

REAL ESTATE PURCHASE & SALE AGREEMENT

and escrow instructions

This PURCHASE & SALE AGREEMENT AND ESCROW INSTRUCTIONS (the "Agreement") is made and entered into this ____ Day Of _____, 20____ ("Effective Date") by and between _____ (hereafter referred to as the "Seller") and _____ (hereafter referred to as the "Buyer") For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **AGREEMENT TO SELL AND BUY.** Upon and subject to the terms set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to buy from Seller, the Property described in Paragraph 2 (the "Property").
2. **PROPERTY.** Seller agrees to sell, convey, and assign to Buyer and Buyer agrees to purchase and accept from Seller land and building(s) located at _____ (exact square footage and dimensions to be determined at or prior to Closing) as more fully described and illustrated on Exhibit A.
3. **OPENING OF ESCROW.** Within three business days, Earnest Money, as defined below, will be deposited with _____, the "Escrow Agent".
 - Purchase Price and Payment Schedule. The purchase price (the "Purchase Price") for the Property shall be _____ payable as follows: _____ no/100 Dollars (\$_____) (the "Earnest Money"), shall be deposited by Buyer into escrow with the Escrow Agent on the date of execution by the Seller (the "Opening of Escrow") to be held in escrow by the Escrow Agent until Close of Escrow (as hereinafter defined). Such Earnest Money shall be credited to the Buyer at close of Escrow.
 - The balance of the Purchase Price, _____ and no/100 Dollars (\$_____) shall be paid into Escrow by Buyer on or before the Close of Escrow in cash or cashier's check in order that funds shall be immediately available to Seller at Close of Escrow.
4. **CONTINGENCIES OF CLOSING.** Buyer shall have a period of Sixty (60) days ("Initial Inspection Period") from the Effective Date to review and waive the following Contingencies at Buyer's sole effort, cost and expense. Closing of the transaction contemplated by this Agreement and Buyer's obligation to purchase the Property shall be subject to the following conditions:
 - A. Any existing hazardous waste reports and any other documents of significance relative to the ownership, operation and/or management of the property.

- B. A zoning letter stating that the Parcel is zoned for use as a retail store, and that the contemplated development is allowed.
- C. ALTA/ACSM Class A boundary survey of the Parcel.
- D. All special assessments pending, levied or assessed against the property shall have been paid by Seller
- E. Purchaser's ability to secure all necessary government approvals and permit to develop the project as planned
- F. Confirmation that a pylon sign shall be allowed on Buyer's parcel

5. **CONDITION OF TITLE.** Seller shall convey to Buyer insurable fee simple title to the Property by Special Warranty Deed. Title to the Property shall be conveyed at the Close of Escrow subject only to (i) the exceptions to title set forth on Schedule B or similar schedule of a Commitment for Title Insurance issued by a title company acceptable to the parties, following review and approval; (ii) such other exceptions to title as Buyer shall approve in writing; and (iii) any other exceptions to title arising by or through Buyer (collectively, the "Permitted Exceptions"). Upon the Opening of Escrow, Escrow Agent shall furnish to Buyer, at Buyer's cost, an existing preliminary title report (the "Preliminary Title Report") for the Property and a commitment for title insurance for the Real Property in the amount of the Purchase Price insuring title to the Real Property issued by Commercial Partners Title ("Title Company"), together with copies of all documents evidencing exceptions to title referenced therein (collectively, the "Title Evidence"), and a copy of the Title Evidence shall be furnished to Seller by the Escrow Agents Buyer shall either provide written objections to the Preliminary Title Report and the Title Evidence or approve such Report and Evidence within SEVEN (7) days of receipt thereof (the "Feasibility Period"). Upon receipt of any objections to Title, Seller shall have an opportunity to cure any objections to Buyer's satisfaction prior to the close of the Feasibility Period. In any event, Buyer shall approve Title Evidence prior to the close of the Feasibility Period or shall cancel this Agreement. If Buyer does not elect to cancel this Agreement by the last day of the Feasibility Period, then the condition of title to the Property will be deemed approved by the Buyer.

6. **CLOSE OF ESCROW.** The Close of Escrow shall occur on or before the later of Thirty (30) days after the satisfaction or waiver of all contingencies listed in Section 5 above.

7. **SELLER'S DISCLOSURES: WARRANTIES, REPRESENTATIONS AND COVENANTS: RELIANCE.** Seller warrants and represents as follows:

- (a) Seller has full power and authority to enter into and perform this Agreement in accordance with its terms;
- (b) The individuals executing this Agreement on behalf of Seller are authorized to do so and, upon execution hereof, this Agreement shall be binding upon and enforceable against Seller;
- (c) Seller has no actual knowledge of any impending lawsuits with respect to the Property;

(d) Seller is not a “foreign person” under Section 1445 of the Internal Revenue Code of 1986 and its regulations;

8. BUYER’S WARRANTIES, REPRESENTATIONS AND

ACKNOWLEDGMENTS. Buyer warrants, represents and covenants with Seller as follows:

(a) Buyer has full power and authority to enter into and perform this Agreement in Accordance with its terms; and

(b) Any individual executing this Agreement on behalf of Buyer is authorized to do so, and upon execution hereof, this Agreement shall be binding upon and enforceable against Buyer.

9. CLOSING DOCUMENTS.

A. Seller’s Closing Documents. On or before the Close of Escrow, Seller shall execute (if applicable) and deliver to Escrow Agent the following (collectively, “Seller’s Closing Documents”) for delivery to Purchaser upon the Closing:

- Deed. A Special Warranty Deed (the “Deed”);
- Bill of Sale. A Bill of Sale; and
- Affidavit of Non-Foreign Status. An Affidavit of Non-Foreign Status

B. Buyer’s Closing Documents. On or before the Closing Date, Purchaser shall execute or cause to be executed (if applicable) and deliver to Escrow Agent the following (collectively, “Purchaser’s Closing Documents”) for delivery to Seller upon the Closing:

1. Purchase Price. The balance of the Purchase Price, by wire transfer of U.S. Federal Funds, or by certified check, to be received at or before 2:00 pm Central Time, on the Closing Date in Escrow Agent’s trust account.
2. Affidavit of Property Value. An Affidavit of Property Value as required by applicable state law.
3. Resolutions. Resolutions evidencing that Purchaser has the requisite power and authority to enter into and perform this Agreement and those Purchaser’s Closing Documents to be signed by it.

10. ESCROW COSTS AND PRORATIONS. Seller shall provide Buyer with the a copy of the existing title policy for the property if existing, which policy may be updated, extended or modified, if possible, at Buyer’s request and at Buyer’s cost. Buyer and Seller will each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. Notwithstanding the foregoing, Buyer shall be responsible for all closing costs. All state deed tax on transfer taxes and filing fees payable as a result of this transaction shall be borne by the party responsible for such taxes or fees pursuant to applicable statutes or ordinances; normal transfer taxes shall be paid by Seller, and mortgage registration tax shall be paid by Buyer. All other costs and expenses will be allocated between Buyer and Seller in accordance with the customary practice, as determined by Escrow Agent, for the county wherein the Property is situated, as agreed in advance by the Parties. General and special taxes and assessments against the Property for the year in which

Escrow closes shall be prorated as of the Close of Escrow. Seller shall be responsible for any property taxes on the property through the date of Close of Escrow. If Close of Escrow takes place before real property taxes for the Property are established for the tax year in which the Close of Escrow occurs, the proration shall be made on the basis of the tax rate for the preceding tax year applied against the latest assessed valuation of the Property.

11. **CONDEMNATION.** In the event of condemnation or notice of condemnation of all or a part of the Property prior to the Close of Escrow, Buyer shall have the right to terminate this Agreement, whereupon all documents deposited in Escrow shall be returned to the party who deposited the same and all Earnest Money and other amounts deposited into Escrow by Buyer shall be paid to Buyer and neither party shall have any further right or remedy against the other by reason thereof or hereof.
12. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement.
13. **REMEDIES.**
 - (a) Should Buyer breach this Agreement or refuse or fail to purchase the Property as contemplated herein, Seller's shall be entitled to retain the Earnest Money Deposit as liquidated damages or seek specific performance, at its sole discretion.
 - (b) Should Seller be unable to convey title to the Property to Buyer at Close of Escrow in accordance with the requirements of this Agreement, Buyer's sole remedy under this Agreement shall be to terminate this Agreement and receive a refund of the Earnest Money Deposit. However, if Seller is obligated by this Agreement to close Escrow and fails or refuses to close Escrow, Buyer shall have the right to seek all available remedies to Buyer by law.
14. **POSSESSION.** Possession of the Property shall be delivered to Buyer upon the Close of Escrow.
15. **REAL ESTATE COMMISSIONS.** In the event this sale closes, Seller shall pay a brokerage fee based on the Purchase Price, of which _____% shall be paid to _____, who represents the Buyer and _____% shall be paid to _____ who represent Seller. If for any reason this sale does not close, Seller's Broker and Buyer's Broker shall not be entitled to any commission or any portion of the Earnest Money. Seller and Buyer each represent to the other that they have not dealt with any other real estate broker or intermediary in connection with the negotiations leading to this Real Estate Purchase & Sale Agreement. Furthermore, Seller and Buyer each agree to indemnify and hold each other harmless from and against the claims of any and all such brokers or other intermediaries claiming to have had any dealings, negotiations, or consultations with the indemnifying party in connection with this Agreement of the sale of the Property.
16. **AS-IS.** Seller shall deliver the Property to Buyer "where as" and in "as-is" condition. IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

ACKNOWLEDGMENT BY SELLER

Signature

Printed Name

Date

ACKNOWLEDGMENT BY BUYER

Signature

Printed Name

Date