

# REAL ESTATE SALES CONTRACT

**WHEN COMPLETED AND SIGNED BY BOTH PARTIES, THIS IS A LEGALLY BINDING CONTRACT. IF THIS CONTRACT IS NOT FULLY UNDERSTOOD, THE SERVICES OF A COMPETENT PROFESSIONAL SHOULD BE SOUGHT.**

Seller, \_\_\_\_\_, hereby agrees to sell to Buyer, Deblen Family Trust, Deblen Investments Trustee, or Buyer's nominee, the real property set forth below and all improvements thereon (herein referred to as the Property), and Buyer agrees to purchase said Property from the Seller on the terms and conditions set forth in this contract.

**DESCRIPTION:** The Property is located in Pennington County, Rapid City, South Dakota and is commonly known as \_\_\_\_\_ and is legally described as follows:

**1. PURCHASE PRICE:** The total purchase price to be paid for the Property by the Buyer is payable as follows:

- (a) Initial deposit ..... \$\_\_\_\_\_
- (b) Sum due within two days after acceptance of this Contract..... \$\_\_\_\_\_
- (c) Additional sum due at closing (not including pro-rations).....\$\_\_\_\_\_
- (d) Proceeds of new note and mortgage to be given by Buyer or any lender other than the Seller ..... \$\_\_\_\_\_
- (e) Existing mortgage on the Property which shall remain on the Property but which shall not subject Buyer to any penalty or fee or increase in the original interest rate of said mortgage.....\$\_\_\_\_\_
- (f) Balance due Seller by promissory note of the Buyer subject to the requirements set forth in this contract. .... \$\_\_\_\_\_
- (g) Balance due Seller by Articles of Agreement for warranty deed  
.....\$\_\_\_\_\_

**TOTAL PURCHASE PRICE ..... \$\_\_\_\_\_**

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

**2. APPORTIONMENT OF PURCHASE PRICE AND DEED:** Land \$\_\_\_\_\_, Building \$\_\_\_\_\_, Personal Property \$\_\_\_\_\_. It is agreed that the Property will be conveyed by recordable warranty deed, with release of dower and homestead rights, subject to general real estate taxes for the current year, covenants, conditions, restrictions of record, and easements of record, all of which must be acceptable to Buyer.

**3. BUYER WILL PAY FOR:** recordation of deed and prorated share of prepaid insurance, taxes, and interest, if any.

**4. SELLER WILL PAY FOR:** Title commitment in the amount of the purchase price from First American Title Company, or any title insurance company duly licensed to underwrite title insurance in the state of South Dakota acceptable to the Buyer; Attorney's fees; Title abstract; Title opinion letter; Satisfaction of mortgage and recording fee; Lead paint inspection certificate and the SD Disclosure statement.

**5. PRORATED ITEMS:** All rents, water taxes or charges, taxes, assessments, monthly mortgage insurance premiums, fuel, prepaid service contracts, and interest on existing mortgages shall be prorated as of the date of closing. If Buyer is to accept the Property, subject to an existing mortgage requiring an escrow deposit for taxes, insurance, and/or other items, all escrow payments required to be made up to the time of closing shall be made to the escrow holder at Seller's expense and said escrow balance shall be assigned to the Buyer without compensation to the Seller; it being expressly understood that said escrow balance is included in the Total Purchase Price. All mortgage payments required of Seller to be made shall be current as of the time of closing. If the exact amount of real estate taxes cannot be ascertained at the time of closing, Seller agrees to prorate said taxes on the basis of 110% of the last ascertainable amount.

**6. TITLE AND TITLE INSURANCE:** Within 30 days after the date of acceptance of this contract, the Seller will provide and deliver to Buyer or Buyer's Attorney: A title commitment for an owner's title insurance policy in the amount of the purchase price (to be issued by a title insurance company duly licensed by the state of South Dakota, to underwrite title insurance);

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Page 2 of 8

**7. SURVEY:** Within 10 days after the date of acceptance of this contract, the Seller will provide and deliver to Buyer or Buyer's Attorney: copy of the most recent certified survey showing all lot dimensions, all corners, and showing all improvements upon the Property.

**8. EXAMINATION OF TITLE AND TIME OF CLOSING:** If the title evidence and survey as specified above disclose that Seller is vested with fee simple title to the Property (subject only to the permitted exceptions set forth above acceptable to Buyer), this sale shall be closed and Buyer shall perform the agreements made in this contract, at the office of First American title Company or any title insurance company duly licensed to underwrite title insurance in the state of South Dakota acceptable to the Buyer, on or before the \_\_\_\_\_. If title evidence or survey reveal any defect or condition which is not acceptable to Buyer, the Buyer shall, within fifteen (15) days, notify the Seller of such title defects and Seller agrees to use reasonable efforts to remedy such defects and shall have thirty (30) days to do so, in which case this sale shall be closed within ten (10) days after delivery of acceptable evidence to Buyer and Buyer's Attorney that such defects have been cured. Seller agrees to pay for and clear all delinquent taxes, liens, and other encumbrances, unless the parties otherwise agree. If Seller is unable to convey to Buyer a good and insurable title to the Property, the Buyer shall have the right to demand all sums deposited by Buyer and held by or for the Seller. At the same time, Buyer shall return to Seller all items, if any, received from Seller, whereupon all rights and liabilities of the parties to this contract shall cease. However, the Buyer shall have the right to accept such title, as Seller may be able to convey and to close this sale upon the other terms as set forth in this contract.

**9. DEFAULT BY BUYER:** If Buyer fails to perform the agreements of this contract within the time set forth herein, Seller may retain, as liquidated damages and not as a penalty, all of the initial deposit specified in paragraph 1(a) above, it being agreed that this is Seller's exclusive remedy.

**10. DEFAULT BY SELLER:** If Seller fails to perform any of the agreements of this contract, all deposits made by Buyer shall be returned to Buyer on demand, or the Buyer may bring suit against Seller for damages resulting from the breach of contract, or the Buyer may bring an action for specific performance. Buyer's remedies are cumulative and not exclusive of one another, and all other remedies shall be available in either law or equity to Buyer for Seller's breach hereof.

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

**11. ATTORNEY FEES AND COSTS:** If any litigation is instituted with respect to enforcement of the terms of this contract, the prevailing party shall be entitled to recover all costs incurred, including, but not limited to, reasonable attorney's fees and court costs.

**12. RISK OF LOSS OR DAMAGE:** Risk of loss or damage to the Property by any cause is retained by the Seller until closing.

**13. CONDITION OF THE PROPERTY:** Seller agrees to deliver the Property to Buyer in its present condition, ordinary wear and tear excepted, and further certifies and represents that Seller knows of no latent defect in the Property. All heating, cooling, plumbing, electrical, sanitary systems, and appliances shall be in good working order at the time of closing. Seller represents and warrants that the personal property conveyed with the premises shall be the same property inspected by Buyer and that no substitutions will be made without the Buyer's written consent. Buyer may also inspect or cause to be inspected the foundation, roof supports, or structural member of all improvements located upon the Property. If any such system, appliance, roof, foundation (except as disclosed in the NW corner), or structural member shall be found defective, Buyer shall notify Seller with-in two weeks of the date of acceptance of this contract of and Seller shall thereupon remedy the defect forthwith at his/her sole expense (in which case the time for closing shall be reasonably extended as necessary). If the costs of such repairs shall exceed 5% of the total purchase price, Seller may elect not to make such repairs and the Buyer may elect to take the Property in such defective condition and deduct 5% from the purchase price or Buyer may, at his/her option, elect to terminate this contract and receive the full refund of all deposits and other sums tendered hereunder. In addition, Seller agrees to remove all debris from the Property by date of possession.

**14. OCCUPANCY:** Seller shall deliver possession to Buyer no later than the closing date unless otherwise stated herein. Seller represents that there are no persons occupying the Property except the following tenants of the Seller:

---

---

---

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Page 4 of 8

Seller agrees to deliver exclusive occupancy of the Property to Buyer at the time of closing unless otherwise specifically stated herein. Seller agrees to provide true and accurate copies of all written leases to Buyer within five (5) days after the date of acceptance of this contract. Said leases are subject to Buyer's approval. Seller shall provide such letters notifying tenants to pay rent to the buyer after closing as Buyer may reasonably request. Seller warrants that any rent rolls and other income and expense data provided to Buyer are complete and accurate, all of which must be acceptable to Buyer.

**15. MORTGAGE OR THIRD PARTY FINANCING:** According to paragraph 1(d) of this contract, it is agreed that Buyer will require a new mortgage loan to finance this purchase. The application for this mortgage will be made with a lender acceptable to Buyer, and unless a mortgage loan, acceptable to Buyer, is approved without contingencies other than those specified in this contract within 10 days from the date of acceptance of this contract, the Seller or Buyer shall have the right to terminate this contract and, at that time, all sums deposited by Buyer shall be returned to Buyer and Buyer shall return any surveys and copies of leases received from Seller. Notwithstanding the aforesaid provisions, if Buyer so requests and if Seller agrees, Seller shall have 10 days to offer Buyer a purchase money mortgage on said property at terms acceptable to and approved by Buyer, and this contract shall remain in full force and effect. Said purchase money mortgage shall be fully subject to the terms and conditions of the paragraph relating to Seller Financing below.

**16. SELLER FINANCING:** According to paragraph 1(f) above, it is understood that the Buyer will execute and deliver at the closing, a Promissory Note to Seller which shall provide for full or partial prepayment without penalty and shall bear interest at the rate of 6.5% per annum with all unpaid principal and interest due \_\_\_\_\_ or 84 months from the date of closing. All interest to accrue but not compound. Total interest at Full term is \$\_\_\_\_\_.

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Page 5 of 8

**16. SELLER FINANCING continued:**

The said Promissory Note shall be secured by a mortgage acceptable to Buyer and providing for the full and free right of the mortgagor to transfer the Property, in whole or in part, subject to the mortgage and to substitute for the Property other collateral of equivalent equity value; the exculpation of the mortgagor from personal liability; thirty (30) days prior written notice to the mortgagor of the mortgagee's intention to commence foreclosure proceedings and the right of the mortgagor to cure; the subordination of mortgagee's lien to an existing or future senior encumbrance; the right of first refusal in the mortgagor if the mortgagee shall at any time sell its interest at a discount; future advances at the option of the mortgagee; the release or portions of the Property from the lien of the mortgage upon partial principal payments by mortgagor, which said portion shall be released in the same proportion that the amount of the partial payment bears to the then outstanding principal balance.

**17. TERMITE INSPECTION:** Seller agrees to furnish to Buyer, at Seller's expense, an inspection report showing all buildings on the Property to be free and clear from visible infestation and free from visible dry or wet rot damage by termites and other wood-destroying organisms. This inspection report is to be furnished by a licensed pest control firm. If a report shows such visible infestation or damage, Seller shall pay all costs of treatment of such infestation and all costs of repair of such damage. If the costs of treatment and repair shall exceed 3% of the total sale price, Seller may elect not to make such treatment and repairs and Buyer may elect to take the Property in its then condition and deduct 3% from the total purchase price and complete the transaction or Buyer may terminate this contract and receive a full refund of all deposits made by Buyer hereunder.

**18. ZONING:** Unless the property is properly zoned for Multi Family use and there are no deed restrictions against such use at the time of closing, the Buyer shall have the right to terminate this contract and receive a full refund of all deposits made by Buyer hereunder.

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Page 6 of 8

**19. LOCAL ORDINANCES:** Seller shall procure for Buyer, at Seller's expense, all certificates of inspection, certificates of occupancy, or the like required under the terms of any local ordinance.

**20. LEGAL USE:** Seller represents and warrants to Buyer that the entire property conforms to all building codes and restrictions that may be imposed by any governmental agency, national, state, or local. Seller also warrants that there are no building code violations on the Property and that Seller has received no notice of any building code violations for the past ten years that have not been fully corrected.

**21. PERSONAL PROPERTY INCLUDED IN THE PURCHASE PRICE:**

---

and such other items as is listed below or on a rider attached hereto, all of which personal property is unencumbered and owned by Seller. All such items shall be conveyed from Seller to Buyer by a Bill Of Sale provided by the Seller at the time of closing.

**22. OFFER SHALL BE VOID:** This offer shall terminate if not accepted before \_\_\_\_\_ before 5PM Mountain time. This offer/agreement shall be deemed accepted and binding on both parties, when deposited with a mail courier prior to this date and time.

**23. ADDITIONAL TERMS AND CONDITIONS:**

- (a) Where the context requires, the terms that Seller and Buyer shall include are in the masculine as well as the feminine and the singular as well as the plural.
- (b) There are no agreements, promises, or understandings between the parties except as specifically set forth in this contract. No alterations or changes shall be made to this contract unless the same are in writing and signed or initialed by the parties hereto.
- (c) The provisions of this contract shall survive the closing and shall not merge in any deed of conveyance herein.
- (d) This agreement shall be construed under the laws of the State of South Dakota.
- (e) Seller to provide Income tax copies as they relate to this property for past two years.

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Page 7 of 8

**24.NOTICES:** Any notices required to be given herein shall be sent to the parties listed below at their respective addresses either by personal delivery or by certified mail - return receipt requested. Such notice shall be effective upon delivery or mailing.

**TIME IS OF THE ESSENCE OF THIS AGREEMENT.**

In witness whereof, the parties signed their names on the dates in the year set forth below.

Buyer: Deblen Family Trust  
Deblen Investments Trustee  
Len Weimer, General Partner

X \_\_\_\_\_

Buyer's Date of Offer: Thursday September 20, 2000  
Address 1284 Woodridge Drive, Rapid City, South Dakota 57701

Sellers:

X \_\_\_\_\_

X \_\_\_\_\_

Seller's Date of Acceptance: (mo./day) \_\_\_\_\_ , (yr.) \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Page 8 of 8