



## MUTUAL AGREEMENT TO ARBITRATE

This Mutual Agreement to Arbitrate (“Agreement”) is for the purpose of resolving claims by arbitration and is mutually binding upon both me and my potential employer or employer, including Mambo Management, L.P. and all Mambo-Related Entities and Restaurants for which I apply or have ever applied, which are defined as any entity owned, controlled, or managed in any manner or to any extent by Mambo Management L.P., including, but not limited to, any entity or restaurant managed, to any extent, by any employee of Mambo Management, L.P. (collectively, the “Company”). The following contains the terms and conditions of the binding Agreement which I agree to entirely.

### **Introduction:**

I agree to arbitrate and resolve any and all application and employment-related disputes between the Company and affiliate entities and myself. I understand that the consideration for this Agreement is my application for employment, the Company’s evaluation of my application for employment, my employment, or my continued employment, with the Company and the different benefits that go along with employment with the Company, including the promises and commitment made in this Agreement. I understand that without this Agreement, the Company would not consider me for employment in any position within the Company. I understand that the purpose of this Agreement is to provide both the Company and myself a way in which claims or disputes may be resolved by binding arbitration rather than litigation in recognition of the fact that resolution of any differences in the courts is rarely time or cost effective for either party, the Company and I have entered into this Agreement to establish and gain the benefits of a speedy, impartial, and cost effective dispute resolution procedure. I understand that arbitration is for the purpose of resolving disputes between me and the Company. As such, collective actions (including a Fair Labor Standards Act (“FLSA”) collective action) are not permissible under this Agreement, unless agreed upon by me and the Company in writing.

I agree that, in the presentation and resolution of any dispute, in any forum, between me and the Company, as well as against the Company’s other employees, owners, directors or officers, I expressly waive the right to participate in any class or collective action and, rather, expressly agree that I will resolve any dispute or claim in a single action between only me and the Company and/or the Company’s other employees, owners, directors or officers. Accordingly, I shall neither serve as a class or collective action representative nor shall I join, seek or agree to join, actively or passively, or participate in any capacity, in any class or collective action, no matter how small or minor, of a claimants’ or plaintiffs’ group, against the Company and/or the Company’s other employees, owners, directors or officers.

### **Disputes Covered:**

Any matter covered under this Agreement or concerning the legality or interpretation of this Agreement shall be heard and decided under the provisions and authority of the Federal Arbitration Act, 9 U.S.C. § 1 as applicable. For purposes of this Agreement, an employment-related dispute includes, but is not limited to, all disputes, including statutory and common law claims, whether under state, federal or local law, including, but not limited to, theories arising from breach of implied or express contract, implied covenant of good faith and fair dealing, constructive discharge, wrongful discharge, negligence, gross negligence, defamation, false imprisonment, worker's compensation retaliation, intentional infliction of emotional distress, misrepresentation, personal injury, claims arising from work-related activities, unsafe workplace, unlawful discrimination, retaliation or harassment, sexual harassment, violations of Title VII of the Civil Rights Act of 1964, as amended, Age Discrimination in Employment Act (ADEA), Americans With Disabilities Act (ADA), Family and Medical Leave Act (FMLA), Fair Labor Standards Act, (FLSA), whistle blowing, wrongful termination in violation of public policy, and defamation. I acknowledge that any employment dispute directly or indirectly affecting my Company shall be subject to binding arbitration, including disputes against supervisors and managers that involve my employment. Notwithstanding, either party may seek temporary injunctive relief through a court of competent jurisdiction, pending final resolution of the dispute in Arbitration.

In the event that I execute a separate written agreement with the Company to govern any particular aspect of my employment relationship, including but not limited to confidentiality or non-competition agreements, I agree that, to the extent of any conflict with this Agreement, the express terms regarding the resolution of disputes contained in the separate written agreements shall control.

I also acknowledge that this Agreement applies to all employment disputes, regardless of when it arises, including disputes that arise or are asserted after I leave the Company. Furthermore, I understand that this Agreement applies to any dispute that occurred before or after I sign this Agreement.

Under this Agreement, I understand that the arbitrator may grant any remedy or relief that the arbitrator deems just and equitable, including any remedy or relief that would have been available to me or the Company, had the matter been heard in court. This authority includes the right to award compensatory and exemplary damages, attorney's fees, costs, and other remedies to the extent those remedies would be available under applicable law in court. Additionally, I acknowledge that under this Agreement, while I may not file a lawsuit to resolve a dispute against the Company, that I may file a complaint with a federal, state, or other governmental administrative agency regarding legally protected rights. For Claims covered by this Agreement, arbitration is the Parties' exclusive remedy.

### **Arbitration Procedure:**

For purposes of this Agreement, arbitration shall be conducted before a neutral arbitrator agreed upon by the Parties, independent from any organization; such arbitration

shall be conducted under the American Arbitration Association (“AAA”) National Rules for the Resolution of Employment Disputes, unless the Parties agree to use other rules or procedures. Should the Parties be unable to agree upon a neutral arbitrator for whatever reason, then the Parties shall agree upon a neutral organization (AAA, JAMS, or National Arbitration Forum) to ensure that the Parties’ commitment to binding and final arbitration of their employment disputes is fulfilled; such an arbitration shall be conducted under the rules of that neutral organization, unless the Parties agree to use other rules or procedures. The Parties under this Agreement will have full rights to legal representation in the arbitration process.

**Discovery:**

The parties shall be entitled to engage in discovery in the form of request for documents, interrogatories, requests for admissions, physical and/or mental examinations and depositions; however, each side shall be limited to three depositions and an aggregate of 30 discovery requests of any kind, including sub parts, except as mutually agreed to by the parties. Physical and/or mental examinations must be justified under the standards set forth by the Federal or Texas Rules of Civil Procedure. A deposition of a corporate representative shall be limited to no more than four designated subjects. At a mutually agreeable date, the parties will exchange lists of experts who will testify at arbitration. Each side may depose the other side’s experts, and obtain the documents they reviewed and relied upon, and these depositions will not be charged to the parties’ aggregate limit on discovery requests or the three deposition limit. Any disputes concerning discovery shall be resolved by the arbitrator, with a presumption against increasing the aggregate limit of requests; additional discovery requests shall be granted only upon a showing of good cause.

**Arbitration Fees & Costs:**

Each Party will pay for their attorney, if a party wishes to be represented by an attorney. To ensure neutrality of the arbitration, the Parties shall equally share all fees and expenses of the arbitration once the award is final to the extent provided below. However, no claim made by or through an employee or applicant shall be required to advance more than \$150.00 in arbitration costs before an award or decision is rendered; the Company will advance any amount due before arbitration begins. Each Party shall pay for each party’s own cost and attorneys’ fees. Unpaid arbitration costs shall be offset against any damage award without regard to which party prevails. However, the arbitrator may, in his or her discretion, but only to the extent permitted by applicable law, permit the prevailing party to recover cost and attorneys’ fees without having that amount offset.

In exceptional circumstances of demonstrated inability to pay (“indigency”) for your share of arbitration, a neutral organization (AAA, JAMS, or National Arbitration Forum), fees, and costs, the arbitrator may require the Company to advance all arbitration costs. No such waiver of arbitration costs shall be ordered unless the claimant meets the guidelines under 28 U.S.C Section 1915 in addition to the timely submission of a written request to the arbitrator for assistance, including the filing an affidavit of indigency with documentation establishing an inability to pay and an inability to obtain representation after claimant makes

a good faith effort. All such indigency advances by the Company shall be offset against any award to the indigent.

**Miscellaneous:**

This Arbitration Agreement includes all of the foregoing recitals, statements and acknowledgements relating to the Parties' intention and agreement to arbitrate all employment disputes. If any of the foregoing terms or clauses of this Agreement are determined to be in violation of any law, rule or regulation or otherwise unenforceable, that determination shall not affect any of the remaining terms or clauses of this Agreement. All other clauses shall remain in full force and effect. In the event that any provision of this Agreement shall finally be determined to be unlawful, there shall be substituted a provision of similar import reflecting the original intent of the Parties to resolve their disputes through binding arbitration. This Agreement shall survive the termination of my employment and can only be revoked or modified by a writing signed by the Parties. This Agreement does not alter the at will employment relationship between the Company and me.

**Requirements before Initiating Arbitration:**

I agree that I will exhaust the Company's informal remedies, open door policy, and/or alternative dispute resolution procedures that the Company has in-place informally or formally before proceeding to arbitration.

I UNDERSTAND THAT THIS AGREEMENT IS EFFECTIVE FROM THE EARLIER OF: THE DATE OF MY SIGNING THE APPLICATION, THE DATE OF MY EMPLOYMENT, OR WITHIN 10 DAYS OF RECEIVING THIS AGREEMENT. I ALSO UNDERSTAND THAT IT RESTRICTS MY RIGHT TO SUE THE COMPANY AND APPLIES TO ANY EMPLOYMENT DISPUTE(S) INCLUDING THOSE THAT OCCURRED BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT.

I AGREE TO THE USE OF ELECTRONIC SIGNATURES, AND BY MY ELECTRONIC SIGNATURE ON THE APPLICATION, I KNOWINGLY AND VOLUNTARILY AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.