



**Fleming's Prime
Steakhouse & Wine Bar
Private Dining and
Facility Use Agreement**

This Agreement between OS Prime, LLC (dba Fleming's Prime Steakhouse and Wine Bar – Austin) (hereinafter "Fleming's") and Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas (hereinafter "University") is for the use of the Fleming's location at 320 East 2nd Street, Austin, TX 78701 ("Facility") as well as food and beverage orders (including set-up and tear-down) for the dates of March 10 through 12, 2019 (the "Event") as further detailed below.

University Contact Information:

Contact Name: Austin Fannin
Title: Events Manager
Telephone: (979) 845-1112
Email Address: a-fannin@tamu.edu

Payment: University understands and agrees to the food and beverage minimum expenditure of \$20,000 per day for the Event (Event total \$60,000) which includes days for set-up and tear down plus applicable tax (if any), gratuity, and administrative fees (the "Fee"). University will perform its own set-up, tear down, and removal of all garbage, debris, and equipment and leaving space in same condition as it was received after Event as detailed below. Gratuities and incidental charges including valet (if applicable), equipment rental fees, gift certificates, takeout food and entertainment do not contribute to the minimum expenditure and will be added to the final bill.

A deposit in an amount equal to \$30,000 (50% of Event total excluding gratuity and administrative fees) (the "**Reservation Deposit**") is due at the time the University executes this Agreement. The balance of the Fee will be billed to University and is due no later than thirty (30) days after University receipt of the invoice.

Administration Fee: All prices are subject to an administration fee of three percent (3%) which does not represent compensation, gratuity, or service charge for the service staff providing service to the event.

Gratuity: University has agreed to a gratuity payment for staff working at the Event of eighteen percent (18%) of the food and beverage minimum Event total or eighteen percent (18%) of the total price for food and beverage if it exceeds the minimum expenditure.

Cancellation Policy: If the Event is cancelled within fourteen (14) days of the Event a cancellation fee of one-half the quoted food and beverage minimum Event total will be charged. Cancellations made within seven (7) days of the Event will result in a cancellation fee equal to the food and beverage minimum quoted for Event total. All cancellations must be made to the Private Dining

Director in writing. In the event Fleming's is unable to make the Facility available to University, it will immediately notify University and return all funds advanced by University within thirty (30) days of the notice to University or if Fleming's is only able to make the Facility available for a portion of the noted time, the parties agree to negotiate in good-faith with respect to a reduced payment by University.

Permitted Uses: University shall only use the Facility for lawful purposes and has sole responsibility for obtaining any required county, state, or federal licenses or permits prior to Event.

Removal of furniture and other modifications: University will be granted access to the Facility on Saturday, March 9 after the close of business for Fleming's regular dining customers. Fleming's will advise University when they may enter. University intends to remove all furniture at the Facility and place them in storage for the duration of the Event. The movers and storage facility used by University must carry insurance to cover potential damages. University shall provide written confirmation as to the storage location of furniture and an inventory of total contents. University also intends to remove certain lighting, installing non-permanent walls, and placing various banners and clings at the Facility, among other items. At the conclusion of the Event, University will be responsible for replacing all removed items as well as removing all garbage, debris, and equipment and leaving space in same condition as it was received. All furniture removed shall be replaced in the same location and in the same condition prior to removal. The Facility will be returned fully to its original condition no later than noon on March 13, 2019. If Fleming's becomes aware of any damage to its Facility or property caused by the Event it will notify University and University will be responsible for any damage correction or replacement which shall be made as soon as commercially reasonable. No equipment shall be located or relocated to a location that impedes visitor walkways or emergency exits at any time. No portion of any passageway or exit shall be blocked or obstructed in any manner and no exit door shall be blocked.

Confirmation of your Event: Final menu, room modifications and arrangements, and all other details pertaining to the Event must be received in writing at least ten (10) days prior to the Event to the Private Dining Director.

Right of First Refusal: Fleming's will grant right of first refusal for renting the facility, with specific rental terms to be discussed at that time, to University for SXSW 2020 event during interactive week. The University shall confirm intent to rent the facility in writing by a mutually agreed upon date.

Other Vendors: University agrees that all vendors selected to work the Event must be pre-approved by Fleming's. Outside food and beverage vendors are not allowed.

Alcohol and Minors: Fleming's does not permit the serving of alcoholic beverages to anyone who the restaurant (in its sole discretion) determines is intoxicated or under the age of twenty-one (21).

Safety and Security: University agrees to be solely responsible and liable for the conduct, safety, and security of its guests, employees, agents, and subcontractors and to take all reasonable actions necessary to ensure their safety and security. This responsibility shall specifically include, but not limited to employing reasonable security measures to ensure the safe and orderly conduct of all guests, employees, agents, vendors and subcontractors; and employing reasonable security measures to prevent non-invitees from entering the Facility.

Insurance Requirements: Fleming's acknowledges that, because University is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of University or for injuries caused by conditions of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of University is provided by The Texas A&M University System as mandated by the provisions of Chapter 502, *Texas Labor Code*. University shall have the right, at its option, to (a) obtain liability insurance protecting University and its employees and property insurance protecting University's buildings and contents, to the extent authorized by Section 51.966, *Texas Education Code*, or other law, or (b) self-insure against any risk that may be incurred by University as a result of its operations under this Agreement.

Limitation of Liability. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, AND EXCEPT WITH RESPECT TO EACH PARTY'S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS HEREUNDER OR INFRINGEMENT UPON THE TRADEMARK(S) OF A PARTY OR VIOLATION OF ANY TRADEMARK LICENSE, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR SIMILAR DAMAGES, WHETHER BASED ON CONTRACT, TORT, WARRANTY, OR OTHER LEGAL OR EQUITABLE GROUNDS, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR OTHER PECUNIARY LOSS, ARISING OUT OF THIS AGREEMENT OR THE SERVICES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Waiver of Claims: University assumes all risk of damage to property or injury to persons in or about the Facility from any cause and, to the extent permitted by the Constitution and laws of the State of Texas, hereby releases Fleming's from damages to the University's personal property, for injury to the University, and/or the University's agents, employees invitees, associates, contractors or any other parties associated with University, in or about the Facility from any cause arising at any time, except to the extent such damage or injury results from the willful acts or gross negligence of Fleming's.

Effective Date: This Agreement shall be effective upon payment of the required Reservation Deposit and execution of the Agreement by the last party to sign.

Confidentiality. The terms of this Agreement will be maintained as confidential by the parties and will not be disclosed to any other person or entity, except, upon written consent of the other party. Either party may disclose the terms of this Agreement to the minimum extent required by law or court order or by the rules and regulations or directives of any regulatory agency or authority or as necessary to effectuate the terms of this Agreement or for accounting or tax purposes.

Force Majeure. Neither party will be liable for any failure or delay in performance under this Agreement, to the extent such failures or delays are due to causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, acts of God, severe weather, earthquakes, hurricanes, floods, disease or other natural disasters, pandemics, wars, riots, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

Governing Law; Venue. This Agreement is governed by the laws of the State of Texas, without regard to its principles of conflicts of laws. Pursuant to Section 85.18 (b), Texas Education Code, Venue for the state court suit filed against The Texas A&M University System, any member of The Texas A&M University System, or any officer or employee of the Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or member, as applicable is located. At execution of this Agreement, such county is Brazos County, Texas. Venue for any suit brought against the Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

General Provisions. Nothing in this Agreement establishes an agency, partnership or joint venture between the parties, or relationship of employer or employee, between the parties (or between either party and the other party's personnel), and this Agreement does not authorize either party to make or enter into any commitments for on behalf of the other party. This Agreement may only be amended or modified by a written agreement executed by both parties expressly stating that it is amending this Agreement. The failure of either party to insist in any instance upon the strict performance of any provision of this Agreement or to exercise any election contained herein will not be construed as a waiver or relinquishment for the future of such provision or election. In the event that any term or provision of this Agreement will be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other term or provision hereof (which will remain in effect), and the parties agree thereafter to use their best efforts to substitute a provision of similar economic intent and effect. The obligations set forth herein relating to indemnification, limitations of liability, governing law, ownership of trademarks, and venue, confidentiality, and outside promotions by University will survive the expiration or earlier termination of this Agreement. This Agreement is not assignable by either party without the prior written consent of the other party. Headings are included for convenience only and will not be used to construe this Agreement. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Further, this Agreement may be executed by facsimile, email, electronic signature or other electronic means, and so executed will have the full force and legal effect as an original. The language of this Agreement will be construed simply and according to its fair meaning, and will not be construed for or against any party as a result of the source of draftsmanship.

Tax Exempt Status. As an agency of the State of Texas, University is tax exempt. Tax exemption certificates will be provided to Fleming's no later than the last day of the Event.

Public Information. (a) Acknowledgement that University is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. (b) Upon University's written request, venue will provide specific public information exchanged or created under this Agreement that is not otherwise exempted from disclosure under Chapter 552, *Texas Government Code*, to University in a non-proprietary format acceptable to University. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which University has a right of access. (c) Fleming's acknowledges that University may be required to post a copy of the fully executed Agreement on its internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

Non-Waiver. Acknowledgement that University is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquished by University of its rights to claim such exemptions, privileges, and immunities as they may be provided by law.

Dispute Resolution. The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University to attempt to resolve any claim for breach of contract under this Chapter to University Contracts Officer of Texas A&M University, who shall examine the claim and any counterclaim and negotiate in an effort to resolve the claim.

Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, Fleming's certifies Fleming's (1) does not currently boycott Israel; and (2) will not boycott Israel during the term of this Agreement. Fleming's acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Fleming's certifies Fleming's is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Fleming's acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

This agreement supersedes all prior discussions and agreements between the parties for the Event.

Texas A&M University:

OS Prime, LLC:

Signature

Dean K. Endler

Name

University Contracts Officer

Title

Date

4 MAR '19

Signature

Leah Hastings

Name

Operating Partner

Title

Date

03/01/2019