



BUSINESS PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form BPA, Revised 10/02)

Date \_\_\_\_\_, at \_\_\_\_\_, California.

1. OFFER:

- A. THIS IS AN OFFER FROM \_\_\_\_\_ ("Buyer"),
B. THE BUSINESS TO BE ACQUIRED is known as \_\_\_\_\_ situated in \_\_\_\_\_, County of \_\_\_\_\_, California, ("Business"),
C. THE PURCHASE PRICE offered is \_\_\_\_\_ Dollars \$ \_\_\_\_\_
D. INVENTORY valued at approximately \$ \_\_\_\_\_, including work in progress, is included in the purchase price.
E. CLOSE OF ESCROW shall occur on \_\_\_\_\_ (date) (or \_\_\_\_\_ Days After Acceptance).

2. PAYMENT OF PURCHASE PRICE: Obtaining the loans below is a contingency of this Agreement unless: (i) 2F is checked below; or (ii) otherwise agreed in writing. Buyer shall act diligently and in good faith to obtain the designated loans. Obtaining deposit, down payment and closing costs is not a contingency. Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Buyer has given a deposit in the amount of \$ \_\_\_\_\_ to the agent submitting the offer (or to \_\_\_\_\_), by personal check (or \_\_\_\_\_), made payable to \_\_\_\_\_, which shall be held uncashed until Acceptance and then deposited within 3 business days after Acceptance or \_\_\_\_\_, with Escrow Holder (or \_\_\_\_\_ into Broker's trust account).
B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ Days After Acceptance, or \_\_\_\_\_.
C. FIRST LOAN IN THE AMOUNT OF \$ \_\_\_\_\_ NEW First Deed of Trust in favor of \_\_\_\_\_ lender, \_\_\_\_\_ seller, \_\_\_\_\_ Small Business Administration, secured by Buyer's own real property or, if real property is included in the sale, then by that real property, payable at maximum interest of \_\_\_\_\_ % fixed rate, or \_\_\_\_\_ % initial adjustable rate with a maximum interest rate of \_\_\_\_\_ %, balance due in \_\_\_\_\_ years, amortized over a period of not less than \_\_\_\_\_ years (if checked: \_\_\_\_\_ and with a margin not to exceed \_\_\_\_\_ %, tied to the following index: \_\_\_\_\_). Buyer shall pay loan fees/points not to exceed \_\_\_\_\_. Additional terms: \_\_\_\_\_
D. SECOND LOAN IN THE AMOUNT OF \$ \_\_\_\_\_ NEW Second Deed of Trust in favor of \_\_\_\_\_ lender, \_\_\_\_\_ seller, \_\_\_\_\_ Small Business Administration, secured by Buyer's own real property (or \_\_\_\_\_), payable at maximum interest of \_\_\_\_\_ % fixed rate, or \_\_\_\_\_ % initial adjustable rate with a maximum interest rate of \_\_\_\_\_ %, balance due in \_\_\_\_\_ years, amortized over a period of not less than \_\_\_\_\_ years (if checked: \_\_\_\_\_ and with a margin not to exceed \_\_\_\_\_ %, tied to the following index: \_\_\_\_\_). Buyer shall pay loan fees/points not to exceed \_\_\_\_\_. Additional terms: \_\_\_\_\_
E. LOAN SECURED BY BUSINESS ASSETS IN THE AMOUNT OF \$ \_\_\_\_\_ Evidenced by a note in favor of Seller secured by the assets of the Business, together with a security agreement in the usual and customary form covering all assets of the Business, and a UCC-1 filing to be filed with the Secretary of State, which shall include proceeds of collateral, in \_\_\_\_\_ first or \_\_\_\_\_ second position, or \_\_\_\_\_, payable at maximum interest of \_\_\_\_\_ % fixed rate, or \_\_\_\_\_ % initial adjustable rate with a maximum interest rate of \_\_\_\_\_ %, amortized over a period of not less than \_\_\_\_\_ years, and all due in not less than \_\_\_\_\_ years (if checked: \_\_\_\_\_ and with a margin not to exceed \_\_\_\_\_ %, tied to the following index: \_\_\_\_\_). Buyer shall have the right, at Buyer's expense, to conduct a valuation of the assets within the time specified in paragraphs 8 and 25. If the assets' value is less than the amount of the loan provided for in this paragraph 2E, then the difference between the amount of the loan specified in this paragraph 2E, less the value of the assets, shall become an unsecured loan.
F. ALL CASH OFFER (If checked): No loan is needed to purchase the Business. Buyer shall, within 7 (or \_\_\_\_\_) Days After Acceptance, provide Seller written verification of sufficient funds to close this transaction.
G. ADDITIONAL FINANCING TERMS: \_\_\_\_\_

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Buyer's Initials (\_\_\_\_\_) (\_\_\_\_\_)
Seller's Initials (\_\_\_\_\_) (\_\_\_\_\_)
Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

H. **BALANCE OF PURCHASE PRICE** (not including costs of obtaining loans and other closing costs) in the amount of \$ \_\_\_\_\_ to be deposited with Escrow Holder within sufficient time to close escrow.

I. **PURCHASE PRICE (TOTAL):** ..... \$ \_\_\_\_\_

**CAUTION:** Obligations secured by mixed collateral (i.e., both personal and real property) are subject to complex rules and court decisions under the California Civil Code, Commercial Code and the Code of Civil Procedure. Buyer and Seller are strongly cautioned to consult legal counsel in connection with the securing and enforcement of any such obligations.

J. **SELLER FINANCING:** For any Seller financing designated above, which is to be secured by real property in favor of Seller, Buyer is to execute a note secured by a deed of trust in favor of Seller on the terms and conditions set forth in the attached addendum (C.A.R. Form SFA).

K. **LOAN APPLICATIONS:** Within 7 (or  \_\_\_\_\_ ) Days After Acceptance, Buyer shall provide Seller a letter from lender or mortgage loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loans specified above.

L. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to 2K) shall, within 7 (or  \_\_\_\_\_ ) Days After Acceptance, provide Seller written verification of Buyer's down payment and closing costs.

M. **LOAN CONTINGENCY REMOVAL:** (i) Within 17 (or  \_\_\_\_\_ ) Days After Acceptance Buyer shall, as specified in paragraph 25, remove the loan contingency or cancel this Agreement; OR (ii) (if checked)  the loan contingency shall remain in effect until the designated loans are funded.

**3. CLOSING AND POSSESSION:**

A. Possession shall be delivered to Buyer at \_\_\_\_\_  AM  PM,  on the date of Close Of Escrow,  on \_\_\_\_\_ or  no later than \_\_\_\_\_ Days After Close Of Escrow. If Seller also owns the real property upon which the Business operates and transfer of title to the real property and possession of the Business do not occur at the same time, Owner and Buyer are advised to: (i) enter into a written agreement regarding possession; and (ii) consult with their insurance and legal advisors or other appropriate professional(s).

B. At Close Of Escrow, Seller assigns to Buyer any assignable warranty rights for items included in the sale and shall provide any available Copies of such warranties. Brokers cannot and will not determine the assignability of any warranties.

C. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems and alarms.

4. **ESCROW HOLDER:**  Buyer  Seller shall pay escrow fees \_\_\_\_\_ . Escrow Holder shall be \_\_\_\_\_ .

5. **FORM OF OWNERSHIP:** The Business shall be owned in the form designated in Buyer's escrow instructions. THE MANNER OF TAKING TITLE AND THE FORM OF OWNERSHIP OF THE BUSINESS MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

6. **ASSETS TRANSFERRED:** With the exception of cash or cash equivalents on deposit in any financial institution, and assets excluded below, Buyer is purchasing all assets of the Business, including but not limited to: inventory for sale, machinery, furniture, fixtures and other equipment, leasehold improvements, transferable government licenses and permits, customer lists, fictitious business names, trade names and trademarks, logos, copyrights and patents, signs and advertising materials, telephone and fax numbers, web sites, URL names, e-mail addresses, accounts receivable, vendor lists and catalogs, goodwill, agreements not to compete, franchise agreements, distribution rights, employee lists and information, computer and customer software, and customer deposits. All  items transferred that are leased are subject to the terms of existing lease(s)  Other \_\_\_\_\_ Excluded asset \_\_\_\_\_

7. **LIABILITIES TRANSFERRED:** Buyer is NOT purchasing any liabilities of the Business, EXCEPT those items checked below:

- A.  Accounts payable, per attached list.
- B.  Service, maintenance and advertising agreements, per attached list.
- C.  Other \_\_\_\_\_

8.  **INVENTORY** (If checked):

A. Buyer's acceptance of inventory is a contingency of this Agreement. Buyer shall have the right, at Buyer's expense, within the time specified in paragraph 25, to conduct a physical inventory and, in writing, remove the contingency or cancel this Agreement.

B. Buyer has the right to confirm the inventory within 5 (or  \_\_\_\_\_ ) Days Prior to Close Of Escrow. The purchase price shall be adjusted to reflect the remaining inventory. The adjustment is to be added to or subtracted from the  cash down payment; or  seller financing.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



EQUAL HOUSING OPPORTUNITY

Untitled

**9. SELLER DISCLOSURE; BUYER INVESTIGATION:**

**Seller shall, within the time specified in paragraph 25, provide to Buyer, or to Buyer's counsel, accountant or other designated representative, the lists of items or documents, or Copies thereof, for the items checked below. For each item, as applicable, Seller shall include a statement of whether the item is owned or leased and whether Seller has any legal, proprietary interest, or intellectual property rights in, or restrictions on, the item. Buyer, within the time specified in paragraph 25, shall then investigate the items provided to Buyer and take the action specified in paragraph 25.**

- |  |   |
|--|---|
| <input type="checkbox"/> Inventory, including work in progress                             | <input type="checkbox"/> Signs and advertising materials                    |
| <input type="checkbox"/> Machinery   | <input type="checkbox"/> Telephone and fax numbers                          |
| <input type="checkbox"/> Furniture, fixtures and other equipment                           | <input type="checkbox"/> Websites, URL names and e-mail addresses           |
| <input type="checkbox"/> Other personal property   | <input type="checkbox"/> Vendor lists and catalogs                          |
| <input type="checkbox"/> Leasehold improvements  | <input type="checkbox"/> Goodwill   |
| <input type="checkbox"/> Government licenses and permits                                   | <input type="checkbox"/> Agreements not to compete                          |
| <input type="checkbox"/> Customer lists  | <input type="checkbox"/> Franchise agreements                               |
| <input type="checkbox"/> Fictitious business name statements                               | <input type="checkbox"/> Distribution rights                                |
| <input type="checkbox"/> Trade names and trademarks  | <input type="checkbox"/> Employee lists and information                     |
| <input type="checkbox"/> Logo  | <input type="checkbox"/> Computer and customer software                     |
| <input type="checkbox"/> Copyrights and patents  | <input type="checkbox"/> Customer deposits                                  |
| <input type="checkbox"/> Schedule of accounts receivable                                   |   |
| <input type="checkbox"/> Business appraisal  | <input type="checkbox"/> Lease  |
| <input type="checkbox"/> Other assets: _____   |   |
| <input type="checkbox"/> Schedule of accounts payable                                      | <input type="checkbox"/> Service, maintenance and advertising agreements    |
| <input type="checkbox"/> Other liabilities: _____  |   |
| <input type="checkbox"/> Employee estoppel certificates                                    | <input type="checkbox"/> Proposed allocation of purchase price among assets |
| <input type="checkbox"/> Sales tax returns for the years _____ to _____                    |   |
| <input type="checkbox"/> Federal and state income tax returns for the years _____ to _____ |   |
| <input type="checkbox"/> Financial statements for the years _____ to _____                 |   |
| <input type="checkbox"/> Employment withholding returns for the years _____ to _____       |   |

**SELLER REPRESENTS THAT: (i) THE BOOKS AND RECORDS THAT OWNER PROVIDES ARE THOSE MAINTAINED IN THE ORDINARY AND NORMAL COURSE OF BUSINESS; AND (ii) FEDERAL AND STATE TAX RETURNS THAT SELLER PROVIDES ARE COPIES OF THOSE FILED WITH THE APPLICABLE GOVERNMENTAL AGENCIES.**

- 10. CONSULTING AND TRAINING:** Seller shall consult with Buyer to show Buyer methods used in operating the Business. Seller shall provide consulting services for a period of \_\_\_\_\_ Days After Close Of Escrow at no cost to Buyer, which services shall not exceed a total of \_\_\_\_\_ hours. Seller shall not be responsible for training Buyer in the basics of operating a business of the type being sold pursuant to this Agreement, but only to alert Buyer to the nuances, as determined by Seller, of operating this type of business. **NOTE TO BUYER: IF YOU ARE NOT ALREADY TRAINED IN THIS TYPE OF BUSINESS, YOU ARE STRONGLY ADVISED TO SEEK TRAINING.**
- 11.  AGREEMENT NOT TO COMPETE** (If checked): As a material part of the consideration of the sale, Seller agrees not to operate or engage in, directly or indirectly, whether as a principal, agent, manager, employee, owner, member, partner, stockholder, director or officer of a corporation, trustee, consultant, or any other capacity whatsoever, any business the same as, or substantially similar to, or in competition with the Business within a radius of \_\_\_\_\_ miles from the current location of the Business (or  \_\_\_\_\_ ) for a period of \_\_\_\_\_ year(s) from the date of final transfer of the Business, so long as Buyer, or Buyer's successor-in-interest, is operating the Business in said area.
- 12. LEASE (Check applicable items):** The sale is contingent upon Buyer obtaining, within **21 (or  \_\_\_\_\_ ) Days** After Acceptance, the assignment, new lease, option to extend, sublease or other lease as indicated below. Buyer shall submit an application for such lease to Seller's landlord or Seller, as applicable, within **15 (or  \_\_\_\_\_ ) Days** After Acceptance.
- A.  An assignment of Seller's existing lease.
  - B.  A new lease with Seller's landlord, on terms acceptable to Buyer, to become effective concurrently with the Close Of Escrow.
  - C.  An option to extend Seller's present lease for an additional \_\_\_\_\_ year(s), on terms acceptable to Buyer and Seller's landlord.
  - D.  A sublease with Seller, on terms acceptable to Buyer, to become effective concurrently with the Close Of Escrow.
- Buyer and Seller are advised that such sublease may require notice to or approval of Seller's landlord.**
- E.  Other: \_\_\_\_\_
- 13.  PURCHASE OF REAL PROPERTY** (If checked): The sale is contingent upon Buyer's ability to purchase, concurrently with the Close Of Escrow, the real property in which the Business operates. **A separate Real Property Purchase Agreement is required (C.A.R. Form CPA).**
- 14. LICENSES:**
- A. **LIQUOR:** If transfer of a liquor license is included in this sale, Seller shall comply with the Alcoholic Beverage Control Act concerning such transfer. Escrow shall not close, and no funds shall be transferred to Seller, until Escrow Holder is advised by the State of California Department of Alcoholic Beverage Control that the license transfer has been approved. The costs of such transfer shall be paid \_\_\_\_\_.
  - B. **OTHER** (If checked): This sale is contingent upon Buyer's obtaining, prior to the Close Of Escrow, the license(s) indicated below. Buyer shall apply for such license(s) within **15 (or  \_\_\_\_\_ ) Days** After Acceptance:
    - 1.  City license: \_\_\_\_\_
    - 2.  State license: \_\_\_\_\_
    - 3.  Other: \_\_\_\_\_

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
 Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
 Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

- 15. **FRANCHISE:** If the Business is a franchise, in addition to being subject to Buyer's acceptance of the terms of franchise as provided in paragraph 9, the sale is also contingent upon Franchisor's acceptance of Buyer.
- 16. **SALES AND USE TAX:** Buyer shall pay any sales or use tax payable as a result of the sale under any Law and shall furnish Seller with Resale Certificates for any items bought for resale.
- 17. **PRORATIONS:** Personal property taxes, business taxes, rents, interest, insurance acceptable to Buyer, and prepaid deposits shall be prorated as of Close Of Escrow (or  \_\_\_\_\_).
- 18. **TAX CLEARANCES:** Seller shall deliver to Escrow Holder proof that city (if applicable), state and federal income tax withholdings are current. Amounts withheld but not yet payable will be transferred in escrow or credited to Buyer. Seller shall also deliver to Escrow Holder any clearance documents available from the State Board of Equalization or Employment Development Department regarding S.D.I. unemployment insurance and FICA withholdings. No funds shall be released from escrow before such delivery.
- 19. **NOTICES OF VIOLATIONS:** Seller represents that, to the best of Seller's knowledge, no notices of violations of federal, state or local statute(s), law(s) or regulation(s) exist, or are filed or issued, that affect the operation of the Business, including any such notices regarding the real property in which the Business is situated ("Notices"), EXCEPT: \_\_\_\_\_

If prior to Close Of Escrow, Seller receives or becomes aware of any Notices filed against or affecting the Business, Seller shall immediately notify Buyer.

- 20. **BULK TRANSFER:** Seller shall comply with the Bulk Sales provision of Division 6 of the Uniform Commercial Code, Bulk Transfer Section, as the law applies within the Seller's state.
- 21. **TITLE:** Seller shall furnish to Buyer bills of sale and other instruments of transfer or assignment necessary to carry out this Agreement.
- 22. **LIENS; ENCUMBRANCES; RESTRICTIONS:** Seller warrants that, to the best of Seller's knowledge, there are no undisclosed liens, encumbrances or restrictions upon the Business.
- 23. **OPERATION OF BUSINESS DURING ESCROW:** During the escrow period, Seller shall: (i) operate the Business diligently and in substantially the same manner as prior to this offer; (ii) maintain the goodwill of the Business; (iii) keep all equipment and personal property in normal working order; and \_\_\_\_\_
- 24. **SELLER REPRESENTATIONS:** Seller's representations and warranties set forth herein, or in any written statements delivered to Buyer, shall be true and correct at Close Of Escrow, and shall survive the transfer of ownership of the Business.
- 25. **TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may be extended, altered, modified or changed only by mutual written agreement. Any removal of contingencies or cancellation under this paragraph must be in writing (C.A.R. Form RRCR).

A. **SELLER HAS:** 7 (or  \_\_\_\_\_ ) Days After Acceptance to deliver to Buyer all reports, disclosures and information for which Seller is responsible under paragraph 9.

B. **BUYER SHALL**, within the times set forth below, take the specified action and, in writing, either remove the applicable contingency or cancel this Agreement:

- (1) **BUYER HAS:** 17 (or  \_\_\_\_\_ ) Days After Acceptance to complete all buyer investigations, unless otherwise agreed in 25B(2); approve all disclosures, reports, and review of reports and other applicable information, for which Buyer is responsible or which Buyer receives from Seller; and approve all matters affecting the Business.
- (2)  (If checked) **BUYER HAS:** 30 (or  \_\_\_\_\_ ) Days After Acceptance to complete geologic, soil and environmental inspections.
- (3) By the end of the times specified in 25B(1) and (2) (or 2M for loan contingency; 12 for lease contingency; 13 for purchase of property contingency; 14 license contingency; or 15 franchise contingency), Buyer shall remove, in writing, the applicable contingency (C.A.R. Form CR) or cancel this Agreement. However, if Seller is unable to deliver any government-mandated inspections or reports required as a condition of closing within the time specified in 25A, Buyer has 5 (or  \_\_\_\_\_ ) Days After receipt of such inspection or report or the time specified in 25B(1), whichever is later, to, in writing, remove the applicable contingency or cancel this Agreement.

**C. CONTINUATION OF CONTINGENCY OR CONTRACTUAL OBLIGATION; SELLER RIGHT TO CANCEL:**

- (1) **Seller right to Cancel: Buyer Contingencies:** Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit if, by the time specified in the Agreement, Buyer does not remove in writing the applicable contingency or cancel this Agreement. Once all contingencies have been removed, failure of either Buyer or Seller to close escrow in time may be a breach of this Agreement.
- (2) Even after the expiration of the time specified in 25B(1), Buyer retains the right to make requests to Seller, remove in writing the applicable contingency or cancel this Agreement, until Seller cancels pursuant to 25C(1). Once Seller receives Buyer's written removal of all contingencies, Seller may not cancel this Agreement pursuant to 25C(1).
- (3) **Seller right to Cancel: Buyer Contract Obligations:** Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit for any of the following reasons: (i) if Buyer fails to deposit funds as required by 2A or 2B; (ii) if the funds deposited pursuant to 2A or 2B are not good when deposited; (iii) if Buyer fails to provide a letter as required by 2K; (iv) if Buyer fails to provide verification as required by 2F or 2L; or (v) if Seller reasonably disapproves of the verification provided by 2F or 2L. **Seller is not required to give Buyer a Notice to Perform regarding Close Of Escrow.**
- (4) **Notice To Buyer To Perform:** The Notice to Buyer to Perform (C.A.R. Form NBP) shall (i) be in writing; (ii) be Signed by Seller; and (iii) give Buyer at least 24 (or  \_\_\_\_\_ ) hours (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform may not be given any earlier than 2 Days Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel this Agreement or meet a 25C(3) obligation.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

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

**D. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: **(i)** completed all buyer investigations and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; **(ii)** elected to proceed with the transaction; and **(iii)** assumed all liability, responsibility and expense for repairs or corrections pertaining to that contingency or cancellation right, or for inability to obtain financing.

**E. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, less fees and costs, to the party entitled to the funds. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. **Release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award.**

**26. ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: **(i)** Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; **(ii)** Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; **(iii)** Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Business; and **(iv)** Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Business.

**27. AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Business is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.

**28. LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement.

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_      Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**29. DISPUTE RESOLUTION:**

**A. MEDIATION:** Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Paragraphs 29B(2) and (3) below apply whether or not the Arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

**B. ARBITRATION OF DISPUTES: (1)** Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 29B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with experience in the purchase and sale of a business, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. The parties shall have the right to discovery in accordance with California Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part III of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.

**(2) EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration: **(i)** a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in California Civil Code §2985; **(ii)** an unlawful detainer action; **(iii)** the filing or enforcement of a mechanic's lien; and **(iv)** any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

**(3) BROKERS:** Buyer and Seller agree to mediate and arbitrate disputes or claims involving either or both Brokers, consistent with 29A and B, provided either or both Brokers shall have agreed to such mediation or arbitration prior to, or within a reasonable time after, the dispute or claim is presented to Brokers. Any election by either or both Brokers to participate in mediation or arbitration shall not result in Brokers being deemed parties to the Agreement.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

- 41. **RISK OF LOSS:** Any risk of loss to the Business shall be borne by Seller until ownership has been transferred to Buyer.
- 42. **DAMAGE OR DESTRUCTION:** If the Business or real property in which the Business is situated is destroyed or materially damaged prior to Close Of Escrow, then, on demand of Buyer, any deposit made by Buyer shall be returned to Buyer and this Agreement shall terminate.
- 43. **INDEMNIFICATION:** Unless otherwise expressly provided herein, upon completion of sale, Seller agrees to indemnify, defend and hold Buyer harmless from all liability resulting from loss, damage or injury to persons or property in any manner arising out of or incident to the operation of the Business prior to transfer to Buyer. Buyer agrees to indemnify, defend and hold Seller harmless from all liability resulting from loss, damage or injury to persons or property in any manner arising out of or incident to the operation of the Business after transfer to Buyer.
- 44. **NOTICES:** Whenever notice is given under this Agreement, each notice shall be in writing and shall be delivered personally, by facsimile or by mail, postage prepaid. Notice shall be delivered to the address set forth below the recipient's signature of acceptance. Either party may change its notice address by providing notice to the other party.
- 45. **DEFINITIONS:** As used in this Agreement:

- A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by a party and is delivered and personally received by the other party or that party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. **"Agreement"** means the terms and conditions of this accepted Business Purchase Agreement and any accepted counter offer and addenda.
- C. **"C.A.R. Form"** means the specific form referenced or another comparable form agreed to by the parties.
- D. **"Close Of Escrow"** means the date the grant deed, or other evidence of transfer of title, is recorded. If the scheduled close of escrow falls on a Saturday, Sunday or legal holiday, then close of escrow shall be the next business day after the scheduled close of escrow date.
- E. **"Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.
- F. **"Days"** means calendar days, unless otherwise required by Law.
- G. **"Days After"** means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59PM on the final day.
- H. **"Days Prior"** means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. **"Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either one to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other.
- J. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- K. **"Notice to Buyer to Perform"** means a document (C.A.R. Form NBP), which shall be in writing and Signed by Seller and shall give Buyer at least 24 hours (or as otherwise specified in paragraph 25C(4)) or until the previously agreed time limit, whichever occurs last, to remove a contingency or perform as applicable.
- L. **"Signed"** means either a handwritten or electronic signature on an original document, Copy or any counterpart.
- M. **Singular and Plural** terms each include the other, when appropriate.

46. **AGENCY:**

- A. **POTENTIALLY COMPETING BUYERS AND SELLERS:** Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer-broker agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Business. Seller understands that Broker representing Seller may also represent other sellers with competing businesses of interest to this Buyer.

- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:  
 Listing Agent \_\_\_\_\_ (Print Firm Name) is the agent of (check one):  the Seller exclusively; or  both the Buyer and Seller.  
 Selling Agent \_\_\_\_\_ (Print Firm Name) (if not same as Listing Agent) is the agent of (check one):  the Buyer exclusively; or  the Seller exclusively; or  both the Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

47. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**

- A. **The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder**, which Escrow Holder is to use along with any relating counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 2, 4, 8B, 13, 14A, 17, 18, 20, 21, 25E, 34, 40, 44, 45, 47, 50, 53A, 54 and paragraph D of the section titled Real Estate Brokers on page 9. If a Copy of the separate compensation agreement(s) provided for in paragraph 50 or 53A, or paragraph D of the section titled Real Estate Brokers on page 9 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

- B. A Copy of this Agreement shall be delivered to Escrow Holder within **3** business days after Acceptance (or  \_\_\_\_\_). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement.
  - C. Brokers are a party to the Escrow for the sole purpose of compensation pursuant to paragraphs 50, 53A and paragraph D of the section titled Real Estate Brokers on page 9. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraphs 50 and 53A, respectively, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow, or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Escrow Holder shall immediately notify Brokers: **(i)** if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or **(ii)** if Buyer and Seller instruct Escrow Holder to cancel escrow.
  - D. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **2** business days after mutual execution of the amendment.
- 48. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Business, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.
- 49. SCOPE OF BROKER DUTY: Buyer and Seller acknowledge and agree that: (i) Brokers do not decide what price Buyer should pay or Seller should accept; (ii) Brokers do not guarantee the performance or repairs of others who have provided services or products to Buyer or Seller; and (iii) they will seek legal, tax, insurance, title and other assistance from appropriate professionals.**
- 50. BROKER COMPENSATION FROM BUYER:** If applicable, upon Close Of Escrow, **Buyer** agrees to pay compensation to Broker as specified in a separate written agreement between Buyer and Broker.
- 51. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Business on the above terms and conditions. All paragraphs with spaces for initials by Buyer and Seller are incorporated in this Agreement only if initialed by all parties. If at least one but not all parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Business for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 52. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit shall be returned, unless the offer is Signed by Seller, and a Copy of the Signed offer is personally received by Buyer, or by \_\_\_\_\_, who is authorized to receive it by 5:00 PM on the third Day after this offer is signed by Buyer, (**OR**, if checked  by \_\_\_\_\_ (date), at \_\_\_\_\_  AM  PM).

Buyer \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Notice Address, If Different \_\_\_\_\_

**53. BROKER COMPENSATION FROM SELLER:**

- A. Upon Close Of Escrow, **Seller** agrees to pay compensation to Broker as specified in a separate written agreement between Seller and Broker.
- B. If escrow does not close, compensation is payable as specified in that separate written agreement.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

**54. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of this Business, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Business on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Broker to deliver a Signed Copy to Buyer.

(If checked) **SUBJECT TO THE ATTACHED COUNTER OFFER, DATED** \_\_\_\_\_ .

Seller \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Notice Address, If Different \_\_\_\_\_

( \_\_\_\_\_ / \_\_\_\_\_ ) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on \_\_\_\_\_ (date) at \_\_\_\_\_  AM  PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

**REAL ESTATE BROKERS:**  
**A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.**  
**B. Agency relationships are confirmed as stated in paragraph 46 above.**  
**C.** If specified in paragraph 2A, Agent who submitted offer for Buyer acknowledges receipt of deposit.  
**D. COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (**Selling Firm**) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow: **(i)** the amount specified in the MLS or PDS, provided Cooperating Broker is a Participant of the MLS or PDS in which the Business is offered for sale or a reciprocal MLS or PDS; or **(ii)**  (if checked) the amount specified in a separate written agreement (C.A.R. Form CBC) between Listing Broker and Cooperating Broker.  
Real Estate Broker (Selling Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
By \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_  
Real Estate Broker (Listing Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
By \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**ESCROW HOLDER ACKNOWLEDGMENT:**  
Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked,  a deposit in the amount of \$ \_\_\_\_\_), counter offer numbers \_\_\_\_\_ and \_\_\_\_\_, any supplemental escrow instructions and the terms of Escrow Holder's general provisions, and agrees to act as Escrow Holder subject to paragraph 47 of this Agreement.  
Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is \_\_\_\_\_  
Escrow Holder \_\_\_\_\_ Escrow # \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_  
Phone/Fax/E-mail \_\_\_\_\_  
Escrow Holder is licensed by the California Department of  Corporations,  Insurance,  Real Estate. License # \_\_\_\_\_

( \_\_\_\_\_ / \_\_\_\_\_ ) **REJECTION OF OFFER:** No counter offer is being made. This offer was reviewed and rejected by Seller on \_\_\_\_\_ (Date)  
(Seller's Initials)

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REAL ESTATE BUSINESS SERVICES, INC.  
a subsidiary of the California Association of REALTORS®  
525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

