

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

IN RE:)	
)	
COLORADO WICH LLC,)	Case No. 18-13443 KHT
)	
Debtor.)	Chapter 11
)	
)	
)	
_____)	
)	
IN RE:)	
)	Case No. 18-13449 EEB
COLORADO WICH INC.,)	
)	Chapter 11
Debtor.)	
)	
)	Jointly Administered Under
)	Bankruptcy Case No. 18-13443 KHT

**DEBTORS' JOINT MOTION FOR ORDER: (I) APPROVING
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, FREE AND CLEAR
OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO 11
U.S.C. § 363(F); (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
LEASES PURSUANT TO 11 U.S.C. § 365(F)(1); (III) APPROVING COMPENSATION
TO THE DEBTORS' COMMERCIAL SALES BROKER; AND (IV) GRANTING
RELATED RELIEF**

Colorado Wich LLC and Colorado Wich Inc., collectively referred to as (the “Debtors” or “Colorado Wich”), by and through their counsel, Buechler & Garber, LLC respectfully move this Court for to approve this Joint Motion for Order: (I) Approving the sale of substantially all of the Debtors’ Assets, Free and Clear of All Liens, Claims, Interests and Encumbrances pursuant to 11 U.S.C. § 363(f); (II) Approving the assumption and assignment of leases pursuant to 11 U.S.C. § 363(f)(1); (III) Approving Commission to Debtors’ Commercial Sales Broker; and (IV) Granting Related Relief (the “Sale Motion”) as follows:

1. The Debtors simultaneously filed for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on April 24, 2018 (the “Petition Date”) and are operating as a Debtors-in-Possession.¹

2. The Debtors continues in possession of its properties and is operating and managing its businesses, as debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

JURISDICTION AND VENUE

3. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

THE DEBTOR

4. Simultaneously with the filings the Debtors jointly filed their Motion for Joint Administration, which was granted by the Court on April 25, 2018. Colorado Wich Inc. is merely a holding company for Colorado Wich LLC., which is the actual operating Debtor entity. Colorado Wich Inc. has nominal assets of little value.

5. Colorado Wich LLC operates a franchise called Which Wich Superior Sandwich Shops (“Which Wich”) and owns and operates eight (8) retail locations in the Denver metro area and along the Front Range in the State of Colorado. Which Wich specializes in custom sandwich making.

¹ In March of 2018 Colorado Wich – Colorado Mills, LLC, Colorado Wich – Cornerstar, LLC, Colorado Wich – Crestline, LLC, Colorado Wich – DTC, LLC, Colorado Wich – EvCo, LLC, Colorado Wich – Highlands Ranch TCN, LLC, Colorado Wich – Lone Tree, LLC and Colorado Wich – Orchards, LLC (collectively, the “Subsidiaries” and each, a “Subsidiary”) were all merged into Colorado Wich LLC.

6. The Debtor Colorado Wich LLC employs approximately 84 people, including the principal of the Debtor, Jeffrey Gordan, who is the managing member or president of the respective Debtors.

7. The Debtors as tenant leases eight retail store locations pursuant to that certain leases described below (“Leases”): The Debtor as tenant leases eight retail store locations pursuant to those certain leases described below (“Leases”):

- A. **Cornerstar Lease dated November 26, 2007**, Colorado Wich – Cornerstar, LLC Tenant, BRE DDR BR Cornerstar Co. LLC, Landlord, Expires November of 2018.
- B. **Crestline Lease dated November 23, 2012**, Colorado Wich – Crestline LLC Tenant, Plaza on the Green LLC, Landlord, Lease assumed and extended per Court order allowing assumption, [Doc. No 80] dated June 28, 2018.
- C. **Colorado Mills Lease dated March 26, 2010**, Colorado Wich- Colorado Mills LLC Tenant, Burgundy Partners LLC, Landlord, Expires March of 2020.
- D. **DTC Lease dated October 1, 2011**, Colorado Wich – DTC, LLC Tenant, MR Marina Square LLC, Landlord, Expires October 2021.
- E. **Lonetree Lease dated January 4, 2007**, Color Wich-Lonetree LLC, Tenant, Meadows Manager 05, LLC Landlord, Expires May 2022.
- F. **Highlands Ranch Lease dated April 21, 2010**, Colorado Wich – Highlands Ranch TCN LLC, Tenant, Shea Homes – TCN 1 LLC, Landlord, Expires April 2020.
- G. **Colorado & Evans Lease dated March 3, 2010**, Colorado Wich – EvCo, LLC Tenant, UPSC LLC Landlord, Expires March of 2020.
- H. **Orchard Town Center Lease dated January 23, 1997** -Extension Dated May 1, 2018, Colorado Wich – Orchards, LLC Tenant, Vestar Orchard Town Center LLC, Landlord, Expires April 2028.

8. The lease for the location commonly known as Crestline has been assumed by the Debtors pursuant to an Order of the Court dated June 28, 2018 [Doc. No. 80].

9. The Debtors decided not to renew its lease for the Cornerstar location which expired by its own terms in November of 2018.

10. This Court granted the Debtors an extension of the exclusive period to file their Joint Plan through and including November 8, 2018 [Doc. No. 117] and to assume or reject Commercial Leases, Court's Minute Order [Doc. No. 119] dated September 13, 2018.²

11. The Debtors have filed timely their Joint Plan and Disclosure Statement herein [Doc. Nos. 151 & 152] which provides for the assumption of the Debtors' Leases described above and further provides for the sale of the Debtors' assets, including Leases and inventory and equipment.

12. With this Court's approval the Debtors retained We Sell Restaurants Inc. ("Broker") on September 17, 2018 to market and sell seven of the Debtor's eight retail locations, see Order at [Doc. No. 123].

13. With the assistance of the Broker the Debtors have obtained an offer to purchase all seven of the Debtor's remaining retail locations, assume all the related Leases, post new security deposits, purchase the equipment and inventory on location at the time of the sale, which constitutes substantially all of the Debtors' assets exclusive of security deposits and accounts receivable, for a total purchase price of \$675,000. A copy of the proposed Asset Purchase Contract dated December 10, 2018 is attached hereto as Exhibit 1 (the "Purchase Contract").

² The Lease for the Colorado Mills location was carved out if this Court's Minute Order of September 13, 2018, which approved the motion as to all locations except for Colorado Mills, *nunc pro tunc* to August 15, 2018 [Doc. No. 104]. The Colorado Mills location and lease is part of this Sales Motion.

The Debtor has accepted the Purchase Offer subject to Bankruptcy Court approval of this Motion.

14. The Purchase Offer is a 100% cash offer but is subject to acceptable financing which must be in place within on or before December 31, 2018 and successful training and certification as a franchisee by Which Wich Inc. the franchisor. The closing of the proposed sale is for on or before March 1, 2019 but the Debtors hope to accelerate the closing to no later than the end of January 2019 or early February 2019.

15. To that end, contemporaneous with the filing of this Motion, the Debtor is filing its Motion to Shorten Notice, seeking to shorten the notice period for this Motion to ten (10) days.

16. This Motion furthers the objectives set forth in the Joint Plan and (1) insures the continued employment of over 80 hourly workers of the Debtors whose employment is an important factor in keeping the store locations open and operating, (2) protects the goodwill and business reputation of the Debtors in the business community, (3) insures that senior secured and unsecured priority debt is paid in full, and (4) provides more of a return to creditors for Debtors' assets than would be obtained in either a forced liquidation of Debtors' assets or the surrender and sale to the Which Wich franchisor, or any other viable alternative to maximize the Debtors' assets. All creditors, including the secured lenders, will be best served by allowing the uninterrupted and continued operations of the Debtors.

17. A review of the potential security interests currently encumbering the Bayfield Property is generally set forth as set forth below.³

Pre-Petition Loans – Colorado Wich LLC.

The Debtor, Colorado Wich LLC, has three separate secured lenders with loan obligations of varying types and amounts totaling approximately \$927,961.20 as follows:

Accel Capital Inc. and Accel Capital LLC

18. Prior to filing for relief, the Debtor Colorado Wich LLC took out several loans from Accel Capital Inc., and Accel Capital LLC (“Accel”). There are two loan obligations to Accel, the first a Note dated November 22, 2017 with a March 31, 2017 scheduled amount due of \$307,516.00 and a second Note dated February 15, 2018 with a balance of \$264,133.00 on March 31, 2018. The notes are secured by substantially all the Debtor’s assets, including cash collateral in the form of future accounts and accounts receivables as evidenced by two UCC-1 Financing Statements.

19. Accel asserts it has perfected liens on the assets of the Debtor by its recording Financing Statements with the Colorado Secretary of State as follows:

- i. UCC Financing Statement, Recorded March 20, 2018 at Reception No. 20182024802;
- ii. UCC Financing Statement, Recorded March 19, 2018 at Reception No. 20182024442.

20. The balances owed on March 31, 2018 the loans with Accel are as follows:

³ The discussion of the secured claims is not an admission by the Debtor of the amount, extent, or validity of the claims.

Loan A: \$307,516.00
Loan B: \$264,133.00

21. Accel is in a junior position in the Debtor Colorado Wich LLC's assets.

Citywide Bank, f/n/a Millennium Bank

22. The Debtor Colorado Wich LLC is indebted to Citywide Bank (Citywide") on a secured Note obligation dated January 27, 2012, secured by substantially all of the Debtor's assets with the exception of the Crestline Which location which is secured by a note to Meadows Bank. The scheduled amount of the secured claim of Citywide is \$224,981.49, plus fees, costs and accruing interest.

21. Citywide asserts it has perfected liens on the assets of the Debtor by virtue of the UCC-1 Financing Statement filed by Millennium Bank with the Colorado Secretary of State as follows:

22. UCC Financing Statement, Recorded January 27, 2012 at Reception No 2012F00556.

23. Citywide asserts it has a senior position in the Debtor Colorado Wich LLC's assets.

JP Morgan Chase Bank

24. The Debtor Colorado Wich LLC has a secured loan obligation with JP Morgan Chase Bank ("Chase") with a scheduled amount owed of \$18,989.60.

25. Under the terms of the loan the Debtor granted Citywide a security interest in, among other things, its accounts, equipment, and general intangibles. Chase asserts it perfected its lien by recording a Financing Statement with the Colorado Secretary of State on April 13, 2010 at Reception No. 20102030229.

26. As of the Petition Date, Chase asserted that it was owed a total of approximately \$18,989.60 plus accrued interest, attorneys fees and charges.

27. Chase is in a junior position in the Debtor Colorado Wich LLC's assets.

28. Chase also asserts a lien in the assets of Colorado Wich, Inc., the companion case filing to Colorado Wich LLC. The amount of the asserted secured claim is scheduled at \$19,364.72.

Meadows Bank – SBA Loan.

29. In early January of 2015 the Debtor Colorado Wich LLC incurred a secured loan obligation with Meadows Bank ("Meadows") and obtained an SBA Loan with a scheduled amount owed of \$112,371.11.

30. Under the terms of the loan the Debtor Colorado Wich LLC granted Meadows a security interest in its accounts, equipment, and general of the Debtor's store locations on Academy Boulevard in Colorado, Springs and the Crestline store in Littleton only.

31. Meadows asserts it has perfected liens on the assets of the Debtor by virtue of the UCC-1 Financing Statement filed with the Colorado Secretary of State as follows:

- a. UCC Financing Statement, Recorded January 22, 2015 at Reception No 20152006719; and
- b. UCC Financing Statement, Recorded January 22, 2015 at Reception No 20152006822.

32. As of the Petition Date, Meadows Bank asserted that it was owed a total of approximately \$112,371.11 plus accrued interest, attorneys fees and charges.

33. Meadow's lien position priority is unknown and may be in a junior position in The Debtor Colorado Which LLC' assets described in the UCC-1 filings.

Everest Business Capital

34. Everest Business Funding (“Everest”) filed Proof of Claim No. 18 on June 27, 2018 in the amount of \$75,395.00 and asserted a UCC-1 lien in Debtor’s cash and future receipts in a fashion similar to that of Accel Capital Inc., and Accel Capital LLC (“Accel”).

35. Everest’s lien position priority is unknown but is clearly in a junior position in the Debtor Colorado Which LLC’ assets described in its UCC-1 filings.

Pre-Petition Loans – Colorado Wich Inc.

The Debtor, Colorado Wich Inc. is a non-operating entity and has one secured loan obligation as described above to Chase in the amount of \$18,989.60.

36. Chase asserts it perfected its lien by recording a UCC-1 Financing Statement with the Colorado Secretary of State on April 13, 2010 at Reception No. 20102030227.

37. As of the Petition Date, Chase asserted that it was owed a total of approximately \$18,989.60 plus accrued interest, attorneys fees and charges.

38. Chase is in a senior position in Debtor Colorado Wich Inc., assets, which are of de minimis value.

RELIEF REQUESTED

AUTHORITY FOR SALE

39. Section 363(b) of the Bankruptcy Code provides authority for a trustee and, through the application of Bankruptcy Code section 1107(a), a debtor-in-possession, “after notice and a hearing, [to] use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The authority to sell assets conferred upon a debtor by section 363(b) “include[s] a sale of substantially all the assets of an estate.” *Otto Preminger Films, Ltd, v. Qintex Entertainment, Inc.* (In re Qintex Entertainment, Inc.), 950 F.2d 1492, 1495 (9th Cir. 1991). Further, section 105(a) of the Bankruptcy Code allows the Court to “issue any

order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

40. The Bankruptcy Court’s power to authorize a sale under section 363(b) is to be exercised at the Court’s discretion. *In re WPRV-TV, Inc.*, 983 F.2d 336, 340 (1st Cir. 1993); *New Haven Radio, Inc. v. Meister* (In re Martin-Trigona), 760 F.2d 1334, 1346 (2d Cir. 1985); *Committee of Equity Sec. Holders v. Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063, 1069 (2d Cir. 1983).

41. Courts have authorized a sale of all or substantially all of a debtor’s assets pursuant to section 363(b) of the Bankruptcy Code or in the absence of a reorganization plan where there is a “sound business purpose.” *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *Titusville Country Club v. Penn Bank* (In re Titusville Country Club), 128 B.R. 396 (Bankr. W.D.Pa. 1991); *In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15 (Bankr. E.D.Pa. 1987). See also, *Stephens Indus., Inc. v. McClune*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1071 (setting forth the “sound business purpose” test in the context of a sale of assets under section 363(b) of the Bankruptcy Code).

42. In this case, the “sound business purpose” test is easily met because the Debtors are unable to obtain debt or equity financing to continue operations. The Purchase Offer is in an amount sufficient to pay all secured and all senior unsecured priority claims.

43. It is not anticipated that any sale proceeds will be left for general unsecured claimants, but the sale does carve out security deposits which have an estimated value of \$40,000 and accounts receivables, which are de minimis. All Article V avoidance actions are being retained as well. Priority unsecured claims are likely to receive distributions.

44. Courts have also required that the sale price be fair and reasonable and that the sale be the result of good-faith negotiations with the buyer. *In re Abbotts Dairies of Pa.*, 788 F.2d 143, 147-50 (3rd Cir. 1986); *In re Tempo Technology Corp.*, 202 B.R. 363, 367 (D. Del. 1996), *aff'd sub nom. Diamond Abrasives Corp. v. Temtechco, Inc.* (In re Temtechco, Inc.), 141 F.3d 1155 (3d Cir. 1998); *In re Industrial Valley*, 77 B.R. at 22; *In re Stroud Ford, Inc.*, 163 B.R. 730 (Bankr. M.D. Pa. 1983); See also *In re Ewell*, 958 F.2d 276 (9th Cir. 1992) (declining to set aside or modify a sale pursuant to section 363 of the Bankruptcy Code because the price was fair and reasonable, and the buyer was a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code).

45. While the Bankruptcy Code does not define “good faith,” courts have held that for purposes of section 363(m), a “good faith purchaser” is one who buys “in good faith” and “for value” and that lack of good faith is shown by fraud, collusion, or an attempt to take grossly unfair advantage of other bidders. *In re Abbotts Diaries of PA.*, 788 F.2d at 147; *In re Tempo Technology Corp.*, 202 B.R. at 367. The Purchase Offer for the Debtors’ assets was negotiated by the Debtor and the Buyers, is the highest offer received to date, and is therefore an arms-length transaction.

46. The adequacy of the consideration in the Purchase Offer is reasonable. The Debtors have received only one other offer, from the franchisor in the sum of \$75,000. The Purchase Offer, at the highest price offered to date, even with a short-term financing contingency, is fair and reasonable.

47. The Debtors’ assets have been marketed through a multitude of private and public avenues and multiple brokers.

48. The Buyers have no affiliation with the Debtors or its insiders.

49. The Debtors therefore respectfully submit that a prompt sale is in the best interest of creditors and will maximize the amount that creditors may realize on account of their claims in this case.

SALE FREE AND CLEAR OF LIENS

50. The Debtor is also requesting authorization to sell substantially all its assets free and clear of liens, claims and encumbrances and other interests. Section 363(f) of the Bankruptcy Code authorizes a debtor in possession to sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions is satisfied:

- a. applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
 - b. such entity consents;
 - c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
 - d. such interest is bona fide dispute; or
 - e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.
- 11 .S.C. § 363(f).

51. In this case, the Debtor anticipates that the purchase price received for the encumbered assets will be greater than the aggregate value of all known undisputed liens on the assets to be sold. Thus, the requirements under Bankruptcy Code § 363(f)(3) are satisfied.

52. Lenders such as Accel and Everest, who claim a lien in ‘future cash’ are not impacted by the sale as the Debtors are not selling any cash assets or receivables to the Purchaser. The Debtors maintain these lenders who are junior to the secured debt to be paid at the closing, are not impacted in any way by this sale and are disputed, any asserted liens will

attach to the sale proceeds with the same validity, priority and perfection, and to the same extent as may exist in the Debtors assets upon its sale.

53. **The Debtor seeks authority to pay the following liens at closing:** (a) Colorado Dept of Revenue – senior sales tax lien in the amount of \$104,206.94; (b) Citywide Bank senior debt in the approximate amount of \$228,678.49 (c) Meadows Bank senior debt in the approximate amount of \$112,795.33; and (d) Chase Bank senior debt in an estimated amount of \$18,898.00.

54. The counties of Denver, Douglas, Arapahoe, El Paso, Jefferson and Yuma and the municipalities of the Cities of Aurora, Lakewood, Lone Tree, Westminster, and Denver, Colorado have each filed priority claims for Business Personal Property and other taxes owed in an aggregate amount \$98,696.34. Many of these liens are disputed and they will attach to the sale proceeds with the same validity, priority and perfection, and to the same extent as may exist in the Debtors assets upon its sale.

55. The IRS has filed a proof of claim in the amount of \$127,779.71 for unassessed liability for the Debtor's payroll tax obligations and corporate income taxes. To the extent proceeds are left after all senior secured debt is paid, this priority unsecured claim would likely consume most of the remainder of any unencumbered sale proceeds. The payment of any claims other the four listed above to be paid at the closing will be treated as set forth in the Debtor's Joint Plan.

56. The Debtor also seeks authority to pay from the sale proceeds the Broker's commission earned from the consummation of the Sale as set forth in the already approved listing agreement in the amount of 12% of the sales price or \$81,000.00.

ASSUMPTION AND ASSIGNMENT OF LEASES

57. Under Section 365(f)(1), with certain exceptions, a bankruptcy trustee or chapter 11 debtor-in-possession ("DIP") may assign an executory contract or an unexpired lease. Any provision in the contract or lease or in applicable law that "prohibits, restricts, or conditions" assignment is not enforceable. The purpose of the provision is to maximize the value of a debtor's assets for the benefit of the estate and creditors. See *Angelone v. Great Atlantic & Pacific Tea Co., Inc.* (In re Great Atlantic & Pacific Tea Co., Inc.), 2016 WL 6084012, *4 (S.D.N.Y. Oct. 17, 2016). The decision to assume or reject is a manifestation of the business judgment rule and the Debtors' decision to do so must meet that standard. Accord, *In Re Sabine Oil & Gas Co.*, 547 B.R. 66, 71 (Bankr. S.D.N.Y. 2016).

58. The Debtors in their Plan have already provided for the assumption of the Leases. This Motion expressly furthers that intent by formally assuming the following executory contracts and/or unexpired leases and assigning them to the Purchaser, they are:

Crestline Lease dated November 23, 2012, Colorado Wich – Crestline LLC Tenant, Plaza on the Green LLC, Landlord, Lease assumed and extended per Court order allowing assumption, [Doc. No 80] dated June 28, 2018.

Colorado Mills Lease dated March 26, 2010, Colorado Wich- Colorado Mills LLC Tenant, Burgundy Partners LLC, Landlord, Expires March of 2020.

DTC Lease dated October 1, 2011, Colorado Wich – DTC, LLC Tenant, MR Marina Square LLC, Landlord, Expires October 2021.

Lonetree Lease dated January 4, 2007, Color Wich-Lonetree LLC, Tenant, Meadows Manager 05, LLC Landlord, Expires May 2022.

Highlands Ranch Lease dated April 21, 2010, Colorado Wich – Highlands Ranch TCN LLC, Tenant, Shea Homes – TCN 1 LLC, Landlord, Expires April 2020.

Colorado & Evans Lease dated March 3, 2010, Colorado Wich – EvCo, LLC Tenant, UPSC LLC Landlord, Expires March of 2020.

Orchard Town Center Lease dated January 23, 1997 -Extension Dated May 1, 2018, Colorado Wich – Orchards, LLC Tenant, Vestar Orchard Town Center LLC, Landlord, Expires April 2028. .

All machinery and equipment leases including but not limited to Master EFA Agreement ME 00140539, CIT Direct capital.

All franchise agreements and contracts on any kind between the Debtors and Wich Wich Corporation, the franchisor, or its assigns and designees.

59. At the closing or beforehand the Debtors shall cure any pre-petition default under the unexpired Leases described above as set forth in the attached Exhibit 2 hereto, or as otherwise agreed to by the Debtors and the respective landlords.

60. Pursuant to Section 365(f)(1) the assumption and assignment of the Leases is permitted. The landlords' interests in this case are more than adequately protected by the new tenants and new security deposits. The new tenant will be better situated to honor the remainder of the assigned Leases.

61. Nothing in this Motion relieves the landlords of their duties to properly account for and return any security deposits properly owed to the Debtors.

CLOSING OF SALE

62. All proceeds remaining after the closing shall be paid to the Debtors and held in the DIP account.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, a proposed form is filed herewith, granting the relief described above, and grant such other relief as may be just.

Dated: December 12, 2018

Respectfully submitted,
BUECHLER & GARBER, LLC

Michael J. Guyerson

Michael J. Guyerson, #11279

999 18th Street, Suite 1230-S

Denver, Colorado 80202

Tel: 720-381-0045

Fax: 720-381-0382

Mike@bandglawoffice.com

ATTORNEYS FOR THE DEBTOR



ASSET PURCHASE CONTRACT

(for the sale and purchase of business assets)

THIS ASSET PURCHASE CONTRACT AND RECEIPT (hereinafter, this "Contract") is entered into on December 10 2019 by and between:

BUYER:

Legal Name of Buyer: Dave Sondergaard and/or his assign

Organizational Structure: A/An Colorado Individual

Address of Buyer: 7240 West Custer Avenue, 206, Lakewood, CO, 80226

who hereby offers and agrees to purchase upon the terms and conditions hereinafter set forth, the business assets of:

SELLER:

Legal Name of Seller: Colorado Which LLC

Organizational Structure: A/An Colorado Limited Liability Corporation

Trade Name: Which Wich

Address of Business: 9183 Viagggio Way Highlands Ranch CO 80126

THE TOTAL PURCHASE PRICE FOR THE BUSINESS ASSETS SHALL BE:

a. \$ 675000.00 **PURCHASE PRICE PAYABLE AS FOLLOWS:**

b. \$ N/A By Earnest Money Deposit received herewith.

c. \$ 20000.00 By Additional Deposit upon acceptance of offer by Seller.

All Deposits to be held by: Izbiky and Associates Trust Account

Address: 7400 E. Caley Avenue, Suite 300, Centennial, CO, 80111

Phone: 3038507080

Email: julian@izbikylaw.com

("Transaction Closing Attorney or Escrow Agent").

Seller and Buyer acknowledge that all checks accepted by the Escrow Agent are subject to collection.

Escrowed funds shall not be disbursed until the bank has cleared them.

The named Buyer on the contract must be the remitter of any deposit.

d. \$ N/A By duly executed Purchase Money Promissory Note.

The Note made in favor of, and delivered to, Seller at Closing payable in N/A equal consecutive monthly payments of \$ N/A which includes interest at the rate of N/A % per annum"

The first note payment shall be due and payable on: N/A

e. \$ N/A By Assumption of existing Promissory Note/Liability.

The unpaid balance of any promissory note or other deferred indebtedness to be assumed by Buyer and mentioned above is approximate. Any adjustments thereto shall be made to the cash portion provided at Closing.

f. \$ 115000.00 By In State Cashier's check or wire transfer from Purchaser on or before the Closing Date.

g. \$ 540000.00 Third Party Financing:

EXHIBIT 1

h. \$ N/A Other: _____

i. \$ 675000.00 **TOTAL PURCHASE PRICE**

PRELIMINARY CONTRACT PROVISIONS**1. OFFER/ACCEPTANCE/COUNTEROFFER****1.1. OFFER.**

Contract shall be open for Party's written acceptance until: 5 o'clock pm on December 11, 2018

1.2. ACCEPTANCE.

Acceptance of this Contract made at: 12/11/2018

1.3. COUNTEROFFER.

Counteroffer of this Contract made at: _____

with change(s) found on the Contract or delineated more fully on the Counter Offer Page of this Contract, and said Counter Offer

shall be open for Buyer's acceptance until: _____ o'clock _____ M on _____
20 _____

2. EFFECTIVE DATE:

The "Effective Date" of this Contract shall be the date on which the last of the parties signs and accepts the final of thereby

making the Contract bi-lateral on all items and conditions.

3. PURCHASE OF BUSINESS ASSETS:

Buyer hereby offers to purchase and Seller hereby agrees to sell the Seller's business assets at the total Purchase Price

4. PAYMENT OF DEPOSIT:

☒ The Buyer tenders payment of the Earnest Money Deposit with this offer, said deposit shall be made payable to the Escrow Agent.

☐ The Buyer does NOT tender payment of the Earnest Money Deposit with this offer.

☐ The Buyer shall deposit the Earnest Money Deposit with the Escrow Agent within 96 hours of the Effective Date.

5. CLOSING:

5.1 Buyer and Seller hereby mutually agree to execute any and all documents necessary to close this transaction on the Closing Date.

5.2 The Closing Date shall be on or before March 1, 2019

5.3 The Closing Date may be extended in a writing signed by both Buyer and Seller.

6. TIME:

TIME IS OF THE ESSENCE with respect to the all aspects of this Contract.

7. AUTHORITY:

7.1 The Buyer and Seller have full authority to enter into this Contract and to conclude the transaction described herein

7.2 Neither Buyer nor Seller is a party to any agreement that shall prevent either Buyer or Seller from concluding this transaction; nor is any consent required from any third party.

7.3 The execution, delivery and performance of this Contract shall not constitute a violation of Seller's Articles of Incorporation if a corporation or Seller's Articles of Organization if a Limited Liability Company or the entity's by-laws.

8. SELLER'S REPRESENTATION:

8.1 Seller represents to Buyer that all outstanding liabilities of the Business, except as specifically set forth herein, shall be paid in full by Seller on or before the Closing, and that Buyer shall receive possession of the Assets free and clear of any encumbrances other than any security interest that may be created pursuant to this Contract.

8.2 Seller represents to Buyer that there is no pending legal action or legal proceeding against Seller relating to the Business, its assets or business activity, nor does the Seller know or have reasonable grounds to know the basis of any potential legal action relative to the Business, its properties or business activity.

8.3 Seller represents to Buyer that all of Seller's statements or representations regarding the prior operation of the Business, the value of the assets being purchased and all other material facts are true and that Seller knows its statements and representations have been relied upon by Buyer in Buyer's decision to enter into this Contract.

8.4 Seller represents that the financial information supplied to Buyer by Seller is true and correct and is an accurate presentation of the financial condition and operating results of the Business.

9. BUYER MAY FORM NEW ENTITY:

9.1 Buyer may elect to form a corporation or a Limited Liability Company after this Contract has been executed. In such event, the new entity shall become the Buyer, and original Buyer shall cause the corporation to ratify all of the terms and conditions of this Contract.

9.2 Buyer shall continue to be personally liable for the performance of the terms, covenants and conditions herein.

9.3 If the Buyer becomes an entity, the individual signatory(ies) to this Contract shall be personally liable for the performance of the terms, conditions and covenants contained herein.

9.4 Is it the Buyer's intention to form an entity prior to closing ☒ Yes / ☐ No / ☐ To Be Decided.

10. BUYER'S DUE DILIGENCE:

10.1 Buyer, at Buyer's expense, shall be responsible for the initiation of any formal Due Diligence examination of the business operation generally and that that examination shall be conducted by the Buyer and/or by an appropriate professional or professionals.

10.2 This Contract shall be contingent upon the Buyer's satisfactory Due Diligence of the company's complete operations including, but not limited to, financial records, corporate and other business records, operational procedure condition of equipment, any and all leases, and any contractual relationships.

10.3 Buyer shall have fifteen (15) days to complete the said Due Diligence (the "Due Diligence Period").

10.4 Buyer's Due Diligence Period shall commence on N/A N/A In the event this date is not specified, Buyer and Seller mutually agree that the start date of Due Diligence shall be the Effective date of this Contract.

10.5 Buyer's discovery, during the Due Diligence Period, of any item or items not to the Buyer's sole, complete and personal satisfaction shall cause this Contract to be cancelled in every respect and particular.

10.6 Buyer and Seller agree that if this Contract shall become cancelled because of the failure of Due Diligence, the Escrow Agent shall be vested with the authority to immediately refund any and all deposits held for this Contract.

11. DEFAULT BY BUYER/SELLER:

11.1 DEFAULT BY BUYER:

If Buyer (a) fails to pay the balance of any cash necessary to close this transaction; (b) fails to perform any of the covenants and conditions of this Contract; or (c) breaches Buyer's obligations or representations or warranties contained herein, the Seller shall have the following sole remedies: (y) the right to enforce this Contract pursuant to the Contract terms; or (z) direct that the Escrow Agent pay the Earnest Money to Seller and Broker, in accordance with the Escrow Agreement, as liquidated damages in full settlement of all claims Seller may have against Buyer and any other person or entity related to the transaction contemplated by this Agreement. The parties agree that such liquidated damages are not a penalty and are a good faith estimate of Seller's actual damages, which damages are difficult to ascertain.

11.2 DEFAULT BY SELLER:

11.2.1 If Seller breaches Seller's obligations or representations or warranties herein, Buyer shall have the right to demand, payment of amount to Buyer equal to the Earnest Money Deposit. Such amount, if accepted and deposited by Buyer shall constitute liquidated damages in full settlement of all claims that Buyer may have against any person or entity and which relate to the transactions contemplated by this Agreement. The parties agree that such liquidated damages are not a penalty and are a good faith estimate of Buyer's actual damages which damages are difficult to ascertain.

11.2.2 If Seller breaches Seller's obligations or representations or warranties herein, Broker shall be entitled to seek full commission against Seller as set forth in the Seller's Broker Listing Agreement with Broker.

CONTRACT PURCHASE PROVISIONS**12. BILL OF SALE:**

Seller shall deliver to Buyer, at the Closing, a Bill of Sale for all furniture, fixtures and equipment, whether tangible or intangible, (the "Assets") included in this sale, as per the attached Schedule "1," which, by this reference, is incorporated herein, for which Seller warrants that it has good and marketable title, free and clear of all liens and encumbrances except any liens or encumbrances disclosed herein.

13. CONDITION OF ASSETS:

13.1 All Assets included in this sale, as per attached Schedule "1," are being purchased on an "as is" basis without warranties of merchantability or fitness for any particular purpose.

13.2 Buyer shall be responsible for inspecting said equipment in order to determine that, as of the date of Closing, said equipment is in good working condition.

14. SELLER FINANCING; PURCHASE MONEY PROMISSORY NOTE:

If applicable, Buyer shall execute a Purchase Money Promissory Note (the "Note") in favor of Seller as more specifically set forth on the first page of this Contract.

15. THIRD PARTY FINANCING; LOAN COMMITMENT:

☐ This Contract IS NOT CONTINGENT upon any third party financing.

☒ This Contract IS CONTINGENT upon third party financing, consequently:

15.1 Buyer shall make written application to lender within five (5) calendar days of the Effective Date of this Contract.

15.2 Buyer shall have twenty-one (21) calendar days from the Effective Date of this Contract to receive a written loan commitment on terms acceptable to Buyer and to Buyer's sole discretion.

15.3 Buyer shall provide written notification to Seller of Buyer's intent to close this transaction if lender's terms are acceptable to Buyer.

15.4 Buyer may cancel this Contract by written notice to Seller and Broker within the loan commitment period; failure of Buyer to so notify the Seller and Broker shall constitute Buyer's absolute waiver of this provision.

15.5 Buyer's cancellation of this Contract for the failure of a loan commitment shall cause this Contract to be a nullity in all respects and particulars and vest the Escrow Agent with the authority to immediately refund any and all deposits held for this Contract.

16. SECURITY AGREEMENT

16.1 If Buyer executes a Note in favor of the Seller, and Buyer has assigned this Contract to its new entity, the Buyer shall make the Note in the entity's name and, along with all fiduciaries of the entity, shall personally guaranty the Note.

16.2 The Buyer shall also execute a Security Agreement in accordance with Section 16.5 securing interest in all of its tangible and intangible Assets.

16.3 The Security Agreement shall continue until the Note is satisfied or until the Seller regains ownership and/or control of the business.

16.4 Buyer shall further execute a Financing Statement (UCC-1), which shall be recorded in the appropriate County and filed with the State of CO as per the requirements of the Uniform Commercial Code or such other applicable law.

The properties, assets and rights of the Debtor, wherever located, whether now owned or hereafter acquired or arising and all proceeds and products thereof (all of the same being hereinafter called the "Collateral") hereinafter described:

1. All personal and fixture property of every kind and nature including, without limitation, all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts, contracts and contract rights, chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles);
2. All trademarks (including common law), service marks and trade names, the entire goodwill of or associated with the businesses now or hereafter conducted by Debtor connected with and symbolized by any of the aforementioned properties and assets;
3. All general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature associated with or arising out of any of the aforementioned properties and assets and not otherwise described above and
4. All proceeds of any and all of the foregoing collateral and, to the extent not otherwise included, all payments under insurance (whether or not Seller is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing collateral.

17. INVENTORY OF TRADE GOODS:

17.1 It is agreed that the inventory held for use at Seller's cost (the "Inventory") shall have the approximate value of \$ 1

17.2 Buyer and Seller, prior to the Closing, shall:

- ☒ Take an itemized physical count of the Inventory.
- ☐ Not take an itemized physical count of the Inventory.

17.3 The difference between the approximate value listed above and the actual Inventory value shall:

Be reflected as an adjustment, more or less to the total price, in particular, as an increase in the Purchase Price if the actual Inventory is more than the value listed in 17.1, or a reduction to the Purchase Price if less than the value listed in 17.1.

Check which is appropriate:

18.1 ☐ It is mutually agreed that Seller's accounts receivable, having the approximate value of \$ N/A shall be included in the purchase price.

18.1.1 Seller shall provide Buyer with account details including the name on the account, the account number, amount owing and aging, and this information shall be delivered to Buyer prior to Closing.

18.1.2 The difference between the approximate value listed above and the actual value of accounts receivable at Closing shall be reflected as an adjustment to the total purchase price.

18.1.3 \$ N/A of accounts receivables transferred at Closing shall be guaranteed by Seller, and if not fully collected within (N/A) days of Closing, Buyer may set-off the difference against the Note, provided that Buyer shall assign Seller the right to collect said receivables.

ALTERNATIVELY

18.2 ☒ It is mutually agreed that Seller's accounts receivable shall NOT be included in the purchase price.

18.2.1 Buyer shall forward to Seller any and all accounts receivable payments received by Buyer for a period of N/A(N/A) days post Closing, and shall cooperate with Seller in providing any and all correspondence or other documents received by Buyer with respect to Seller's accounts receivable, and will otherwise cooperate with Seller in the collection of Seller's accounts receivable.

19. ACCOUNTS PAYABLE:

19.1 All accounts payable accruing to the date of the Closing shall remain the responsibility of Seller and are not included in this sale.

19.2 Immediately from and after the Closing, all subsequent accounts payable shall be the sole responsibility of Buyer.

20. BUSINESS TRADE NAME (check all that apply):

☐ It is not the Buyer's intention to use a trade name.

☐ It is the Buyer's intention to use a trade name. ☐ Current Trade name; ☐ New Name: " _".

☒ Seller's rights to a trade name for a particular franchise location are being transferred pursuant to a Franchise Agreement in connection with this transaction

☐ Seller's current trade name is not subject to any Franchise Agreement and therefore, Seller hereby grants Buyer effective at Closing, any and all rights held by Seller in the trade name, " N/A" and any derivations thereof, and Seller hereby waives any rights thereto, and shall not, after Closing, make use of such name, directly or indirectly.

21. SELLER'S INDEMNIFICATION AND BUYER'S RIGHT OF SET-OFF:

21.1 Seller indemnifies Buyer and shall hold Buyer harmless from all debts, claims, actions, losses, damages, attorney's fees, existing or that may arise from or be related to Seller's past operation and ownership of the Business except for any liabilities specifically assumed by Buyer hereunder.

21.2 In the event Buyer should become aware of any such claim against the Business not disclosed prior to Closing, Buyer shall promptly notify Seller in writing of such claim. In the event Seller does not satisfy said claim or said claim is not disputed within ten (10) days from the receipt of such notice:

21.2.1 In the event of an owner financed transaction, Buyer may, at its sole option, pay such claim and receive full credit against any Promissory Note payment owed to Seller under this Contract.

21.2.2 In the event of a cash transaction, the parties agree that the Closing Attorney shall retain \$ N/A from the Seller's closing proceeds for a period of (N/A) days after closing to secure the Seller's indemnification as provided for in this paragraph.

22. LOSS/DAMAGE:

22.1 In the event there is any loss or damage to the Business premises, or any of the improvements, system equipment or Assets included in this sale at any time prior to the Closing, the risk of loss shall be upon Seller.

22.2 Immediately from and after the Close of this sale, all risk of loss or damage shall be upon Buyer.

Seller hereby represents to Buyer that from the date of execution of this contract to the date of Closing, Seller shall (a) carry the business activities and operations of the Business diligently and in substantially the same manner as has been customary in the past; (b) not remove any item with the exception of the Inventory sold in the normal course of business and (c) not undertake to bind or otherwise obligate the Business to any contractual obligation without the prior consent of Buyer, including but not limited to, any advertising or other promotional campaigns which would obligate the Buyer to provide services or products to customers at less than the ordinary and customary retail cost.

24. BUSINESS DEPOSITS:

24.1 Any and all amounts currently on deposit for the benefit of the Business for utility services, leases, insurance, etc., are and shall remain the sole property of Seller and are not included as part of this transaction.

24.2 Buyer shall, effective with the Closing, deposit such amounts as are necessary to continue the operation of the Business.

25. BUSINESS TELEPHONE/WEBSITE/EMAIL/PASSWORDS:

Seller agrees to transfer to Buyer at Closing, and Buyer agrees to accept all of Seller's right, title, interest and responsibility for the Business telephone number(s), and yellow pages, Website(s), social media and email addresses, passwords, or other advertising that refers to said items.

26. BUSINESS MAIL:

Seller agrees that all mail relating to the Business shall be routed to Buyer, and Buyer agrees to promptly forward to Seller any mail personalized to Seller.

27. BUSINESS PREMISES:

Until possession is transferred to the Buyer at Closing, Seller agrees to maintain the Business premises, including heating, cooling, plumbing and electrical systems, built-in fixtures, together with all other equipment and assets included in this sale, in good working order, and to maintain and leave the premises in a clean, orderly condition.

28. PRORATIONS:

All pro-ratable items shall be prorated as of the Closing Date.

29. LICENSES AND PERMITS:

29.1 Unless otherwise specified herein, Seller agrees to cooperate with Buyer in obtaining, at Buyer's expense, all licenses, permits, approvals or certificates necessary for the continued operation of the Business.

29.2 Seller represents that to the best of Seller's knowledge the Business and premises meet, at the time of Closing, all government regulations as to health, fire, zoning and other licensing laws.

29.3 Seller shall bear the cost of repairs and/or alterations that are required to allow Buyer to operate the Business in a lawful manner.

30. FAMILIARIZATION:

Seller and/or manager agrees to spend, at no cost to Buyer, a period of [15] days [N/A] weeks [N/A] month(s) during normal business hours, of approximately 6 hours per day, exclusive of holidays and Sundays, after the Closing Date, to assist Buyer and employees in the orderly transfer of the Business.

31. RESTRICTIVE COVENANT:

Check which is appropriate:

31.1 ☒ The Buyer and Seller shall enter into a written valid restraint of trade or commerce protecting the legitimate business interests associated with or conveyed in this transaction. The party seeking enforcement of restrictive covenant shall state, with particularity and specificity, the legitimate business interests to be protected and the reasonable time, place and manner restrictions necessary to protect the enumerated legitimate business interests. The Parties agree that the restrictive covenant shall have a term of per franchise agreement (N/A) years and shall be enforced within the following geographic area: N/A miles. Unless otherwise agreed upon by Buyer and Seller, Buyer shall incur the initial cost of preparing a restrictive covenant agreement, as an additional closing document, in accordance with this Section. To the extent that Seller wishes to have such restrictive covenant agreement reviewed by independent counsel, the cost of such review shall be borne by Seller. Broker shall not have any responsibility to prepare, oversee or otherwise coordinate the preparation of any separate restrictive covenant agreement and Buyer and Seller hereby release and hold Broker harmless from any such responsibility. Broker hereby advises Buyer and Seller to seek their own separate, independent legal counsel in regards to the preparation of any such restrictive covenant agreement.

ALTERNATIVELY

31.2 ☐ The Buyer and Seller shall NOT enter into any restraint of trade or commerce.

32. ALLOCATION OF PURCHASE PRICE:

32.1 Buyer and Seller acknowledge that certain Federal Income Tax laws may be applicable to this transaction.

32.2 Buyer and Seller acknowledge that each party may be required to report this transaction to the Internal Revenue Service (IRS) and allocate the Purchase Price among the applicable asset classifications found on IRS Rev. Form 859.

32.3 Buyer and Seller agree to cooperate fully with each other to determine the appropriate asset allocation for this transaction and that the IRS Rev. Form 8594 shall be prepared by Buyer's accountant at Buyer's expense.

32.4 Buyer and Seller agree to complete, sign and submit the appropriate IRS Rev. Form 8594 for this transaction.

32.5 Buyer and Seller ☒ agree to have the asset allocation completed at Closing, ☐ do not agree to have the asset allocation completed at Closing.

33. PREMISES LEASE:

33.1 ☒ At Closing, Seller shall assign and Buyer shall assume the lease on the Business premises with Lessor's written consent, and this Contract shall be subject to such consent where consent is required.

33.2 ☐ Alternately, at Buyer's option, Seller shall cooperate with the Buyer in obtaining a new premises lease on substantially the same terms and conditions as the Seller's existing lease, to be effective as of the Closing Date.

33.3 Buyer and Seller agree that the lease assignment fee, if any, shall be paid as follows: 0% Seller 100% Buyer.

33.4 Other: _____

34. CLOSING ATTORNEY/ESCROW AGENT:

34.1 The parties hereby appoint Izbiky and Associates Trust Account at 7400 E. Caley Avenue, Suite 300, Centennial, CO, 80111 Phone: 3038507080

Email: julian@izbikylaw.com as the Transaction Closing Attorney and Escrow Agent to receive, deposit and distribute funds for the parties and acknowledge that the Transaction Closing Attorney shall prepare and obtain execution of escrow instructions, closing documents and instruments evidencing the terms and conditions of this transaction as are required for the closing, conduct the closing, and provide for recording of the documents.

34.2 Buyer and Seller agree to execute said documents as are reasonably requested by the Closing Attorney, and except as otherwise provided herein, Buyer shall pay the Closing Attorney's fees.

35. CLOSING COSTS/FILING AND RECORDING FEES:

35.1 Buyer and Seller agree that, unless otherwise specified herein, Buyer shall pay the Closing Costs, including but not limited to, lien, judgment and utility searches.

35.2 If the Contract contains a Note in favor of Seller, Buyer shall pay all of the Filing/Recording fees associated with the State and County UCC filings, Documentary Stamps and any other fees associated with the Note.

36. PRE-CLOSING COVENANTS:

36.1 If necessary, Buyer and Seller agree not to divulge any information about this transaction prior to Closing.

36.2 Buyer agrees not to visit business premises prior to Closing without Seller's approval, which approval shall not be unreasonably withheld.

37. BULK SALES TRANSFERS:

Seller shall cooperate with Buyer in accomplishing any requirements related to bulk transfers under applicable State law. Seller agrees to retain independent legal counsel to prepare, or otherwise provide, any schedules of property, lists of creditors or affidavits necessary to comply with applicable State law related to bulk transfers.

38. GOVERNING LAW AND FORUM SELECTION

38.1 CHOICE OF LAW. The laws of the State of CO (without giving effect to its conflicts of law principles) govern matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, constructive performance, and enforcement.

38.2 DESIGNATION OF FORUM. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the County of Douglas, State of CO.

39. ATTORNEYS' FEES AND COURT COSTS

39.1 If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Contract, the successful prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs, and all expenses even not taxable court costs (including, without limitation, all such fees, costs, and expenses incident to arbitration, appellate bankruptcy, and post-judgment proceedings), incurred in that action or proceeding or any appeal, in addition to any other relief to which the party or parties may be entitled.

39.2 For purposes of this Agreement, "Attorneys' fees" include legal assistant fees, expert witness fees, investigative fees, administrative costs, and all other charges billed by the attorney.

40. WAIVER:

No waiver of any provisions of this contract shall be effective unless it is in writing, signed by the party against whom it asserted and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing waiver.

41. PARAGRAPH HEADLINES:

Captions and paragraph headlines in this contract are for convenience and reference only and do not define, describe, extend or limit the scope or intent of this contract or any provision herein.

42. SURVIVABILITY OF REPRESENTATIONS AND WARRANTIES:

The parties hereto acknowledge that the representations and warranties contained in this contract shall survive the Closing of this transaction for a period of 2 years.

43. BINDING EFFECT:

43.1 This contract shall bind and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the parties hereto.

43.2 The parties hereto acknowledge that this contract, including all covenants, representations, warranties and agreements, shall survive the Closing of this transaction.

44. ENTIRE AGREEMENT:

This Contract constitutes the entire agreement and understanding of the parties and cannot be modified except in writing executed by all parties. All representations made herein shall survive the closing.

45. SEVERABILITY:

In the event that any of the terms, conditions or covenants of this Contract are held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected but shall remain in full force and effect.

46. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:

Typewritten or handwritten provisions inserted in this form and acknowledged by the parties as evidenced by their initials shall control all printed provisions in conflict therewith.

The parties acknowledge having been advised by the Broker that they are aware of the health, liability and economic impact of environmental matters relative to real estate transactions, which may include the sale of the Business or the lease of the premises where the Business is conducted. The Broker specifically affirms that it does not conduct, advise and/or have any knowledge of environmental matters, nor does it undertake or conduct analyses thereof. The parties are advised to retain qualified environmental professionals to determine if any hazardous toxic wastes, substances or other undesirable materials or conditions exist on the property and if so, whether any health danger or other liability exists as to whether such substances may have been used during the construction or operation of the business or buildings, or may be present as a result of previous activities on property. Various laws and regulations have been enacted at the federal, state and local level dealing with the use, storage, handling, removal, transportation and disposal of toxic or hazardous wastes and substances. Depending upon past, current and proposed uses of this property, the parties acknowledge that it is prudent to retain an environmental expert to conduct a site investigation and/or building inspection. If hazardous toxic substances exist or are contemplated to be used at the property, special governmental approvals or permits may be required. Further, the cost of removal and disposal of such materials may be substantial. Consequently, the assistance of legal and technical experts should be obtained where these substances are or may be present.

48. TAX AND LEGAL DISCLOSURE:

Broker discloses the existence of possible sales tax liability for the parties involved as a result of the sale or exchange of business assets. Tax on sales, use and other taxes, may be due as a result of the closing of this contract. Broker discloses the existence of such possible tax liability as well as the potential transferee liability purported to be created therein. However, Broker specifically disclaims any responsibility as to whether and/or to what extent liability is applicable to this transaction. Broker advises that the parties hereto seek the assistance of tax and legal independent counsel. The parties acknowledge that they have been advised by the Broker to seek tax and legal advice as to the allocation of the purchase price, as is required by law. Buyer and Seller acknowledge that certain Federal and State Income Tax laws and other laws may be applicable to this transaction.

49. REAL PROPERTY; CROSS TERMINATION:



This Contract DOES NOT include real estate property.



This Contract DOES include real estate property, consequently:

49.1 The terms and conditions of the real estate sale shall be found on a separate commercial real estate contract.

49.2 If this Contract shall terminate according to its terms any contingent commercial real estate contract shall also terminate.

50. BROKERAGE:

The parties hereby acknowledge that We Sell Restaurants, Inc. is the Broker for this transaction and is herein referred to as such "Broker." Broker(s) identified herein have performed valuable brokerage services and are to be paid commission pursuant to a separate agreement or agreements. Unless otherwise provided for herein, the Listing Broker will be paid a commission by Seller, and the Selling Broker will receive a portion of the Listing Broker's commission pursuant to a cooperative brokerage agreement. The closing attorney is directed to pay the commission of the Broker(s) at closing out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission will pay any shortfall at closing. If more than one Broker is involved in the transaction, the closing attorney is directed to pay each Broker its respective portion of said commission. In the event the sale is not closed because of Buyer's failure or refusal to perform any of Buyer's obligations herein, Escrow Agent shall pay in equal shares and to the extent that a commission is owed, all Earnest Money to the Listing Broker and the Selling Broker. If such Escrow Money is insufficient to satisfy the commission obligation(s), then Buyer shall immediately pay to the Broker(s) the balance of the full commission the Broker(s) would have received had the sale closed, and the Selling Broker and Listing Broker may jointly or independently pursue Buyer for their portion of the commission. In the event the sale is not closed because of Seller's failure or refusal to perform any of Seller's obligations herein, then Seller shall immediately pay to the Broker(s) the full commission the Broker(s) would have received had the sale closed, and the Selling Broker and Listing Broker may jointly or independently pursue Seller for their portion of the unpaid commission.

Buyer, its owners and Guarantors hereby acknowledge that they have not relied upon any advice, promise, inducements, representations, commitments, guarantees, or opinions of any kind, either verbally or in writing, of Broker or its' owners, associates, agents, employees, or representatives in connection with any aspect of the transaction contemplated by this Agreement. It is further understood by Buyer that the Broker relies entirely upon the representations made by Buyer and Seller. Broker does not warrant any information in regards to obtaining any license, any management agreements, any employee issues, leases, previous history, payables/liabilities, payroll and payroll tax data, liens/lien checks, UCCs, facility/equipment condition, franchise issues, profits or losses, personal and/or business financial data, building codes, or sales figures, will not be held responsible for any errors and/or omissions, and hereby recommended that Buyer retain its own independent, separate legal counsel. Buyer hereby acknowledges that Buyer is relying solely on Buyer's own inspection of the Business and the representations of Seller regarding the prior Business operating history, the value of the assets being purchased and all other material facts. Broker(s) neither represented nor warranted the accuracy of any facts, figures, books, records, memoranda, financial information or data, of any kind concerning the operations of Seller. Broker has not conducted any independent investigation whatsoever of the Business and the information provided by Seller to Broker. Moreover, Buyer acknowledges that Broker has not verified any of the representations made by Seller. Buyer indemnifies Broker and its' owners, associates, agents, employees and representatives from any liability involved in the transaction contemplated by this Agreement. If the transaction contemplated by this Agreement is closed in escrow, with or without an attorney's presence or involvement, Broker and its' owners, associates, agents, employees and representatives will not be responsible for any errors or omissions and do not warrant any of the closing documents.

Seller, its owners and Guarantors hereby acknowledge that they have not relied upon any advice, promise, inducements, representations, commitments, guarantees, or opinions of any kind, either verbally or in writing, of Broker or its' owners, associates, agents, employees, or representatives in connection with any aspect of the transaction contemplated by this Agreement. It is further understood by Seller that the Broker relies entirely upon the representation made by Buyer and Seller, will not be held responsible for any errors and/or omissions, and has recommended that Seller retain its own independent, separate legal counsel. Seller acknowledges that Broker made no representation concerning the creditworthiness, integrity or ability of Buyer to complete this transaction or satisfy any promissory note issued in connection with this Agreement. Seller has relied solely on Buyer's representations with respect thereto. Seller acknowledges that the Broker has performed all its duties pursuant to the listing agreement and has earned compensation as set forth therein. Seller indemnifies Broker and its' owners, associates, agents, employees and representatives from any liability involved in the transaction contemplated by this Agreement. If the transaction contemplated by this Agreement is closed in escrow, with or without an attorney's presence or involvement, Broker and its' owners, associates, agents, employees and representatives will not be responsible for any errors or omissions that do not warrant any of the closing documents.

53. INDEPENDENT COUNSEL:

By signing this Agreement, Buyer and Seller each acknowledge (a) that this agreement is a standard form which has been prepared in representation of either party; (b) that they have been advised to retain their own separate legal counsel to review and modify this form prior to its execution; (c) that it is a legally binding document with important legal implications; and (d) to the extent that Buyer or Seller choose not to retain their own independent legal counsel, that such party has waived its opportunity to obtain independent counsel despite being advised to do so.

54. BUYER'S DEPOSIT INSTRUCTIONS TO BROKER / AGENT:

In the event that Buyer tenders payment of the Earnest Money Deposit with this offer (see Section 4): (a) Buyer hereby orders Broker to accept and deliver Buyer's Deposit Check(s) to the Escrow Agent; (b) Broker shall acknowledge acceptance and receipt of Buyer's deposit in a writing that shall be placed in Buyer's file; and (c) Broker's acceptance and delivery of Buyer's Deposit Check(s), as found in part (a), is mutually agreeable by and between Buyer and Seller.

55. SCHEDULES, EXHIBITS, AND ADDENDA

All Schedules, Exhibits, and/or Addenda hereto, listed below, or referenced herein are made a part of this contract. If a such Schedule, Exhibit, or Addendum conflicts with any preceding paragraph, said Schedule, Exhibit, or Addendum shall control:

A. Schedules:

i) **Schedule 1 – Assets of the Business**

B. Exhibits:

☒ **No Exhibits apply to this Contract**

☐ **Alternatively, the following Exhibits are incorporated herein:**

N/A

C. Addenda:

☐ **No Addenda apply to this Contract**

☐ **Alternatively, the following Addenda are incorporated herein:**

☒ **Which Wich Standard Addendum :**

N/A

The following Special Stipulations, if conflicting with any exhibit or preceding paragraph, shall control:

1. Buyer and Seller agree that the franchise training and transfer fee shall be paid as follows:
100% Buyer 0% Seller
2. Buyer's requirement to perform its obligations hereunder are contingent upon approval by the Franchise of the Buyer as a franchisee and Buyer's acceptance of the franchise agreement
3. The proposed contract is contingent on the Seller's side as it's to be approved by the Bankruptcy Court for the District of Colorado before it is binding upon Colorado Which as the Seller. Para 7 at p. 2 should be amended to add in the following: 7.4 This Contract, and the Seller's acceptance of it, remain subject to the approval of the Bankruptcy Court for the District of Colorado ("Court") in Jointly Administered Case No: 18013443 KHT. Upon its acceptance the Seller shall promptly take the required steps to obtain Bankruptcy Court approval of the Contract. In the event this Contract is not approved by the Court, it shall be considered null and void and of no effect.
4. 15.6 Buyer's represents to Seller that it has, in prospect, request(s) for financing and that it will be able to obtain and make a determination of an acceptable written loan commitment on or before December 31, 2018.

LISTING BROKER:

Eric Gagnon
Print Name of Agent
Eric Gagnon
By: 6B2EF9BCB4564A2...
Signature

12/11/2018

We Sell Restaurants, Inc.

Business Broker's Name

P.O. Box 387

Business Broker's Street Address

Daytona Beach, FL, 32136

Business Broker's City, State, Zip

(404) 800-6704 - (404) 800-6700

Agent's Phone Number

SELLING BROKER:

Eric Gagnon
Print Name of Agent
Eric Gagnon
By: 6B2EF9BCB4564A2...
Signature

12/11/2018

We Sell Restaurants, Inc.

Business Broker's Name

P.O. Box 387

Business Broker's Street Address

Daytona Beach, FL, 32136

Business Broker's City, State, Zip

(404) 800-6704 - (404) 800-6700

Agent's Phone Number

The Buyer and Seller acknowledge reading, understanding and receiving a true copy of this Contract. If either Party do not understand the Contract, or has any questions concerning the Contract, they should immediately consult a professional before signing. A facsimile copy of this document and any signatures thereon shall be considered as an original.

BUYER'S BINDING OFFER:OFFERED and DATED THIS 12/10/2018

The Buyer makes the foregoing offer and agrees to purchase the above-described business assets on the terms a conditions according to the foregoing Contract. Seller acknowledges receipt of a true copy of this document.

BUYER:Organizational Structure: A/An Colorado IndividualBy: Dave Sondergaard and/or his assign

(Print Full Name of Buyer)

7240 West Custer Avenue, 206

(Street Address of Buyer)

By: Dave Sondergaard 12/10/2018

(Signature of Authorized Person) (Date) (Print Name)

Lakewood, CO, 80226

(City, State, Zip of Buyer)

By: Dave Sondergaard 12/10/2018

(Signature of Partner if a partnership) (Date) (Print Name)

N/A

(Business Phone) -(Cell Phone)

By: Dave Sondergaard 12/10/2018

(Signature of Guarantor) (Date) (Print Name)

who personally guarantees Buyer's performance herein.

Unless otherwise provided by law, an electronic signature may be used to sign as writing and shall have the same for and effect as a written signature.)

SELLER'S ACCEPTANCE OF OFFER:ACCEPTED and DATED THIS day of 12/11/2018

The Seller accepts the foregoing offer and agrees to sell the business assets on the terms and conditions according the foregoing contract. Seller acknowledges receipt of a true copy of this document.

SELLER:Organizational Structure: A/An Colorado Limited Liability CorporationBy: Colorado Which LLC

(Print Full Name of Seller)

9183 Viagggio Way Highlands Ranch CO 80126

(Street Address of Seller)

By: Jeff Gordon 12/11/2018

(Signature of Authorized Person) (Date) (Print Name)

Highlands Ranch CO 80126

(City, State, Zip of Seller)

By: Jeff Gordon 12/11/2018

(Signature of Partner if a partnership) (Date) (Print Name)

(Business Phone) -(Cell Phone)

By: Jeff Gordon 12/11/2018

(Signature of Guarantor) (Date) (Print Name)

who personally guarantees Seller's performance herein.

(Unless otherwise provided by law, an electronic signature may be used to sign as writing and shall have the same for and effect as a written signature.)

REJECTED and DATED THIS day of _____

The Seller rejects the foregoing offer on the terms and conditions set out in the contract. Seller acknowledges receipt of a true copy of this document.

SELLER:

By: _____ (Street Address of Seller)
(Print Full Name of Seller)

By: _____ (City, State, Zip of Seller)
(Signature of Authorized Person) (Date) (Print Name)

By: _____ (Business Phone) -(Cell Phone)
(Signature of Partner if a partnership) (Date) (Print Name)

By: _____ who personally guarantees Seller's performance herein.
(Signature of Guarantor) (Date) (Print Name)

(Unless otherwise provided by law, an electronic signature may be used to sign as writing and shall have the same force and effect as a written signature.)

SELLER'S COUNTER OFFER:

COUNTER OFFERED and DATED THIS day of _____

The Seller counters the foregoing offer on the terms and conditions set out in the contract per his hand written change incorporated herein. Seller acknowledges receipt of a true copy of this document.

Selling Price: \$ _____

Special Stipulations as follows:

SELLER:

By: _____ (Street Address of Seller)
(Print Full Name of Seller)

By: _____ (City, State, Zip of Seller)
(Signature of Authorized Person) (Date) (Print Name)

By: _____ (Business Phone) -(Cell Phone)
(Signature of Partner if a partnership) (Date) (Print Name)

By: _____ who personally guarantees Seller's performance herein.
(Signature of Guarantor) (Date) (Print Name)

(Unless otherwise provided by law, an electronic signature may be used to sign as writing and shall have the same force and effect as a written signature.)



Attached



Below



None

- Items and quantities will vary by location
- Back Kitchen
- walk in cooler/freezer
- walk in freezer
- green Metro shelving
- POS server
- 17 inch monitor
- Brother fax/printer
- 2 compartment drop safe
- 2 drawer file cabinet
- Hand wash sink
- 60 inch stainless table with built in sink
- Scottsman ice machine
- Back of house metro shelving (multiple)
- Bag in box system
- Nemco tomato slicer
- Nemco rotary slicer
- Miscellaneous kitchen utensils
- Miscellaneous Cambro containers and lids
- Miscellaneous stainless pans
- Front Kitchen
- True sandwich units (line coolers)
- True under counter cooler (milk coolers)
- stainless cabinet with built in ice cream dipping cabinet and sink (back line)
- stainless cabinet (back line)
- 2- Lincoln ovens
- microwave
- Slicer Hobart
- 30x32 stainless microwave table
- Aloha terminal with 1 printer
- Stamp organizer
- Shake ingredient system
- 2 sleeve cup dispenser
- Neon sign
- Dining Room and Patio
- beverage cabinet/counter
- 10 foot order counter and bag system
- Kids counter and menu panel
- Menu board system
- Community wall frame
- Exterior sign
- Neon open sign
- cameras security system
- outside ordering pool system
- Trash cans (2) in lobby
- Bose sound system
- Various size wall hangings
- cup lid holders
- Condiment station
- Stainless towel holders
- round lighted signs (pick up & order)
- Television
- Existing Franchise terms and Renewals

This addendum ("Addendum") to that certain purchase agreement ("APA") between Colorado Which LLC, ("Seller") and David Sodergaard and/or his assign ("Buyer"), pursuant to which Buyer is buying certain of Seller's assets with the intention of becoming a Which Wich Franchise, Inc. ("WWFI") franchisee is hereby made an integral part of such APA. Further, Seller and WWFI are parties to that certain franchise agreement which is the subject of the APA ("Franchise Agreement").

All defined terms used in this Addendum that are also defined in the APA have the same meanings given to them in the APA, unless otherwise defined herein. In the event any provisions or terms used in the APA or any attachments, exhibits, or addenda thereto are contradictory to the provisions or terms of this Addendum, the provisions and terms in this Addendum will control. Buyer and Seller hereby agree as follows:

1. WWFI Transfer Procedures: Payment. Buyer and Seller both acknowledge that each of them has received and reviewed WWFI's transfer questionnaires, which set forth certain of WWFI's transfer procedures and requirements, and which are subject to change from time to time, in WWFI's discretion and in compliance with the Franchise Agreement. Buyer and Seller acknowledge that WWFI will not consent to the bartering of such responsibilities and further acknowledge and agree that if any provision set forth in the APA which is contrary to any provision of the Franchise Agreement or any of WWFI's transfer procedures, then the Franchise Agreement and WWFI's procedures will control, not the APA. Seller further acknowledges that Seller is bound by the transfer provisions set forth in the Franchise Agreement.
2. Payments. Notwithstanding anything to the contrary set forth in the APA, Seller is responsible for payment to WWFI of the transfer fee and other costs related to the transfer, as set forth in the Franchise Agreement. Any agreement between Buyer and Seller relating to the payment of fees and costs incurred by either party in relation to the transfer is between Buyer and Seller and will have no effect on Seller's contractual obligations to WWFI or on WWFI's requirements for consent.
3. Closing Date. Buyer and Seller acknowledge and agree that the Closing Date is subject to WWFI's consent, and WWFI is under no obligation to comply with the Closing Date agreed to by Buyer and Seller. If Buyer and Seller close on the transaction contemplated by the APA without WWFI's consent, such transaction will be a default of Seller's Franchise Agreement, which will make the Franchise Agreement subject to termination. If such were to occur, then Seller's rights in and to the Franchise Agreement would no longer be an asset subject to the transaction contemplated by the APA.
4. Transfer of Franchise Agreement. Notwithstanding anything to the contrary set forth in the APA, the Franchise Agreement is not an asset or contract that can be or will be assigned. Seller's rights in and to the Franchise Agreement may be sold as an asset, but the Franchise Agreement between Seller and WWFI will be terminated, not assigned, and Buyer will be required to enter into a new, then-current franchise agreement with WWFI.
5. Documents Required by WWFI. If WWFI consents to the transfer, Buyer and Seller acknowledge that they and their owners will be required to sign a consent to transfer in the form required by WWFI and that Buyer will be required to enter into a new, then-current franchise agreement with WWFI. Buyer and Seller hereby agree that they will sign all other documents relating to the transfer as required by WWFI.
6. Rights in and to the Marks. Notwithstanding anything to the contrary set forth in the APA, Seller has no rights in or to the Marks (as defined in the Franchise Agreement), therefore, Seller has no authority to assign, sell, or license any rights in or to the Marks.
7. WWFI Not a Party. Notwithstanding anything to the contrary set forth in the APA, WWFI is not a party to the APA. Therefore, any statements made in the APA relating to WWFI's rights or obligations are void from the beginning and are of no force or effect.

DocuSigned by:
Buyer: Dave Sodergaard
By: Dave Sodergaard
Date: 12/10/2018

DocuSigned by:
Seller: Colorado Which LLC
By: Jeff Gordon
Date: 12/11/2018

SCHEDULE A

Case No. 18-13443; Colorado Wich LLC

CLAIMANT	SCHEDULED AMOUNT	PROOF OF CLAIM	DIFFERENCE	AMOUNT TO CURE
LANDLORD CURE FIGURES				
Burgundy Partners, LLC	\$25,000.00	\$30,205.49	\$5,205.49	\$30,205.49
* DDRMCH West LLC	\$3,100.00			\$0.00
Meadows Manager 05, LLC	\$8,824.34	\$3,585.42	-\$5,238.92	\$3,585.42
* Plaza on the Green, LLC	\$15,000.00			\$0.00
Shea Homes - TON 1, LLC	\$15,499.12	\$10,418.85	-\$5,080.27	\$10,418.85
Vestar Orchard Town Center, LLC	\$12,606.62			\$12,606.62
TOTAL	\$80,030.08	\$44,209.76	-\$5,113.70	\$56,816.38
TOTAL CLAIMS ASSERTED		\$74,916.38		

Total claims asserted is comprised of the "scheduled amount" except if a proof of claim is filed, in which case the proof of claim is considered in determining the total claims asserts

*PAID