

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is hereby made and entered into this ____ day of February, 2016 by and between CWS, Agent for the United States of America (the "Seller") and _____ (the "Purchaser") for the purchase and sale of all right, title and interest in Society JJ LLC, a limited liability company, (the "LLC") including the business known as Society JJ Lounge and Olivia's Rooftop Lounge both located at 8229 Georgia Avenue in Silver Spring, Maryland (the "Business") and all assets, personal, tangible and intangible of that business (the "Assets").

WHEREAS, Seller desires to sell, transfer and convey to Purchaser and Purchaser desires to buy and receive from Seller on the terms and conditions set forth herein, all of that certain personal property, both tangible and intangible, owned by the Seller as more particularly described in this Agreement which is used for the ownership, operation and maintenance of the Business.

NOW, THEREFORE, for and in consideration of ten dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1.

Transfer of Assets.

In material and substantial reliance on the representations and warranties contained herein and subject to all of the terms and conditions of this Agreement, Seller hereby agrees to sell, transfer, assign and convey to Purchaser, and Purchaser hereby agrees to purchase, accept and receive from Seller at closing, the LLC, the Business and the Assets, to wit:

1.1 **Personal Property.** All of that certain furniture, fixtures, equipment and other personal property of any kind, whether tangible or intangible, used in connection with the ownership, operation and maintenance of the Business (collectively, the "Personal Property") as listed on the attached Exhibit A.

1.2 **Leases and Contracts.** All assignable contracts and contract rights of the Business that are then in effect or enforceable, including all contracts, leases, franchises and other agreements of any kind, which relate to the ownership, operation and/or maintenance of the business and which are not cancelable at will, together with any contracts, purchase orders, binding proposals or other contracts or offers made by Seller to provide services or sell goods on or after the Date of Closing, as defined hereinafter (collectively, the "Leases and Contracts"). Attached Exhibit B contains a complete listing of the Leases and Contracts.

1.3 **Instruments of Conveyance.** Transfer by Seller to Purchaser of

the foregoing Assets listed in this Article 1 shall be made at closing by Seller's execution, acknowledgment and delivery to Purchaser of a Bill of Sale conveying the Personal Property "As Is - Where Is" without any express or implied warranty, an assignment of all Leases and Contracts and of the ownership of the LLC and any other instruments as may be reasonably required to convey to Purchaser the LLC, the Business and the Assets, all "As Is - Where IS".

ARTICLE 2

Contingencies

2.1 **Approval by Landlord.** The current lease for the Business is assumable by the Purchaser provided that the Purchaser meets the landlord's qualifying requirements of:

1. Five years' experience in the restaurant/bar business.
2. Copies of three years federal and state income tax returns, both personal and for the business, if a different entity.
3. Personal financial statements for all individuals, members, partners or stockholders of new tenant's entity.

4. Satisfactory credit reports for all individuals involved in the purchase of the restaurant business.

5. Satisfactory criminal checks for all individuals involved in the purchase of the restaurant business.

6. Individuals able to hold liquor license in Montgomery County, Maryland.

7. Copies of six months bank statements for all individuals of new tenant.

Purchaser shall provide the Landlord the foregoing within 5 days of the Effective Date of this Agreement. If the Purchaser is not approved by the Landlord, this Agreement shall be null and void. There are no other contingencies.

ARTICLE 3.

Purchase Price.

3.1 **Purchase Price.** The purchase price for the business shall be _____ Dollars (\$_____) ("Purchase Price").

3.2 **Earnest Money Deposit.** Immediately upon execution of this Agreement, Purchaser shall deliver to Brian E. Barkley, Esquire (the "Escrow Agent"), as an escrow agent under this Agreement, Ten Thousand Dollars (\$10,000) as an earnest money deposit (the "Earnest Money Deposit"), which

shall be held in escrow by the Escrow Agent and applied at closing to the Purchase Price. Said Earnest Money Deposit shall be retained or refunded, as the case may be, only in accordance with the terms of the Agreement.

3.3. Payment of Purchase Price.

The balance of the Purchase Price will be payable as follows:

Purchase Price:	\$_____
Earnest Money Deposit:	\$10,000
Balance Due at Closing:	\$_____

3.4 Prorations. Unless otherwise agreed in writing, all of the following shall be prorated as of 12:01 A.M. on the date of closing (the "Date of Closing") and purchased in cash by Purchaser or credited against cash due by Seller:

- (a) all taxes, assessments or liens of any kind including but not limited to personal property taxes.
- (b) all utility, cable and/or telephone charges of any kind that serve the business.
- (c) all rents or other amounts payable under any contract, lease, franchise or other agreement, including but not limited to the Leases and Contracts.

3.5 **Adjustments.** The following adjustments, purchases or credits shall be made outside of closing and payment in full shall be made at a final walk-through conducted by Purchaser and Seller at closing:

- (a) *Accounts Payable.* Any accounts payable shall be paid in full prior to closing.
- (b) *Deposits.* All refundable deposits made by Seller under any lease or agreement of any kind, whether oral or written, shall be purchased by the Purchaser, and Purchaser shall thereupon acquire all of Seller's rights and obligations, if any, in and to such deposits. If any deposit is refundable only upon the occurrence of some contingency, then the parties shall agree to the disposition of such deposit.
- (c) *Employee Wages.* Seller shall be responsible for payment of all regular and overtime wages, taxes and/or other withholdings earned by any employee prior to the Date of Closing.
- (d) *Food and Beverages.* At the Date of Closing all useable food and beverage items will be inventoried and valued based upon the price paid, the total amount of which shall be purchased by Purchaser from Seller at closing.

- (e) *Rent.* Purchaser shall reimburse Seller for any prepaid rent.
- (f) *Security Deposit.* Purchaser will have to pay the security deposit for the lease to the Landlord at time of lease transfer in the amount of \$25,800.00.

3.6 **Escrow Agent.** Escrow Agent shall hold the Earnest Money Deposit in a non-interest bearing account in accordance with this Agreement until closing has occurred in accordance with Section 6.1 herein. In the event that closing does not occur in the time required under Section 6.1 herein, then at Escrow Agent's sole and absolute discretion, Escrow Agent may do any of the following: (i) Escrow Agent may continue to hold the Earnest Money Deposit in escrow until instructed in a writing signed by all of the parties to this Agreement; (ii) Escrow Agent may pay the Earnest Money Deposit into a court of competent jurisdiction in any jurisdiction reasonably related to the performance of this Agreement or Escrow Agent's duties herein or (iii) in the event that either party defaults in the performance of any duties or obligations or breaches any covenant under this Agreement, then Escrow Agent shall pay the Earnest Money Deposit to the non-defaulting or non-breaching party. Prior to or contemporaneous with any disbursement of the Earnest Money Deposit, Escrow Agent shall notify in writing the Purchaser and Seller herein of such

disbursement. Purchaser and Seller hereby agree to indemnify, defend and hold harmless Escrow Agent from and against any claim, cause of action, suit or other damages of any kind, including but not limited to attorneys fees and costs, incurred in performing its duties under this Agreement. All attorneys' fees, costs or expenses incurred by Escrow Agent shall be offset against any money held in escrow and the balance disbursed as otherwise provided in this Agreement.

ARTICLE 4.

Representations, Warranties, and Covenants of Seller.

Seller hereby represents, warrants, and covenants that at the Date of Closing all of the following will be true:

4.1 **Authority.** The execution, delivery and performance of this Agreement shall have been duly and effectively authorized by all necessary action of the Seller, and no other consent or approval is required in order for the Seller to consummate the transactions provided for herein, except as set forth in this instrument.

4.2 **Title.** Seller has good and marketable title to the Personal Property and all other assets conveyed or to be conveyed hereunder and, further, at closing all Personal Property, whether tangible or intangible, shall be free and clear of all liens, encumbrances with the exception of equipment leases.

4.3 **Operation Pending Closing.** Seller agrees to maintain the business for the duration of this Agreement substantially in its present condition, reasonable wear and tear excepted. . Following execution of this Agreement, Seller will not enter into any new contracts or agreements without the express written consent of Purchaser, which consent Purchaser may withhold in its discretion for any matter outside the normal course of business. For matters within the normal course of business, Seller may continue to enter contracts for the routine provision of services and sale of goods.

4.4 **Employees.** All employees of the business are terminable at will. Seller hereby acknowledges that Purchaser is making no representations or warranties about the retention of any existing employees following the Date of Closing.

ARTICLE 5.

Representations, Warranties and Covenants of Purchaser.

Purchaser represents and warrants to Seller that at the Date of Closing all of the following will be true:

5.1 **Good Standing.** If not a natural person, Purchaser is duly organized validly existing and in good standing under the laws of the state of its creation with all requisite power to own and operate the Hotel and to carry on the business conducted with respect thereto.

5.2 **Authority.** The execution, delivery and performance of this Agreement has been duly and effectively authorized by and on behalf of the Purchaser, and no further action is necessary in respect hereto, nor is the consent of any person required in order for the Purchaser to consummate the transactions provided for herein.

5.4 **Property Condition - "As Is, Where Is"**. Except as otherwise agreed herein, Purchaser acknowledges and agrees it shall accept the LLC, Business and the Assets "As Is - Where Is", without any warranties, express or implied. Purchaser further acknowledges and agrees that it is not relying upon any representation, statement, or warranty (oral or written, implied or express) of any officer, employee or agent of Seller, or any salesperson or broker involved in this transaction as to the condition of the business the Personal Property, including, but not limited to, any representations, statements or warranties as to the physical condition or compliance of the business and/or the Property with any applicable laws, codes, ordinances, rules or regulations.

ARTICLE 6.

Closing.

6.1 **Time and Place.** Time is of the essence on all matters of this Agreement. Closing shall be held on or before thirty (30) days from the acceptance of this Agreement by Seller. Unless otherwise agreed, closing shall be held at the office of Purchaser's attorney.

6.2 **Payment of Taxes, Fees and other Closing Costs.** Purchaser shall pay all fees, taxes and costs at closing, including but not limited to any transfer or sales taxes. Purchaser and Seller shall be responsible for their own attorney's fees.

ARTICLE 7.

Additional Terms.

7.1 **Survival of Warranties.** Except as expressly stated herein, all representations, warranties and covenants by Purchaser and Seller, which are contained in this Agreement or given pursuant hereto shall merge with the Bill of Sale and Assignments and shall not survive closing.

7.2 **Default and Remedies.** If Purchaser shall default in the performance of any part of this Agreement, Seller may elect to waive such default or Seller may elect to terminate this Agreement by written notice to Purchaser. In the event this Agreement is terminated by Purchaser, the Earnest Money Deposit shall be forfeited as Seller's entire liquidated damages and Purchaser shall have no other responsibility or liability of any kind to Seller by virtue of such default. If Seller shall default in the performance of any part of this Agreement, Purchaser may elect to waive such default or Purchaser may elect to terminate this Agreement by written notice to Seller. In the event this Agreement is terminated by Purchaser as a result of Seller's default, the

Earnest Money Deposit shall be returned to Purchaser without right of offset by Seller. In the event this Agreement is terminated by the Landlord rejection of the Purchaser, the Earnest Money Deposit will be returned to the Purchaser.

7.3 **Indemnification**. Purchaser and Seller hereby agree to indemnify, defend and hold harmless the other from and against, all claims or causes of action of any kind which may be asserted against the other party arising out of the ownership, operation or maintenance of the business before or after the transfer of possession and ownership at Closing. Purchaser further agrees to indemnify, defend and hold harmless the Seller from and against, all claims or causes of action of any kind, including but not limited to personal injuries or death, which may be asserted against the Seller arising out of the Purchaser's inspections of the business prior to the Date of Closing. The provisions of this numbered paragraph shall survive closing and delivery of the instruments of conveyance and shall not merge into the deed.

7.4 **Notices**. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be made in writing, signed by the party giving such notice, election or demand, and shall be delivered to the other party at the address set forth below or at such other address as may be supplied in writing by one of the following methods: (a) personal, in hand delivery to the named recipient; (b) registered or certified mail, return receipt requested; (c) overnight courier; or (d) by facsimile transmission directly to the

named recipient followed immediately thereafter by a copy mailed by U.S. Mail.
The date of delivery or the date of mailing, as the case may be, shall be the effective date of giving of such notice, election or demand.

For the purpose of the Agreement:

The address of Seller is:

With Copy to:

Attention: _____

The address of Purchaser is:

The address of Landlord is:

The address of Escrow Agent is:

Brian E. Barkley, Esquire
Barkley & Kennedy, Chartered
51 Monroe Street, Suite 1407
Rockville, MD 20850
bbarkley@barkenlaw.com
301-251-6600

or such other address as any party hereto may give the other pursuant to the provisions hereof.

7.5 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties in connection herewith. No covenant, warranty, representation, condition or undertaking not expressed herein, or in any certificate, instrument or documents delivered pursuant hereto, shall affect or be effective to interpret, change or restrict this Agreement. No modifications, waiver, discharge, cancellation or other agreement shall affect the terms hereof unless in writing and signed by the parties hereto.

7.6 **Non-waiver.** Failure on the part of either party to insist upon strict compliance by the other with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, conditions and covenants, unless otherwise provided herein.

7.7 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, executors, administrators, legal representative, successors, transferees and assigns; provided that neither party shall be entitled to assign its rights hereunder without the prior written consent of the other party and in accordance with Paragraph 7.11 herein.

7.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Maryland.

7.9 **Insurance.** All Seller's insurance policies, including fire and any additional hazard insurance, shall be canceled by Seller not sooner than the Date of Closing (any refunded premiums to be retained by the Seller).. In the event any insurance policy is assigned, by mutual agreement, premiums shall be prorated as of the Date of Closing.

7.10 **Assignment.** Purchaser may not assign this Agreement unless it is an entity of which Purchaser or its shareholders controls or owns at least fifty-one percent (51%) which constitutes a controlling, voting interest.

7.11 **Signing Date.** This Agreement shall be void unless a fully-signed Agreement is entered into by both parties on or before February , 2016.

7.13 **Effective Date.** This Agreement will be considered effective on the date last signed by Purchaser or Seller.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date and year set forth below.

SELLER:

Date: _____

By: _____

Its: _____

PURCHASER:

Date: _____

By: _____

ESCROW AGENT:

Date: _____

By: _____

Exhibit "A"
Personal Property

(To Be Provided)

Exhibit "B"

Contract and Leases

Lease for premises at 8229-8231 Georgia Avenue, Silver Spring, MD 20910
with S & K Investments LLC

Equipment Lease with Balboa Capital and list of leased equipment

