

SETTLEMENT AGREEMENT

This Settlement Agreement, effective and with an “**Effective Date**” as of October 23, 2017, is made by and among Applejack Wine & Spirits LLC (“**Applejack**”), Bruce D. Dierking (“**Dierking**”), and the City of Wheat Ridge (“**Wheat Ridge**”). Applejack, Dierking, and Wheat Ridge are referred to individually as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

- A. On or about March 14, 2017, Dierking served a Colorado Open Records Act (“**CORA**”) request on Wheat Ridge for ownership records relating to Applejack.
- B. In response to Dierking’s request, Wheat Ridge provided Dierking with documents relating to Applejack. Dierking then requested and received from Wheat Ridge copies of certain of the documents relating to Applejack (the “**Produced Documents**”).
- C. A dispute has arisen between the Parties concerning Dierking’s rights to the continued use and possession of the Produced Documents.
- D. The Parties are engaged in litigation concerning this dispute in Jefferson County District Court in a case captioned *Applejack Wine & Spirits LLC v. Bruce D. Dierking*, Case Number 2017 CV 30649 (the “**Lawsuit**”). Dierking has brought a counterclaim against Applejack in the Lawsuit. Wheat Ridge has intervened in the Lawsuit.
- E. Applejack has obtained a temporary restraining order in the Lawsuit, preventing, for a time certain, Dierking’s continued use and possession of the Produced Documents.
- F. The Parties acknowledge that the Produced Documents may be in the hands of certain media personnel over whom Dierking cannot and does not exert control or authority as to the Documents and for whose independent actions he is neither responsible nor liable.
- G. The Parties desire to resolve the Lawsuit, the claims brought therein, and any claims that could have been brought in the Lawsuit, stemming from the release of the Produced Documents by Wheat Ridge to Dierking.

NOW, THEREFORE, subject to the terms set forth below, the Parties wish to resolve fully and finally all disputes as set out in the recitals above, including but not limited to the release of all claims and counterclaims in the Lawsuit, and, in order to accomplish that end, they hereby enter into this Settlement Agreement.

AGREEMENT

In consideration of the mutual terms, covenants and conditions contained in this Settlement Agreement and other good and valuable consideration, the Parties agree as follows:

1. **Recitals.** The Parties acknowledge and agree that the recitals set forth above are true and correct to the best of their knowledge, information, and belief, and hereby constitute a part of this Settlement Agreement.

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. **Releases.**

(a) Applejack, for itself and its representatives, agents, successors, assigns, parents, subsidiaries, affiliates, partners, attorneys, shareholders, members, officers, directors, employees, and insurers, past and present (the “**Applejack Releasers**”) does hereby remise, release, and forever discharge (i) Dierking, his representatives, agents, assigns, and attorneys, past and present (the “**Dierking Releasees**”), and (ii) Wheat Ridge and its representatives, agents, successors, assigns, attorneys, and employees, past and present (the “**Wheat Ridge Releasees**”), from any and all claims; causes of action;

demands; suits; damages; judgments of whatever kind or nature, in law or in equity; either known or unknown or suspected or unsuspected, concerning the Lawsuit and/or other claims stemming from Wheat Ridge's release of the Produced Documents to Dierking, and which the Applejack Releasors may now own, hold, have or claim to have by reason of any matter, cause or thing whatsoever from the beginning of the world through the Effective Date of this Settlement Agreement.

(b) Dierking, for himself and his representatives, agents, assigns, and attorneys, past and present (the "**Dierking Releasors**") does hereby remise, release, and forever discharge (i) Applejack, its representatives, agents, successors, assigns, parents, subsidiaries, affiliates, partners, attorneys, shareholders, members, officers, directors, employees, and insurers, past and present (the "**Applejack Releasees**"), and (ii) the Wheat Ridge Releasees, from any and all claims; causes of action; demands; suits; damages; judgments of whatever kind or nature, in law or in equity; either known or unknown or suspected or unsuspected, concerning the Lawsuit and/or other claims stemming from Wheat Ridge's release of the Produced Documents to Dierking, and which the Applejack Releasors may now own, hold, have or claim to have by reason of any matter, cause or thing whatsoever from the beginning of the world through the Effective Date of this Settlement Agreement.

(c) Wheat Ridge, for itself and its representatives, agents, successors, assigns, attorneys, and employees, past and present (the "**Wheat Ridge Releasors**") does hereby remise, release, and forever discharge (i) the Dierking Releasees, and (ii) the Applejack Releasees, from any and all claims; causes of action; demands; suits; damages; judgments of whatever kind or nature, in law or in equity; either known or unknown or suspected or unsuspected, concerning the Lawsuit and/or other claims stemming from Wheat Ridge's release of the Produced Documents to Dierking, and which the Applejack Releasors may now own, hold, have or claim to have by reason of any matter, cause or thing whatsoever from the beginning of the world through the Effective Date of this Settlement Agreement.

(d) Notwithstanding the releases set out in 6(a)-6(c) above, the Parties may enforce their respective rights under this Agreement in any court with jurisdiction. Any of the Parties may seek redress for breach of this Agreement, including to seek damages and injunctive relief.

7. **Dismissal of Lawsuit.** Within three business days of the Effective Date of this Agreement, the Parties shall file or cause to be filed a Stipulated Dismissal with Prejudice of the Lawsuit in Jefferson County District Court, including a dismissal of all claims and counterclaims therein and the dissolution of the temporary restraining order, in the form attached to this Settlement Agreement as Exhibit B.

8. **Future CORA Requests.** Nothing in this Settlement Agreement shall prevent Dierking from making any future requests for information under CORA. Nor shall anything in this Agreement be understood to limit the authority and responsibility of Wheat Ridge to consider and interpret any future CORA requests, and to respond to any such request by releasing, releasing in part, or refusing to release records, as required by Colorado law. In the event Dierking makes any future CORA request, he shall not argue that any of the Redacted

Information or Withdrawn Documents are in the public domain or otherwise lost their confidentiality by reason of those documents being used or referenced in this Lawsuit or Settlement Agreement; provided, however, that (i) Dierking does not concede, and nothing in this Settlement Agreement shall be construed to admit or conclude, that the Redacted Information and the Withdrawn Documents are trade secrets, confidential financial information, or otherwise exempt from disclosure under CORA as a matter of law, and (ii) Applejack does not concede, and nothing in this Settlement Agreement shall be construed to admit or conclude, that the Redacted Information and the Withdrawn Documents are not trade secrets, confidential financial information, or otherwise exempt from disclosure under CORA as a matter of law.

9. **No Admission of Liability.** Nothing in this Settlement Agreement shall constitute, or be construed as an admission on behalf of any of the Parties as to the validity of any claims, defenses, or allegations released pursuant to this Settlement Agreement. This Settlement Agreement shall not be admissible in any court, administrative agency, or tribunal for any purpose, with the exception of a proceeding, action, or motion to enforce or interpret the terms of this Settlement Agreement.

10. **Confidentiality.** The Parties and their respective counsel represent and agree that, except for matters of public record as of the date of this Settlement Agreement, they will keep the terms and contents of this Settlement Agreement confidential, and that they will not hereinafter disclose the terms of this Agreement to other persons except as compelled by applicable law or to individuals who have a need to know about this Agreement and its contents, such as Parties' legal counsel, tax advisors, or other retained professional representatives, all of whom shall also be informed of and bound by this confidentiality clause. Nothing in this paragraph shall be construed as limiting Dierking's rights to use or refer to information contained in the Settlement Documents addressed in Paragraph 2 of this Agreement or as limiting either party's rights to refer to the issuance or dissolution of the temporary restraining order or stating that its terms do not bind Dierking from the date of the Court's dissolution of that order. Applejack and Wheat Ridge further agree that Wheat Ridge shall file an Unopposed Motion to Declare the Settlement Agreement Protected from Disclosure Under CORA, attached to this Settlement Agreement as Exhibit C.

11. **Authority to Execute and Perform.** The Parties represent and warrant that all actions necessary to make the provisions of this Settlement Agreement binding on the Parties have been properly taken. The persons signing this Settlement Agreement for or on behalf of the Parties are duly authorized to execute and to perform this Settlement Agreement. This Settlement Agreement, when executed and delivered by each Party, will be the legal and binding obligation of the Parties.

12. **Attorneys' Fees and Costs.** Each of the Parties shall be responsible for his or its attorneys' fees and costs with respect to the preparation of this Settlement Agreement and the dispute culminating in it. The Parties acknowledge that the mutual covenants and conditions contained in this Agreement constitute sufficient consideration for this Agreement notwithstanding the lack of any payment of fees or costs in connection with this Agreement.

13. **Representation by Counsel.** The Parties hereby acknowledge that they have been represented by counsel of their choice throughout the negotiations which preceded the

execution of this Agreement, and in connection with the preparation and execution of this Agreement, and that they have carefully and thoroughly reviewed this Agreement, in its entirety, with that counsel.

14. **Interpretation, Construction.** Should any provision of this Agreement require interpretation or construction, the Parties agree that this Agreement will be interpreted or construed without any presumption that the provisions of this Agreement are to be strictly construed against the Party or Parties which, itself or through its agents, prepared such Agreement; it also being agreed that the Parties and their respective counsel and other agents have fully and equally participated in the preparation, negotiation, review and approval of all provisions of this Agreement.

15. **Survival of Obligations.** In the event that a court of competent jurisdiction enters judgment declaring any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, such remaining provisions being deemed modified to the extent necessary to comply with the judgment.

16. **Miscellaneous.**

(a) This Settlement Agreement is binding in all respects upon, and shall inure to the benefit of, the Parties, all owners and interest holders in Plaintiff, and their successors, heirs, and assigns.

(b) This Settlement Agreement constitutes the Parties' entire agreement with respect to the subject matter hereof and is a complete merger of all offers, counteroffers, negotiations and agreements.

(c) This Settlement Agreement may not be amended except in a writing signed by the authorized representatives of the Party against whom an amendment is to be enforced.

(d) This Settlement Agreement shall be construed pursuant to Colorado law without reference to its conflict of laws principles.


(e) This Settlement Agreement may be signed in identical counterparts, all of which, together, shall constitute one and the same instrument and such counterparts may be transmitted by telecopy or by email pdf, the telecopy or pdf having the full force and effect, as if it were an original.

(f) This Settlement Agreement shall be void and of no effect if the temporary restraining order remains in effect thirty (30) days after the Effective Date of this Agreement.

[Signature pages to follow.]

IN WITNESS WHEREOF, this Settlement Agreement has been entered into as of the day, month, and year first written above.

APPLEJACK WINE AND SPIRITS, LLC



By: James Shpall

Its: CEO

BRUCE D. DIERKING

CITY OF WHEAT RIDGE



By: GERALD DANK

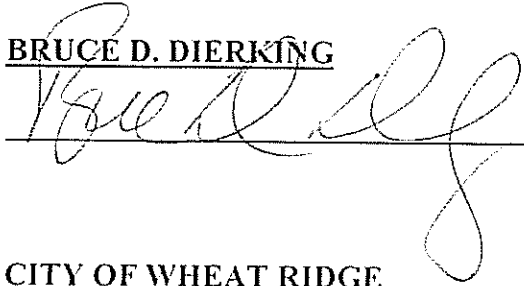
Its: CITY ATTORNEY

IN WITNESS WHEREOF, this Settlement Agreement has been entered into as of the day, month, and year first written above.

APPLEJACK WINE AND SPIRITS, LLC

By: _____

Its: _____

BRUCE D. DIERKING


CITY OF WHEAT RIDGE

By: _____

Its: _____