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# COMMERCIAL PURCHASE AGREEMENT

**THIS COMMERCIAL PURCHASE AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ [entity type and state organized] ("Seller"), whose address is \_\_\_\_\_, \_\_\_\_\_ [municipality], Michigan, \_\_\_\_\_ [zip], and \_\_\_\_\_, a \_\_\_\_\_ [entity type and state organized], ("Purchaser"), whose address is \_\_\_\_\_, \_\_\_\_\_ [municipality], \_\_\_\_\_ [State], \_\_\_\_\_ [zip code], in the manner following:

**1. PROPERTY DESCRIPTION.** Purchaser offers and agrees to purchase the property located in the  City or  Township of \_\_\_\_\_, County of \_\_\_\_\_, Michigan, commonly known as \_\_\_\_\_, and further described as: \_\_\_\_\_, or  see attached legal description as **Exhibit A**; together with \_\_\_\_\_ land division splits as provided under the Michigan Land Division Act as revised March 31, 1997 (the "Property"), together with all buildings, structures and other physical improvements situated on the Property (the "Improvements"), and all equipment and other personal property appurtenant to and currently used in connection with the Improvements, including personal property as described in **Exhibit B** (the "Personal Property"), provided, however, the description of the Property shall be subject to a survey as provided for in this Agreement.

**2. PURCHASE PRICE.** The purchase price for the Property shall be \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars. Any allocation of the purchase price between the Property and Personal Property shall be set forth on an attached Exhibit.

**3. TERMS OF PAYMENT.** The purchase price shall be paid as indicated by an "X" placed in the appropriate box below, with initials of Seller and Purchaser acknowledging Purchaser's method of payment, while the other unmarked terms of purchase shall not apply.

**Cash.** Purchaser shall pay the full purchase price, including any adjustments and/or prorations contained herein, to Seller at closing upon execution and delivery of a warranty deed and performance by Seller of the closing obligations specified herein.

**New Mortgage.** Purchaser shall pay the full purchase price, including any adjustments and/or prorations contained herein, to Seller at closing upon execution and delivery of a warranty deed and performance by Seller of the closing obligations specified herein, contingent upon Purchaser's ability to obtain a loan acceptable to Purchaser in Purchaser's sole discretion. Purchaser shall apply for financing immediately. If Purchaser does not deliver to Seller on or before \_\_\_\_\_, 20\_\_\_\_, proof that Purchaser has accepted a loan commitment, Seller may thereafter at any time treat this contingency as not having been satisfied and may terminate this Agreement by written notice to Purchaser, with the return of Purchaser's Deposit, unless Purchaser has waived this contingency in writing prior to the date set forth in this Section.

**Contract.** Purchaser shall pay the full purchase price, including any adjustments and/or prorations contained herein, to Seller pursuant to the terms and conditions stated in the attached Land Contract Agreement or the attached Purchase Money Mortgage (either hereafter referred to as "Contract"), upon performance by Seller of the closing obligations specified herein. This Contract shall provide for a down payment of \$ \_\_\_\_\_ and payment of the balance of \$ \_\_\_\_\_ in \_\_\_\_\_ installments of \$ \_\_\_\_\_, or more, at Purchaser's option, including interest at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum, computed monthly, amortized over \_\_\_\_\_ (\_\_\_\_) years, with interest to start on the closing date and the first payment to become due within \_\_\_\_\_ (\_\_\_\_) days after the closing date. The entire unpaid balance will become due and payable \_\_\_\_\_ (\_\_\_\_) months after closing. Seller understands that the consummation of the sale or transfer of the Property shall not relieve Seller of any liability that Seller may have under any mortgage or land contract to which the Property is subject, unless otherwise agreed to by its mortgage or land contract holder.

**4. EARNEST MONEY DEPOSIT.** Within three (3) calendar days following the Effective Date of this Agreement, Purchaser shall deposit with \_\_\_\_\_, as  Seller's Broker; or  Purchaser's Broker; or  the Title Insurance Company; which party shall be referred to as the "Escrow Agent", Purchaser's earnest money deposit in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars, paid in cash or check representing immediately available funds (the "Deposit"). The Deposit shall be refunded to Purchaser in the event this Agreement is terminated under the terms and conditions provided for herein; or applied to the Purchase Price at Closing.

**5. INSPECTION PERIOD.** Purchaser shall be under no obligation to purchase the Property or otherwise perform under this Agreement unless Purchaser determines the Property to be, in all respects, suitable for its intended purposes. The decision as to whether the Property is suitable for its intended purposes shall be the sole decision of Purchaser, determined in the

absolute discretion of Purchaser, with Purchaser's decision being final and binding upon both parties. Purchaser shall have \_\_\_\_\_ (\_\_\_\_) [insert # of days allowed for due diligence] days from the Effective Date to notify Seller of its termination of this Agreement due to Purchaser's determination that the Property is unsuitable for its intended purpose (the "Inspection Period"). In the event Purchaser elects to terminate this Agreement, Purchaser shall provide written notice of termination to Seller prior to the expiration of the Inspection Period. In the event Purchaser provides said notice of termination, Seller and the Escrow Agent shall be obligated to return the Deposit to Purchaser as provided in Section 4 hereof, and neither party shall have any further rights or obligations under this Agreement. In the event Purchaser does not submit written notice of termination prior to the expiration of the Inspection Period, Purchaser shall be deemed to be satisfied with its inspections of the Property and this contingency shall therefore be deemed to be fulfilled. Seller, at no expense to Seller, shall fully cooperate with Purchaser in the obtaining of all approvals required from any federal, state or local government ("Governmental Approvals") necessary for Purchaser to satisfy itself during the Inspection Period of the suitability of the Property. Said Governmental Approvals shall be obtained during the Inspection Period unless the parties agree that additional time is required to obtain them.

## 6. SURVEY AND TITLE INSURANCE.

- (a) **Survey:** Purchaser may, at its option, cause to be prepared an on-the-ground boundary survey of the Property (herein referred to as the "Survey"). The metes and bounds or other legal description of the Property resulting from the Survey, if and as accepted by Purchaser, shall upon such acceptance supersede and replace the description of the Property set forth in Section 1 hereof for all purposes hereunder and shall be the description of the Property used in the Warranty Deed or Land Contract and Owner Policy of Title Insurance to be furnished hereunder, to be paid for by  Seller or  Purchaser. (
- (b) **Title Insurance:** Within ten (10) days of the Effective Date of this Agreement, Purchaser shall order a commitment for an Owner's ALTA Title Policy,  with Standard Exceptions; or  without Standard Exceptions (the "Commitment"), from \_\_\_\_\_ (the "Title Company"), and shall provide a copy of the same to Seller upon receipt. Purchaser shall notify Seller in writing within thirty (30) days of receipt of any concerns that Purchaser may have with such Commitment. Notwithstanding the same, Purchaser shall be under no obligation to purchase the Property from Seller unless the Title Company shall deliver to Purchaser at Closing an Owner's ALTA Policy of Title Insurance, which shall identify the Property and easements appurtenant thereto by the legal description(s) set forth on the Survey. To satisfy the requirements hereof, the Commitment shall be accompanied by legible copies of all exceptions to title referred to therein and shall be deemed to include the same. The Title Insurance Policy to be issued pursuant to the Commitment shall contain endorsements stating: (i) that the Property abuts the public street(s) immediately adjacent thereto and has direct and valid full and unrestricted access thereto at the locations designated on the Survey provided by Purchaser and (ii) such other endorsements as Purchaser may reasonably require (the "Endorsements"), provided, however, in the event any such Endorsements shall not be included in the Title Company's standard fee for the Commitment and title insurance policy, then Purchaser shall be responsible for the additional fees in connection with the issuance of such Endorsements. Seller hereby agrees to provide to the Title Company any abstracts of title covering the Property and/or any other form of title evidence it may have obtained, including any former owner's title insurance policy. Purchaser's decision as to whether satisfactory title insurance can be obtained shall be final and shall not be subject to question by Seller. Seller shall cooperate fully with Purchaser in helping Purchaser to eliminate such exceptions from Purchaser's Commitment as Purchaser may desire eliminated, and further, Seller shall cooperate fully with Purchaser to satisfy all requirements of Closing outlined in Purchaser's Commitment.
- (c) **Objections to Title and Survey.** In the event the Commitment reflects that title to the Property is not vested in Seller or if any of the building and/or use restrictions, easements, or covenants of record (the "Permitted Exceptions") would, in Purchaser's reasonable judgment, interfere with Purchaser's intended use of the Property, or if the Survey reflects that title to the Property is not in the condition as described in Section 6(a) above, or if Purchaser has any other objection to title, and Purchaser so notifies Seller in writing of such objection(s) within the time provided in Section 5, then Seller shall have \_\_\_\_\_ (\_\_\_\_) [insert # of days allowed] from the date Seller is notified in writing of the particular defect(s) claimed by Purchaser, to either: (i) remedy the title defects described in Purchaser's written notification to Seller and obtain and deliver to Purchaser a revised Commitment and/or Survey which reflects that all such defects have been remedied; or (ii) notify the Escrow Agent to promptly refund Purchaser's Deposit in full termination of this Agreement.

## 7. ENVIRONMENTAL WARRANTY, DISCLOSURES AND INDEMNIFICATION.

- (a) **Environmental.** To the best of Seller's knowledge, there are no areas of the Property where hazardous substances or hazardous wastes, as such terms are defined by applicable Federal, State and local statutes and regulations, have been disposed of, released, or found. No claim has been made against Seller with regard to hazardous substances or wastes as set forth herein and Seller is not aware that any such claim is current or ever has been threatened. Seller shall inform Purchaser, to the best of Seller's knowledge, of any hazardous materials or release of any such materials into the environment, and of the existence of any underground structures or utilities which are, or may be present on the Property.

- (b) **Due Diligence.** Seller shall deliver to Purchaser any documentation (for example; any title evidence, surveys, reports, studies, test results, engineering drawings, permits or tank registrations) in Seller's possession or control which relates to the Property. Within thirty (30) days of the Effective Date, Seller understands that Purchaser requires this information and the information in 7 (a) above to properly evaluate the Property, avoid damaging underground structures and utilities and avoid causing, contributing to or exacerbating the release of a hazardous substance in the course of its investigations. Purchaser shall have the right to conduct a Phase I environmental investigation during the Inspection Period. If further activities are required, Purchaser and Seller shall determine the extent of said activities. Purchaser agrees to pay all of the costs and expenses associated with its investigation and testing and to repair and restore any damage to the Property caused by Purchaser's investigations or testing, at Purchaser's sole expense. Purchaser shall indemnify and hold Seller harmless from all costs, expenses and liabilities arising out of Purchaser's inspection of the Property, including that of Purchaser's employees, agents, consultants, or contractors performing said inspection.

**8. CLOSING AND CLOSING ADJUSTMENTS.** Closing shall take place at the offices of \_\_\_\_\_ and Seller shall convey the Property to Purchaser in accordance with the terms hereof at the earlier of: (i) ten days following the expiration of the Inspection Period described in Section 5; or (ii) upon Purchaser's written notification to Seller that all of the requirements set forth in Sections 5, 6 and 7 of this Agreement have been fulfilled to the full satisfaction of Purchaser, unless this Agreement is terminated as otherwise herein provided (such date for Closing and performance being hereinafter sometimes referred to as the "Closing" or "Closing Date").

At Closing, Seller shall deliver to Purchaser a Warranty Deed, subject to the Permitted Exceptions, conveying the Property along with the right to make all permitted land divisions of the Property, under the Michigan Land Division Act, MCL 560.101 *et seq* to Purchaser, to be prepared at Seller's cost. At Closing Seller agrees that it will convey the Property to Purchaser by Warranty Deed containing covenants of title satisfactory to Purchaser, which covenants of title shall state that Seller is seized of the Property in fee simple, and that Seller has bargained, sold and conveyed unto Purchaser and its successors and/or assigns in title the Property in fee simple, and that Seller will warrant and defend title against the claims of all persons or entities. The Warranty Deed shall provide that title to the Property conveyed at Closing shall be marketable and free and clear of any and all liens, mortgages, deeds of trust, security interests, covenants, conditions, restrictions, non-permitted easements, non-permitted rights-of-way, licenses, encroachments, judgments or encumbrances of any kind except: (i) the lien of real estate taxes not yet due and payable; and (ii) any Permitted Exceptions. Should any liens or encumbrances be recorded against the property, Seller shall pay and/or satisfy any such encumbrances simultaneously with the closing and transfer the property in the condition required above. In addition, at Closing Seller shall have the responsibility of paying for the title insurance and all state or county transfer taxes and documentary stamps, if any, occasioned by the conveyance of the Property. The current real estate taxes (i.e. the most recent summer and winter tax bills issued) and assessments, if any, on the Property shall be prorated to the date of the Closing on a "due date" basis. All other assessments, including, but not limited to any special assessments which have become a lien upon the land shall be paid in full by Seller. Seller shall pay all broker's fees or real estate sales commissions, or any similar fees occasioned by the sale of the Property, and Purchaser shall have no obligation or responsibility toward the payment of any such costs. Seller agrees to promptly forward to Purchaser any property tax statements for the Property received by Seller after Closing and if Seller fails to do so, Seller shall be liable for any penalties Purchaser has to pay because of Seller's failure.

**9. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** As an inducement to Purchaser to enter into this Agreement and to purchase the Property, Seller warrants, represents and covenants to Purchaser, as follows:

- (a) **Authority.** Seller: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Michigan or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Purchaser in accordance with the terms and provisions of this Agreement.
- (b) **Title and Characteristics of Property.** Seller, as of the date of execution of this Agreement, owns the Property in fee simple and has marketable and good title of public record and in fact and the Property at Closing shall have the title status as described in Section 6 of this Agreement.
- (c) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound. At Closing all necessary and appropriate action will have been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller at

Closing and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

- (d) **Condemnation.** Seller has received no notice of, nor is Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof.
- (e) **Litigation.** There is no action, suit or proceeding pending or, to Seller's knowledge, threatened by or against or affecting Seller or the Property which does or will involve or affect the Property or title thereto. Seller will defend, indemnify and otherwise hold Purchaser harmless from any and all claims of any person due to, arising out of or relating to the Property, including any and all costs, expenses, and attorneys' fees which Purchaser may incur as a result of Seller's breach of its warranty hereunder. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Purchaser written notice thereof.
- (f) **Assessments and Taxes.** No assessments have been made against any portion of the Property which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, and Seller shall notify Purchaser of any such assessments which are brought to Seller's attention after the execution of this Agreement. Seller will pay or cause to be paid promptly all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Property and due on or prior to the Closing Date.
- (g) **Boundaries.** (i) There is no dispute involving or concerning the location of the lines and corners of the Property; (ii) to Seller's knowledge there are no encroachments on the Property and no portion of the Property is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and (iii) no portion of the Property is located within a watershed area imposing restrictions upon use of the Property or any part thereof.
- (h) **No Violations.** Seller has received no notice there are any violations of state or federal laws, municipal, or county ordinances, or other legal requirements with respect to the Property, including those violations referenced in Paragraph 7 above. Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. In the event Seller receives notice of any such violations affecting the Property prior to the Closing, Seller shall promptly notify Purchaser thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.
- (i) **Foreign Ownership.** Seller is not a "foreign person" as that term is defined in the U. S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, and Purchaser has no obligation under Section 1445 of the U. S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U. S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445).
- (j) **Prior Options.** No prior options or rights of first refusal have been granted by Seller to any third parties to purchase or lease any interest in the Property, or any part thereof, which are effective as of the execution date.
- (k) **Mechanics and Materialmen.** On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect, or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any person could claim a lien against the Property and shall not have done any work on the Property within one hundred twenty (120) days prior to the Closing Date.

#### 10. PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS

- (a) **Authority** Purchaser: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Michigan or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Seller in accordance with the terms and provisions of this Agreement.
- (b) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Purchaser on the Closing Date, and the performance by Purchaser of Purchaser's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Purchaser is a party, or any judicial order or judgment of any nature by which Purchaser is bound. At Closing all necessary and appropriate action will have been taken by Purchaser authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Purchaser of the documents and instruments to be executed by Purchaser at Closing and the performance by

Purchaser of Purchaser's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

**11. DAMAGE TO PROPERTY.** If between the Effective Date of this Agreement and the Closing Date, all or any part of the Property 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 Property is taken pursuant to any power of eminent domain, Seller shall immediately notify Purchaser of such occurrence, and Purchaser may terminate this Agreement with written notice to Seller within fifteen (15) days after the date of damage or taking. If Purchaser does not elect to terminate this Agreement, there shall be no reduction of the purchase price and Seller shall assign to Purchaser whatever rights Seller may have with respect to any insurance proceeds or eminent domain award at Closing.

**12. SELLER'S CLOSING OBLIGATIONS.** At Closing, Seller shall deliver the following to Purchaser:

- (a) The Warranty Deed, Land Contract or Assignment of Land Contract required by Section 3 of this Agreement.
- (b) A bill of sale for any Personal Property and/or Improvements.
- (c) A written assignment by Seller of Seller's interest in all leases and a transfer to Purchaser 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 herein, which are assignable by their terms and which Purchaser wishes to assume, together with an original or true copy of each service assigned.
- (e) A notice to any tenants advising the tenants of the sale and directing that future payments be made to Purchaser.
- (f) Any other documents required by this Agreement to be delivered by Seller.
- (g) An accounting of operating expenses including, but not limited to: common area maintenance statements, property tax statements, insurance binder and/or policy, a schedule of rents collected in advance or arrears, and an accurate allocation between the parties of the same pursuant to the terms herein.
- (h) Other: \_\_\_\_\_.

**13. PURCHASER'S CLOSING OBLIGATIONS.** At closing, Purchaser shall deliver to Seller the following:

- (a) The cash portion of the purchase price specified in Section 3 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 Purchaser of the obligations of Seller under the leases arising after closing, including an acknowledgement of the receipt of all security deposits.
- (c) Any other documents required by this Agreement to be delivery by Purchaser.
- (d) Other: \_\_\_\_\_.

**14. SECTION 1031 TAX-DEFERRED EXCHANGES.** 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 non-requesting 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 parties' "replacement property" or "relinquished property"); or (c) agree to delay the Closing. However, should both parties wish to complete a tax-deferred exchange, the parties will each incur their own additional expenses related to their exchange and shall split any common costs which will benefit both parties by such a division.

**15. 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 or express mail addressed to the parties at their addresses specified in the preamble of this Agreement, and any notices given by mail shall be deemed to have been given as of the date of the postmark. Copies of all notices shall be made as follows:

If to Purchaser:

Name:	
Address:	
Address:	

Telephone:	
Facsimile:	
Email:	

With copy to:

Name:	
Address:	
Address:	
Telephone:	
Facsimile:	
Email:	

If to Seller:

Name:	
Address:	
Address:	
Telephone:	
Facsimile:	
Email:	

With copy to:

Name:	
Address:	
Address:	
Telephone:	
Facsimile:	
Email:	

**16. ADDITIONAL ACTS.** Purchaser and Seller agree to execute and deliver such additional documents and perform such additional acts as may become necessary to effectuate the transfers contemplated by this Agreement.

**17. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties with respect to the sale of the Property. 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 of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles. For purposes of this Agreement, the phrase "Effective Date" shall be the last date upon which this Agreement becomes fully executed, including any counter proposals or amendments counter-signed by the opposing party.

**18. ADVICE OF COUNSEL.** All parties involved in a real estate transaction should seek the advice of legal counsel before entering into any agreement; to determine the marketability of title; understand possible tax consequences; to ascertain that the terms of the sale are adhered to before the transaction is closed; and to obtain advice with respect to all notices related to this Agreement. Purchaser and Seller acknowledge the importance for advice to counsel and acknowledge that Broker is not an attorney and does not provide legal advice and shall not be responsible for any loss or damage resulting from the preparation of this Agreement or any addenda thereto.

**19. BROKERAGE FEE.** Purchaser and Seller each acknowledge that: (i) Purchaser's real estate agent is \_\_\_\_\_ and is acting as:  an agent of the Purchaser; or  an agent of the Seller; or  as a disclosed transaction coordinator, with written, informed consent of both Purchaser and Seller; and (ii) Seller's real estate agent is \_\_\_\_\_ and is acting as:  an agent of the Seller; or  an agent of the Purchaser; or  as a disclosed transaction coordinator, with written, informed consent of both Purchaser and Seller.

Seller agrees to pay the real estate broker(s) involved in this transaction a brokerage fee as specified in a commission or listing agreement, or as provided in a subsequent agreement between the parties. In the event no such agreement exists, Seller agrees to pay a brokerage fee equivalent to \$\_\_\_\_\_ promptly at and subject only to closing. Unless otherwise previously agreed, the parties agree that the brokerage fee may be shared between the parties' brokerage agents, in such amount as the recipients may decide. The parties acknowledge that other than the parties' real estate agents

disclosed herein, no other real estate brokers, salespersons, or agents are involved in this transaction and the parties hereby indemnify and hold each other harmless from any and all such claims for brokerage fees.

## 20. DEFAULT.

- (a) **Seller's Default.** If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default or failure to perform hereunder, Purchaser may, at Purchaser's option and as its sole remedy, elect to either: (i) specifically enforce the terms hereof; or (ii) demand and be entitled to an immediate refund of the Deposit, in which case this Agreement shall terminate in full.
- (b) **Purchaser's Default.** If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Purchaser's default hereunder, Seller shall be entitled, as its sole and exclusive remedy hereunder, to receipt of the Deposit amount as full and complete liquidated damages for such default of Purchaser, the parties hereby acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default of this Agreement or any duty arising in connection or relating herewith. Seller's entitlement to and receipt of the Deposit is intended not as a penalty, but as full and complete liquidated damages. The right to retain such sums as full liquidated damages is Seller's sole and exclusive remedy in the event of default or failure to perform hereunder by Purchaser, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Purchaser for any claims, injury or loss arising from or in connection with this Agreement, including without limitation: (i) for specific performance of this Agreement; or (ii) to recover any damages in excess of such liquidated damages.

**21. INCENTIVES.** Purchaser shall have the exclusive right to seek and obtain any federal, state or other governmental approval or quasi-governmental environmental or tax incentives, inducements, allowances or similar benefits (by way of example, and not in limitation of the foregoing, any Brownfield classification or any Brownfield tax and/or grant reimbursements) with respect to the Property, and Purchaser's right to do so shall take precedence over any such right of Seller with respect to the Property in the event such incentives, inducements, allowances or similar benefits may only be sought by one party. Seller shall reasonably cooperate and provide all necessary information and approvals to facilitate the same.

**22. WAIVER.** The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

**23. DATE FOR PERFORMANCE.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next following business day.

**24. FURTHER ASSURANCES.** The parties agree that they will each take such steps and execute such documents as may be reasonably required by the other party or parties to carry out the intent and purposes of this Agreement.

**25. SEVERABILITY.** In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

**26. CUMULATIVE REMEDIES.** The rights, privileges and remedies granted by Seller to Purchaser hereunder shall be deemed to be cumulative and may be exercised by Purchaser at its discretion. In the event of any conflict or apparent conflict between any such rights, privileges or remedies, Seller expressly agrees that Purchaser shall have the right to choose to enforce any or all such rights, privileges or remedies.

**27. AUTHORITY.** The undersigned officers of Seller and Purchaser, if an entity, hereby represent, covenant and warrant that all actions necessary by their respective Shareholders, Members, Partners, Boards of Directors, or other corporate entity authority will have been obtained and that they will have been specifically authorized to enter into this Agreement and that no additional action will be necessary by them in order to make this Agreement legally binding upon them in all respects. Purchaser and Seller covenant to provide written evidence of compliance with this Section (27) prior to or on the Closing Date.

**28. SUCCESSORS AND ASSIGNS.** The designation Seller and Purchaser as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

**29. NOTICE OF CONTACT WITH THIRD PARTIES.** During the pendency of this Agreement, Seller may discuss with, or receive the submission of proposals or offers from a third party or entity relating to the purchase of the Property. In the event

Seller should receive such a proposal, Seller shall promptly notify Purchaser in writing of same and, further, advise any such third party or entity of the existence of this Agreement and, if necessary, make a copy of this Agreement available to any such third party or entity with all monetary terms, dates and conditions redacted and blocked from view.

**30. ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties and shall become a binding and enforceable Agreement among the parties hereto upon the full and complete execution and unconditional delivery of this Agreement by all parties hereto. No prior verbal or written Agreement shall survive the execution of this Agreement. In the event of an alteration of this Agreement, the alteration shall be in writing and shall be signed by all the parties in order for the same to be binding upon the parties.

**31. RELATIONSHIP OF THE PARTIES.** Nothing contained herein shall be construed or interpreted as creating a partnership or joint venture between the parties. It is understood that the relationship is of arms length and shall at all times be and remain that of Purchaser and Seller.

**32. RECORDING.** This Agreement shall not be recorded by either party or any of their representatives.

**33. CONFIDENTIALITY.** Subject to all other terms of this Agreement, each party agrees to maintain this Agreement and the information in this Agreement as confidential, and each will not disclose such information to any other person without the prior written consent of the other party. However, a party may disclose such confidential information to its legal counsel, to such party's real estate broker, salesperson, or agent, to other professional advisors or agents of the party, and as required by law or legal process.

**34. COUNTERPARTS.** This Agreement may be executed in counterpart originals, and facsimile or electronic signatures shall be considered as originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.

**35. OTHER PROVISIONS.** In addition to the provisions outlined above, the following additional provisions shall apply to the transaction as contemplated herein.

**Purchaser's Acknowledgement of Offer:**

By signing below, Purchaser acknowledges having read and received a copy of this Purchase Agreement.

**For Purchaser:**

**Witnesses:**

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

**Seller's Acceptance:**

Seller accepts this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (AM/PM)  with the following conditions:

or  without qualification.

By signing below, Seller acknowledges having read and received a copy of this Agreement. If this Agreement is signed by Seller without any modification, the acceptance date stated herein shall be the Effective Date of the Agreement.

If additional conditions are stipulated herein, Seller gives Purchaser until the \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (AM/PM) to provide its written acceptance of the counter conditions stated herein.

**For Seller:**

**Witnesses:**

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

**Purchaser's Acknowledgment of Seller's of Acceptance:**

Purchaser acknowledges receipt of Seller's acceptance of Purchaser's offer. If the acceptance was subject to changes from Purchaser's offer, Purchaser agrees to accept those changes, with all other terms and conditions remaining unchanged. If this Agreement is signed by Purchaser without any modification, then the date stated as Purchase's Receipt of Acceptance shall then becomes the Effective Date of this Agreement.

Seller has accepted this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_(AM/PM)

**For Purchaser:** \_\_\_\_\_ **Witnesses:** \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibits:**

The following exhibits are attached hereto and shall become part of this Agreement by reference

<b>Exhibit Name</b>	<b>Exhibit Description</b>	<b>Provided By (Purchase or Seller)</b>	<b>Attached By (Date)</b>
Exhibit A	Property Survey and/or Legal Description	Seller	
Exhibit B	Personal Property	Seller	
Exhibit C			
Exhibit D			
Exhibit E			
Exhibit F			
Exhibit G			

