

AGREEMENT OF SALE OF LIQUOR LICENSE

THIS AGREEMENT OF SALE made this 31ST day of July, 2017, by and between **Colorado Café Inc.** whose mailing address is 154 Bonnie Burn Road, Watchung, New Jersey, hereinafter referred to as “Seller” and, _____ whose mailing address is _____ hereinafter referred to as “Buyer.”

WITNESSETH:

WHEREAS, Colorado Café Inc. by corporate resolution authorized the auction sale of its liquor license via Public auction and said auction sale was conducted by A.J. Willner Auctions on July 31, 2017; and

WHEREAS, the Seller owned and operated the Colorado Café located at 154 Bonnie Burn Road and is the owner of a Class C liquor license in Watchung Borough, Somerset County New Jersey liquor license number 1821-33-005-010 (hereinafter “Liquor License”); and

WHEREAS, pursuant to the Auction Sale, the Liquor License was sold by auction on July 31, 2017 pursuant to the terms and conditions of the Auction Sale; and

WHEREAS, the parties hereto desire to set forth their mutual understandings and agreements with respect to the sale of and purchase of said Liquor License pursuant to the auction sale; and

WHEREAS, the within agreement of sale of the Liquor License is not subject to an attorney review period and is binding upon the Buyer’s execution of this agreement and shall be signed immediately at the conclusion of the Auction Sale. The terms of this agreement are not negotiable and are binding on the Buyer upon signing this Agreement.

WHEREAS, The within Liquor License is being sold expressly in “as is” “where is” condition without any representations and or warranties and or guarantees. The Buyer agrees to purchase said Liquor License in “as is” “where is” condition without any representations and or warranties and or guarantees.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained the parties hereto agree that the recitals set forth above shall be deemed part of the Agreement and further agree as follows:

1. AGREEMENT TO SELL AND PURCHASE LIQUOR LICENSE: Seller, for and in consideration of sum hereinafter specified, to be paid and satisfied as stipulated herein pursuant to the Auction Sale Seller shall agree to sell and transfer and sell said Liquor License pursuant to the terms and conditions as contained herein.

2. LIQUOR LICENSE: The class "C" Liquor License in the Borough of Watchung, County of Somerset bearing license number 1821-33-005-010.

3. PURCHASE PRICE: The Buyer shall pay the total price of \$ _____ which shall also include the Buyers Preimum, (_____) (the "Purchase Price") which Purchase Price shall be payable in the following manner:

Cash deposit paid prior to bidding \$50,000.00
(Initially held by auctioneer and then transferred to counsel to Seller)

Buyers premium (10% of the purchaser price paid by Purchaser) \$

Balance of Purchaser Price to be paid at conclusion of Auction or by 4p.m., August 1, 2017, in cash or certified funds or wire \$

TOTAL PURCHASE PRICE \$

a. The deposits and Total Purchase price are to be held in escrow by the Seller's attorney pending Closing (as hereinafter defined) and no interest shall be earned on said deposit monies.

b. The Deposit and Purchase Price shall be deemed non-refundable except as may be provided for otherwise in this Agreement.

4. LIQUIDATED DAMAGES: The parties acknowledge that the measure of damages for breach of this Agreement may be difficult to determine. In the event the Buyers without reason, fails and refuses to have the license Transferred, after the Seller fully complies with all requirements of this Agreement, then the Seller may retain the Total Purchase Price of \$ _____ as **Liquidated Damages**.

5. BILL OF SALE AND TITLE:

(a) The License is being sold "As Is" , "Where Is" without any representations, warranties and or Guarantees. After all the monies are paid by the Buyers and Within 24 hours of the Auction Sale the Seller shall provide to the Buyer a Bill of Sale and a consent to Transfer the Liquor License. The Buyer shall file a person to person Transfer application of the Liquor License and all other necessary

paperwork and fees and costs within 40 days from the Auction Sale. The Buyer shall be responsible for all costs and fees associated with the person to person Transfer of the Liquor License and must comply with all state, county, municipal and Alcoholic Beverage rules, statutes and regulations concerning the person to person Transfer. The Sale Proceeds shall be held in escrow by Counsel for the Seller until the license is transferred but in no event shall the sale proceeds be held in escrow beyond November 29, 2017. If the Buyer has not been able to transfer the liquor license by November 29, 2017 then the sale proceeds shall be released from escrow and paid to the Sellers'.

6. CONTINGENCIES:

a) Consent to Transfer

(i) This Agreement is contingent upon Buyer obtaining, at its/their sole cost and expense, a person to Transfer of the Liquor License in the name of the Buyer. The sale is expressly not contingent upon a place to place transfer of the Liquor License.

(ii) The Buyer shall make immediate application for a person to person transfer of the Liquor License into the name of the Buyer with the Township in accordance with all Local, State, County and Alcoholic Beverage rules, statutes and regulations. Buyer shall provide counsel to the Seller a copy of said application and said application shall be made within 30 days from the date of the Auction Sale. The license shall be transferred to the Buyer as soon as practicable and in any event no later than November 29, 2017. If the license is not transferred on or before November 29, 2017, then the sale proceeds shall be released from escrow and turned over to the Seller and Seller has no further obligations to the Buyer under the Agreement or Contingency.

7. CLOSING: Closing shall take place within 24 Hours of the Auction Sale. The closing will take place at counsel for the Sellers' office located at 6 East Main Street, Suite 6, Clinton New Jersey 08809.

8. TERMS AND CONDITIONS

a) Purchaser shall accept the Liquor License "as is" "where is" without any representations, warranties or guarantees. Seller shall not be liable for any matter whatsoever as to the sale and Transfer of the Liquor License.

b) In entering into this Contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, auctioneer, employee or other representative of Seller or by the auctioneer or any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this Contract, whether or not any such representations, warranties or statements were made in writing or verbally.

c) Except as specifically set forth in this Contract, including, without limitation, in any representation, warranty or covenant made by Seller, **the Liquor License shall be sold and**

conveyed strictly on an “as is”, “where is” and, without representations, warranties or covenants, express, implied or statutory, of any kind whatsoever, including but not limited to, any representation, warranty or covenant, as to the condition of the Liquor License, as to the value, compliance with specifications, use, condition, ability to hold a Liquor License, merchantability, design, quality, description, durability, operation or fitness for use or purpose of the Liquor License, use or occupancy, construction, development, or performance, investment or income potential, tax ramifications or consequences, income, compliance with law (including but not limited to any and all legal requirements, merchantability or fitness or suitability for any purpose (all of which are hereby disclaimed), or any other matter or thing affecting or related to the Liquor License.

d) Purchaser hereby expressly acknowledges that no representations, warranties or covenants regarding the Liquor License have been made to it by Seller or anyone else unless the same appear in this Contract and, in any event, Purchaser shall not claim it relied upon any such representation.

e) Purchaser further acknowledges that it is a knowledgeable Purchaser as it relates to Liquor Licenses and Purchaser is relying solely on its own expertise and that of its consultants, legal counsel and experts. Purchaser has, or, will have conducted, to the extent same is permitted under this Contract, such investigations, due diligence and inspections of the Liquor License prior to the auction sale and execution of the Agreement, and shall rely on same and upon Closing, shall assume all the risk concerning the purchase of the Liquor License, including, but not limited to any adverse legal conditions and matters, that may have not been revealed by Purchaser’s investigations and due diligence prior to the Auction. Purchaser agrees to accept and take the Liquor License on an “as is”, “where is” basis, whether known or unknown, manifest or latent. It is understood and agreed that all oral or written statements, representations, or promises, if any, and all prior negotiations and agreements between Seller and Purchaser are superseded hereby and merged in this Contract, which alone fully and completely expresses the understanding between them, and that this Contract is entered into after full investigation, neither party relying upon any statement, representation, warranty or covenant not set forth herein.

f) Purchaser, for itself, and any person or entity claiming by or through either, as a material part of the consideration to Seller for the sale of the Liquor License, does hereby knowingly and voluntarily waive and release Seller, its agents, employees, representatives, counsel and the auctioneer from any and all existing or future claims, demands or liabilities, whether known or unknown, arising from or in connection with, or in any way relating to sale and purchase of the Liquor License. Purchaser, for itself, any Permitted Assignee, and any person or entity claiming by or through either, does hereby knowingly and voluntarily covenant not to sue Seller on account of any Released Claim.

g) Except as may be otherwise expressly stated in this Contract, Seller shall have no obligation under this Contract as a condition precedent to Closing to effectuate any cure, remedy, or as to any condition of the Liquor License or to comply or satisfy any legal requirement with respect to the Liquor License.

h) The provisions of this Article shall survive the Closing or the termination of this Contract.

9. Buyers Premium: The purchaser shall pay a ten percent (10%) Buyer's Premium to A.J. Willner Auctions as to the sale of the Liquor License and said Buyer's Premium will be part of the Purchaser Price. The Buyers Premium shall be due and payable at the time of actual closing of Auction and shall be the sole responsibility of the Purchaser.

10. REPRESENTATIONS AND WARRANTIES OF THE SELLER:

(a) The Seller represents and warrants to the Buyer that they are the owner of the Liquor License. The Liquor License shall be sold free and clear of any and all liens, claims and or encumbrances and there are no unpaid liquor suppliers as to the liquor license.

(b) The Seller has the full right, power, and authority to consummate this transaction and convey the Liquor License to the Buyer on the date of closing.

11. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

(a) The Purchaser has the necessary funds on hand in cash in the bank account to consummate this Agreement.

(b) The Purchaser has not been convicted of any crime and or knows that he or she has the ability to own a liquor license in accordance with all local, county, state, statutes, rules and regulations.

12. NOTICES: Any notices hereunder shall be deemed given when mailed by Overnight Delivery, Registered, Certified Mail, and Return Receipt Requested and/or by Regular Mail, addressed to Seller or Buyer, along with facsimile transmissions, and/or delivered personally to Seller or Buyer at the following addresses:

As to Seller: Alan Bauerle
Colorado Café, Inc.

Copy to:

Mitchell Malzberg, Esq.
Law Offices of Mitchell J. Malzberg, LLC
P. O. Box 5122
6 E. Main Street, Suite 7
Clinton, NJ 08809
Attorneys for Colorado Café Inc.

As to Buyer :

Copy to:

13. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties hereto. No amendment or modification hereof shall have any force or effect unless in writing and executed by all parties.

14. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, their heirs, executors, administrators, successors and assigns.

15. GOVERNING LAW: It is agreed by and between the parties that this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey and the United States of America and if litigation shall be necessary in order to resolve any dispute arising under this Agreement, such litigation shall be venued in New Jersey and in the County of Somerset.

16. MODIFICATION: No change, alteration, amendment, modification or waiver of any of the terms or provisions of this Agreement shall be valid and binding upon the parties unless the same shall be in writing and signed by each of the parties hereto.

17. SURVIVAL: Whenever the context of this Agreement allows, expressly provides, or reasonably implies a continuing obligation, such continuing obligation shall survive the closing and shall not merge therein.

18. GENDER: For the purposes of this Agreement, the neuter shall be deemed to include the masculine and the feminine and the singular shall be deemed to include the plural and the plural the singular as the context may require.

19. MISCELLANEOUS:

- a) All rights, powers, and privileges conferred hereunder upon the parties shall be cumulative but not restrictive of those given by law.

- b) No failure of any party to exercise any power given any party hereunder or to insist upon strict compliance by any party with its obligations hereunder and not custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.
- c) If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the closing must be held, expires on a Saturday, Sunday or Legal Holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.
- d) If any provision hereof shall be illegal or unenforceable, such provision shall be deemed severable and shall not affect the continued validity of the remainder of this Agreement.
- e) The captions used herein are for reference purposes only and shall not be deemed to define, limit, explain or modify any provision hereof.
- f) This Agreement shall not be construed in favor of or against any party by virtue of having been drafted by the attorneys for a party hereto.

20. COUNTERPARTS: This Agreement will be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the undersigned have set their hands and seals the day and year first above written.

WITNESS:

SELLER:

 Alan Bauerle, President and Chariman
 Colorado Café, Inc.

WITNESS:

BUYER:
