use the proprietary methods, techniques, trade dress, trademarks, and logos (“symbolic intellectual property” or “IP”) for an initial term of ten years with one five-year renewal option. Revenues related to the designated territory and IP are continuing monthly royalty fees as defined in the franchise agreement and are 6% of gross sales. Revenue from continuing monthly royalty fees is billed monthly and is recognized as revenue when earned. These revenues will be used to continue the development of the Company’s brand, the franchise system and provide on-going support for the Company’s franchisees.

Revenue from initial fees is allocated to the performance obligations in the franchise agreement that are distinct from the territory rights and symbolic intellectual property and consist primarily of pre-opening services provided by the Company as defined in the franchise agreement. For each new franchise awarded, the Company’s current franchise agreement requires the franchisee to pay an initial, non-refundable fee of \$25,000 upon the signing of the agreement. The amount is allocated to each identified performance obligation by using the fair market value approach. Revenue from initial fees is recognized when the performance obligation is satisfied and control of the good or service has been transferred to the franchisee. Unearned initial fee revenues are recorded as non-refundable deferred revenue and recognized into revenue over the initial term of the franchise agreement.

*Advertising Fees*

An advertising fee of 2% of gross sales is collected from all franchised locations to be used to maximize the general public recognition, acceptance, and use of the system. The fee may be increased to 4% under the terms of the franchise agreement. The fees are billed monthly with the royal fees and recognized as revenue when earned.

*Ancillary Service Fees*

The Company provides technology and other related services on a monthly basis to the Company's franchisees. These services are billed monthly and recognized as revenue when earned.

*Advertising Expenses*

The Company expenses advertising costs for the selling of franchises as incurred. Advertising expenses were \$4,882, and \$22,882 for the year ended December 31, 2023, and 2022.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 1 - NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

*Income Taxes*

The member of the Company has elected to be treated as a disregarded entity for income tax purposes. Accordingly, taxable income and losses of the Company are reported on the income tax returns of the Company's member and no provision for federal or state income taxes has been recorded in the accompanying financial statements.

The Company follows accounting requirements associated with uncertainty in income taxes under the provisions of Financial Accounting Standards Board ("FASB") ASC 740, Income Taxes. Using that guidance, tax positions initially need to be recognized in the financial statements when it is more-likely-than-not the positions will be sustained upon examination by the tax authorities. A recognized tax position is then measured at the largest amount of benefit that is greater than 50% likely of being realized upon settlement.

Based on its evaluation, the Company has concluded that there are no significant uncertain tax positions requiring recognition in its financial statements for the years ended December 31, 2023, and 2022.

*Concentrations of Credit Risk*

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash, franchise receivables and advances to Related Parties. The Company places its temporary cash investments with financial institutions. At times throughout the year the Company may, in the ordinary course of business, maintain cash balances in excess of federally insured limits. Management does not believe the Company is exposed to any unusual risks on such deposits.

The Company grants credit to franchisees and Related Parties. The Company's ability to collect the amounts due from franchisees and Related Parties is affected by fluctuations in the economy and the operations of the franchisees.

*Recently Issued and Adopted Accounting Guidance*

The Company has adopted all recently issued Accounting Standards Updates ("ASU"). Management has not yet determined the effect the adoption of the other recently issued ASUs, including those not yet effective, could have on the financial position or results of operations of the Company.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 2 – CONTRACTS WITH CUSTOMERS**

The Company has recorded a liability for unearned revenue associated with franchisee acquisition and acceptance performance obligation of the Company’s franchise agreement. The account balances and activity are as follows:

	December 31,	
	2023	2022
<b>Non-refundable Deferred Franchise Fees:</b>		
Balance beginning of year	\$ 212,993	\$ 245,741
Implementation of new revenue standard	53,500	78,500
Recognition of non-refundable franchise fees	(67,990)	(111,248)
Balance at end of year	\$ 198,503	\$ 212,993

Disaggregation of Revenues

Disaggregated revenues based on the satisfaction of performance obligations in the Company’s contracts with franchisees for the years ended December 31, 2023, and 2022, is as follows:

	2023	2022
Performance obligations satisfied at a point in time	\$ 598,707	\$ 670,288
Performance obligations satisfied through the passage of time	67,990	111,248
Total revenues	\$ 666,697	\$ 781,536

Estimated Recognition of Non-refundable Deferred Franchise Fees

Estimated revenues and franchise acquisition costs to be recognized in future periods related to non-refundable deferred franchise fees as reported as of December 31, 2023, is as follows:

	Non-refundable Franchise Fees
Year ending December 31:	
2024	\$ 42,113
2025	29,700
2026	23,833
2027	22,711
2028	19,300
Thereafter	60,846
	\$ 198,503

**NOTE 3 – RELATED PARTY TRANSACTIONS**

The member of the Company operates a Wine and Design location similar to the franchise offered by the Company. Transactions with the member's location primarily consist of payroll, shared office space costs and advances made to the related parties to support their operations both in cash and costs incurred. Amounts charged to the related party for the years ended December 31, 2023, and 2022, were \$103,025 and \$86,958.

Advances are not collateralized, noninterest bearing and due on demand. Advances due from the related parties as of December 31, 2023, and 2022, were \$15,592, and \$1,653.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 4 – NOTES PAYABLE**

Notes payable consist of the following at December 31,

	<b>2023</b>	<b>2022</b>
<p>Note payable with the Small Business Administration under the EIDL program for COVID-19 relief. Face amount of \$149,900, payable in monthly installments of \$731 including interest at the rate of 3.75% until all principal and interest is repaid. Final payment due June 2050. Collateralized by assets of the Company.</p>	\$ 149,900	\$ 149,900
<p>Note payable with Bank under the North Carolina Rapid Recovery Program for COVID-19 relief. Face amount of \$100,000, payable in 91 monthly installments including interest at the rate of 5.5% Final payment is due November 2030. The note is collateralized by a security interest in the assets of the Company and the personal guarantee of the Company's member.</p>	86,542	96,247
	236,442	246,147
Less current maturities	(10,238)	(9,704)
	\$ 226,204	\$ 236,443

The maturities of the long-term debt are as follows:

Year ending December 31:

2024	\$ 10,238
2025	10,829
2026	14,737
2027	15,413
2028	16,200
Thereafter	169,025
	\$ 236,442

Interest expense on notes payable was \$10,676 and \$17,910 for the years ended December 31, 2023, and 2022. During 2023 and 2022 the Company made cash payments of \$5,731, and \$1,000 towards interest accrued on the SBA EIDL loan .

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 5 – RIGHT TO USE ASSET AND LEASE LIABILITY**

On January 1, 2022, under the guidance of ASC 842 "Leases", the Company recorded a right to use asset and lease liability for the lease of office space from a company owned by one of the members of the Company. As of January 1, 2022, the remaining initial lease term was 39 months, through March 31, 2025. Lease payments over the term are between \$5,975 and \$6,183. The right to use asset and lease were recorded as an operating lease. The right to use asset and lease liability were valued at \$211,275 using the monthly lease payments over the initial term of the lease using a 4.75% discount rate based on the lessors borrowing rate at the inception of the lease. Total lease expense recorded for the years ended December 31, 2023, and 2022, was \$72,627, and \$63,972.

Future minimum payments of the lease, including the interest component is as follows:

Year ending December 31:	
2024	\$ 73,881
2025	18,549
Total	<u>\$ 92,430</u>

**NOTE 6 – OTHER INCOME**

During the year ended December 31, 2023, and 2022, other income included a grant from the North Carolina Recovery Program of \$0, and \$13,852 and sub-lease income from the Company's related party of \$ 50,839, and \$44,780.

**NOTE 7 - COMMITMENTS AND CONTINGENCIES**

Contingencies

The Company may be party to various claims, legal actions and complaints arising in the ordinary course of business. In the opinion of management, all matters are of such kind, or involve such amounts, that unfavorable disposition, if any, would not have a material effect on the financial position of the Company.

**NOTE 8 - SUBSEQUENT EVENTS**

Date of Management's Evaluation

Management has evaluated subsequent events through April 13, 2024, the date on which the financial statements were available to be issued.

**WINE AND DESIGN FRANCHISE LLC**

Financial Statements

December 31, 2021 and 2020

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Certified Public Accountants

## INDEPENDENT AUDITORS' REPORT

To the Member  
Wine and Design Franchise LLC  
Raleigh, North Carolina

### Opinion

We have audited the accompanying financial statements of Wine and Design Franchise LLC (a limited liability company), which comprise the balance sheets as of December 31, 2021 and 2020, and the related statements of operations, changes in member's equity, and cash flows for the years ended December 31, 2021 and 2020, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wine and Design Franchise LLC as of December 31, 2021 and 2020, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Wine and Design Franchise LLC and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Wine and Design Franchise LLC's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

## **Auditors' Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Wine and Design Franchise LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Wine and Design Franchise LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*Thomas, Judy & Tucker, P.A.*

Raleigh, North Carolina  
May 24, 2022

**WINE AND DESIGN FRANCHISE LLC**  
**BALANCE SHEETS**  
December 31, 2021 and 2020

<u>ASSETS</u>	<u>2021</u>	<u>2020</u>
Current Assets:		
Cash	\$ 389,384	\$ 390,863
Royalties Receivable	68,139	72,160
Franchise Fee Receivable, Net	3,365	4,307
Prepaid Rent	5,612	
Other Assets	<u>16,127</u>	<u>9,900</u>
Total Current Assets	<u>482,627</u>	<u>477,230</u>
Property and Equipment At Cost:		
Furniture and Fixtures	27,203	27,203
Website	47,231	47,231
Leasehold Improvements	<u>44,156</u>	<u>44,156</u>
	118,590	118,590
Less Accumulated Depreciation	<u>(86,377)</u>	<u>(73,793)</u>
Net Property and Equipment	<u>32,213</u>	<u>44,797</u>
Other Asset:		
Due from Related Party	<u>83,240</u>	<u>77,882</u>
Total Other Asset	<u>83,240</u>	<u>77,882</u>
Total Assets	<u><u>\$ 598,080</u></u>	<u><u>\$ 599,909</u></u>

<u>LIABILITIES AND MEMBER'S EQUITY</u>	<u>2021</u>	<u>2020</u>
Current Liabilities:		
Current Portion of Notes Payable	\$ 8,883	\$ 1,855
Accounts Payable	26,875	1,750
Accrued Consulting Fee	3,648	3,544
Deferred Revenue	245,741	283,067
Deferred Rent	36,352	36,352
Accrued Payroll	1,303	941
	<u>322,802</u>	<u>327,509</u>
Notes Payable	<u>241,017</u>	<u>248,045</u>
Total Liabilities	<u>563,819</u>	<u>575,554</u>
Member's Equity	<u>34,261</u>	<u>24,355</u>
Total Liabilities and Members' Equity	<u>\$ 598,080</u>	<u>\$ 599,909</u>

See Accompanying Notes

**WINE AND DESIGN FRANCHISE LLC**  
**STATEMENTS OF OPERATIONS**  
Years Ended December 31, 2021 and 2020

	2021	2020
Revenues:		
Franchise Fees	\$ 60,826	\$ 48,972
Termination Fees	40,720	41,480
Royalties	366,077	297,872
Advertising	121,562	72,431
Technology Service Fees	38,248	38,912
Rental Income	50,857	18,191
Conference Fees		(250)
	<u>678,290</u>	<u>517,608</u>
Total Revenues		
Expenses:		
General and Administrative	23,240	40,125
Computer and Internet	73,802	114,732
Advertising	28,985	9,575
Bad Debt	5,500	3,500
Bank Service Charges		2,491
Professional Fees	76,066	63,129
Meals and Entertainment	2,664	4,370
Rent	67,041	58,568
Depreciation	12,584	12,959
Payroll	170,018	230,592
Travel	2,091	15,053
Property Tax	199	328
Consulting Fees	8,222	10,114
	<u>470,412</u>	<u>565,536</u>
Total Expenses		
Income (Loss) from Operations	<u>207,878</u>	<u>(47,928)</u>
Other Income:		
Other Income	64,263	70,470
Commission Fees Income	22,262	28,125
	<u>86,525</u>	<u>98,595</u>
Total Other Income		
Net Income	<u>\$ 294,403</u>	<u>\$ 50,667</u>

See Accompanying Notes

**WINE AND DESIGN FRANCHISE LLC**  
**STATEMENTS OF CHANGES IN MEMBER'S EQUITY**  
Years Ended December 31, 2021 and 2020

Equity, January 1, 2020	\$	337,809
Cumulative Effect of ASC 606 Adoption (See Note 1)		(332,039)
Distributions to Members		(32,082)
Net Income		<u>50,667</u>
Equity, December 31, 2020		24,355
Distributions to Members		(284,497)
Net Income		<u>294,403</u>
Equity, December 31, 2021	\$	<u><u>34,261</u></u>

See Accompanying Notes

**WINE AND DESIGN FRANCHISE LLC**  
**STATEMENTS OF CASH FLOWS**  
Years Ended December 31, 2021 and 2020

	2021	2020
Cash Flows from Operating Activities:		
Net Income	\$ 294,403	\$ 50,667
Adjustments to Reconcile Net Income to Net Cash Provided by Operating Activities:		
Depreciation	12,584	12,959
Changes in Operating Assets and Liabilities:		
Royalties Receivable	4,021	16,435
Franchise Fee Receivable	942	32,643
Prepaid Rent	(5,612)	
Due from Related Party	(5,358)	4,676
Other Receivables		62,900
Other Assets	(6,227)	
Accounts Payable	25,125	(39,024)
Accrued Consulting Fee	104	
Deferred Rent		31,471
Deferred Revenue	(37,326)	(48,972)
Accrued Payroll	362	(10,225)
	283,018	113,530
Net Cash Provided by Operating Activities		
Cash Flows from Investing Activities:		
Purchases of Property and Equipment		(9,628)
		(9,628)
Net Cash Used by Investing Activities		
Cash Flows from Financing Activities:		
Proceeds on Notes Payable		249,900
Distributions to Members	(284,497)	(32,082)
	(284,497)	217,818
Net Cash Provided (Used) by Financing Activities		
Net Increase (Decrease) in Cash	(1,479)	321,720
Cash at Beginning of Year	390,863	69,143
Cash at End of Year	\$ 389,384	\$ 390,863

See Accompanying Notes

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2021 and 2020

1. Summary of Significant Accounting Policies

Business Operations

Wine and Design Franchise LLC (the “Company”) was organized on June 30, 2011 under the General Statutes of North Carolina. The Company is organized to be the franchisor of the Wine and Design franchise system. The Company’s fiscal year-end is December 31.

The Company derives its initial revenues from the sale of Wine and Design franchises and then earns recurring royalty revenues from monthly gross sales of each franchisee.

Ownership

Membership interest in the Company is held by one member. The member shall not be bound by, or personally liable for, the expenses, liabilities or obligations of the Company except as otherwise provided in the Operating Agreement or as required by law. The Company shall continue in perpetual existence unless the Company is dissolved in accordance with the provisions of the Company’s operating agreement.

Basis of Accounting

The financial statements of the Company are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America.

Revenue Recognition

The Company accounts for revenue in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification 606 (“ASC 606”), *Revenue from Contracts with Customers*, which was adopted on January 1, 2020. Revenue is recognized in accordance with a five-step revenue model, as follows: identifying the contract with the customer; identifying the performance obligations in the contract; determining the transaction price; allocating the transaction price to the performance obligations; and recognizing the revenue when (or as) the entity satisfies a performance obligation. The Company also elected to adopt the accounting policy within Accounting Standards Update 2021-02 (“ASU 2021-02”), *Franchisors – Revenue from Contracts with Customers (Subtopic 952-606): Practical Expedient*, which allows the Company to treat pre-opening activities provided to a franchisee as a distinct and separate performance obligation from the franchise license if the pre-opening activities are consistent with those included within a predefined list within the guidance, and therefore the pre-opening activities are recognized as revenue in the year the services are provided. Prior to ASC 606, revenue related to initial fees was recognized upon store opening and renewal and transfer fees were recognized when the related agreement became effective. Upon the adoption of ASC 606, the Company determined that the franchise license that the Company provides in exchange for the upfront franchise fee that is allocated to the franchise license is highly interrelated with the franchise right and is not individually distinct from the ongoing services that the Company provides to franchisees. As a result, upon the adoption of ASC 606, a portion of the upfront franchise fee allocated to the franchise license is recognized as revenue over the term of the respective franchise agreement. Upon the adoption of ASU 2021-02, the Company determined that the pre-opening activities are recognized as revenue in the year the services are provided.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2021 and 2020

1. Summary of Significant Accounting Policies (Continued)

Revenue Recognition (Continued)

The franchise license granted for each individual store within an arrangement represents a single performance obligation. Therefore, initial franchise license fees for each arrangement are allocated to each individual store and recognized over the 10-year term of the respective franchise agreement from the date of the store opening.

Royalty income is also recognized over the term of the respective franchise agreement based on the royalties earned each period as the underlying sales occur. Renewal fees are generally recognized over the renewal term for the respective store from the start of the renewal period. Transfer fees are recognized over the remaining term of the franchise agreement beginning at the time of transfer.

Retained earnings and deferred revenue were adjusted for \$332,039 as of date of ASC 606 and ASU 2021-02 adoption on January 1, 2020.

Continuing fees such as royalties, advertising, and technology services fees, are typically billed and paid monthly. Royalty fees are based on 6% of the franchisee's gross store-level sales and national advertising fees are based on 2% of the franchisee's store-level sales. The Company has determined the advertising services provided to franchisees are highly interrelated with the franchise right and therefore not distinct. Franchisees remit to the Company a percentage of Wine and Design store-level sales as consideration for providing the advertising services. As a result, revenues for royalties and advertising services are recognized when the related store sales occur based on the application of the sales-based exception within ASC 606.

The following table disaggregates the Company's revenue based on the timing of satisfaction of performance obligations for the year ended December 31, 2021:

Performance Obligations Satisfied Over Time	\$ 60,826
Performance Obligations Satisfied at a Point in Time	<u>617,464</u>
	<u>\$ 678,290</u>

The following table disaggregates the Company's revenue based on the timing of satisfaction of performance obligations for the year ended December 31, 2020:

Performance Obligations Satisfied Over Time	\$ 48,972
Performance Obligations Satisfied at a Point in Time	<u>468,636</u>
	<u>\$ 517,608</u>

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2021 and 2020

1. Summary of Significant Accounting Policies (Continued)

Contract Balances

Royalty receivables relate primarily to payments due for royalties. Deferred revenue represents the Company's remaining performance obligations under its franchise and license agreements for which consideration has been received. These amounts have been separately stated in the accompanying balance sheets and therefore are not disclosed as required by ASC 606.

Allocation of Profit and Loss

In accordance with the operating agreement, net income and loss are allocated to the Company's sole member.

Cash Equivalents

The Company considers investments in money market accounts and commercial paper with maturities of 90 days or less to be cash equivalents. At December 31, 2021 and 2020, the Company had no cash equivalents.

Receivables

Receivables are reported at the amount management expects to collect from outstanding balances net of any rebates. Differences between the amount due and the amount management expects to collect are reported in the results of operations in the year in which those differences are determined. Balances that are still outstanding after management has used reasonable collection efforts are written off.

Royalties receivable consists of royalties due from individual franchisees for their share of monthly gross sales. Total royalties due to the Company at December 31, 2021 and 2020 was \$68,139 and \$72,160, respectively.

Franchise fees receivable consists of initial fees due on franchises signed, net of reimbursements. Franchise fees due to the Company totaled \$28,365 and \$29,307 as of December 31, 2021 and 2020, respectively. Based upon a review of the individual account balances for these receivables, the allowance for doubtful accounts totaled \$25,000 as of December 31, 2021 and 2020.

Due from related party consists of advances made to an affiliated entity and are due on demand. Amounts due totaled \$83,240 and \$77,882 as of December 31, 2021 and 2020, respectively.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2021 and 2020

Summary of Significant Accounting Policies (Continued)

Property and Equipment

Property and equipment are recorded at cost. Depreciation is provided on the straight-line method for financial statement purposes over the following estimated useful lives:

	<u>Years</u>
Furniture and Fixtures	5
Website	5
Leasehold Improvements	5

Depreciation expense for the years ended December 31, 2021 and 2020 was \$12,584 and \$12,959, respectively.

Concentration of Credit Risk

The Company maintains its cash in bank deposit accounts at one financial institution in the Raleigh, North Carolina area. Accounting standards identifies this item as a concentration of credit risk requiring disclosure, regardless of the degree of risk. This risk is managed by maintaining all deposits in high-quality financial institutions. At December 31, 2021, the Company's uninsured cash balances was \$157,798.

Use of Estimates and Assumptions

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results could differ from those estimates.

Income Taxes

The Company, with the consent of its members, was organized under the General Statutes of North Carolina as a limited liability company. In lieu of corporate federal and state income taxes, the members are taxed on their proportionate share of the Company's taxable income. Therefore, no provision or liability for federal or state income taxes has been included in the financial statements.

Accounting for Uncertainty in Income Taxes

The Company has implemented the provisions of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 740-10-25. Using that guidance, tax positions initially need to be recognized in the financial statements when it is more-likely-than-not the position will be sustained upon examination by the tax authorities. As of December 31, 2021, the Company had no uncertain tax positions that qualify for either recognition or disclosure in the financial statements. The Company is also subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2021 and 2020

1. Operating Leases

In September 2014, the Company entered into a lease agreement for its office space located in Raleigh, North Carolina. In December 2016, the Company expanded its leased space. Monthly payments increased to \$3,000 through maturity in December 2018. The lease transitioned to a month-to-month agreement after maturity in December 2018. In June 2019, the Company entered into a new lease for office space also located in Raleigh, North Carolina. The monthly payments start at \$4,950 in December 2019 and increase to \$5,358 through maturity in August 2024. The Company recognizes these payments on a straight-line basis through maturity in August 2024. During the year ended December 31, 2020, the Company deferred rents under the lease agreement totaling \$26,664 which will be due in 2024.

The difference between straight-line rent and contractual rent was reflected as deferred rent, which totaled \$36,352 as of December 31, 2021 and 2020. Total rent expense for the years ended December 31, 2021 and 2020 was \$67,041 and \$58,568, respectively.

Future minimum lease payments under the lease are as follows:

Year Ending December 31	Amount
2022	\$ 61,903
2023	63,141
2024	69,528
	\$ 194,572

3. Notes Payable

In April 2020, the Company received a North Carolina Rapid Recovery loan with a financial institution for \$50,000. Subsequent to the loan agreement, the Company was approved for an additional \$50,000 and a new loan agreement was signed for \$100,000. The loan requires interest to be repaid at a rate of 0.25% through April 2022. Beginning May 2022, principal and interest payments at a rate of 5.50% will be due monthly through October 2030 in the amount of \$1,230, with a final payment of \$1,335 due upon maturity on November 1, 2030. The note is collateralized by a security agreement and personally guaranteed by the member of the Company. The amount outstanding totaled \$100,000 as of December 31, 2021.

In June 2020, the Company received an Economic Injury Disaster Loan with the United States Small Business Administration for \$149,900. The loan is interest only at 3.75% until June 2021 at which time monthly principal and interest payments of \$731 will be payable through maturity in June 2050. The note is collateralized by all tangible and intangible property and other assets in accordance with the note agreement. The amount outstanding totaled \$149,900 as of December 31, 2021.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2021 and 2020

3. Notes Payable (Continued)

Maturities of notes payable are as follows:

2022		\$ 8,883
2023		13,188
2024		13,870
2025		14,588
2026		15,343
Thereafter		184,028
Total Notes Payable		\$ 249,900

4. Related Party Transactions

A member of the Company is affiliated with an entity that supplied services and goods to the Company. Amounts expensed totaled \$337 and \$2,926 for the years ended December 31, 2021 and 2020, respectively, and were for advertising expenses. A member of the Company is also affiliated with an entity that shares space with the Company. The amount due from this entity was \$83,240 and \$77,882 at December 31, 2021 and 2020, respectively. The amount paid by this entity for rent expense was \$50,857 and \$18,191 for the years ended December 31, 2021 and 2020, respectively.

5. Paycheck Protection Program

As a result of the COVID-19 outbreak, the Company applied for funding through the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to fund payroll costs and assist with operating expenses. As a result, the Company signed a promissory note with a financial institution in April 2020 for \$66,800. The Company received forgiveness in accordance with the regulations of the Paycheck Protection Program in February 2021 for the full amount of the promissory note. This amount was recognized as other income in the accompanying statements of operations.

As a result of the COVID-19 outbreak, the Company applied for funding through the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to fund payroll costs and assist with operating expenses. As a result, the Company received funding in February 2021 in the amount of \$64,158. The Company received forgiveness in accordance with the regulations of the Paycheck Protection Program in 2021 for the full amount of the promissory note. This amount was recognized as other income in the accompanying statements of operations.

**WINE AND DESIGN FRANCHISE LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2021 and 2020

6. Commitments and Contingencies

In May 2017, the Company entered into a consulting agreement, whereby the Company is committed to pay \$.05 per painter/ticker sold and \$300 for each new franchise agreement entered into by the Company. The consulting agreement will terminate on the earlier of a) the termination of the consulting agreement by the Company, b) termination of the consulting agreement by the consultant for any reason upon notice to the Company, or c) sale of the Company. Termination fees apply as defined in the agreement. Amounts accrued as of December 31, 2021 and 2020 totaled \$3,544 and \$3,080, respectively. Amounts expensed totaled \$5,222 and \$6,160 for the years ended December 31, 2021 and 2020, respectively, and are included in consulting fees on the accompanying statements of operations.

7. Uncertainties

As a result of the COVID-19 outbreak in the United States, economic uncertainties have arisen which may have a negative impact on the Company's financial results in the future. The extent of the impact of COVID-19 on the operation and financial performance of the Company will depend on certain developments, including duration and spread of the outbreak and impact on customers, employees, and vendors, which are uncertain at this time. The extent to which COVID-19 may impact the Company's financial condition or results in the future is uncertain.

8. Subsequent Events

Management evaluates events occurring subsequent to the date of the financial statements in determining the accounting for and disclosure of transactions and events that affect the financial statements. Subsequent events have been evaluated through May 24, 2022, which is the date the financial statements were available to be issued.

**EXHIBIT D**

**WINE AND DESIGN**

**STATE SPECIFIC DISCLOSURES AND AGREEMENT AMENDMENTS**

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURES  
REQUIRED BY CALIFORNIA**

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

OUR WEBSITE ([www.wineanddesign.com](http://www.wineanddesign.com)) HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION at [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

CHANGES TO THE FDD DOCUMENT AS REQUIRED BY CALIFORNIA LAW:

1. In addition to the disclosure in Item 3 of the FDD, the following statement will also apply:

Neither the franchisor, any person or franchise broker in Item 2 of the FDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

2. In addition to the disclosure in Item 17 of the FDD, the following statements will also apply:

The franchisor, any person or franchise broker in Item 2 of the FDD is not subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

a. California Business and Professions Code 20000 through 20043 provide rights to the franchisee concerning termination, transfer or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.

b. The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law. (11 U.S.C.A. Sec. 101 et seq.).

c. The franchise agreement contains a covenant not to compete, which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

d. The franchise agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

e. The franchise agreement requires binding arbitration. The arbitration will occur at our headquarters in Raleigh, North Carolina with the costs being borne by the losing party to such arbitration. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

f. The franchise agreement requires application of the laws of North Carolina. This provision may not be enforceable under California law.

g. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.

h. Furthermore, *if applicable*, disclose: You must sign a general release of claims if you renew or transfer your franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 Voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

3. Any interest rate charged to a California franchisee shall comply with the California Constitution. The interest rate shall not exceed either (a) 10% annually or (b) 5% annually plus the prevailing interest rate charged to banks by the Federal Reserve Bank of San Francisco, whichever is higher.

4. No disclaimer, questionnaire, clause, or statement signed by a franchisee in connection with the commencement of the franchise relationship shall be construed or interpreted as waiving any statutory claim under the California Franchise Investment Law, or as disclaiming reliance on or the right to rely upon any statement made or information provided by any franchisor, broker or other person acting on behalf of the franchisor that was a material inducement to a franchisee's investment. Any statements or representations signed by a franchisee purporting to understand any fact or its legal effect shall be deemed made only based upon the franchisee's understanding of the law and facts as of the time of the franchisee's investment decision. This provision supersedes any other or inconsistent term of any document executed in connection with the franchise.

**The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the Commissioner.**

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURES  
REQUIRED BY MARYLAND**

1. The following language shall be added to 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 shall be added to Item 17:

Any claim arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

Any general release required as a condition of renewal, sale and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

You are advised that a provision in the Wine and Design Franchise Agreement that provides for automatic termination of your franchise license if you file for protection under any section of the federal bankruptcy law may not be enforceable under that law (11 U.S.C. Section 101 et seq.).

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

3. The following language shall be additionally added to Item 17:

The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

4. No statement, questionnaire or acknowledgement 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, or (ii) disclaiming reliance on behalf of the Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## MARYLAND AMENDMENT TO FRANCHISE AGREEMENT

Section 3 entitled Franchise Fees and Payments is revised to include the following:

Based upon Franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by Franchisee shall be deferred until Franchisor completes its pre-opening obligations under this Agreement and your Franchised Studio opens for business.

Section 13 entitled Transfer; Franchisor's Right of First Refusal is revised to include the following:

The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

Section 20 entitled Franchisee Representations is revised to include the following:

All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

Subsections 20(a), (b), and (d) are deleted in full.

Section 21 entitled Governing Law, Jurisdiction and Venue is revised to include the following:

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

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

Section 23 entitled Miscellaneous is revised to include the following:

All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

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.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**FRANCHISEE:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

MARYLAND AMENDMENT TO AREA DEVELOPMENT AGREEMENT

Section 6 entitled Development Fees is revised to include the following:

Based upon Franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by Developer shall be deferred until the first Wine and Design Studio to be developed under this agreement opens.

Section 11.02 entitled Choice of Law Jurisdiction and Venue shall be amended to include the following:

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

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

Section 12 entitled Miscellaneous is revised to include the following:

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.

**IN WITNESS WHEREOF**, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**DEVELOPER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURES  
REQUIRED BY 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 E 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 FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE 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, 21<sup>ST</sup> FLOOR, NEW YORK, NY 10005. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of Item 4:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of the offering circular: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or

(c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after that officer or general partner of the franchisor held this position in the company or partnership.

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

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

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

However, to the extent required by applicable law, all rights you enjoy 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; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

6. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”: You may terminate the agreement on any grounds available by law.

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

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

8. 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”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

9. No statement, questionnaire or acknowledgement 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, or (ii) disclaiming reliance on behalf of the Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

NEW YORK AMENDMENT TO FRANCHISE AGREEMENT

Section 11(e) entitled Operations, Standards of Quality, and Inspections - Manuals of the Franchise Agreement is revised to include the following:

Revisions to the Manual will not unduly affect your obligations, including economic requirements, under this Agreement.

Section 13(a) entitled Transfers by Franchisor is revised to include the following language:

Franchisor will not assign its rights under this Agreement, except to an assignee who in its good faith and judgment is willing and able to assume Franchisor's obligations under this Agreement.

Section 21(b) entitled Injunctive Relief of the Franchise Agreement is revised to include the following language:

Franchisor's right to obtain injunctive relief exists only after proper proofs are made and the appropriate authority has granted such relief.

Section 21(h) entitled Governing Law of the Franchise Agreement is revised to include the following language:

"Provided, however, that all rights arising in the favor from the provisions of Article 33 of the GBL of the State of New York and the regulations issues thereunder shall remain in force, it being the intent of this provision that the non-waiver provisions of GBL sections 687.4 and 687.5 be satisfied."

**IN WITNESS WHEREOF**, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**FRANCHISEE:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NEW YORK AMENDMENT TO DEVELOPMENT AGREEMENT

Section 9.02 is revised to include the following language:

Franchisor will not assign its rights under this Agreement, except to an assignee who in its good faith and judgment is willing and able to assume Franchisor's obligations under this Agreement.

Section 10.02 is revised to include the following language:

Franchisor's right to obtain injunctive relief exists only after proper proofs are made and the appropriate authority has granted such relief.

Section 11 is revised to include the following language:

"Provided, however, that all rights arising in the favor from the provisions of Article 33 of the GBL of the State of New York and the regulations issues thereunder shall remain in force, it being the intent of this provision that the non-waiver provisions of GBL sections 687.4 and 687.5 be satisfied."

**IN WITNESS WHEREOF**, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**DEVELOPER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURES  
REQUIRED BY NORTH DAKOTA**

**Item 17, Additional Disclosures.** The following statements are added to Item 17:

The North Dakota Securities Commissioner has held the following to be unfair, unjust, or inequitable to North Dakota franchisees (Section 51-19-09, N.D.C.C.):

- A. Restrictive Covenants: Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.
- B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.
- C. Restriction on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- D. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- E. Applicable Laws: Franchise agreements which specify that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.
- F. Waiver of Trial by Jury: Requiring North Dakota franchisees to consent to the waiver of a trial by jury.
- G. Waiver of Exemplary and Punitive Damages: Requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.
- H. General Release: Requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.
- I. Limitation of Claims: Requiring that North Dakota franchisees to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
- J. Enforcement of Agreement: Requiring that North Dakota franchisees to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

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.

Each provision of the Additional Disclosures shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such

provision, are met independent of the Additional Disclosures. The Additional Disclosures shall have no force or effect if such jurisdictional requirements are not met.

## NORTH DAKOTA AMENDMENT TO FRANCHISE AGREEMENT

1. The provisions of this Addendum form an integral part of, and are incorporated into, the Franchise Agreement. This Addendum is being executed because: **(A)** the offer or sale of a franchise to you was made in the State of North Dakota; **(B)** you are a resident of the State of North Dakota; and/or **(C)** the Franchised Business will be located in the State of North Dakota.
  
2. The North Dakota Securities Commissioner has held the following to be unfair, unjust, or inequitable to North Dakota franchisees (Section 51-19-09, N.D.C.C.):
  - A. Restrictive Covenants: Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.
  - B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.
  - C. Restriction on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
  - D. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
  - E. Applicable Laws: Franchise agreements which specify that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.
  - F. Waiver of Trial by Jury: Requiring North Dakota franchisees to consent to the waiver of a trial by jury.
  - G. Waiver of Exemplary and Punitive Damages: Requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.
  - H. General Release: Requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.
  - I. Limitation of Claims: Requiring that North Dakota franchisees to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
  - J. Enforcement of Agreement: Requiring that North Dakota franchisees to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.
  
3. 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.

4. Any capitalized terms that are not defined in this Addendum shall have the meaning given them in the Franchise Agreement.
5. Except as expressly modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.
6. This Addendum may be executed in multiple counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Addendum by electronic transmission (including PDF) shall be as effective as delivery of a manually executed counterpart of this Addendum.

**IN WITNESS WHEREOF**, the parties have duly executed, sealed and delivered this Addendum as of the Effective Date identified below.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**AREA DEVELOPER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## NORTH DAKOTA AMENDMENT TO AREA DEVELOPMENT AGREEMENT

1. The provisions of this Addendum form an integral part of, and are incorporated into, the Development Agreement. This Addendum is being executed because: **(A)** the offer or sale of a franchise to you was made in the State of North Dakota; **(B)** you are a resident of the State of North Dakota; and/or **(C)** part or all of the Development Area is located in the State of North Dakota.
2. The North Dakota Securities Commissioner has held the following to be unfair, unjust, or inequitable to North Dakota franchisees (Section 51-19-09, N.D.C.C.):
  - A. Restrictive Covenants: Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.
  - B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.
  - C. Restriction on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
  - D. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
  - E. Applicable Laws: Franchise agreements which specify that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.
  - F. Waiver of Trial by Jury: Requiring North Dakota franchisees to consent to the waiver of a trial by jury.
  - G. Waiver of Exemplary and Punitive Damages: Requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.
  - H. General Release: Requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.
  - I. Limitation of Claims: Requiring that North Dakota franchisees to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
  - J. Enforcement of Agreement: Requiring that North Dakota franchisees to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.
4. 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.

5. Any capitalized terms that are not defined in this Addendum shall have the meaning given them in the Development Agreement.
6. Except as expressly modified by this Addendum, the Area Development Agreement remains unmodified and in full force and effect.
7. This Addendum may be executed in multiple counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Addendum by electronic transmission (including PDF) shall be as effective as delivery of a manually executed counterpart of this Addendum.

**IN WITNESS WHEREOF**, the parties have duly executed, sealed and delivered this Addendum as of the Effective Date identified below.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**AREA DEVELOPER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURES  
REQUIRED BY THE COMMONWEALTH OF VIRGINIA**

In recognition of the Virginia Retail Franchising Act, the Franchise Disclosure Document for WINE AND DESIGN FRANCHISE LLC for use in the Commonwealth of Virginia shall be amended to include the following:

1. **Initial Fees, Item 5.** The following is added to Item 5:

“The Virginia State Corporation Commission’s Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement”.

2. **Termination, Item 17.** The following is added to Item 17.f:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the franchise agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

3. No statement, questionnaire or acknowledgement 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, or (ii) disclaiming reliance on behalf of the Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

This Additional Disclosure shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Virginia Retail Franchising Act are met independently, without reference to these Additional Disclosures

VIRGINIA FRANCHISE AGREEMENT AMENDMENT

In recognition of the requirements of the Virginia Retail Franchising Act, Virginia Code sections 13, 1-557 et seq., the attached WINE AND DESIGN FRANCHISE LLC FRANCHISE AGREEMENT (the "Agreement") is supplemented as follows:

1. The following is added to the end of Section 3(a) of the Franchise Agreement:

The Virginia State Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

2. To the extent this Amendment is deemed to be inconsistent with any terms or conditions of the Agreement, the terms of this Amendment shall govern.

**IN WITNESS WHEREOF**, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**FRANCHISEE:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

VIRGINIA AMENDMENT TO AREA DEVELOPMENT AGREEMENT

In recognition of the requirements of the Virginia Retail Franchising Act, Virginia Code sections 13, 1-557 et seq., the attached WINE AND DESIGN FRANCHISE LLC AREA DEVELOPMENT AGREEMENT (the “Agreement”) is supplemented as follows:

1. The following is added to the end of Section 6 of the Agreement:

The Virginia State Corporation Commission’s Division of Securities and Retail Franchising requires us to defer payment of the development fee owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the development agreement.

2. To the extent this Amendment is deemed to be inconsistent with any terms or conditions of the Agreement, the terms of this Amendment shall govern.

IN WITNESS WHEREOF, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**AREA DEVELOPER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## WASHINGTON ADDENDUM TO DISCLOSURE DOCUMENT

The Disclosure Document is amended by the addition of the following:

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

Item 5 of the FDD is amended by the addition of the following:

In lieu of an impound of franchise fees, the Franchisor will not require or accept the payment of any initial franchise fees until the franchisee has (a) received all pre-opening and initial training obligations that it is entitled to under the franchise agreement or offering circular, and (b) is open for business.

No statement, questionnaire or acknowledgement 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, or (ii) disclaiming reliance on behalf of the Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

The provisions of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act are met independently without reference to this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

## WASHINGTON FRANCHISE AGREEMENT AMENDMENT

This Addendum to the Wine and Design Franchise, LLC Franchise Agreement dated \_\_\_\_\_ (“Franchise Agreement”) between Wine and Design Franchise, LLC (“we,” “us,” and “our”) and \_\_\_\_\_ (“you” and “your”) is entered into simultaneously with the execution of the Franchise Agreement.

The following statement is added to Section 3 of the Franchise Agreement:

In lieu of an impound of franchise fees, the Franchisor will not require or accept the payment of any initial franchise fees until the franchisee has (a) received all pre-opening and initial training obligations that it is entitled to under the franchise agreement or offering circular, and (b) is open for business.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee’s earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor’s earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

The undersigned does hereby acknowledge receipt of this Amendment.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**FRANCHISEE:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## WASHINGTON AMENDMENT TO AREA DEVELOPMENT AGREEMENT

The following statement is added to Section 6 of the Area Development Agreement:

In lieu of an impound of franchise fees, the Franchisor will not require or accept the payment of any initial fees until the franchisee has (a) received all pre-opening and initial training obligations that it is entitled to under the Area Development Agreement, and (b) is open for business. Because franchisor has material pre-opening obligations with respect to each franchised business Franchisee opens under the Area Development Agreement, payment of the franchise fee will be released proportionally with respect to each franchise outlet opened and until franchisor has met all its pre-opening obligations under the Agreement and Franchisee is open for business with respect to each such location.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

The undersigned does hereby acknowledge receipt of this Amendment.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, parties hereto have duly executed this Amendment on \_\_\_\_\_,  
20\_\_\_\_\_.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**DEVELOPER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT E**

**WINE AND DESIGN**

**LIST OF STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS**

## LIST OF STATE ADMINISTRATORS

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

<p><b>CALIFORNIA</b>  Commissioner of Financial Protection and Innovation  Department of Financial Protection and Innovation  320 West Fourth Street, Suite 750  Los Angeles, California 90013-2344  (213) 576-7500 / Toll Free: (866) 275-2677  Email: ASK.DFPI@dfpi.ca.gov  Website: <a href="http://www.dfpi.ca.gov">http://www.dfpi.ca.gov</a></p>	<p><b>NEW YORK</b>  NYS Department of Law  Investor Protection Bureau  28 Liberty St. 21st Fl  New York, NY 10005  (212) 416-8222</p>
<p><b>HAWAII</b>  Commissioner of Securities  Department of Commerce &amp; Consumer Affairs  Business Registration Division  Securities Compliance Branch  335 Merchant Street, Room 203  Honolulu, Hawaii 96813  (808) 586-2722</p>	<p><b>NORTH DAKOTA</b>  North Dakota Securities Department  State Capitol  Department 414  600 East Boulevard Avenue, Fourteenth Floor  Bismarck, North Dakota 58505-0510  (701) 328-4712</p>
<p><b>ILLINOIS</b>  Illinois Office of the Attorney General  Franchise Bureau  500 South Second Street  Springfield, Illinois 62706  (217) 782-4465</p>	<p><b>RHODE ISLAND</b>  Department of Business Regulation  Securities Division, Building 69, First Floor  John O. Pastore Center  1511 Pontiac Avenue  Cranston, Rhode Island 02920  (401) 462-9527</p>
<p><b>INDIANA</b>  Secretary of State  Franchise Section  302 West Washington, Room E-111  Indianapolis, Indiana 46204  (317) 232-6681</p>	<p><b>SOUTH DAKOTA</b>  Division of Insurance  Securities Regulation  124 South Euclid Avenue, 2<sup>nd</sup> Floor  Pierre, South Dakota 57501  (605) 773-3563</p>
<p><b>MARYLAND</b>  Office of the Attorney General  Securities Division  200 St. Paul Place  Baltimore, Maryland 21202-2020  (410) 576-6360</p>	<p><b>VIRGINIA</b>  State Corporation Commission  Division of Securities and Retail Franchising  1300 East Main Street, 9th Floor  Richmond, Virginia 23219  (804) 371-9051</p>
<p><b>MICHIGAN</b>  Michigan Attorney General’s Office  Corporate Oversight Division, Franchise Section  525 West Ottawa Street  G. Mennen Williams Building, 1<sup>st</sup> Floor  Lansing, Michigan 48913  (517) 335-7567</p>	<p><b>WASHINGTON</b>  Department of Financial Institutions  Securities Division  P.O. Box 41200  Olympia, Washington 98504-1200  (360) 902-8760</p>
<p><b>MINNESOTA</b>  Minnesota Department of Commerce  85 7<sup>th</sup> Place East, Suite 280  St. Paul, Minnesota 55101  (651) 539-1600</p>	<p><b>WISCONSIN</b>  Division of Securities  4822 Madison Yards Way, North Tower  Madison, Wisconsin 53705  (608) 266-2139</p>

**AGENTS FOR SERVICE OF PROCESS**

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states. There may be states in addition to those listed below in which we have appointed an agent for service of process. There may also be additional agents in some of the states listed.

<p><b>CALIFORNIA</b>          Commissioner of Financial Protection and Innovation          Department of Financial Protection and Innovation          320 West Fourth Street, Suite 750          Los Angeles, California 90013-2344          (213) 576-7500 / Toll Free: (866) 275-2677          Email: ASK.DFPI@dfpi.ca.gov          Website: http://www.dfpi.ca.gov</p>	<p><b>NEW YORK</b>          New York Secretary of State          One Commerce Plaza          99 Washington Avenue          Albany, NY 12231          (518) 473-2492</p>
<p><b>HAWAII</b>          Commissioner of Securities          Department of Commerce &amp; Consumer Affairs          Business Registration Division          Securities Compliance Branch          335 Merchant Street, Room 203          Honolulu, Hawaii 96813          (808) 586-2722</p>	<p><b>NORTH DAKOTA</b>          North Dakota Securities Commissioner          State Capitol          Department 414          600 East Boulevard Avenue, Fourteenth Floor          Bismarck, North Dakota 58505-0510          (701) 328-4712</p>
<p><b>ILLINOIS</b>          Illinois Attorney General          500 South Second Street          Springfield, Illinois 62706          (217) 782-4465</p>	<p><b>RHODE ISLAND</b>          Director of Department of Business Regulation          Department of Business Regulation          Securities Division, Building 69, First Floor          John O. Pastore Center          1511 Pontiac Avenue          Cranston, Rhode Island 02920          (401) 462-9527</p>
<p><b>INDIANA</b>          Secretary of State          Franchise Section          302 West Washington, Room E-111          Indianapolis, Indiana 46204          (317) 232-6681</p>	<p><b>SOUTH DAKOTA</b>          Division of Insurance          Director of the Securities Regulation          124 South Euclid Avenue, 2<sup>nd</sup> Floor          Pierre, South Dakota 57501          (605) 773-3563</p>
<p><b>MARYLAND</b>          Maryland Securities Commissioner          200 St. Paul Place          Baltimore, Maryland 21202-2020          (410) 576-6360</p>	<p><b>VIRGINIA</b>          Clerk of the State Corporation Commission          1300 East Main Street, 1<sup>st</sup> Floor          Richmond, Virginia 23219          (804) 371-9733</p>
<p><b>MICHIGAN</b>          Michigan Attorney General’s Office          Corporate Oversight Division, Franchise Section          525 West Ottawa Street          G. Mennen Williams Building, 1<sup>st</sup> Floor          Lansing, Michigan 48913          (517) 335-7567</p>	<p><b>WASHINGTON</b>          Director of Department of Financial Institutions          Securities Division – 3<sup>rd</sup> Floor          150 Israel Road, Southwest          Tumwater, Washington 98501          (360) 902-8760</p>
<p><b>MINNESOTA</b>          Commissioner of Commerce          Minnesota Department of Commerce          85 7<sup>th</sup> Place East, Suite 280          St. Paul, Minnesota 55101          (651) 539-1600</p>	<p><b>WISCONSIN</b>          Division of Securities          4822 Madison Yards Way, North Tower          Madison, Wisconsin 53705          (608) 266-2139</p>

**EXHIBIT F**

**WINE AND DESIGN**

**GENERAL RELEASE**

## GENERAL RELEASE

**THIS GENERAL RELEASE** (“Release”) is executed on \_\_\_\_\_ by \_\_\_\_\_ (“Franchisee”) and/or \_\_\_\_\_ (“Guarantors”) as a condition of (1) the transfer of the Wine and Design Franchise Agreement dated \_\_\_\_\_ between WINE AND DESIGN FRANCHISE LLC (“Wine and Design”) and Franchisee (“Franchise Agreement”), or the Wine and Design Development Agreement dated \_\_\_\_\_ between WINE AND DESIGN FRANCHISE LLC (“Wine and Design”) and Franchisee (“Development Agreement”); or (2) the execution of a renewal Franchise Agreement by Franchisee and Wine and Design.

**1. Release by Franchisee and Guarantors.** If Franchisee is an entity, Franchisee (on behalf of itself and its parents, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, agents and employees, in their corporate and individual capacities) and Guarantors (on behalf of themselves and their respective heirs, representatives, successors and assigns) or, if Franchisee is an individual, Franchisee (on behalf of himself/herself and his/her heirs, representatives, successors and assigns) (collectively, “Releasors”) freely and without any influence forever release Wine and Design, its parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, agents and employees, in their corporate and individual capacities (collectively, “Releasees”), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, “Claims”), which any Releasor ever owned or held, now owns or holds or may in the future own or hold, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to, the Development Agreement and/or Franchise Agreement and all other agreements between any Releasor and any Release arising out of, or relating to any act, omission or event occurring on or before the date of this Release, unless prohibited by applicable law. This general release shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

**2. Risk of Changed Facts.** Franchisee and Guarantors understand that the facts in respect of which the release in Section 1 is given may turn out to be different from the facts now known or believed by them to be true. Franchisee and Guarantors hereby accept and assume the risk of the facts turning out to be different and agree that the release in Section 1 shall nevertheless be effective in all respects and not subject to termination or rescission by virtue of any such difference in facts.

**3. No Prior Assignment.** Franchisee and Guarantors represent and warrant that the Releasors are the sole owners of all Claims and rights released in Section 1 and that the Releasors have not assigned or transferred, or purported to assign or transfer, to any person or entity, any Claim released under Section 1.

**4. Covenant Not to Sue.** Franchisee and Guarantors (on behalf of Releasors) covenant not to initiate, prosecute, encourage, assist, or (except as required by law) participate in any civil, criminal, or administrative proceeding or investigation in any court, agency, or other forum, either affirmatively or by way of cross-claim, defense, or counterclaim, against any person or entity released under Section 1 with respect to any Claim released under Section 1.

**5. Complete Defense.** Franchisee and Guarantors: **(a)** acknowledge that the release in Section 1 shall be a complete defense to any Claim released under Section 1; and **(b)** consent to the entry of a temporary or permanent injunction to prevent or end the assertion of any such Claim.

**6. Successors and Assigns.** This Release will inure to the benefit of and bind the successors, assigns, heirs and personal representatives of Wine and Design and each Releasor.

**7. Third Party Beneficiary.** Wine and Design and its parent, affiliates and subsidiaries shall be third party beneficiaries under this Release.

**8. Representation by Counsel.** Franchisee and Guarantors acknowledge and agree that they have been represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Release, and that they have executed this Release with the consent and upon the advice of said independent counsel.

**9. Enforcement.** This Release and all claims relating to this Release shall be governed by and construed under the law of North Carolina. Franchisee and Guarantors shall file any controversy or claim whatsoever arising out of or relating to this Release or the enforcement of the promises in this Release or with regard to the interpretation, formation, or breach of this Release in the court where Wine and Design's principal offices are located. Wine and Design may file any controversy or claim whatsoever arising out of or relating to this Release or the enforcement of the promises in this Release or with regard to the interpretation, formation, or breach of this Release in the court where its principal offices are located, where Franchisee resides or does business, or where the claim arose.

**10. Confidentiality.** The terms of this Release shall remain confidential and may not be disclosed except when and to the extent necessary to comply with applicable federal, state, or local laws, court orders or regulations.

**11. Construction.** Any capitalized terms that are not defined in this Release shall have the meaning given them in the Development Agreement and Franchise Agreement, as the context requires. The masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular to refer to and include the plural, and vice versa.

*This Release does not apply with respect to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.*

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, Franchisee and Guarantors have executed this Release as of the date shown above.

**ATTEST:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title \_\_\_\_\_

**WITNESS:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**FOR ENTITY:  
FRANCHISEE:**

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

**GUARANTOR:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**FOR INDIVIDUAL:  
FRANCHISEE:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT G**

**WINE AND DESIGN**

**ACH/EFT TRANSFER AGREEMENT**

**ACH/EFT TRANSFER AGREEMENT**



**AUTHORIZATION TO HONOR CHECKS AND DEBITS BY AND PAYABLE TO THE FOLLOWING PAYEE(S):**

1. (CHECK EACH APPLICABLE BOX)

	<b>BANK NAME</b>	<b>ACCOUNT#</b>	<b>ABA#</b>
<input type="checkbox"/> <b>WINE AND DESIGN FRANCHISE LLC</b>	_____	_____	_____
<input type="checkbox"/> <b>OTHER</b>	_____	_____	_____
<input type="checkbox"/> <b>OTHER</b>	_____	_____	_____

2. Bank Account in Name of:

**ATTACH ONE VOIDED CHECK FOR THE ABOVE ACCOUNT TO THIS SHEET**

3. Studio Location: \_\_\_\_\_ Studio # \_\_\_\_\_

4. For Information Call: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

**TO THE BANK DESIGNATED:**

You are hereby requested and authorized to honor and to charge to the foregoing account, checks and electronic debits (collectively, "debits") drawn on such account which are payable to any of the above named Payees. It is agreed that rights with respect to each such debit shall be the same as if it bore a signature authorized for such account. It is further agreed that if any such debit is not honored, whether with or without cause, you shall be under no liability whatsoever. This authorization shall continue in force until revocation in writing is received by you.

5. DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

6. \_\_\_\_\_  
Name of Franchisee/Payor (please print)

7. By: \_\_\_\_\_

SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE

## **INDEMNIFICATION AGREEMENT**

To the above named Payee and the Bank Designated:

The Payor agrees with respect to any action taken pursuant above authorization:

1. To indemnify the Bank and hold it harmless from any loss it may suffer resulting from or in connection with any debit, including, without limitation, execution and issuance of any check, draft or order, whether or not genuine, purporting to be authorized or executed by the Payee and received by the Bank in the regular course of business for the purpose of payment, including any costs or expenses reasonably in collection therewith.
2. To indemnify Payee and the Bank for any loss arising in the event that any such debit shall be dishonored, whether with or without cause and whether intentionally or inadvertently.
3. To defend at our own cost and expense any action which might be brought by any depositor or any other persons because of any actions taken by the Bank of Payee pursuant to the foregoing request and authorization, or in any manner arising by reason of the Bank's or Payee's participation therein.

**BE SURE THAT ALL INFORMATION ASKED FOR IS PROVIDED**

**EXHIBIT H**

**WINE AND DESIGN**  
**ACCOUNTANT AUTHORIZATION**

**ACCOUNTANT AUTHORIZATION**

WINE AND DESIGN FRANCHISE LLC

THIS ACCOUNTANT AUTHORIZATION (“Authorization”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as “Franchisee”).

WHEREAS, on \_\_\_\_\_, Franchisee and WINE AND DESIGN FRANCHISE LLC, a North Carolina corporation (hereinafter referred to as “WINE AND DESIGN”) entered into an agreement governing their franchise relationship (“Franchise Agreement”), hereby incorporated by reference; and

WHEREAS, Pursuant to Section 11 of the Franchise Agreement and the WINE AND DESIGN Operations Manual, Franchisee agrees to permit WINE AND DESIGN to obtain directly from any and all of Franchisee’s accounting and other financial institutions (“Service Providers”) all of Franchisee’s financial information.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Franchisee hereto agrees as follows:

1. Franchisee hereby authorizes any and all of Franchisee’s Service Providers to release directly to WINE AND DESIGN all of Franchisee’s financial information, confidential or otherwise, related to the franchised business and to permit WINE AND DESIGN to inspect and copy such records, including, but not limited to, income, sales, payment tax returns, financial ledgers, accountant working papers, financial statements, and supporting bank statements, as WINE AND DESIGN may request from time to time.
2. This Authorization is irrevocable and shall remain in effect from the date hereof so long as the Franchise Agreement is still in effect.
3. Franchisee hereby releases and forever discharges WINE AND DESIGN and Service Providers from any and all liability associated with the release of Franchisee’s financial information pursuant to this Authorization.
4. In event that any provision or portion of this Authorization shall be determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Authorization be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law.
5. This Agreement shall be governed by and construed and interpreted in accordance with the laws of North Carolina without reference to principles of conflict of laws.

By signing below you agree to be bound by the foregoing terms and conditions.

\_\_\_\_\_  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I**

**WINE AND DESIGN**

**AREA DEVELOPMENT AGREEMENT**

## Area Development Agreement

This Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ is made by and between \_\_\_\_\_ referred to as (“Developer”) and Wine and Design Franchise LLC, a North Carolina limited liability company with its principal place of business located at 510 W Martin Street, Suite 300, Raleigh, NC 27603, referred to as (“Wine and Design” or “Franchisor”).

WHEREAS, Wine and Design is the owner of the Wine and Design franchise system and is the franchisor of Wine and Design Studios specializing in offering art studio classes during which patrons enjoy a relaxing and pressure free creative environment and food and beverages of their choosing as well as children’s art programs;

WHEREAS, Wine and Design grants franchise licenses to individuals to operate Wine and Design Studios at various locations within the United States. Each Wine and Design license is governed by the terms of a Wine and Design Franchise Agreement (“Franchise Agreement”) that a franchisee or dealer is required to sign before they can open a Wine and Design Studio;

WHEREAS, Developer has expressed a desire to develop Wine and Design Studios (the “Wine and Design Studios”) and be the exclusive Developer of these Wine and Design Studios in the market designated in **Schedule I** of this Agreement, which is attached hereto and incorporated by reference for all purposes (the “Area”);

WHEREAS, Wine and Design, upon the fulfillment of certain conditions by Developer, is desirous of granting such Development Rights (“Development Rights”) to Developer;

WHEREAS, the parties to this Agreement desire that the terms of the Development Rights be contained in this Agreement.

NOW THEREFORE, in consideration for the mutual promises contained herein and other valuable consideration, subject to the terms and conditions hereof, it is mutually agreed between the parties as follows:

### 1. **Grant**

- 1.01 Wine and Design hereby grants to the Developer the right to be the exclusive Developer of the Wine and Design franchise system within the Area defined in Schedule I, subject to the terms and conditions stated in this Agreement and the governing terms and conditions of each applicable Unit Franchise Agreement (“Unit Franchise Agreement”). Developer hereby accepts the grant of these area Development Rights, and agrees to open and operate a series of Wine and Design Studios in accordance with the development schedule attached to this Agreement as **Schedule II** (“Area Development Schedule” or “Development Schedule”) during the initial term of this Agreement as defined in Section 4 of this Agreement. The fees payable under each Unit Franchise Agreement shall be paid in accordance with the terms of such Unit Franchise Agreement, subject to the terms in Section 6 of this Agreement.
- 1.02 The term “Open” as used in this Agreement shall mean the completion by the Developer of the following undertakings: (i) the execution by Developer and Franchisor of the then current Unit Franchise Agreement and payment of all initial fees required therein; (ii) Developer has entered into a lease, sublease, or purchase agreement for the Studio; (iii) Developer has obtained all required licensing by state or local authorities; and (iv) the Studio is in fact open for business to the general public.

- 1.03 For each of the Wine and Design Studios to be developed by Developer, pursuant to this Area Development Agreement, it shall execute the then current Wine and Design Franchise Agreement.
- 1.04 This Area Development Agreement (“Agreement”) is not to be construed as a franchise agreement and this agreement does not give the Developer the right to use the Wine and Design Franchise System, or Wine and Design’s name or trademarks. The rights to use the Wine and Design System and Wine and Design’s name, trademarks, and proprietary marks shall be granted only in the Unit Franchise Agreements executed by Developer in accordance with its Development Rights.
- 1.05 In conjunction with the development of the Wine and Design Franchise System in the Area, Developer shall not use the Wine and Design name or trademarks in its trade name or as part of its corporate name, if applicable, except that the Wine and Design Studios referred to in the Unit Franchise Agreements shall be referred to as Wine and Design Studios.
- 1.06 Nothing in this Area Development Agreement shall be construed as governing the use of or the implementation of the Wine and Design Franchise System, such rights and requirements being contained in each Unit Franchise Agreement.

2. **Execution of Unit Franchise Agreements**

- 2.01 In conjunction with the opening of each Studio by Developer pursuant to this Agreement, Developer shall sign Wine and Design’s then current Unit Franchise Agreement for each location prior to opening such Studio. Each Unit Franchise Agreement shall be for a term of 10 years.
- 2.02 In the event that Developer is in default of any of the governing Unit Franchise Agreements, they shall be prohibited from opening any additional Wine and Design Studio(s) pursuant to this Development Agreement or any other agreements until such default(s) are cured to Wine and Design’s satisfaction to the extent that they are subject to cure. If any of the Unit Franchise Agreements are terminated, except as provided for in this Agreement, the Agreement shall terminate. However, to the extent that Developer is not in default of other existing Unit Franchise Agreements, they can continue to operate under those agreements, and they shall remain in full force and effect, unless and until such Unit Franchise Agreement(s) may be terminated pursuant to their specific terms.

3. **Development Schedule**

- 3.01 In consideration for the grant of the exclusive rights granted by Wine and Design to Developer to develop the Area, the Developer will develop a total of \_\_\_ Wine and Design Studios within and pursuant to the development schedule that is attached to this agreement as Schedule II, and incorporated by reference for all purposes (“Development Schedule”).
- 3.02 Nothing in this section shall prevent Developer from developing more Wine and Design Studios than the minimum number shown on the Development Schedule for the Area, provided that Developer signs a Unit Franchise Agreement for each additional Studio, complies with the terms of each such Unit Franchise Agreement, and opens those additional Wine and Design Studios prior to the end of the Term of this Agreement. Developer shall have no exclusive rights to develop Wine and Design Studios in the Area after the expiration of the Term of this Agreement, unless the Agreement is further extended pursuant to Section 4.03 of this Agreement.

- 3.03 The failure by Developer to adhere to the Development Schedule shall result in the termination of the Area Development Agreement. Thereafter, the Developer shall lose the exclusivity granted in this Agreement. Upon the termination of this Agreement for any reason, Developer shall forfeit all of the Development Fees paid by it to Franchisor. Notwithstanding anything stated to the contrary, Developer may continue to operate its existing Wine and Design Studios under its existing Unit Franchise Agreements, but without the exclusivity provided in this Agreement, for so long as it is not in default of such agreement(s) or the expiration of their respective term(s), whichever occurs first.
- 3.04 All sites that Developer wishes to operate as Wine and Design Studios shall be approved by Franchisor in accordance with the terms of the governing Unit Franchise Agreement, prior to the time that it opens such Wine and Design Studio.

4. **Term of Development Agreement**

- 4.01 This Area Development Agreement shall remain in full force and effect, unless earlier terminated by the provisions of this Agreement, until the development of the last Studio listed on the Development Schedule, subject to any modification, but in no event shall it extend beyond \_\_\_\_\_20\_\_ (“Term”).
- 4.02 The termination of this Area Development Agreement shall not effect the then existing Unit Franchise Agreements for the then existing Wine and Design Studios, provided that Developer is not in default of each such Unit Franchise Agreement.
- 4.03 At the end of the term of this Agreement, provided that Developer is in compliance with the terms of this Agreement and all of its Unit Franchise Agreements, then Franchisor will grant Developer an opportunity to extend this Agreement for a term equal to one year for each additional Studio over and above the number specified in the Development Schedule. In order to exercise this option, Developer shall sign an Extension Agreement and must pay to Franchisor at the time of such exercise, a Successor Development fee for each Studio to be covered in such term extension, equal to \$2,500.00. There shall be attached to the extension of this Agreement a new Development Schedule that will define the dates upon which each additional Studio must open.

5. **Nature of Exclusive Rights**

- 5.01 The exclusive rights granted to Developer as outlined in Article 1 of the Agreement shall expire upon the expiry of the Area Development Agreement, or sooner terminated as provided by this Agreement, unless this agreement shall be further extended as provided by Article 4.03 the Agreement.
- 5.02 Upon the termination of the Agreement, Wine and Design shall have the right to develop and establish franchised or company owned Studios within the Area, subject only to any territorial exclusivity granted in the governing Unit Franchise Agreement(s).
- 5.03 Nothing in the grant of this exclusivity shall prevent or otherwise abridge Franchisor’s reservation of rights defined in its then governing Franchise Agreement at the time of the execution of this Agreement.

6. **Development Fees**

6.01 In consideration for the grant of the exclusive rights outlined in Article 1 of this Agreement, Developer shall pay to Wine and Design a Master Development fee in the amount of \$\_\_\_\_\_. The Development Fee will equal a pre-paid portion of the Initial Franchise Fee that is due for each Franchise that is included in the Development Agreement. The Development Fee shall equal one-half of the Initial Franchise Fee that is due for each franchise covered by the Area Development Agreement. You shall pay us the Development Fee at the time that you sign the Area Development Agreement. At the time you sign your Area Development Agreement you also will pay us the remaining balance due on the first franchise that is covered by the Area Development Agreement. Thereafter, at least one year before you open your next Franchise covered by the Area Development Agreement, you shall pay to us the remaining balance due on the Initial Franchise Fee for the next studio that is covered by the Area Development Agreement. Neither the Development Fee nor any remaining portion of the initial franchise fee for each of the franchises covered by the Area Development Agreement is refundable for any reason.

For example, if you were to purchase the minimum two Wine & Design franchises, your Development Fee would be equal to one-half times the sum of \$25,000 X 2, or \$25,000. In addition, at the time you sign your initial franchise agreement you would also be required to pay us the remaining balance for the first franchise, which would be \$12,500 for a grand total of \$37,500. At the time that you sign each of your other Franchise Agreements, you would pay to us the remaining on each Initial Franchise Fee which would be \$12,500 per franchise. Neither the Development Fee nor any of the Initial Franchise Fees are refundable under any circumstances.

6.02 All Development Fees when paid to Wine and Design shall be deemed to be fully earned by Wine and Design. Under no circumstances shall the Development Fee be refundable to Developer.

6.03 In addition to the Development Fee, Developer shall pay to the Franchisor an Initial License Fee for each Wine and Design Studio to be opened, pursuant to the Development Schedule, which will be the then current Initial Franchise Fee for that particular Studio as represented in the particular Unit Franchise Agreement, less any portion of the Development Fee that has been allocated to the Initial Unit Franchise Fee, and any credible discounts that may be provided to you by us. The Initial License Fee for each Studio shall be paid by Developer at the time that they sign the Unit Franchise Agreement for that particular Studio, which shall be no later than 6 months before the projected opening date of that Studio listed on the Development Schedule.

7. **Managers and Operational Assistants**

7.01 Developer must devote its full-time to the business of the development and operation of the Wine and Design Studios made the subject of this Development Agreement. Accordingly, Developer must employ competent managers for each Studio who in-turn will be required to devote their full-time and attention to the business carried on at the Studio.

7.02 All managers, to the extent allowed by law, will be bound by restrictive covenants preventing them from operating or participating in a competing business for the geographic and temporal scope as defined by the then current Franchise Agreement applicable to Developer for the Studio where the manager is employed. In addition, the Developer shall cause its managers to sign Confidentiality Agreements that will require the managers to treat the information provided

to them by Developer as confidential in the same manner as the Developer is to treat such information provided to them pursuant to the Wine and Design business system.

## 8. **Termination**

- 8.01 The termination of any Unit Franchise Agreement shall result in the automatic termination of the Area Development Agreement, except that the termination of a Unit Franchise Agreement which is by mutual agreement of Developer and Franchisor, shall not by itself cause this Agreement to terminate; provided however that any and all outstanding royalties and advertising contributions owed to Wine and Design for that Studio shall be paid in full within 30 days from the termination of the Unit Franchise Agreement or closure of said Studio.
- 8.02 The Agreement shall be terminated upon any default of any of the terms of this Agreement if such default, to the extent that it may be cured, is not cured within 30 days from notice being sent by Wine and Design to Developer. All such notice shall be sent to Developer by First Class Mail or any other form of public or private delivery service known to the general public, including but not limited to UPS and Federal Express.

## 9. **Sale and Assignment**

- 9.01 Developer shall not have the right to sell or assign the Development Rights provided in this Agreement without the prior written approval of Wine and Design. However, nothing in this provision shall prevent Developer from selling, assigning or otherwise transferring any Unit Franchise Agreement and the accompanying Studio subject to the terms and conditions in the governing Unit Franchise Agreement, which shall include the Franchisor's right of first refusal.
- 9.02 This agreement and the rights and obligations contained herein may be assignable or transferable in any manner whatsoever by Wine and Design or its transferees or assigns.
- 9.03 If the Developer or any party holding an interest in the Developer ("Owner") receives a bona fide offer (as determined by Franchisor in their reasonable discretion) from a third party or otherwise desires to undertake any transfer or assignment of this Agreement, which would require Franchisor's consent, it shall notify Franchisor in writing of the terms of the proposed transfer or assignment as Franchisor may reasonably require. For a period of 30 days from the date of Franchisor's receipt of such offer, Franchisor shall have the right, exercisable by written notice to Developer (or Owners) to purchase the interest proposed to be sold, for the price and on the same terms and conditions contained in such offer, provided that Franchisor may substitute cash for any other form of payment proposed in such offer. If Franchisor does not exercise its right of first refusal, the bona fide written offer may be accepted by Developer (or Owners) but only upon the same terms and conditions proposed to Franchisor, and subject to the prior written approval of Franchisor, as provided in this Agreement.

## 10. **Arbitration**

- 10.01 In the event that any dispute arising between the parties cannot be resolved either between them or through third party mediation, which shall not be a pre-requisite to arbitration, the parties shall engage in binding arbitration under the following provisions:
- a) Arbitration shall take place in the jurisdiction of Franchisor's corporate offices.
  - b) All arbitration shall be binding upon the parties.

- c) All arbitration proceedings shall be presided over by one arbitrator agreed upon by the parties, or if not agreed upon by the parties then pursuant to the rules of the American Arbitration Association. Such arbitrator shall have a general familiarity with franchising.
- d) The rules governing the arbitration shall be those of the American Arbitration Association.
- e) The laws of the State of North Carolina shall control the interpretation of any dispute or construction of the Area Development Agreement.
- f) All arbitration awards shall be payable in the United States funds.
- g) All arbitration awards shall accrue both pre and post award interest at the rate of eight (8%) percent simple interest per annum.

10.02 Notwithstanding the requirement for arbitration, either party hereto may obtain in any court of competent jurisdiction temporary restraining orders and preliminary injunctions in accordance with applicable law. The parties agree that any violation of Article 7, Article 11, Article 13, Article 14, or Article 18 of the governing Unit Franchise Agreement would result in irreparable harm for which no adequate remedy at law may be available. The provisions of this Article 10 shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

**11. Choice of Law Jurisdiction and Venue**

11.01 Except as otherwise provided by the United States Arbitration Act (9 U.S.C. §1, et seq.), this Agreement shall, and all issues arising from or relating to this agreement, be governed by and construed under the laws of the State of North Carolina, provided the foregoing does not constitute a waiver of Developer's rights under any applicable franchise registration and disclosure or franchise relationship law of another state. Otherwise, in the event of any conflict of law, North Carolina law will prevail, without regard to the application of North Carolina conflict of law principals.

11.02 Any judicial proceeding that is to be brought in accordance with the terms of this Agreement shall be brought in the State Courts in Wake County, North Carolina, or in the United States Federal District Court for the Middle District of North Carolina

**12. Miscellaneous**

12.01 All notices required in the Area Development Agreement shall be in writing and sent by either First Class Mail or Federal Express and addressed to Wine and Design Franchise LLC at:

510 W Martin Street, Suite 300  
Raleigh, North Carolina 27601

to Developer at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as Developer and or Wine and Design shall designate in writing.

Any notice shall be deemed to have been given three days after it is deposited in the mail, or with the local Federal Express office or pick-up representative.

12.02 If Developer shall execute this Agreement in its capacity of an owner or officer of a legal entity other than as a sole proprietorship, then Developer along with its other owners shall execute a guaranty of performance in substantially the same form as the guaranty of performance made a part of the Wine and Design Franchise Agreement.

12.03 This Agreement together with the schedules attached hereto, constitute the entire agreement between the parties relative to the subject matter contained therein and supersedes any and all prior understandings, representations, inducements and statements oral or written, collateral or otherwise, of the parties in connection with the subject matter hereof. No amendment or modification of this Agreement shall be binding, unless in writing executed by both the Developer and Wine and Design. Notwithstanding anything stated to the contrary in this Agreement, nothing in this Agreement, or in any related agreements are intended to disclaim the representations we made in the Franchise Disclosure Document that we gave to you before you signed this Agreement.

12.04 If there is a conflict between the terms of this Agreement and any of the governing Unit Franchise Agreements, the terms of this Agreement shall control.

**IN WITNESS WHEREOF**, parties hereto have duly executed this Agreement on the day, month and year first written above.

**FRANCHISOR:**

**WINE AND DESIGN FRANCHISE LLC**

By: \_\_\_\_\_

Harriet E. Mills, President and CEO

**DEVELOPER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE I**  
**(“Market Area”)**

**SCHEDULE II**  
**(“Area Development Schedule”)**

### State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<b>STATES</b>	<b>EFFECTIVE DATE</b>
California	[pending]
Maryland	[pending]
New York	[pending]
North Dakota	[pending]
Virginia	[pending]
Washington	[pending]
Wisconsin	[pending]

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**EXHIBIT J**

**WINE AND DESIGN**

**RECEIPT PAGES**

## RECEIPT (Our Copy)

This disclosure document summarized certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Wine and Design Franchise LLC offers you a franchise, Wine and Design Franchise LLC must provide this disclosure document to you at least 14 calendar days before you sign a binding agreement or make any payment to Wine and Design Franchise LLC or an affiliate in connection with the proposed franchise sale. Iowa and New York require that Wine and Design Franchise LLC give you this disclosure document at the earlier of the first personal meeting or 10 business days (or 14 calendar days in Iowa) before you sign the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that Wine and Design Franchise LLC give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first

If Wine and Design Franchise LLC does not deliver this disclosure document on time, or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580, and to the appropriate state agency listed on Exhibit E.

The franchisor is: Wine and Design Franchise LLC, located at 510 W Martin Street, Suite 300 Floor, Raleigh, NC 27601. Its telephone number is: (919) 803-3343.

Issuance Date: April 29, 2024

The franchise sellers for Wine and Design Franchise LLC are: Harriet E. Mills, President, 510 W Martin Street, Suite 300, Raleigh, NC 27603, telephone (919) 803-3343 and \_\_\_\_\_.

Wine and Design Franchise LLC authorizes the respective state agencies identified on Exhibit E for our registered agent authorized to receive service of process for it in the particular state

I have received a Wine and Design Franchise LLC franchise disclosure document dated April 29, 2024, that included the following Exhibits:

A. Wine and Design Franchise and Trademark Agreement	F. General Release
B. List of Current and Former Franchisees	G. ACH/EFT Transfer Agreement
C. Financial Statements	H. Accountant Authorization
D. State-specific Disclosures and Agreement Amendments	I. Area Development Agreement
E. List of State Administrators and Agents for Service of Process	J. Receipt

Dated: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
**Signature of Prospective Franchisee**

\_\_\_\_\_  
**Print Name**

Please sign and date this receipt and return to: Wine and Design Franchise LLC, via U.S. Mail at Franchise Administration, 1520 Glenwood Ave., Ste. 200A, Raleigh, NC 27608. You may keep the second copy for your records.

**RECEIPT (Your Copy)**

This disclosure document summarized certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Wine and Design Franchise LLC offers you a franchise, Wine and Design Franchise LLC must provide this disclosure document to you at least 14 calendar days before you sign a binding agreement or make any payment to Wine and Design Franchise LLC or an affiliate in connection with the proposed franchise sale. Iowa and New York require that Wine and Design Franchise LLC give you this disclosure document at the earlier of the first personal meeting or 10 business days (or 14 calendar days in Iowa) before you sign the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that Wine and Design Franchise LLC give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first

If Wine and Design Franchise LLC does not deliver this disclosure document on time, or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580, and to the appropriate state agency listed on Exhibit E.

The franchisor is: Wine and Design Franchise LLC, located at 510 W Martin Street, Suite 300 Floor, Raleigh, NC 27601. Its telephone number is: (919) 803-3343.

Issuance Date: April 29, 2024

The franchise sellers for Wine and Design Franchise LLC are: Harriet E. Mills, President, 510 W Martin Street, Suite 300, Raleigh, NC 27603, telephone (919) 803-3343 and \_\_\_\_\_.

Wine and Design Franchise LLC authorizes the respective state agencies identified on Exhibit E for our registered agent authorized to receive service of process for it in the particular state

I have received a Wine and Design Franchise LLC franchise disclosure document dated April 29, 2024, that included the following Exhibits:

A. Wine and Design Franchise and Trademark Agreement	F. General Release
B. List of Current and Former Franchisees	G. ACH/EFT Transfer Agreement
C. Financial Statements	H. Accountant Authorization
D. State-specific Disclosures and Agreement Amendments	I. Area Development Agreement
E. List of State Administrators and Agents for Service of Process	J. Receipt

Dated: \_\_\_\_\_  
**(Do not leave blank)**

\_\_\_\_\_  
**Signature of Prospective Franchisee**

\_\_\_\_\_  
**Print Name**

(KEEP THIS COPY FOR YOUR RECORDS)