

# Agreement for the Sale and Purchase of Improved Real Estate

**THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL PROPERTY** (herein referred to as this "Agreement") is made by and between \_\_\_\_\_ (herein referred to as the "Seller") and \_\_\_\_\_, (herein referred to as the "Purchaser") and will include the heirs, successors, personal representatives and assigns of Seller and Purchaser.

## RECITALS

Seller is the owner of that certain tract of real property consisting of a building with +/- \_\_\_\_\_ sf, located in \_\_\_\_\_, along with all improvements located thereon and all easements and appurtenances thereunto belonging, including any right, title and interest of the Seller in and to adjacent streets, alleys or rights-of-way, and being more particularly described in Exhibit "A" attached hereto and being made a part hereof (herein referred to as the "Property").

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. **Purchase Price.**

Subject to the terms and conditions herein, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller. Purchaser shall pay to Seller the purchase price as follows:

- |  |          |
|--|----------|
| A. Binder deposit which will remain as a binder until closing, unless sooner forfeited or returned, according to the provisions in this Agreement.   | \$ _____ |
| B. Balance due at closing (not including Purchaser's closing cost, prepaid items or prorations) in U.S. cash or locally drawn certified or cashiers check - [ ] approximately [ ] exactly. | \$ _____ |
| C. Proceeds of a new loan to be executed by Purchaser to any lender other than Seller.   | \$ _____ |
| D. Purchase money loan to Seller on terms set forth in Paragraph 2C  | \$ _____ |
| E. Other financing _____.  | \$ _____ |
| F. Existing mortgage balance encumbering the Property to be taken subject to by Purchaser (approximately).   | \$ _____ |
| G. Total Purchase Price - [ ] approximately [ ] exactly  | \$ _____ |

2. **Method of Payment.**

The Purchase Price is based [Select A, B, or C Below]

A. [ ] **All Cash to Seller at Closing:** Purchaser's obligation to close shall not be subject to any financing contingency.

B. [ ] **New Loan To Be Obtained:** This Agreement is made conditioned upon Purchaser's ability to obtain a loan. "Ability to obtain" as used herein means Purchaser is qualified to receive the loan described herein based upon the Lender's customary and standard underwriting criteria. Lender is defined herein as the financial institution funding the loan.

C. [ ] **Seller Financing:** The balance due to Seller will be evidenced by a negotiable promissory note by Purchaser, secured by a valid purchase money \_\_\_\_\_ Mortgage or Trust Deed on the Property and delivered by Purchaser to Seller dated the date of closing bearing annual interest rate of \_\_\_ % and payable as follows:  
 [ ] \$ \_\_\_\_\_ per \_\_\_\_\_ for [ ] \_\_\_\_\_ years and/or [ ] \_\_\_\_\_ months;

[ ] No payments, entire balance due within \_\_\_\_\_ months from closing;

[ ] Any balance due to Seller - [ ] will be / [ ] will not be subordinated to a new Mortgage or Deed of Trust put in place by Purchaser. Purchaser will have the privilege but not the obligation of prepayment for any or all part of the financed portion with no penalty.

D. Release Provision: Seller will release to Purchaser at Purchaser's request any tract of land consisting of all or part of the whole tract upon payment to the Seller equal to the same price per square foot as Purchaser paid for the Property. The release will be determined by dividing the total purchase price by the total square footage purchased, then multiplying that number by the square feet Purchaser requests to be released.

3. Earnest Money.

A. Earnest Money. Within \_\_\_\_\_ ( ) business days from the execution of this Agreement, the Purchaser shall deliver a check to \_\_\_\_\_ (herein referred to as the "Escrow Agent") to be designated as the "Earnest Money". As used in this Agreement, the Earnest Money shall be held in escrow and delivered by the Escrow Agent in accordance with the provisions hereof.

B. Application. At the Closing, the Escrow Agent shall deliver the Earnest Money to the settlement agent and the Earnest Money shall be applied to the Purchase Price. If Purchaser shall validly exercise any right or option under this Agreement to rescind, cancel or terminate this Agreement, then Escrow Agent shall pay the Earnest Money to Purchaser, less the sum of ONE HUNDRED AND NO/100<sup>TH</sup> DOLLARS (\$100.00) which shall be retained by Seller in consideration for entering into this Agreement initially, whereupon this Agreement shall terminate and the parties to this Agreement shall have no further rights, duties or obligations under this Agreement, except as otherwise specifically provided in this Agreement.

C. Dispute. In the event of a dispute or if in doubt as to Escrow Agent's duties or liabilities under the provisions of this Agreement, Escrow Agent may, at Escrow Agent's option, either (i) continue to hold the subject matter of the escrow until the parties mutually agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or (ii) Escrow Agent may interplead the Earnest Money into the registry of the clerk of the Court. Upon notifying all parties concerned of such interpleader, Escrow Agent shall be released from any further or continuing liability with respect to the disposition of such Earnest Money. In such event only, Escrow Agent will be entitled to reimbursement to the extent of all costs and expenses reasonably incurred to obtain an order of interpleader, including reasonable attorney's fees, which will be secured by a lien upon the Earnest Money deposited with the court. Escrow Agent shall exercise ordinary care with respect to the custody and delivery of the Earnest Money and any other duties of Escrow Agent under this Agreement.

D. Escrow Agreement. By delivery to and acceptance by Escrow Agent of a fully executed copy of this Agreement together with the Earnest Money, Escrow Agent agrees to be bound to the provisions of this Agreement specifically related to the Earnest Money. Purchaser and Seller agree to execute any agreements reasonably required by Escrow Agent with respect to its holding and investment of the Earnest Money.

E. Liability. Escrow Agent will not be liable for any act or omission that is undertaken in good faith and with ordinary care. Without limitation, Escrow Agent may assume without verification the genuineness of any signatures on any writings that are regular on their face and may maintain the Earnest Money in a federally insured, commingled trust account. No provision of this Agreement by itself authorizes recovery of monetary damages, costs, expenses, or attorney's fees from or against Escrow Agent. Escrow Agent will have a reasonable period of time to comply with all further instructions received pursuant to this Agreement. Escrow Agent's sole duty of collection with respect to any instrument payable to Escrow Agent is to present such instrument promptly for payment and to advise the parties promptly if it is not then collected in the ordinary course of banking business.

4. Conveyance of Title.

The Seller shall convey good and marketable fee simple title to the Property to the Purchaser pursuant to recordable limited warranty deed. The Property shall be conveyed free and clear of all liens, encumbrances and other exceptions to title, except for: (1) current city, state and county ad valorem property and sanitary taxes for the Property not yet due and payable; (2) general utility, sewer and drainage easements of record; (3) zoning ordinances affecting the Property; (4) matters which would be disclosed by a current and accurate inspection and survey of the Property; and (5) other matters of record to which Purchaser does not object within the Inspection Period (collectively, the "Permitted Title Exceptions").

5. **Right of Inspection.**

The Seller agrees that during the entire escrow period, the Purchaser and its agents shall have the right and privilege of going upon the Property to inspect, examine, and survey the Property, to plan for the development and use thereof so long as Purchaser does not damage or harm the Property. This right and privilege shall include the right to locate utilities, review any zoning conditions or requirements, review any protective or restrictive covenants, make soil tests, and such other inspections, examinations and tests the Purchaser deems necessary to prepare for the purchase of the Property; provided, however that no grading shall be done and no trees or bushes shall be cut. Purchaser shall repair any disturbances or holes created by Purchaser during its inspection of the Property.

Purchaser shall repair any disturbances or holes created by Purchaser during its inspection of the Property. Purchaser indemnifies and holds Seller harmless from and against loss or damage Seller may incur and any and all liens that may arise as a result of Purchaser's activities or the activities of Purchaser's agents, representatives or designees on the Property and against any and all claims for death or injury to persons or property arising out of or connected with Purchaser's (or its agents, representatives or designees) going upon the Property pursuant to the provisions of this Paragraph or otherwise, and against all costs, expenses and liabilities occurring in or in connection with any such claim or proceeding brought thereon, including, without limitation, court costs and reasonable and actual attorney's fees. This indemnity shall survive the Closing or any termination of this Agreement.

If, prior to the termination of the \_\_\_\_ ( ) day Inspection Period, Purchaser finds any information or condition concerning the Property objectionable within the Purchaser's sole discretion, or determines not to purchase the Property for whatever reason, (herein referred to as "Objections"), then Purchaser may elect to either: (1) terminate this Agreement and receive a refund of the Earnest Money pursuant to Paragraph 3 (less the \$100.00 referenced therein) and neither party shall have any further rights, duties, or obligations hereunder; or (2) purchase the Property subject to the Objections. This Inspection Period may be extended for up to thirty (30) days to allow sufficient time for Purchaser to acquire a MAI Appraisal or Phase I Environmental Test.


6. **Closing.**

A. **General.** The consummation of the transaction contemplated under this Agreement (herein referred to as the "Closing") shall occur on or before sixty (60) days after the expiration of the Inspection Period (herein referred to as the "Closing Date"). The Closing shall be held at a location and at a time that are mutually agreeable to Seller and Purchaser. At the Closing, the Seller shall execute and deliver to the Purchaser the limited warranty deed conveying good and marketable fee simple title to the Property free and clear of all liens and encumbrances except the Permitted Title Exceptions. Seller shall pay from the sales proceeds at closing all liens upon the Property, ad valorem taxes assessed against the Property for years preceding the year of Closing and all water, electricity and other utility charges for services furnished to the Property through the Closing Date.

B. **Taxes.** Real property ad valorem taxes assessed against the Property for the year in which the Closing occurs shall be prorated as of the Closing Date. In the event tax bills for the year in which the Closing occurs have not been issued at the time of the Closing, the proration shall be made on the basis of the taxes actually paid for the immediately preceding year. In the event the amount of such taxes is not finally determined at the date of Closing, an appropriate adjustment shall be made between Seller and Purchaser by payment of the difference, if any, when the actual amount of such taxes becomes known. At the time that the tax bills are received for the year in which the Closing occurs (whether before or after the Closing), the Purchaser and the Seller shall make any adjustments made necessary by reason

thereof.

C. Documents. The Seller and the Purchaser agree that such documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by each party to the other at the Closing. Such documents shall include, but not be limited to, an affidavit from the Seller that has as its subject matter averments that (i) there are no rights or claims of parties in possession not shown by the public records, (ii) there are no liens or encumbrances other than those as to which specific provision is made at Closing, (iii) there are no liens, or rights to a lien, for services incurred by Seller (including, but not limited to, real estate brokerage services incurred by Seller), labor or material furnished at the request of Seller and not shown by the public records, and (iv) the Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1954, as amended, and the Regulations thereunder. Such documents shall also include, but not be limited to, evidence satisfactory to the other party and the Escrow Agent that the person executing the Closing documents has full right, power, and authority to do so.

 D. Expenses of Closing. The Seller shall pay the cost of the State of \_\_\_\_\_ transfer tax due on the conveyance of the Property, the cost of title examination, title certification, title insurance premiums and survey. Purchaser shall pay the cost of preparation of Deed of conveyance and other Closing documents preparation, as well as any other costs incurred by the Purchaser. Each party shall bear the expense of its own legal counsel.

7. Seller's Representations, Warranties and Obligations.

A. The Seller makes the following representations and warranties:

(i) Seller owns fee simple title to the Property, subject to the Permitted Title Exceptions and to those mortgages, deeds of trust and deeds to secure debt which are in existence on the date this Agreement is executed by Seller;


(ii) There may be leases whose term (or any extension thereof) would extend beyond the Closing Date or give the right of possession of the Property or any portion thereof beyond the Closing Date, and Seller agrees to provide any and all information relating to said leases to Purchaser;


(iii) Seller has not received any actual notice from any governmental authority of any taking of the Property or any portion thereof by eminent domain and, to his actual knowledge, no condemnation or any taking of the Property is contemplated or threatened by any such governmental authority;

(iv) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1954, as amended, and the Regulations thereunder;

(v) To the Seller's actual knowledge, there are no encroachments upon the Property from adjacent land or landowners.

B. Seller will not take, or cause to be taken, any action that would cause or threaten to cause, any of the representations stated herein to become incorrect or untrue.

 C. To the best of Seller's knowledge, neither the Property nor any part thereof has ever been used for hazardous or toxic waste disposal, for disposal of fuel, oil or any other similar material, for a landfill or a garbage or trash disposal site, and no part of the Property is or was contaminated with hazardous or toxic waste or fuel or oil or similar products from any source whatsoever. Purchaser may, at Purchaser's expense retain a qualified professional to conduct a Phase I Environmental audit on the Property. If the results of said audit recommends a Phase II Environmental audit, Seller will have one completed at Seller's expense.

 In the event said Environmental audit recommends remedial action be taken on the Property, any and all work required will be completed at the Seller's expense and deducted from cash due Seller at closing unless proof of payment of all work is furnished prior to closing. If Seller elects not to proceed with environmental remedies, Purchaser may elect to either: 1) terminate this Agreement, whereupon Seller will be required to reimburse

Purchaser no later than ten (10) days from Purchaser's notification to Seller of their intention to cancel this Agreement any and all expenses incurred for due diligence as well as any earnest money deposits; or 2) proceed with this Agreement under the existing terms thereof and close on the Property in its "AS IS" condition.

D. Seller agrees to furnish to Purchaser the following documents, to the extent they are either in the possession of the Seller or reasonably available to Seller, within fifteen (15) calendar days of the Effective Date of this Agreement: a copy of the existing boundary survey of the Property, ad valorem tax bills for the year prior to Closing, engineering reports, environmental studies and similar type reports and studies, as well as any and all information relating to said property reasonably requested by Purchaser.

8. **Condemnation.**

In the event of any condemnation with respect to any material portion of the Property, the Purchaser may elect to (i) terminate this Agreement and receive a refund of the Earnest Money pursuant to Paragraph 2 (less the \$100.00 referenced therein) and neither party shall have any further rights, duties, or obligations hereunder; or (ii) consummate the purchase of the Property in accordance with the terms and provisions hereof and without any diminution in the purchase price on account of such condemnation in which event the Seller shall, at the Closing, pay to the Purchaser all condemnation awards and other payments previously received in connection with such condemnation and assign to the Purchaser all of Seller's rights to receive any award payable on account of such condemnation.

9. **Notices.**

Any notice, approval or other communication which may be required or permitted to be given or delivered hereunder shall be in writing and shall be deemed to have been given, delivered and received by the parties if given at the addresses listed below the parties name(s) on the signature page(s) of this Agreement (i) as of the date when the notice is personally delivered or (ii) if mailed, in the United States Mail, certified, return receipt requested, as of the date which is the date of the post mark on such notice or (iii) if delivered by courier or express mail service, telegram or mailgram where the carrier provides or retains evidence of the date of delivery, as of the date of such delivery.

The Seller and the Purchaser may by notice to the other in the manner provided above, designate a different address for receiving notices under this Agreement. A post office box shall not be the only notice address for either Seller or Purchaser. Any notice which is delivered to the notice address on a non-business day shall be deemed given the next business day if left at the notice address; or, if not left at the notice address, the next business day when re-delivered to the notice address. The refusal to accept delivery of any notice or the absence of anyone at a notice address to accept delivery shall not prevent any notice from being effectively given. A non-business day is a Saturday, Sunday or any legal holiday when national banks are closed for business to the general public.

10. **Default.**

A. **Remedies of Purchaser.**

(i) In the event the Closing does not occur in accordance with the terms of this Agreement because of the inability of the Seller to convey good and marketable fee simple title to the Property because of title defects or objections which are in existence on the date this Agreement is signed by the Seller, the Purchaser's sole right and exclusive remedy shall be either to (a) terminate this Agreement and receive a refund of the Earnest Money previously paid by Purchaser pursuant to Paragraph 2 along with any other monies expended in the due diligence process (less the \$100.00 referenced therein) and neither party shall have any further rights, duties, or obligations hereunder; or (b) waive such inability and proceed to close the transaction without regard thereto.

(ii) In the event the Closing does not occur in accordance with the terms of this Agreement due to circumstances or conditions other than (a) the default of the Purchaser, (b) the exercise by the Purchaser of a specific option hereunder to terminate this Agreement or (c) the inability of the Seller to convey good and

marketable fee simple title to the Property because of title defects or objections which are in existence on the date this Agreement is signed by the Seller, the Purchaser shall have the right of specific performance against Seller. In addition to the right to specific performance, Purchaser shall have the right to damages against Seller if Seller, either before or during the term that this Agreement remains in effect, sells, assigns, rents, leases, conveys (absolutely or as security), grants a security interest in, or otherwise encumbers or disposes of, any portion of the Property or any interest or rights therein without the express prior written consent of the Purchaser (provided, however, the Seller shall have the right to encumber the Property with mortgages, deeds of trust or deeds to secure debt provided the indebtedness secured does not exceed the Purchase Price and may be paid in full without any premium or penalty on the Closing Date).

B. Remedies of Seller. If the Closing does not occur in accordance with the terms of this Agreement due to the default of the Purchaser, or in the event of a breach by the Purchaser of its obligations hereunder, the Seller shall be entitled, as its sole right and exclusive remedy, to receive the Earnest Money previously paid by Purchaser as full, final and complete liquidated damages. The parties understand and agree that (i) actual damages would be difficult or impossible to ascertain in the event of such default or breach and (ii) the sum specified as liquidated damages is a reasonable estimation of the probable loss which would be sustained by the Seller by reason of such default or breach and is not a penalty or forfeiture.

11. Brokerage Commission and Disclosure.

Seller represents and warrants that Seller has not retained or engaged a real estate agent or broker in connection with this transaction other than \_\_\_\_\_ which shall be paid a commission by Seller pursuant to a separate agreement. Purchaser represents and warrants that Purchaser has not retained or engaged a real estate agent or broker in connection with this transaction. Purchaser and Seller each hereby indemnifies the other against and agrees to hold harmless the other from any and all claims for real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the purchase and sale of the Property contemplated by this Agreement or any cancellation or termination of this Agreement. Each party agrees to execute an affidavit at closing confirming the contents of this Paragraph.

12. Miscellaneous.

A. Termination. In the event this Agreement is terminated pursuant to the terms hereof or otherwise, the terminating party shall give notice thereof to the other party and this Agreement shall be null and void and of no force or effect and the parties shall have no rights, obligations or liabilities hereunder, except as otherwise specifically provided herein.

B. Waiver. The failure of any party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with any such term, condition or covenant under this Agreement.

C. Entire Agreement. This Agreement contains the sole and entire agreement of the Seller and the Purchaser with respect to the transaction contemplated hereunder and no representation, inducement, promise or agreement, parole or written, between the Purchaser and the Seller and not incorporated herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by the Purchaser and the Seller.

D. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable against the parties hereto and their respective heirs, legal representatives, successors and assigns.

E. Time is of the Essence. Time is of the essence with respect to this Agreement.

F. Survival of Provisions. The provisions of this Agreement shall not merge into the documentation

from this transaction and shall survive the closing of this transaction and the execution and delivery of the deed pursuant hereto.

G. Applicable Law. This Agreement and all amendments hereto shall be governed by and construed under the laws of the State of \_\_\_\_\_.

H. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, such provision, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall be deemed severable, and the remainder hereof shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

I. Date of this Agreement. In the event that any date or deadline set forth in this Agreement occurs on a Saturday, Sunday or legal holiday, such date or deadline shall automatically be extended to the next date which is not a Saturday, Sunday or legal holiday. The date of "final execution" and the "Effective Date" of this Agreement shall be the date this Agreement is last executed by either of the parties hereto.

J. Assignment. This Agreement may be assigned by the Purchaser without the express written consent of Seller.

K. Possession. Full and complete possession of the Property shall be delivered to Purchaser at Closing.

L. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

M. No Presumption. Purchaser and Seller hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed among Purchaser and Seller, and that this Agreement reflects Purchaser's and Seller's mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, neither Seller nor Purchaser shall be deemed to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

13. 1031 Exchange.

It may be the intention of either party to exchange other real property of like kind for the Property under terms and conditions that qualify as an exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder. Accordingly, each party acknowledges the other party's prospective intentions and hereby agrees to fully assist and cooperate with the other party in consummating this transaction as contemplated in this Agreement in compliance with Section 1031, and Purchaser and Seller hereby agree to enter, and execute all reasonable and customary documents in relation thereto. Provided, however, the non-exchanging party shall not incur or become liable for any liability or expense relating to this Article, and furthermore, the exchanging party shall indemnify and hold harmless the other party from and against any and all costs, expenses, liabilities, claims, taxes, professional fees, attorney fees and court costs, etc. in relation thereto. Seller will receive all cash concerning this transaction, and shall not be obligated to take title to other property in conformance with this paragraph.

14. Non-Disclosure.

Seller may not, under any circumstances, disclose any aspect or term of this Agreement, including, but not limited to the purchase price, to any party whatsoever without the express written consent of Purchaser. Breach of this term may possibly result in damages to Purchaser, and the parties understand and agree that actual damages will be determined by Purchaser in the event of such default or breach.

15. Special Terms/Conditions/Exceptions.

16. Time For Acceptance.

This Agreement shall be regarded as an offer made by the Purchaser on \_\_\_\_\_, 20\_\_ to the Seller and is open for acceptance by the Seller on or before 5:00 p.m. Eastern Time on \_\_\_\_\_, 20\_\_.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, as of the day and year indicated under their names below.

**"SELLER"**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**"PURCHASER"**

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Its \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

EXHIBIT "A"

LEGAL DESCRIPTION