Expanding Horizons: Understanding Business Acquisitions

PRESENTED BY

MICHAEL RESKO, ESQ.
Michael Resko earned his JD from New York University School of Law in 1991. After working for several years at a New York City law firm, in 1996 he opened his own practice, specializing in real estate transactions and litigation, business transactions and litigation, and estate planning and asset protection.

There are several ideals on which the practice is founded:

1. be accessible and responsive to our clients;
2. offer practical solutions to our client’s problems;
3. upfront and fair pricing of our services including written fee agreements in ALL matters; and
4. bringing all of our attention, experience and expertise to bear for every one of our clients.

Michael was recently honored for 15 years of service as an Adjunct Professor at New York Law School, where he teaches courses in Real Estate Law and Contracts. He has also taught continuing legal education courses to other attorneys on the subject of New York real estate transactions.

Michael is admitted to practice before the state and federal courts of New York and New Jersey and the United States Court of Appeals for the Second Circuit.

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OUTLINE

INTRODUCTION

I. Attorney’s Role in Transaction (2.5 min.)

II. Transaction’s Set of “Facts” (2.5 min.)

III. Risks of Transactions (5 min.)

REPRESENTING THE BUYER

I. Existing Relationship Between the Buyer and the Seller or Arms-Length Transaction? (5 min.)

II. Identifying included Assets and Liabilities (5 min.)

III. How does the Identity of the Buyer Affect the Deal? (5 min.)

IV. Valuation of Included Assets (5 min.)

V. Due Diligence (5 min.)

VI. Protect the Buyer but don’t kill the Deal (5 min.)

REPRESENTING THE SELLER

I. Preparing for the Deal (10 min.)

II. Payment Terms (5 min.)

III. Negotiating the Contract (10 min.)

WORKING WITH OTHER PROFESSIONALS (15 min.)

REVIEW OF TRANSACTION DOCUMENTS (10 min.)

CONCLUSION
I. What is the Attorney’s Role in the Transaction?
   A. Buy Side
   B. Sell Side

II. Every Transaction is Based on a Set of “Facts”
   A. Where do the Facts Come From?

III. Every Transaction has Risks
   A. Non-Performance
   B. Facts are Wrong
   C. Facts Change

REPRESENTING THE BUYER

I. Is there an Existing Relationship Between the Buyer and the Seller or is this an Arms-Length Transaction?

II. Identifying included Assets and Liabilities
   A. “Term Sheet”

III. How does the Identity of the Buyer Affect the Deal?
   A. What is/are the Buyer’s Goals/Objectives?
   B. Where is the Money Coming From?

IV. Valuation of Included Assets
   A. Real Property
   B. Leasehold
      1. Negotiation with Seller’s Landlord
C. Other Business Property
   1. Fixtures, Equipment and Supplies
   2. Inventory
   3. Intellectual Property
   4. “Goodwill”
   5. Accounts Receivable
   6. Executory Contracts

V. Due Diligence
   A. Objectives
   B. Focus
   C. Costs
   D. Confidentiality

VI. Protect the Buyer but don’t kill the Deal
   A. “Levels” of Risk

**REPRESENTING THE SELLER**

I. Preparing for the Deal
   A. Seller’s Due Diligence
   B. Buyer’s Due Diligence
      1. Confidentiality
   C. Corporate Consent(s)
   D. Landlord Consent(s)
E. Regulatory Issue(s)

F. Liens and Encumbrances on Assets

G. Taxes

II. Payment Terms

A. Collateral

III. Negotiating the Contract

A. Business Terms v. Legal Terms

WORKING WITH OTHER PROFESSIONALS

A. Brokers

B. Accounts/Tax Professionals

REVIEW OF TRANSACTION DOCUMENTS

A. Sample Term Sheet

B. Sample Asset Purchase Agreement

C. Sample Closing Documents — Bill of Sale, Corporate Consents, Assignment and Assumption of Lease

D. NYS Form AU-196.10
Letter of Intent

Listing No. # 26599

Date: June 10, 2015

THIS FORM HAS BEEN PROVIDED BY VENTURE BUSINESS BROKERS, LTD. (HEREAFTER "VBB") AS A CONVENIENCE TO THE PARTIES TO ENABLE THEM TO FACILITATE THE PROSPECTIVE TRANSACTIONS OFFERED HEREIN. IT IS NOT INTENDED AS, AND SHOULD NOT BE INTERPRETED AS A BINDING AGREEMENT OF SALE OR PURCHASE. IT IS A REFLECTION ONLY OF THE PARTIES' INTENTIONS.

1. Purchaser(s): [Insert Name(s)]
2. Business to be Purchased: [Insert Name(s)]
3. Form of Transaction: Asset
4. Purchase Price: The total purchase price for the present transaction shall be $2,100,000 with $200,000 due on or before closing plus inventory.
   a. Refundable Good Faith Deposit: Upon Seller's execution of this agreement, Buyer will pay a non-refundable deposit of five thousand ($5,000.00) dollars, to be held at VBB. Such deposit shall be returned to the Buyer at Closing. (Certified Fundsmade payable to [Insert Bank].)
   b. Down payment of $2,000,000 (10% of the purchase price) shall be paid at contract date representing the entire cash deposit.
   c. Balance of $2,000,000 to be paid at closing plus inventory
   d. Note Payable Terms:
      1. To be executed for remainder of purchase price totaling $2,100,000 at a rate of 5% to be payable over 24 months
5. Assumed Liabilities:

6. Contingencies:
   a. Assumption, renewal or modification of Business lease arrangements;
   b. Mutual acceptance of list of fixtures, fixtures, equipment.

[Signature]

TRTCLE.COM
Business Brokers

1. Inventory: Not included, transfer prices need to be verified as ACTIVE, SLOW (OVER 6 MONTHS), DEAD (OVER 12 MONTHS). Seller finance 50% of the final value of active and slow inventory for 12 months. Personal guarantee required.

2. Verification of certain key customers/seller relationships;
3. Contribution of certain other key employees;
4. Seller standard non-compete for at least three years;
5. Complete review of financial information pertaining to the business
6. Subject to accountant's review.
7. Subject to transferrability of all applicable licenses.
8. Seller agrees to provide 6 weeks of full-time assistance to allow for a smooth transition subsequent to closing. And remote consultant for up to one year, as long as notes are outstanding.
9. Sales during the due diligence period must average N/A.

6. Purchase Price Allocation: The allocation of the purchase price of this transaction for accounting and tax purposes will be agreed upon between the parties prior to closing.

2. Due Diligence: The Buyer shall conduct due diligence for no longer than two (2) weeks from the inception of this agreement.

3. Buyer Responsibility: It is the sole responsibility of the Buyer to perform due diligence. Buyers are advised to seek counsel from an Attorney, Certified Public Accountant, and any other parties necessary to make an informed decision regarding the purchase of this business. It is understood that all information pertaining to the business, financial or otherwise, provided by VBB to the buyer, are exclusively representations of the Seller, and VBB shall not be held liable for their content or accuracy. Buyer and Seller jointly agree to hold VBB and/or its agents harmless for any misrepresentations or omissions made by the seller.

9. Purchase/Sale Agreement: The parties hereby agree to execute a formal Purchase/Sale Agreement containing the terms found in this letter and any other usual and customary representations, warranties and indemnifications contained in agreements of this nature.

10. Closing: This transaction shall go to close no later than ten (10) business days following the completion of due diligence.

11. Closing: The closing of this transaction will take place as soon as possible, estimated date: July 31, 2015.

12. Employee Fees: The Seller shall be responsible for the payment of any and all fees due to VBB as a result of the consummation of this transaction payable in certified funds to VBB Business Brokers, as at closing. (Seller see addendum)

13. Non-Circumvention: Buyer agrees NOT to circumvent, in any manner, the terms agreed to in his/her Buyer Registration Agreement with VBB Business Brokers.
14. It is agreed to that Seller will not entertain directly or indirectly, solicit or encourage, any inquiries or proposals from, or participate in, any discussions or negotiations with, or provide any information to any third party with respect to a potential sale, transfer, merger or similar transaction involving the businesses to be purchased, or any associated property or assets until the earlier of satisfactory completion of the prospect or July 1, 2015.

15. Notwithstanding anything herein to the contrary, paragraphs 12, 13 & 14 above shall be deemed binding and legally enforceable between the parties and Business Brokers, Ltd. An executed facsimile copy of this agreement shall have the same force and effect as an original.

Agreed to on this 10th day of June, 2015, By and Between:

Seller (Please Print)

Purchaser (Please Print)

Seller's Signature

Purchaser's Signature

Attorney Information (Please Print)

Seller's Attorney

Michael Resko, Esq

Name

100 South Bedford Rd.

Address

# 304

MT/150-049

City/State/Zip

914-358-0045

Phone

914-358-0047

Fax

Purchaser's Attorney

Name

Address

City/State/Zip

Phone

Fax
ASHET PURCHASE AGREEMENT

AGREEMENT, made and entered into as of the ___ day of
April 2014, in the State of New York, by and between

SELLER, INC., a New York Corporation (hereinafter referred
to as “Seller/Transferor”) whose address is 555 MAIN STREET,
Scarsdale, NY 10583, and

BUYER, LLC, (hereinafter referred to as
“Purchaser/Transferee”), whose address is 12345 ELM STREET,
Whitehouse Station, NJ 08889.

WHEREAS, Seller is the owner of a Pet Store located at 555
MAIN STREET, Scarsdale, NY 10583 and

WHEREAS, the Purchaser hereby desires to purchase and the
Seller desires to sell the, right, title and interest of the
Seller for the premises located at 555 MAIN Street, Scarsdale, NY
10583, consent to a new lease or assignment of lease from the
landlord, goodwill as a going concern, licenses, use of rental,
maintenance or use of equipment machinery, equipment accessories,
fixtures, and all other property used by Seller in such business
at the said premises, free and clear of any debts, mortgages,
security interest or other liens or encumbrances; and

NOW THEREFORE, in consideration of the promises and mutual
covenant contained herein, the parties agree as follows:

1. Purchase and Sale: At Closing, as more fully
described below, the Seller shall convey to Purchaser, and the
Purchaser shall acquire all of the Seller’s rights, title and
interest in and to the assets of the Seller, consent to an
assignment of lease or a new lease from the landlord, and

   goodwill.

   Purchaser hereby agrees to pay to
   Seller the sum of $__________ Dollars payable as follows:

   Tangible personal property (furniture, fixtures, etc.) $____________
   Intangible property (goodwill) $____________
   Inventory $____________
   Account Receivables $____________
   Stock in Trade $____________
   Real Estate/Lease $____________

   Total: $____________
(i) $\text{(DOLLAR AMOUNT)} = \text{TEN PERCENT}$ upon execution of this agreement by cash or certified check, the proceeds of which shall be held in escrow by Seller’s Attorney, under the provisions of this agreement:

(ii) $\text{(DOLLAR AMOUNT) BALANCE}$ by certified fund at closing.

3. Adjustments: At the closing, adjustments shall be made, if applicable, for rents, securities/deposits, taxes, electricity, water or any other applicable apportionments. Any errors or omissions in computing apportionments shall be corrected after closing within seven (7) days.

4. Seller’s Representations and Warranties: the Seller represents and warrants to the Purchaser as follows:

   (i) Seller makes no representations with respect to:
       
       (a) The gross and/or net profits earned by the Seller from his operation of the business in the past or in the future;

       (b) The expenses which have been incurred by Seller through the operation of the business in the past or in the future including, without limitation, insurance, payroll, taxes, utilities, heat, telephone, and maintenance of the business.

4. Purchaser’s Representations and Warranties: The Purchaser represents and warrants to the Seller as follows:

   (i) The Purchaser agrees to indemnify, defend and hold harmless from and against any and all loss, liabilities, damage or expense, including but not limited to reasonable attorney’s fees, arising out of or due to the breach of any of the representations, warranties or undertaking of the Purchaser’s operation of the business on or after closing, including but not limited to obligations arising from obligations incurred on or after closing;

   (ii) That the Purchaser has reviewed or had an opportunity to review the Lease covering the premises operated by the Seller or its assignors;

   (iii) That the Purchaser has conducted its own independent investigation and inspection of the Seller’s premises, assets, furniture, fixtures, equipment, property, its past performance and its prospects for the future; and have not relied on any oral or written representations made by Seller and
agrees to accept same in "AS IS" condition, subject to reasonable wear and tear between the date hereof and closing;

(v) That any deposits which the Seller may have with any public utility company shall remain the sole property of the Seller; and

(vi) That Purchaser has obtained all necessary approvals required to make this Agreement binding upon it in accordance with the terms hereof.

5. Closing Date: The closing shall take place at the Law offices of [SELLER'S ATTORNEY], on or about May 1, 2014.

6. Prior Transactions: All accounts receivable earned and accrued by the Seller prior to closing shall be the sole property of the Seller. All accounts payable accrued by the Seller prior to closing shall be the responsibility of the Seller.

6. Restrictive Covenant: Transferor and all other persons heretofore active in the said business or in any way interested therein with the Transferor, not to reestablish, re-open, be engaged in, nor in any manner whatsoever become interested, directly or indirectly, either as employee, owner, as partner, as agent, or as stockholder, director or officer of a corporation, or otherwise, in any business, trade or occupation similar to the one hereby agreed to be sold within the area bounded:

Ten Blocks in all directions.
For a term of One year from the Closing date.

9. Lease: Transferor further agrees, at the time of closing, to assign and transfer as part of this sale the existing lease or to execute and deliver, or, at Transferor's discretion, to procure the execution and delivery, to the Transferee of a new lease or an extension of the term of the existing lease, covering the premises used in connection with said business. Security in the sum of $9,000.00 now held by the Landlord under the existing lease, shall be paid to the Transferor by the Transferee at the closing, less any valid set-off or counterclaim asserted by the Landlord. Transferee acknowledges and agrees that said security amount is not part of the purchase price. Transferor shall assign and transfer to the Transferee all of Transferor's right, title and interest in said security, or Landlord will return the Security to Tenant and Transferee will deposit new Security to the Landlord. Any default on the part of the Transferor with
respect to the provisions of this paragraph shall forthwith entitle the Transferee to repayment in full, on demand, of any deposit or payment on account hereunder.

10. **Brokers:** The parties hereto represent and warrant to each other that they have not dealt with any broker or finder in connection with this Agreement or the transactions contemplated hereby, and no broker or any person is entitled to receive any brokerage commission, finder's fees or similar compensation in connection with this Agreement or the transactions contemplated hereby. Each of the parties shall indemnify and hold the other harmless from and against all liability claim, loss, damage or expense, including reasonable attorney's fees, pertaining to any broker, finder or other person with whom such party has dealt.

11. **Benefit:** This agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective representatives, successors, and assigns.

12. **Notices:** All notices, requests, demands and other communications hereunder shall be in writing, and shall be deemed to have been duly given if sent by certified mail, return receipt request, postage prepaid,

**Seller:**
SELLER  
555 MAIN Street  
Scarsdale, NY 10583

**Purchaser:**
BUYER  
1234 ELM STREET  
Whitehouse Station, NJ 08889

or at such other place as the party may have designated to the other party upon written notice, sent by certified mail, return receipt requested.

13. **Survival of Warranties:** The warranties, covenants and representations contained in this Agreement shall survive closing and shall continue in full force as though set forth at length therein.

14. **Construction:** The Agreement has been executed in the State of New York and shall be construed in accordance with the laws of the State of New York.

15. **Severability:** If any of the terms or provisions of this Agreement or the agreements referenced herein shall be held
invalid, illegal or unenforceable, the validity of all other terms and provisions hereof shall in no way be effected thereby.

16. **Headings:** The heading of the articles and sections of this Agreement are inserted for convenience only and shall not be used to interpret or construe its provisions.

17. **Counterparts:** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

19. **Entire Agreement:** This Agreement, together with riders and any written agreements executed simultaneously herewith, constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties with respect to such subject matter.

20. **Amendments:** This Agreement cannot be changed or terminated orally. Any modification of this Agreement shall be effective only if made in writing and signed by both Seller and Purchaser. If the parties agree upon any modification of any term or condition of this Agreement, all other terms and conditions of this Agreement which are not expressly modified shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly agreed to and executed this agreement on the date first above written.

Date: , 20

Seller(s): Purchaser(s):

By: By:

State of New York )
County of ) ss.: On the day of in the year before me, the undersigned personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature (s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed this instrument.
Notary Public

State of
) ss.: 
County of 

On the day of in the year before me, the undersigned personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed this instrument.

Notary Public
RIDER TO ASSET PURCHASE AGREEMENT
SELLER, INC. TO BUYER, LLC
APRIL ___, 2014

1. In the event of any inconsistency between the provisions of this rider and those contained in the Asset Purchase Agreement to which rider is annexed, the provisions of this rider shall govern and be binding. In the event that any provision of this rider conflicts with the applicable law of the jurisdiction in which the business is located, such conflict shall not affect other provisions of this rider which can be given effect without the conflicting provision. All capitalized terms not defined herein shall have the same meaning as in the printed portion of the contract. The representations made in the annexed contract are made as of the date of the execution of the contract.

2. This Contract may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Facsimile and/or .pdf signatures may be affixed to the Contract and any instrument so signed shall be deemed an original.

3. If either party commences an action to enforce any term and/or condition of this Contract, the prevailing party in any such action shall be entitled to an award of its reasonable costs of litigation, including without limitation reasonable attorneys’ fees.

4. Purchaser shall, as soon as practicable and not less than ten (10) days prior to the Closing, file the form AU-196.10 Notification of Sale, Transfer or Assignment in Bulk with the New York State Department of Taxation and Finance and Seller’s Attorney, as Escrow Agent, shall hold in escrow post-closing the amount of five thousand dollars ($5,000.00) against tax liabilities and general creditors. Not less than thirty (30) days post-closing or upon earlier agreement between the parties, Escrow Agent may release the escrow, or any balance then remaining, to Transferor upon three (3) days’ notice to Transferee and Transferee’s Attorney.

[SIGNATURES ON FOLLOWING PAGE]
SELLER INC., Seller

By:

BUYER, LLC, Purchaser

By: 

, 

Managing Member
ASSIGNMENT AND ASSUMPTION OF LEASE

For valuable consideration, the receipt and adequacy of which are expressly acknowledged, Assignor and Assignee agree that:

1. Definitions. In this Assignment, the following terms have the meanings given to them:
   (a) Assignor:
   (b) Assignee:
   (c) Lease: LEASE, dated April 24, 2007, between ("Landlord"), and ("Tenant") (the "Lease"). A copy of the Lease is annexed to this Assignment as Exhibit A and made a part of this Assignment by this reference.
   (d) Premises: GROUND FLOOR STORE and FRONT BASEMENT in [ADDRESS], Astoria, NY 11106
   (e) Date: March 1, 2011

2. Assignment and Delivery of the Premises. Assignor assigns to Assignee, effective as of the Date, all of Assignor's right, title, and interest in (a) the Lease, (b) the Security Deposit made pursuant to the Lease, and (c) the Minimum Rent (the "Rent") prepaid under the Lease. Assignor reserves the right, however, to receive any refunds of overpayments from Landlord relating to the period prior to the Date. Assignor will deliver possession of the Premises to Assignee on the Date or on such other date as may be set forth above for Delivery of Possession.

3. Assumption and Acceptance of the Premises. Assignee assumes and agrees to perform each and every obligation of Assignor under the Lease, effective as of the Date. Assignee will accept the Premises in their condition as of the Date.

4. Assignor's Warranties. Assignor warrants to Assignee that (a) the Lease is in full force and effect and unmodified; (b) Assignor's interest in the Lease is free and clear of any liens, encumbrances, or adverse interests of third parties; (c) Assignor has full and lawful authority to assign its interest in the Lease; and (d) there is no default under the Lease or any circumstances which by lapse of time or after notice would be a default under the Lease. The warranties contained in this paragraph will be true as of the date of Assignor's execution of this Assignment and will be true as of the Date. The warranties will survive the Date.

5. Mutual Indemnification. Assignor will indemnify Assignee against and hold Assignee harmless from any and all loss, liability, and expense (including reasonable attorneys' fees and court costs) arising out of any breach by Assignor of its warranties contained in this Assignment, and Assignee will indemnify Assignor against and will hold Assignor harmless from any loss, liability, and expense (including reasonable attorneys' fees and court costs)
arising out of any breach by Assignee of its agreements contained in this Assignment after the Date.

6. Consent. The effectiveness of this Assignment is conditioned upon the endorsement of the Consent by Landlord.

7. Entire Agreement. This Assignment embodies the entire agreement of Assignor and Assignee with respect to the subject matter of this Assignment, and it supersedes any prior agreements, whether written or oral, with respect to the subject matter of this Assignment. There are no agreements or understandings which are not set forth in this Assignment. This Assignment may be modified only by a written instrument duly executed by Assignor, Assignee, Guarantor and Landlord.

8. Binding Effect. The terms and provisions of this Assignment will inure to the benefit of, and will be binding upon, the successors, assigns, personal representatives, heirs, devisees, and legatees of Assignor and Assignee.

Assignor and Assignee have executed this Assignment on the respective dates set forth beneath their signatures below.

ASSIGNOR:

By: ____________________________, President

ASSIGNEE:

By: ____________________________, President

CONSENT

Landlord consents to the foregoing Assignment, and releases the personal guarantee(s), if any, given on behalf of the Assignor; and this Consent will not be deemed a consent to any subsequent assignment, but rather any subsequent assignment will require the consent of Landlord pursuant to the Lease.

LANDLORD:

By: ________________________________________

Name: ________________________________________

Title: _________________________________________

Date: _________________________________________
AFFIDAVIT OF CORPORATE AUTHORITY

STATE OF NEW YORK )
COUNTY OF NEW YORK )

, being duly sworn, deposes and says:

That he is the Managing Member of SELLER, LLC, a limited liability company organized under the laws of the State of New York, and having its principal office at ADDRESS (the "Company").

That the members of the Company have authorized (i) the sale of substantially all of the assets of the Company to [NAME OF BUYER], and (ii) [NAME OF AUTHORIZED SIGNER] and/or [NAME OF AUTHORIZED SIGNER] to sign and execute such documents necessary to effectuate (i) hereinabove and so bind the Company by his signature.

That this affidavit is made for the express purpose and with the intent of inducing [NAME OF BUYER] to purchase the Company's assets, knowing full well that said parties will rely upon this affidavit and pay a good and valuable consideration.

Sworn to before me this 26th day of August, 2015

[NAME OF AUTHORIZED SIGNER]

Notary Public
BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that [SELLER], LLC, [SELLER’S ADDRESS] ("Seller"), for and in consideration of the sum of $__________ paid by [NAME OF BUYER] ("Purchaser"), the receipt of which is hereby acknowledged has bargained and sold, and by these presents does grant and convey unto the Purchaser, the furniture business located at [BUSINESS ADDRESS];

To have and to hold the same unto said Purchaser, Purchaser’s heirs, executors, administrators, successor and assigns forever, and does for Purchaser’s heirs, executors and administrators, covenant and agree, to and with the Purchaser, to warrant and defend the sale of the aforesaid restaurant hereby sold unto the Purchaser, Purchaser’s heirs, executors, administrators, successors and assigns, against all and every person and persons whomsoever.

Dated: New York, New York August 26, 2015

[SELLER], LLC

By: __________________________
   , Managing Member

SCHEDULE OF THE FOREGOING BILL OF SALE

1. Inventory (see attached)
2. Business furniture and equipment
STATE OF NEW YORK ) ss.:
COUNTY OF NEW YORK )

, being duly sworn, deposes and says:

That he is the Managing Member of [SELLER] LLC, a limited liability company organized under the laws of the State of New York, and having its principal office at [ADDRESS] (the "Company").

That the Company is now the sole owner of all the goods and chattels described and more specifically enumerated in the schedule above and made part of the foregoing Bill of Sale.

That your deponent states that there are no mortgages, liens, conditional sales agreement or other encumbrances of whatever nature or description affecting the said goods and chattels set forth in the foregoing schedule and that they are absolutely free and clear thereof.

That the Company is not indebted to any one and has no creditors.

That there are no actions pending against the Company in any court; nor are there any replevin judgments of execution outstanding against the Company now in force; nor has any petition in bankruptcy or arrangement proceedings been filed by or against the Company; nor has the Company taken advantage of any law relating to insolvency.

That this affidavit is made for the express purpose and with the intent of inducing [BUYER] LLC to purchase the property set forth and described in the foregoing bill of sale, knowing full well that it will rely upon this affidavit and pay a good and valuable consideration.

____________________________

Sworn to before me this 26th day of August, 2015

____________________________
Notary Public
BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that [SELLER] INC., [ADDRESS] ("Seller"), for an in consideration of the sum of [AMOUNT OF PURCHASE PRICE ASSIGNED TO TANGIBLE PROPERTY] ($ ) paid by [BUYER] INC. ("Purchaser"), the receipt of which is hereby acknowledged has bargained and sold, and by these presents does grant and convey unto the Purchaser, the Restaurant located at [BUSINESS ADDRESS];

To have and to hold the same unto said Purchaser, Purchaser's heirs, executors, administrators, successor and assigns forever, and does for Purchaser's heirs, executors and administrators, covenant and agree, to and with the Purchaser, to warrant and defend the sale of the aforesaid restaurant hereby sold unto the Purchaser, Purchaser's heirs, executors, administrators, successors and assigns, against all and every person and persons whomsoever.

Dated: Astoria, New York
March 1, 2011

[SELLER] INC.

By: ___________________________, President

SCHEDULE OF THE FOREGOING BILL OF SALE

1. Approx. forty (40) tables
2. Approx. one hundred fifty (150) chairs
3. Aluminum French doors and windows
4. Kitchen hood
5. Coffee machine
6. Approx. three hundred (300) plates and five hundred (500) glasses, and silverware
7. Electric fireplace
8. Cameras, POS system, six (6) speakers
9. Box refrigerator
That he is an officer and director of [SELLER] Inc., a corporation organized under the
laws of the State of New York, and having its principal office at [ADDRESS].
That the corporation is now the sole owner of all the goods and chattels described
and more specifically enumerated in the schedule above and made part of the foregoing Bill
of Sale.
That your deponent states that there are no mortgages, liens, conditional sales
agreement or other encumbrances of whatever nature or description affecting the said
goods and chattels set forth in the foregoing schedule and that they are absolutely free and
clear thereof.
That the corporation is not indebted to any one and has no creditors.
That there are no actions pending against the corporation in any court; nor are there
any replevin judgments of execution outstanding against the corporation now in force; nor
has any petition in bankruptcy or arrangement proceedings been filed by or against the
corporation; nor has the corporation taken advantage of any law relating to insolvency.
That this affidavit is made for the express purpose and with the intent of inducing
[BUYER] INC. to purchase the property set forth and described in the foregoing bill of sale,
knowing full well that it will rely upon this affidavit and pay a good and valuable
consideration.

Sworn to before me this
1st day of March, 2011

__________________________
Notary Public
**Notification of Sale, Transfer, or Assignment in Bulk**

The following information should be submitted by registered mail at least 10 days before taking possession of or paying for the business or property, whichever comes first. Complete this form in duplicate. Retain a copy for your records. See instructions for where to mail.

Read instructions on page 2 before making entries below.

| Section 1 - Mailing address of purchaser, seller, and escrow agent (if any)* |  |
|---|---|---|
| Purchaser or representative's name | Seller or representative's name | Escrow agent |
| Number and street | Number and street | Number and street |
| City, state, ZIP code | City, state, ZIP code | City, state, ZIP code |
| Telephone number with area code | Telephone number with area code | Telephone number with area code |

| Section 2 - Vendor identification* |  |
|---|---|---|
| Purchaser's Certificate of Authority identification number | Seller's Certificate of Authority identification number | Last day of business |
| Purchaser's name | Seller's name |
| Business or trade name | Business or trade name |
| Business location (number and street) | Business location (number and street) |
| City, state, ZIP code | City, state, ZIP code |

| Section 3 - Details of sale* |  |
|---|---|---|
| a) Scheduled date of sale | b) Location of property when transferred | f) Sales prices of assets sold: |
| c) Type of business or property sold | d) Amount of escrow fund | 1. Tangible personal property (furniture, fixtures, etc.)... |
| e) Name of bank in which escrow fund is deposited | | 2. Motor vehicles .................................. |
| Address (number and street) | | 3. Merchandise inventory for resale ..... |
| City, state, ZIP code | | 4. Manufacturing equipment, tools and supplies.................. |
| Account identification (name and number) | Bank telephone number ( ) | 5. Real estate ....................................... |
| Total sales price .................................... | | 6. Intangible property (goodwill, etc.) ... |
| g) Terms and conditions of sale (attach copy of Contract of Sale): |  |

*Notification in writing is required of any change in the information reported above.*

New York State Sales and Use Tax Law, Article 28, section 1141(c), provides in part as follows:

Whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefore, notify the (Commissioner of Taxation and Finance) by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that he owes any tax pursuant to this article, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Certification: I, the purchaser/seller named above, or other authorized representative of such purchaser/seller, do hereby certify that the above statements are true, complete and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully issuing a false or fraudulent document with the intent to evade tax may constitute a felony under New York State Law, punishable by a substantial fine and a possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity and the accuracy of any information entered on this document.

<table>
<thead>
<tr>
<th>Date</th>
<th>Signature</th>
<th>Title (if other than purchaser, please identify)</th>
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</thead>
<tbody>
<tr>
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</table>
Instructions

Section 1 - Mailing address of purchaser, seller, and escrow agent (if any)

Since Transaction Desk Audit Bureau will be contacting the purchaser, seller, and escrow agent, a mailing address for each is required. The mailing address provided may be the business or home address of the officer, partner, or other representative responsible for the records of the parties involved. If the mailing address is that of a representative, a power of attorney must be attached.

Section 2 - Vendor identification

List each vendor's identification number as shown on the Certificate of Authority issued by the NYS Tax Department. If the purchaser is not a registered vendor, indicate none.

List the purchaser and seller as stated in the sales contract, including their trade name (corporation, partnership, name under which an individual owner is doing business, assignee, trustee, estate, etc.) and business location.

Section 3 - Details of sale

In connection with the proposed sale, the following information is required:

a) Scheduled date of sale – The date to be entered is the date that the purchaser is taking possession of the business or property sold, or paying therefor, whichever comes first.

b) Location of property when transferred to the purchaser – If more than one location, attach a detailed schedule.

c) Type of business or property sold – For example, restaurant, retail clothing, fuel oil distributor, wholesale automotive supply, hardware manufacturer, etc.

d) Amount of escrow fund (if any).

e) Name, address, and telephone number of bank and identification of account in which escrow fund is or will be deposited.

g) Sales prices of assets sold – If the sales contract does not provide a sales price for the asset, the amount to be listed is the depreciable value for income tax purposes or the fair market value, whichever is higher. Do not reduce the sales price or valuation assigned by the amount of any mortgage or other liability assumed by the purchaser.

1. Sales price of tangible personal property. Include furniture, fixtures, supplies, and all other tangible personal property (except for inventory for resale, manufacturing equipment, tools and supplies, and motor vehicles).

2. Sales price of motor vehicles.

3. Sales price of merchandise inventory for resale. Inventory for resale may be transferred exempt from sales tax. The purchaser must give the seller a properly completed Form ST-120, Resale Certificate, within 90 days of the sale.

4. Sales price of manufacturing equipment, tools, and supplies. Include all equipment or machinery for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, and tools and supplies used in connection with such machinery or equipment. Machinery, equipment, and parts entitled to exemption in accordance with Tax Law sections 1105-B, 1115(a)(12), and 1210(a)(1), may be transferred exempt from sales tax. The purchaser must give the seller a properly completed Form ST-121, Exempt Use Certificate, within 90 days of the sale.

5. Sales price of real estate.

6. Sales price of intangible assets. Include goodwill, accounts receivable, notes receivable, mortgages, securities, and all other intangible assets.

g) Terms and conditions of sale – Outline manner of payment and any conditional provisions of the contract.

Mailing address

Mail original to:

NYS Tax Department
TDAB-Bulk Sales Unit
W A Harriman Campus
Albany NY 12227

Attention

Any person who is required to file Form AU-196.10 and who, in addition, has to obtain a Certificate of Authority, must file Form DTF-17, Application to Register for a Sales Tax Certificate of Authority. This application must be filed at least 20 days before either taking possession of the business assets or paying for them, whichever comes first. Failure to file a timely registration for a Certificate of Authority may, in addition to any other penalty imposed by the Tax Law, result in a penalty of up to $200. You can file this application online at www.nyss-permits.org or get a paper application to file from our Web site (see Need help?).

If you sell tangible personal property or services subject to tax, receive amusement charges, operate a hotel, purchase or sell tangible personal property for resale, or sell automotive fuel or cigarettes without a Certificate of Authority, you are subject to a penalty not exceeding $500 for the first day plus an amount not exceeding $200 for each subsequent day on which such sales or purchases are made, not to exceed $10,000 in the aggregate.

Need help?

Internet access: www.tax.ny.gov
(for information, forms, and publications)

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

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