

# Offer to Purchase

## (Restaurant Purchase)

[Buyer Name] (the “Buyer”) hereby offer to purchase from [Seller Name] (the “Seller”), all of the undertaking, property and assets of the Seller of every kind and description and wherever situated used in its [Business Name] business (the “Business”), which it carries on from rented premises at [Business Address] (the “Premises”), as a going concern including but not limited to the assets described in Schedule “A” hereto (the “Purchased Assets”), upon and subject to the following terms and conditions, provided that the Business assets set out in Schedule “B” shall be excluded from this Agreement (the “Excluded Assets”):

- 1 **Irrevocable Period.** This Offer shall be irrevocable by the Buyer until 5:00 on [Irrevocable Date], after which time, if not accepted, this Offer shall be null and void and the Deposit returned to the Buyer without interest or deduction. Upon written acceptance of this Offer by the Seller, this Offer to Purchase shall constitute a binding agreement of purchase and sale between the Buyer and the Seller on the terms herein set out.
- 2 **Closing Date.** Time shall be of the essence. The closing of this transaction shall take place on [Closing Date], or such earlier or later date as may be mutually agreed to between the parties (the “Closing Date” or “Closing”) at the office of the Buyer’s solicitors or at such other place as may be approved in writing by the parties or their respective solicitors.
- 3 **Purchase Price.** The purchase price for the Purchased Assets shall be \$[Purchase Price], plus inventory under paragraph 4 and such other sums payable under the terms of this Agreement (the “Purchase Price”).
- 4 **Inventory and Supplies.** In addition to the other sums payable under this Agreement, the Buyer will pay the Seller on Closing the value of liquor, food and beverages on hand as of the Closing Date (“Inventory”), valued at lower of cost and net realizable value, as determined by the Seller and Buyer by conducting a physical inventory on or immediately before the Closing Date. If the Seller and the Buyer cannot agree on the value of Inventory, the average of their assessments shall be used on Closing, the parties shall undertake to readjust following Closing, and an independent appraiser of Inventory agreeable to both parties shall be hired and his or her decision shall be final and binding. The Buyer shall not be required to purchase: (a) Inventory which was purchased more than two months prior to Closing; or (b) Inventory which is damaged, unsaleable or unusable, as the case may be; or (c) more than \$[Inventory Maximum] in Inventory in the total aggregate. All Inventory not acquired by the Buyer under this Agreement shall remain the property of the Seller and shall be removed from the Premises by the Seller on or before Closing or within seven days after Closing.
- 5 **Payment of Purchase Price.** The Purchase Price shall be paid as follows:
  - (a) Immediately upon acceptance of this Offer, the Buyer will deliver to the Buyer’s solicitors a cheque or bank draft payable to the Buyer’s solicitors in trust in the amount of \$[Deposit

**Amount]** as a deposit (the “**Deposit**”), to be held in a non-interest bearing account pending completion or termination of this Agreement; and

(b) On Closing the Seller will pay the balance of the Purchase Price, subject to the usual adjustments and any adjustments set out in this Agreement, by certified funds.

- 6 **Deposit.** If the Buyer fails to complete this transaction as a result of the breach by the Buyer of any of its obligations in this Offer, the Deposit together with interest thereon (if any) shall be delivered to the Seller as liquidated damages and in final settlement of any and all claims of the Seller against the Buyer of any kind whatsoever arising out of such failure to complete including costs, expenses and damages under any theory or rule of law, and the Deposit shall be obtained by the Seller making the requisite demand upon the Buyer’s solicitors. If the Buyer fails to complete this transaction for any other reason, including but not limited to the non-fulfillment of any of the conditions for the Buyer’s benefit set forth in this Offer or the Seller’s default, the Seller shall not be entitled to the Deposit and it shall be immediately released to the Buyer without deduction or setoff.
- 7 **Adjustments.** The Purchase Price shall be subject to adjustment for rent, utilities, Buyer’s maximum obligations under s. 9 of the *Employment Standards Act* (if any), and any other adjustments on a transaction of this kind as appropriate, such adjustments being made to the amount payable at the time of Closing. If any adjustments are made for the Buyer’s obligations under s. 9 of the *Employment Standards Act*, then the Buyer will assume all such obligations for and on behalf of the Seller to the extent therein set out and hereby indemnifies the Seller from all liabilities or obligations to those employees to the extent adjusted.
- 8 **Assumed Liabilities:** The Buyer shall not assume any liabilities of the Seller of any kind, except for as included in the adjustments under paragraph 7.
- 9 **Allocation.** The Purchase Price shall be allocated between the Purchased Assets by the parties prior to Closing, provided no more than \$1.00 will be allocated to goodwill. If the parties can not agree on the allocation prior to Closing, the accountants for the parties shall make such determination acting together; if they cannot agree, a Chartered Accountant acceptable to both shall make the determination and his or her decision shall be final and binding. The Seller and the Buyer agree that the amounts so attributed to the Assets are the respective fair market values thereof, and shall file in mutually agreeable form all elections required or desirable under the *Income Tax Act* (Canada) in respect of the foregoing allocations.
- 10 **Harmonized Sales Tax.** The Purchase Price does not include HST. The Buyer shall pay and remit all HST exigible as a result of this transaction, and indemnifies the Seller in that regard. The Seller and the Buyer shall each be HST registrants at the time of Closing, and shall complete and execute a valid joint election as provided in subsection 167(1) of *The Excise Tax Act* (Canada). The Buyer shall file such election with Canada Revenue Agency with the Seller’s HST return for the reporting period in which the Closing occurs.

- 11 **Bulk Sales Act.** This transaction will be completed under and pursuant to the *Bulk Sales Act* (Ontario), and the Seller will comply with the requirements of that Act at its expense.
- 12 **Investigation.** The Buyer and its advisers shall during business hours have reasonable access to the Premises, books, leases and other records of the Business for the purpose of investigating the business and affairs of the Business. Within one week following acceptance of this Offer the Seller shall deliver copies of the following documentation and information to the Buyer, or shall make the following available for inspection including the right to inspect originals, make notes and photocopy:
- (a) Franchise agreement and documents (if any);
  - (b) Lease or sublease;
  - (c) Liquor license files and documents (if any);
  - (d) List of employees by name including date of first hire, current position held, hours of work, and rate of pay, compensation or benefits, and all employee files;
  - (e) List of all suppliers including name, address, contact particulars, and copies of any relevant contracts;
  - (f) List of all fixtures, furnishings, equipment and leasehold improvements;
  - (g) Preliminary list of Inventory;
  - (h) All tax or government returns or assessments of any kind, including income tax, source deduction, WSIB, RST and HST, and all government or regulatory correspondence or files, for the past two years;
  - (i) Cash register tapes and bank deposits for the past twelve months;
  - (j) Expenses by month for the past twelve months;
  - (k) Cash journal and general ledger for the past twelve months;
  - (l) All franchisor reports (if any) for the past twelve months;
  - (m) Any internal or accountant prepared financial statements since the location opened for business, including access to accountant working papers;
  - (n) A balance sheet and income statement as of each of the last two fiscal year ends;
  - (o) A year to date balance sheet and income statement; and

**THIS IS A 14-PAGE DOCUMENT, including schedules.**