

COMMERCIAL PURCHASE AND SALE AGREEMENT



Office of _____, Agency
Address: _____ Phone: _____ Fax: _____
Email: _____ Date: _____, _____ (time)

1. The undersigned Buyer and Seller each acknowledge the Agency name above is acting as (choose one):
 Subagent of the Seller Agent of the Buyer Dual Agent (with written, informed consent of both Buyer and Seller)
 Other (specify) : _____
2. **Buyer's Offer.** The undersigned Buyer offers and agrees to purchase the property located in the _____ of _____, _____ County, State of _____, commonly known as _____, Permanent Parcel Number _____ and legally described as follows:

(the "Land"), together with all buildings, fixtures and improvements situated on the Land (the "Improvements"), and all equipment and other personal property listed on Exhibit D (the "Personal Property"), all of which is collectively referred to herein as the "Premises", except the following:

3. **Purchase Price.** The purchase price for the Premises is: _____ Dollars (\$) (_____). Any allocation of the purchase price between the Land with Improvements and the Personal Property shall be set forth on an attached Exhibit.
4. **Terms of Payment** shall be as indicated by "X" below (other unmarked terms of purchase do not apply).
 Cash. Buyer shall pay the full purchase price to the Seller upon execution and delivery of a warranty deed and performance by Seller of the closing obligations specified herein.
 New Mortgage. Buyer shall pay the full purchase price to the Seller upon execution and delivery of a warranty deed and performance by Seller of the closing obligations specified herein, contingent upon Buyer's ability to obtain a _____ type _____ year mortgage loan in the amount of \$ _____ bearing interest at a rate no greater than _____% per annum. Buyer shall apply for the mortgage loan immediately and accept it promptly if tendered. If Buyer does not deliver to Seller on or before _____ (date), proof that Buyer has accepted a mortgage loan commitment, Seller may thereafter at any time treat this contingency as not having been satisfied and terminate this Agreement by written notice to Buyer, unless Buyer has previously either satisfied or waived this contingency in writing.
 Land Contract **Purchase Money Mortgage.** The Buyer shall pay the full purchase price to the Seller pursuant to the terms and conditions stated in a _____ Land Contract form or a Purchase Money Mortgage form upon performance by Seller of the closing obligations specified herein. The Land Contract or Purchase Money Mortgage shall provide for a down payment of \$ _____ and payment of the balance in monthly installments of \$ _____ or more, at Buyer's option, including interest at the rate of _____% per annum computed monthly, interest to start on date of closing, and first payment to become due _____ calendar days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Seller understands that consummation of the sale or transfer of the Premises shall not relieve the Seller of any liability that Seller may have under the mortgage(s) to which the Premises are subject, unless otherwise agreed to by the lender.
- Additional Provisions:**

5. **Survey.** A new recertified existing boundary survey with iron corner stakes and with all easements of record, improvements, and encroachments (if any); and/or ALTA survey showing all easements of record, improvements, and encroachments, if any, shall be provided by Buyer Seller within _____ calendar days after the later to occur of (i) the title insurance commitment referenced in Section 6 below is delivered to the party responsible for the survey; and (ii) Buyer's right to terminate under Section 7 below is waived or deemed to have been waived. If the survey reveals a matter that materially and adversely affects the value of the Premises or Buyer's intended use of the Premises, Buyer shall have the right to terminate this Agreement by giving Seller written notice within _____ (_____) calendar days after copies of both the survey and title commitment referenced in Section 6 below are delivered to Buyer, otherwise Buyer's right to terminate this Agreement pursuant to this Section shall be deemed to have been waived. Other:

Buyer's Initials Seller's Initials

6. **Title Insurance.** At Seller's expense, Seller shall provide Buyer with a standard owner's policy of title insurance in the amount of the purchase price, effective as of the date of closing. A commitment to issue such policy insuring marketable title (as defined in Section 11 below) vested in Buyer, including a tax status report, shall be ordered within seven (7) calendar days after the Effective Date of this Agreement, and shall be delivered as soon as feasible thereafter. If any matter disclosed by the title commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Premises, Buyer shall have the right to terminate this Agreement by giving Seller written notice within _____ (_____) calendar days after copies of both the title commitment and survey referenced in Section 5 above are delivered to Buyer, otherwise Buyer's right to terminate this Agreement pursuant to this Section shall be deemed to have been waived. A matter disclosed on the title commitment that is in the form of a lien that is liquidated in amount and that can be readily discharged (such as a mortgage) shall not be grounds for termination of this Agreement by Buyer under this Section so long as Seller discharges such lien(s) at the closing. Other:

7. **Inspections.** By signing this Agreement, Buyer is representing that the Buyer is aware that inspection services of buildings and building components and systems are commercially available. Buyer has the right to inspect the buildings and building components and systems or have the buildings and building components and systems inspected by experts selected by the Buyer. Buyer has elected to arrange and pay for the following inspections:
 No Inspections Plumbing Heating, Ventilating & Air Conditioning Electrical
 Structural, including roof Termites and other wood destroying insects Other (specify):

After the Effective Date of this Agreement, Buyer shall have the right to enter upon the Premises during reasonable business hours for purposes of conducting the above-noted inspections; provided, however, that such inspections shall not interfere with the rights of tenants in possession. Buyer shall indemnify and hold Seller harmless from and against any damage to persons or property caused by Buyer or Buyer's agents in conducting such inspections. Buyer shall have the right to terminate this Agreement if the inspection reports are not acceptable to the Buyer by giving Seller written notice within _____ calendar days after the Effective Date of this Agreement, otherwise the right to terminate shall be deemed to have been waived. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson regarding any aspect of the Premises or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by the Seller. Accordingly, Buyer agrees to accept the Premises "as is" and "with all faults" except as otherwise expressly provided in the documents specified in the preceding sentence. Other:

8. **Closing Adjustments.** The following adjustments shall be made between the parties as of the close of business on the closing date, with the Buyer receiving a credit or assuming responsibility, as the case may be, for amounts attributable to time periods following the closing date:
a. Prepaid rent;
b. Interest on any existing indebtedness assumed by Buyer;
c. Charges for any transferable service contracts assigned to Buyer described in Exhibit C;
d. Utility deposits;
e. Security deposits;
f. Additional Rent (as defined below).

If any tenant is late, delinquent or otherwise in default in the payment of rent on the closing date, Seller shall assign to Buyer the claim for and the right to collect the rent; Buyer shall forward any past due rent to Seller promptly upon receipt, but Buyer shall not be obligated to file suit to collect such rent and shall reassign the claim to Seller on demand. If any tenants are required to pay percentage rent, charges for real estate taxes, insurance, common area maintenance expenses, or other charges of a similar nature ('Additional Rent'). Such amounts shall be allocated between the parties pursuant to the terms of the applicable leases. If any Additional Rent is collected by Buyer after closing which is attributable in whole or in part to any period prior to closing, Buyer shall promptly pay to Seller Seller's proportionate share of the Additional Rent. Other:

9. **Property Taxes.** Real property taxes will be prorated as follows (choose one):
 No proration:
Seller shall pay taxes billed prior to and including the _____ tax bill.
Buyer shall pay taxes billed starting with the _____ tax bill.
 Real property taxes shall be deemed to cover the calendar year in which they are first billed. Tax bills issued for years prior to the year of closing shall be paid by Seller. Tax bills issued, or to be issued, in the year of closing shall be prorated so that Seller shall be charged from the first of the year to the closing date, and Buyer will be charged for the balance of the year, including the date of closing. If any bill for taxes proratable hereunder is not issued as of the closing date, the then current taxable value and tax rate and any administrative fee will be substituted and prorated.
 Taxes shall be prorated with Seller paying to but not including the day of closing assuming that taxes are paid on a due date basis:
 In advance In arrears
 Other:

Buyer's Initials Seller's Initials

10. **Special Assessments.** (choose one)

- Seller shall pay all special assessments which have become a lien on the Premises prior to the date of closing, whether due in installments or otherwise.
- Seller shall pay all special assessments which have become a lien on the Premises prior to the date of closing, provided, however, that in the event a special assessment is payable in installments, Seller shall only be responsible for those installments covering the years prior to the year of closing, and Buyer shall be responsible for all installments covering all years after the year of closing. Installments of special assessments covering the year of closing shall be prorated using the same method set forth in Section 9 for the proration of real estate taxes.
- Other: _____

11. **Conveyance.** Upon performance by Buyer of the closing obligations specified herein, Seller shall convey marketable title to the Premises to Buyer by warranty deed or by land contract or assignment, as required by Section 4 above, including oil, gas, and other mineral rights, subject only to building and use restrictions, easements, and restrictions of record, if any.

12. **Warranties of Buyer.** Except as otherwise provided or acknowledged in this Agreement, Buyer represents and warrants to Seller as follows:

- a. The performance of the obligations of Buyer under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Buyer .
- b. There is no litigation or proceeding pending, or to the Buyer's knowledge threatened, against or involving the Buyer, and the Buyer does not know or have reason to know of any ground for any such litigation or proceeding, which could have an adverse impact on Buyer's ability to perform under this Agreement.
- c. In entering into this Agreement, Buyer has not relied upon any written or verbal representations made by Seller or any representative of Seller, including any real estate salesperson, regarding the Premises or any aspect of this transaction, which are not expressly set forth in this Agreement.
- d. Other: _____
- e. _____
- f. _____
- g. _____

13. **Warranties of Seller.** Except as otherwise provided or acknowledged in this Agreement, Seller represents and warrants to, and agrees with Buyer as follows:

- a. Seller's interest in the Premises shall be transferred to Buyer on the closing date, free from liens, encumbrances other than as disclosed in the title commitment and not objected to by Buyer pursuant to Section 6 hereof.
- b. The performance of the obligations of Seller under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Seller or the Premises.
- c. There is no litigation or proceeding pending or to the Seller's knowledge threatened, against or involving the Seller or the Premises, and the Seller does not know or have reason to know of any ground for any such litigation or proceeding which could have an adverse impact on Seller's ability to perform under this Agreement or that could affect Buyer's title to or use of the Premises.
- d. Seller shall continue to operate the Premises in the ordinary course of business and maintain the Premises in good condition and repair during the interim between the signing of this Agreement and the closing date.
- e. If a statement(s) of income and expense with respect to the operation of the Premises is(are) described in Exhibit A, such statement(s) is(are) accurate for the period(s) designated in the statement(s).
- f. The information concerning written leases and any tenancies not arising out of written leases described in Exhibit B is accurate as of the Effective Date of this Agreement, and there are no leases or tenancies with respect to the Premises other than those described in Exhibit B (the "Leases").

Except as otherwise described in Exhibit B:

- (1) All of the Leases are in full force and effect, no party thereto is in material default thereunder, and none of them have been modified, amended or extended;
- (2) No renewal or extension options have been granted to tenants;
- (3) No tenant has an option to purchase the Premises;
- (4) The rents set forth are being collected on a current basis and there are no arrearages or advance payments in excess of one month;
- (5) There are no security deposits, and
- (6) No real estate brokerage commission will become owing in the event of any tenant's exercise of any existing option to renew the term of any Lease or purchase of the Premises.
- g. If a schedule of service, maintenance, supply and management contracts ("Service Contracts") is described in Exhibit C, the Exhibit lists all the Service Contracts currently in effect with respect to the Premises.
- h. With respect to underlying land contracts or mortgages, the sale will not accelerate indebtedness, increase interest rates, or impose penalties and sanctions.

- i. Seller is without personal knowledge as to the presence on the Premises of any toxic or hazardous substances or of any underground storage tanks.
- j. Other: _____

14. **Damage to Premises.** If between the Effective Date of this Agreement and the closing date, all or any part of the Premises is damaged by fire or natural elements or other causes beyond the Seller's control which cannot be repaired prior to the closing date, or any part of the Premises is taken pursuant to any power of eminent domain, Seller shall immediately notify Buyer of such occurrence, and either Seller or Buyer may terminate this Agreement by written notice to the other within fifteen (15) calendar days after the date of the damage or taking. If neither elects to terminate this Agreement, there shall be no reduction of the purchase price and at closing Seller shall assign to Buyer whatever rights Seller may have with respect to any insurance proceeds or eminent domain award.

15. **Closing.** The closing shall be held within _____ calendar days after all contingencies have been satisfied or waived. An additional period of thirty (30) calendar days shall be allowed for closing to accommodate the correction of title defects and/or survey problems which have been properly identified pursuant to Section 5 or 6 hereof and which are readily correctable.

16. **Possession.** Seller shall tender to Buyer possession of the Premises upon completion of the closing, subject to all existing leases and rights of tenants in possession. Other: _____

17. **Seller's Closing Obligations.** At closing, Seller shall deliver the following to Buyer:

- a. The warranty deed, land contract or assignment of land contract required by Section 4 of this Agreement.
- b. A bill of sale for any Personal Property (described in Exhibit "D")
- c. A written assignment by Seller of Seller's interest in all leases and a transfer to Buyer of all security deposits, accompanied by the original or a true copy of each lease.
- d. An assignment of all Seller's rights under any Service Contracts described in Exhibit C which are assignable by their terms and which Buyer wishes to assume, together with an original or true copy of each Service Contract assigned.
- e. A notice to any tenants advising the tenants of the sale and directing that future payments be made to Buyer.
- f. Any other documents required by this Agreement to be delivered by Seller.
- g. An accounting of operating expenses including, but not limited to, CAM, taxes, insurance, and Additional Rent, collected in advance or arrears, spent or not yet spent by Seller, showing an accurate allocation between the parties pursuant to the leases.

18. **Buyer's Closing Obligations.** At closing, Buyer shall deliver to Seller the following:

- a. The cash portion of the purchase price specified in Section 4 above shall be paid by cashier's check or other immediately available funds, as adjusted by the apportionments and assignments in accordance with this Agreement.
- b. A written assumption by Buyer of the obligations of Seller under the Leases arising after closing, including an acknowledgment of the receipt of all security deposits.
- c. Any other documents required by this Agreement to be delivered by Buyer.

19. **1031 Tax Deferred Exchange.** Upon either party's request, the other party shall cooperate and reasonably assist the requesting party in structuring the purchase and sale contemplated by this Agreement as part of a tax deferred, like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended; provided, however, that in connection therewith, the nonrequesting party shall not be required to (a) incur any additional costs or expenses; (b) take legal title to additional real property (i.e., the requesting party's "replacement property" or "relinquished property"); or (c) agree to delay the closing.

20. **Notices.** Unless otherwise stated in this Agreement, a notice required or permitted by this Agreement shall be sufficient if in writing and either delivered personally or by certified mail or other form of documentable delivery addressed to the parties at their addresses specified in the proximity of their signatures below, and any notices given by mail shall be deemed to have been given as of the date of the postmark.

21. **Additional Acts.** Buyer and Seller agree to execute and deliver such additional documents and to perform such additional acts as may become necessary to effectuate the transfers contemplated by this Agreement.

22. **Authority of the Parties.** Each of the undersigned individuals who have signed this Agreement on behalf of Seller and Buyer entities represent and warrant that he/she is authorized to sign this Agreement on behalf of such party and to bind such party to the requirements of this Agreement.

23. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the sale of the Premises. All contemporaneous or prior negotiations have been merged into this Agreement. This Agreement may be modified or amended only by written instrument signed by the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of _____ For purposes of this Agreement, the phrase "Effective Date of this Agreement" shall be the date upon which this Agreement is fully executed pursuant to Section 33 or 34 below, whichever may apply.

24. **Earnest Money.** Buyer gives _____, Agency, _____ calendar days to obtain the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding agreement between Buyer and Seller. Buyer shall deposit \$ _____ with Agency with this offer OR within _____ calendar days after acceptance of this offer, evidencing Buyer's good faith, to be held by the Agency and to be applied to the purchase price or the down payment portion thereof where applicable. If this offer is not accepted or the title is not marketable or if the purchase is contingent upon conditions specified which cannot be met, this deposit shall be promptly refunded. If the Buyer defaults, all deposits made may be forfeited as liquidated damages at Seller's election or, alternatively, Seller may retain the deposit as part payment of the purchase price and pursue Seller's legal or equitable remedies against Buyer. If the sale is not closed according to its terms, the Agency may notify Buyer and Seller of Agency's intended disposition of the earnest money deposit, and all parties shall be deemed to have agreed to the disposition of the earnest money deposit unless the Agency receives written objection within seven (7) calendar days.

25. **Disclosure of Price and Terms.** The purchase price and the terms of this sale may be disclosed to Associations of REALTORS®, multiple listing services and/or commercial property information exchanges. Deletion of this Section shall not be considered a counter offer which would require a counter acceptance.

Buyer's Initials Seller's Initials

- 26. **Credit Reports.** Buyer consents that, if not otherwise prohibited, the Agency may give Seller information about the Buyer contained in a credit report which may be furnished to the Agency by a reporting agency.
- 27. **Advice of Counsel.** Buyer acknowledges that the Agency has recommended that Buyer retain an attorney to pass upon the marketability of title, to ascertain that the terms of the sale are adhered to before the transaction is closed and to advise with respect to the Notice referenced in Section 28 hereof.

28. **Environmental.**

a. **Notice to sellers, buyers, landlords and tenants (environmental risks).**

Whenever property is acquired, the buyer incurs some degree of risk with regard to potential environmental contamination and/or protected natural resources on the property. Various federal, state and local laws may impose liability upon the buyer for the remediation of the contamination even though the buyer did not cause it, or may restrict the buyer's ability to fully develop or utilize the property. Such risk can be minimized through the performance of environmental due diligence.

No real estate broker/salespersons in this transaction possess the expertise necessary to assess the nature or extent of these environmental risks or to determine the presence of environmental contamination or protected natural resources. The real estate broker/salespersons involved in this transaction do not make independent investigations as to environmental contamination or protected natural resources with respect to any property, and they make no representations regarding the presence or absence, now or in the past, of environmental contamination. It is therefore prudent for each party to this transaction to seek legal and technical counsel from professionals experienced in environmental matters to provide an evaluation of the environmental risks associated with the transaction.

b. **Environmental reports and assessments.**

- (1) Seller shall provide copies of any existing Environmental Assessments or reports involving the Premises within _____ calendar days after the Effective Date of this Agreement.
- (2) At Buyer's option, Buyer shall be given access to the Premises during normal business hours to perform an ASTM E1528 Transaction Screen or an ASTM E1527 Phase I Site Assessment (individually or collectively the "Environmental Assessment"). Buyer shall pay _____% and Seller shall pay _____% of the cost of the Environmental Assessment. The Environmental Assessment shall be ordered by the Buyer Seller. The Environmental Assessment shall be completed within _____ calendar days after the Effective Date of this Agreement and shall be certified to _____.
- (3) If an Environmental Assessment of the Premises reveals recognized environmental conditions as defined by ASTM, then Buyer shall have the right to:
 - (a) terminate this Agreement within _____ calendar days after receipt of the Environmental Assessment report; or
 - (b) provide Seller with the Environmental Addendum to Buy and Sell Agreement (Seller's refusal to execute the Environmental Addendum within _____ calendar days shall, at Buyer's option, terminate this Agreement); or
 - (c) proceed with the purchase.
- (4) For residential housing units, Seller will attach either the Seller's acknowledgment Form Concerning Lead-Based Paint or a Lead-Based Paint Seller's Disclosure form, depending on whether the improvements were built prior to 1978 or 1978 or later.

c. **Nondisclosure.**

If Buyer exercises its right to terminate this Agreement pursuant to subsection b. above, Buyer shall not disclose its Environmental Assessment report(s) to any third-party. At Seller's request, Buyer shall provide copies of any Environmental Assessment report(s) to Seller.

d. **Other:**

- 29. **Brokerage Fee.** Seller and/or Buyer agrees to pay the broker(s) involved in this transaction a brokerage fee as specified in any agency agreement or other written agreement between them. In the event no such agreement exists, Buyer Seller agrees to pay a brokerage fee of _____ . This brokerage fee shall be paid in full promptly after it is earned, but not later than any applicable closing. Unless otherwise previously agreed, Buyer and/or Seller agrees that the brokerage fee may be shared by the recipient with any cooperating broker who participates in the sale, in such amount as the recipient decides, without further disclosure to or consent from Buyer and/or Seller. Other:

30. **Other Provisions.**

31. Index of Exhibits.

Not Applicable	Attached	Seller to Furnish	Exhibit	Subject	Attached	Seller to Furnish	Exhibit	Subject
			A	Income and expense with respect to the operation of the Premises				
			B	Written leases and any tenancies not arising out of written leases				
			C	Service Contracts				
			D	List of Personal Property				

As to any "Seller to furnish" item(s) listed above, Buyer shall have the right to terminate this Agreement if any such item is not acceptable to Buyer by giving Seller written notice within _____ calendar days after receipt of such item(s), otherwise the right to terminate this Agreement pursuant to this Section shall be deemed to have been waived.

32. By signing below, Buyer acknowledges having read and received a copy of this Agreement.

Witness: _____ Entity: _____
 Buyer's Address: _____ By: _____
 _____ (Note: Please sign as you wish your name to appear on the final papers.)
 Printed name of Signatory: _____
 Its: _____
 Bus. Phone: _____ Fax: _____
 E-Mail: _____

SELLER'S ACCEPTANCE

Date: _____, _____ (time)

33. The above offer is hereby accepted:

By signing below, Seller acknowledges having read and received a copy of this Agreement. If this Agreement is signed by Seller without any modification, this becomes the Effective Date of this Agreement.

Seller gives Agency above named until _____ (time) _____ (date), to obtain Buyer's written acceptance of counter offer, if any.

Witness: _____ Entity: _____
 Seller's Address: _____ By: _____
 _____ (Note: Please sign as you wish your name to appear on the final papers.)
 Printed name of Signatory: _____
 Its: _____
 Bus. Phone: _____ Fax: _____
 E-Mail: _____

BUYER'S RECEIPT OF ACCEPTANCE

Date: _____, _____ (time)

34. Buyer acknowledges receipt of Seller's acceptance of Buyer's offer. If the acceptance was subject to changes from Buyer's offer, the Buyer agrees to accept those changes, all other terms and conditions remaining unchanged. If this Agreement is signed by the Buyer without any modification, this becomes the Effective Date of this Agreement.

Witness: _____ Buyer: _____

SELLER'S RECEIPT OF ACCEPTANCE

Date: _____, _____ (time)

35. Seller acknowledges receipt of a copy of the Buyer's acceptance of the counter-offer (if Seller made a counter-offer).

Witness: _____ Seller: _____

Buyer's Initials Seller's Initials