

MEMORANDUM OF SALE OF LIQUOR LICENSE BY RECEIVER

This Memorandum of Sale (this “Memo”) is made as of _____, 2015, between and among _____ (the “Buyer”), AARON POSNIK & CO., INC. (“Auctioneer”), and THOMAS S. HEMMENDINGER (the “Receiver”), receiver of A J N CORP. (“Owner”). Buyer, Receiver, and Auctioneer are also referred to individually as a “Party” and collectively as “Parties”.

1. Purchase and Sale. Subject to the terms and conditions of this Memo, Buyer hereby agrees to purchase the all-alcoholic beverage liquor license issued by the Town of Mattapoisett (the “Town”) to Owner (the “Liquor License”).

2. Excluded Assets. Buyer understands and agrees that the Equipment excludes the following: licenses, permits, or other governmental approvals other than the Liquor License; leased equipment; books and records; cash; accounts receivable; deposit accounts; tax refunds; pre-paid deposits; unearned insurance premiums; choses-in-action; any and all claims of the Receiver or the receivership estate against any shareholder, officer, director, manager, member, partner, employee or other insider of Owner, including claims for breach of fiduciary duties, fraudulent transfers, preferences, or breach of any other duties to Owner or its creditors; employee benefit plans, including retirement, health or welfare plans; employment agreements, including collective bargaining agreements; software and intellectual property that is owned by and/or subject to the copyrights or other intellectual property of third parties; any other assets not owned by Owner; and the proceeds of any of the foregoing.

3. Purchase Price. The Purchase Price is _____ Dollars (\$ _____), and is payable certified check, bank cashier’s check, or wire transfer as follows:

(a) A deposit of \$5,000 accompanies this Memo (the “Deposit”).

(b) The balance of the Purchase Price must be paid at the Closing.

4. Closing. The Closing shall take place at the Receiver’s office set forth below on at 10:00 a.m. on the tenth (10th) business day after the Superior Court (the “Court”) approves this Memo (the “Closing Date”), or at such other time as Buyer and the Receiver may agree in writing. At the Closing, and in exchange for the Purchase Price, the Receiver agrees to sell and transfer the Liquor License to Buyer by a good and sufficient receiver’s bill of sale (the “Bill of Sale”), free and clear of all liens and encumbrances, which shall attach to the proceeds of sale in accordance with their respective priorities. The transfer of the Liquor License nevertheless is subject to all federal, state and municipal laws, rules, and regulations, any violations thereof, and injunctions by any court or other tribunal of competent jurisdiction. Approval of the transfer of the Liquor License into Buyer’s name by the Town of Mattapoisett or the Alcoholic Beverage Control Commission of the Commonwealth of Massachusetts is not a contingency of this sale.

5. Buyer’s Premium. At the Closing, as separate bargained-for consideration for the Auctioneer’s services Buyer shall pay to the Receiver a buyer’s premium equal to 10% of the Purchase Price.

6. Court Confirmation. The Receiver’s obligations under this Memo are subject to confirmation by the Court. The Receiver agrees promptly to seek Court confirmation.

7. [Intentionally Omitted].

8. [Intentionally Omitted].

9. Possession. At the Closing, the Receiver shall deliver possession the Liquor License.

10. [Intentionally Omitted].

11. Other Assets. If Buyer has agreed to buy other assets from the Receiver pursuant to any other Memorandum of Sale, Buyer represents, warrants, and agrees as follows: (a) the identity, extent, and condition of the other assets are not material inducements for this Memo, and they are not material to this Memo; and (b) no Memorandum of Sale is contingent on any other Memorandum of Sale.

12. Receiver's Title. If for any reason Receiver is unable to give title or to make transfer under this Memo, all payments made by Buyer to Receiver on account of the Purchase Price shall be returned to Buyer, and all obligations of Buyer and the Receiver shall be terminated, and the Parties shall be without further recourse under this Memo. The acceptance of the Bill of Sale by Buyer in any event constitutes conclusive evidence of full performance and discharge of all of the Receiver's obligations under this Memo. Notwithstanding anything in this Memo to the contrary, if Buyer notifies Receiver of a defect in title within ten (10) days after Receiver signs this Memo and Receiver is unable to give title as required by this Memo and such defect is susceptible to being cured, Receiver, at Receiver's option, may extend the Closing Date for such period of time as is reasonably necessary to permit Receiver to cure the defect.

13. Default. If Buyer defaults in the performance of Buyer's obligations under this Memo, or if any condition to the Receiver's obligation to perform under this Memo is not satisfied as of the Closing Date, the Receiver has the right to retain the Deposit, such remedy to be without prejudice to the right of Receiver to require specific performance or payment of other or further damages or to pursue any remedy, legal or equitable, which accrues by reason of such default. Without limiting such rights or remedies, the Receiver may, without first tendering the Bill of Sale to the Buyer, sell the Liquor License, separately or as an entirety to any third party, subject to Court confirmation. If Receiver defaults in the performance of Receiver's obligations under this Memo, the Deposit shall be returned to Buyer, this Memo shall be terminated, and the Parties shall be without further recourse under this Memo.

14. Broker. The Buyer represents and warrants (Buyer must select the Alternative that applies, by initialing the appropriate space below. If Buyer fails to complete this section, the First Alternative applies):

[First Alternative] initials _____: Buyer has dealt with no broker, finder or drummer; and no sales commission, finder's fee or other charge of any kind is due or shall arise with respect to the transfer contemplated in this Memo.

[Second Alternative] initials _____: Buyer has dealt with no broker, finder or drummer, other than _____ (fill in name of broker), and no sales commission, finder's fee or other charge of any kind is due or shall arise with respect to the transfer contemplated in this Memo, except:

(a) Any compensation, fee or other charge which Buyer has agreed to pay separately to said person or

organization, with no deduction from the Purchase Price.

(b) To the extent eligible for broker participation, one-tenth (1/10) of the buyer's premium.

15. Representations, Warranties and Covenants of Buyer. Buyer represents and warrants as follows:

(a) Buyer is not relying on any warranty, statement or representation, express or implied, made by or on behalf of Receiver as to any matter whatsoever with respect to the Liquor License, including zoning matters, the terms of the Liquor License, or any adverse claims with respect to the Liquor License.

(b) Buyer has had full and adequate opportunity to perform due diligence as to the Liquor License.

(c) Buyer is satisfied with the Receiver's and the Auctioneer's conduct of the auction from which this Memo results, and there are no defects or irregularities in the auction.

16. Indemnity. Buyer shall defend, indemnify, and hold the Receiver and the Receiver's agents harmless from and against any claim, loss, cost, expense, liability, or damage, including reasonable attorneys' fees, incurred by the Receiver or the Receiver's agents arising from or related to a breach of any one or more of Buyer's representations, warranties, covenants, or agreements in this Memo.

17. Transfer of Liquor License "AS IS". Buyer acknowledges and agrees that the Receiver shall transfer the Liquor License, and that Buyer shall accept the Liquor License, strictly "AS IS" and "WHERE IS."

18. No Other Obligations. This Memo imposes no obligations or duty on the Receiver or Auctioneer other than those expressed in this Memo.

19. Notice. In the event that notice is necessary or desirable under the provisions of this Memo, it shall be given by first-class mail, postage prepaid, mailed to the addressee at the addresses set forth for each party in this Memo.

20. No Recording this Memo. Buyer agrees not to record or cause this Memo to be recorded with the land evidence records and that, should this Memo be so recorded by or on behalf of Buyer in breach of this provision, a default by Buyer is deemed to have occurred and Receiver has the right to terminate this Memo by recording with said land evidence records a written notice of termination, executed by Receiver only. Buyer hereby appoints Receiver as Buyer's attorney-in-fact for such purpose.

21. Entire Memo, Binding Effect. This Memo merges any and all understandings and agreements between Buyer and Receiver with respect to the Liquor License and binds and inures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

22. Survival of Terms. All promises, representations, warranties, covenants, and indemnifications made by the Buyer in this Memo shall survive the Closing and the delivery of the Bill of Sale.

23. Assignment. Buyer shall not assign Buyer's rights under this Memo or nominate a third-party buyer without the written consent of the Receiver.

24. [Intentionally Omitted].

25. [Intentionally Omitted].
26. Further Assurances. Buyer and the Receiver shall each obtain and issue statutorily-required certificates or other instruments with respect to a transfer of the Liquor License.
27. Disclosure. Buyer acknowledges that disclosure requirements do not apply to the Liquor License or to the transactions contemplated by this Memo.
28. Construction of Memo. The captions and headings in this Memo are for convenience only and are not to be used to interpret or define the provisions of this Memo. This Memo shall be construed without regard to any presumption or rule requiring that it be construed against the Party causing all or part of this Memo to be drafted.
29. Severability. If any provisions of this Memo is held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or enforceability without in any manner affecting the validity or enforceability of such provision in any other jurisdiction or the remaining provisions of this Memo in any jurisdiction.
30. Expenses. Buyer agrees to pay all costs of recording and to pay the cost of all documentary stamps. Each Party otherwise bears its own expenses in connection with this Memo and the transactions contemplated by this Memo.
31. Governing Law. This Memo must be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts applicable in the case of agreements made and to be performed entirely in Massachusetts.
32. Signature and Effective Date of Memo. This instrument is not binding on the Receiver until the Receiver executes this Memo where indicated below.
33. Time is of the Essence. The Parties agree that time is of the essence in each provision of this Memo.
34. Receiver Not Personally Liable; Buyer Waives Right to Certain Damages. **The Receiver signs this Memo solely in the Receiver's capacity as receiver of the Liquor License. Nothing makes the Receiver personally liable under this Memo in any way whatsoever. Buyer unconditionally and irrevocably waives any right it may have to recover any special, exemplary, punitive or consequential damages, or any damages other than actual damages, even if the person or organization is on notice of the possibility of any of these types of damages, and limits its recovery of actual damages to the proceeds of the Liquor License.**
35. Waiver of the Right to Trial by Jury. **The Parties each hereby unconditionally and irrevocably waive any right to trial by jury in any proceeding arising out of or otherwise relating to this Memo or the Liquor License or any transaction or occurrence arising from any of the foregoing or related to any of the foregoing.**

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have caused this Memo to be duly executed under seal, all as of the day and year first above written.

_____ (Buyer)

Thomas S. Hemmendinger, receiver of Matchow Realty
LLC and not individually

By _____

c/o Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909

Buyer's address:

Aaron Posnik & Co., Inc. (Auctioneer)

Buyer's telephone: _____
Buyer's fax: _____
Buyer's email: _____

By _____
Name:
Title:

31 Capital Drive
West Springfield, MA 01089