

COMMERCIAL  
PURCHASE AGREEMENT

(Firm and address)

(date)

**Agency Confirmation:** The following agency relationship(s) are hereby confirmed for this transaction.

**Agent:** \_\_\_\_\_  
of \_\_\_\_\_ (company)  
\_\_\_\_\_ (agent's cell)

Is the agent of: ☐ Seller exclusively ☐ Buyer exclusively ☐ both the Buyer and Seller (Limited Dual Agent)

**Agent:** \_\_\_\_\_  
of \_\_\_\_\_ (company)  
\_\_\_\_\_ (agent's cell)

Is the agent of: ☐ Seller exclusively ☐ Buyer exclusively ☐ both the Buyer and Seller (Limited Dual Agent)

The undersigned, as Buyer, agrees to purchase the following property on the following terms:

1. **Address:** \_\_\_\_\_

2. **Legal Description:** \_\_\_\_\_  
\_\_\_\_\_ (Property)

3. **Personal Property.** ☐ If checked, the purchase price includes all furniture and furnishings and any other personal property owned by Seller and used in the operation of the property per attached signed inventory, receipt of which is hereby acknowledged. The inventory is hereby made an integral part of this Agreement upon its execution by both parties. Said personal property is to be transferred by Bill of Sale in favor of Buyer at closing.

Including all fixtures and equipment permanently attached to Property owned by Seller provided Seller has a marketable title in fee simple. The only personal property included is as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. **Price.** Buyer agrees to pay \$ \_\_\_\_\_, allocated \$ \_\_\_\_\_ for land and buildings and \$ \_\_\_\_\_ for the personal property, on the following terms: an earnest money deposit of \$ \_\_\_\_\_ at this time as shown by the receipt herein. If paid by check, it will be cashed. If the selling broker is other than the listing broker the earnest money will be transferred to the listing broker upon acceptance. All monies shall be deposited in a trust account, to be held until the time of closing or until transferred to an escrow agent by Agreement of Buyer and Seller. Balance to be paid as shown in the following Paragraph(s) # \_\_\_\_\_:

**A. Cash at Closing – No Financing Being Required:** Balance of \$ \_\_\_\_\_ shall be paid in cash, or by certified or cashier's check at time of closing. Buyer to provide Seller a letter from a government regulated depository showing evidence of said funds within 10 calendar days of acceptance of this offer or this offer shall be null and void with the earnest money forfeited to the Seller.

**B. Conditional Upon Loan:** Balance of \$ \_\_\_\_\_ shall be paid in cash, or certified or cashier's check at time of delivery of deed, contingent upon Buyer's ability to obtain a loan, to be secured by first mortgage or deed of trust, on above described Property in the amount of \$ \_\_\_\_\_ on the following terms: initial interest not exceeding \_\_\_\_\_ % per annum; amortized over not less than \_\_\_\_\_ years; points not to exceed \_\_\_\_\_. Loan origination and all service fees shall be

paid by Buyer. Buyer agrees to make application for the loan within \_\_\_\_\_ days of acceptance of this offer, sign all papers, pay all costs, except as provided herein, and to establish escrow reserves for taxes and insurance if required by Lender. If processing of the application has not been completed by the lending agency by the closing date stated elsewhere in this Agreement, such time limit shall be automatically extended until the lending agency has, in the normal course of its business, advised either approval or rejection. Seller may cancel this Agreement any time after \_\_\_\_\_ unless Buyer shall have previously provided to Seller a copy of Buyer's written, non-contingent loan approval from a government regulated lender.

**5. Title.** Seller agrees to convey marketable title to Buyer by warranty deed or \_\_\_\_\_ free and clear of all liens, encumbrances, special assessments levied or assessed and subject to all easements and restrictions or covenants now of record. Buyer shall be furnished a current title insurance commitment before closing and a title insurance policy insuring good and marketable title. The cost of the title insurance shall be paid as follows:

- |   |                                 |                                |  |
|---|---------------------------------|--------------------------------|--|
| <input type="checkbox"/> Title Insurance policy paid by: (select one) | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer | <input type="checkbox"/> Divided equally |
| <input type="checkbox"/> Lenders Policy paid by: (select one)         | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer | <input type="checkbox"/> Divided equally |
| <input type="checkbox"/> Endorsements paid by: (select one)           | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer | <input type="checkbox"/> Divided equally |

**6. Real Estate Taxes/Prorations.** Seller shall pay all taxes to and including \_\_\_\_\_ (date). Taxes for the calendar year \_\_\_\_\_, together with interest, rents, prepaid services, and other expenses of the property, if any, shall be prorated to the date of possession/closing. Taxes shall be prorated on the basis of the county assessor's valuation at the date of closing and the most recently certified mill levy.

**7. Compliance with Law.** Seller shall comply with all federal, state and local laws applicable to the sale or transfer of the property, including but not limited to installing smoke detectors or providing inspections.

**8. Maintenance/Repairs/Replacements, Cost to Seller.** Seller agrees to maintain the property in its condition on the date hereof until initial delivery of possession which maintenance shall include, but not be limited to, the building, lawn, parking lot, heating, air conditioning, water heater, sewer, plumbing, electrical system, and any appliances.

**9. Due Diligence.** This agreement is contingent upon Buyers satisfaction of the property after the opportunity for inspections. Buyer, or any designee, at Buyer's expense (or as otherwise agreed), shall have the right to any inspections desired of the real estate and personal property to be sold hereunder on or before \_\_\_\_\_ (date) (the "inspection deadline"). Buyer shall give written notice to the Seller of any unsatisfactory conditions of the property or rescission of this agreement on or before \_\_\_\_\_ days after the inspection deadline (the "rescission deadline"). If the Buyer fails to notify the Seller of any unsatisfactory conditions or rescission by such deadline, Buyer agrees to accept the property in its condition on the inspection deadline. If such a notice of unsatisfactory condition is received by the Seller as set forth above, this Agreement shall terminate \_\_\_\_\_ days after the rescission deadline (the "settlement deadline") unless Seller and Buyer have agreed to a settlement in writing or Buyer has waived such condition in writing.

☐ If checked, Buyer requests a termite and wood destroying insect inspection of the property and all buildings thereon at Buyer's expense. Should evidence of termites or wood destroying insects be found, the property shall be treated at Seller's expense by a commercially licensed applicator who has met the certification requirement of the Nebraska Pesticide Act for treatment of termites and wood destroying insects. Buyer agrees to accept the treated property. If visible evidence of previously treated infestation, which is now inactive, is found, treatment shall not be required. Should damage from such insects be found, the damage shall be corrected at Seller's expense. However, if the cost required for repairs exceeds 1% of the purchase price, either Seller or Buyer may rescind this Agreement.

**10. Utilities.** Seller agrees to have the following utilities turned on, if not currently on, for inspections and/or appraisal.

☐ Electric ☐ Gas ☐ Water ☐ Other \_\_\_\_\_

**11. Access to Property.** Seller shall provide reasonable access to Buyer, Buyer's inspectors or agents to timely fulfill this Agreement and to representatives of Buyer's Lender to accommodate financing.

**12. Condition of Property.** Seller represents (1) that to the best of Seller's knowledge, there are no defects in the property that are not readily ascertainable and which significantly affect the desirability or value of the property, or which the Seller has not disclosed to Buyer in writing dated \_\_\_\_\_ and (2) that Seller has no notice of violations of any local state or federal laws, rules and regulations relating to the property.

☐ If checked, a disclosure is attached.

**13. Risk of Loss.** Risk of loss or damage to Property, prior to closing date, shall be the responsibility of Seller. If, prior to closing, the Property is materially damaged by fire, explosion or any other cause, Buyer shall have the right: i) to require the premises to be restored to the condition at execution hereof; ii) to adjust the price to the value subject to the damage; or iii) to rescind this Agreement.

**14. Possession and Closing.** Closing of the sale shall be on \_\_\_\_\_ (date) or within \_\_\_\_\_ days after loan approval, whichever shall last occur. Possession of Property shall be given on \_\_\_\_\_ (date) but not before closing. This Agreement shall in no manner be construed to convey Property or to give any right of possession. Buyer shall have the right to make a final inspection of Property prior to closing to ascertain that all conditions of this Agreement have been met. Time is of the essence in this Agreement.

**15. Escrow Closing.** Buyer and Seller agree that the closing of the sale may be handled by an escrow agent. If so, the listing broker is authorized to transfer to the escrow agent the earnest money, other trust funds received by the listing broker and all documents and other items received by the listing broker in connection with the sale. After the transfer, the listing broker shall have no further responsibility or liability to Buyer or Seller to account for funds or preparation of documents in connection with the closing of the sale. Escrow agent will not be required to disburse funds or deliver or record any documents until it has received certified funds or other good, sufficient and collected funds, and all conditions, terms and provisions of this Agreement have been satisfied, performed and met. Escrow Agent shall be \_\_\_\_\_ (Title Company) and escrow closing charges shall be paid as follows: \_\_\_\_\_.

**16. Rescission, Termination or Default.** If Buyer fails to consummate this purchase according to the terms of this Agreement, Seller may, at Seller's option, retain the earnest money as liquidated damages for such failure, or utilize such other legal remedies as are available to Seller by reason of such failure. If this Agreement is rescinded or terminated by either party without fault as allowed hereby, each party shall bear his or her costs and the earnest money shall be refunded.

**17. Foreign Investment and Real Property Tax Act (FIRPTA).** The Foreign Investment and Real Property Tax Act requires a Buyer of real property to withhold ten percent (10%) of the sale price and to deposit that amount with the Internal Revenue Service upon closing, if the Seller is a foreign person, foreign corporation or partnership, or non-resident alien, unless the property qualifies for an exemption under the Act. Unless it is established that the transaction is exempt because the purchase price is \$300,000 or less and the Buyer intends to use the property as his primary residence, Seller agrees to: (a) Provide Broker with a Non-Foreign Seller Affidavit (PPC Form 101-V) stating under penalty of perjury that Seller is not a foreign person; or (b) Provide Broker with a Certificate from the Internal Revenue Service establishing that no federal income tax withholding is required; or (c) Subparagraphs (a) or (b) to be provided to Buyer within \_\_\_\_\_ days of acceptance or Seller consents to withholding ten percent (10%) from the sale proceeds, to be deposited with the Internal Revenue Service.

**18. Tax Deferred Exchange.** In the event the Seller wishes to enter into a tax deferred exchange for the real property described herein, or if Buyer wishes to enter into a tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that: (a) The other party shall not be obligated to delay the closing, (b) All additional costs in connection with the exchange should be borne by the party requesting the exchange, and (c) The other party shall not be obligated to execute any note, contract, deed, or other document providing for any personal liability which would survive the exchange, nor shall the other party be obligated to take title to any property other than the property described in this Agreement. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the acquisition of the exchange property.

**19. Rights of Persons in Possession.** ☐ If checked, this property is sold subject to the rights of persons in possession. Rents shall be prorated to date of closing. Security deposits, advance rentals or considerations involving future lease credits shall be credited to Buyer. Buyer acknowledges that trade fixtures located in the premises may belong to tenants and may be removed upon the conclusion of the tenancy.

☐ If checked, purchase is subject to Buyer's inspection and approval of the leases which shall be treated as an inspection above. Promptly after execution hereof, Seller shall provide Buyer with copies of all leases and rental Agreements, notices to or from tenants, claims made to or by tenants, a statement of rents owing and damage or security deposits held and a summary of all oral agreements with tenants which affect the operation or ownership of the premises. Seller shall warrant the foregoing disclosures as true and correct.

Seller agrees that no changes in the existing leases or rental Agreements shall be made nor new leases or rental Agreements entered into nor shall any substantial repairs or alterations be commenced without the express written consent of the Buyer. Buyers' obligations hereunder are conditioned upon receipt at closing of an estoppel certificate from each tenant acknowledging that the lease or rental Agreement is in effect, that no lessor default exists, and stating the amount of any prepaid rent or deposits.

**20. Income/Expense.** ☐ If checked, the purchase is subject to Buyer's inspection and approval of the operating statement of the premises. Promptly after execution hereof Seller shall provide a statement of rental income and expenses for the premises which Seller shall warrant as true and correct. Such inspection shall be treated as an inspection above. Buyer agrees to keep such statement confidential. Buyer agrees to use such statement only for the purpose of analysis of a purchase of the premises.

**21. Service Contracts.** Seller agrees to provide to Buyer a copy of any service and/or equipment contracts with respect to the property which extend beyond closing. Buyer agrees to assume such contracts.

**22. Environmental.** ☐ If checked, the purchase is contingent upon the satisfactory environmental quality of the Property. On or before the inspection deadline, Buyer may request a Phase I environmental review at Buyer's expense which shall be promptly ordered by Buyer or Buyer's Agent. If the results raise a question of environmental quality, Buyer may request further study and delay closing as necessary, accept the property as is or rescind the Agreement. If further study is requested, Buyer shall have ten days after receipt of the study results to accept the property as is or rescind this Agreement. Copies of all requests for environmental investigation and the results thereof shall be provided to both Buyer and Seller. If the environmental investigation is not completed by \_\_\_\_\_ (date), either party may rescind this Agreement.

**23. Use.** ☐ If checked, Buyer intends to use the premises for a specific purpose. Buyer may rescind this Agreement on or before the rescission deadline if Buyer determines that zoning or land use restriction prohibits such intended use. The purpose is as follows:  
\_\_\_\_\_  
\_\_\_\_\_

**24. Acceptance Date.** This offer is null and void if not accepted by Seller on or before \_\_\_\_\_ (date) at \_\_\_\_\_ o'clock \_\_\_\_\_.

**25. Counterparts, E-Mail and Fax Transmission:** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument. The facsimile or e-mail transmission of a signed copy hereof or any counter offer to the other party or their agent with confirmation of transmission shall constitute delivery. The parties agree to confirm delivery by mail or personal delivery of a signed copy to the other party or their agent.

**26. Other Provisions.** \_\_\_\_\_  
\_\_\_\_\_

**27. Addenda.** The attached addenda shall be made a part of the Purchase Agreement. (List Addenda) \_\_\_\_\_  
\_\_\_\_\_ (Seller \_\_\_\_\_ / \_\_\_\_\_) (Buyer \_\_\_\_\_ / \_\_\_\_\_)

**28. Mediation and Arbitration.** ☐ [If checked]

**(a) Disputes.** The term "Dispute" shall include, without limitation, any controversy, complaint, dispute, claim or disagreement relating to or arising out of the brokerage relationship or the construction, interpretation, enforcement, or breach of the terms of this Agreement or any actions of the parties or their agents in the sale and purchase of the described property including claims of misrepresentation and claims under §21-2120 (Seller Property Condition Disclosure) of the Nebraska Revised Statutes.

**(b) Mediation.** In the event of any Dispute, any party to the Dispute may seek non-binding mediation in an attempt to resolve the Dispute by giving 15 days written notice of a request for such mediation to all other parties to the Dispute. The request for mediation must be made within 360 days after the party making the request knew, or exercising reasonable diligence and care, should have known, of the Dispute. In no case shall such request be made after the statute of limitations on a civil suit based on the Dispute would have run. Such mediation shall be held in Nebraska. Such mediation may be administered by the American Arbitration Association and shall be conducted according to the American Arbitration Association's Commercial Rules-Real Estate Industry Arbitration Rules (Including a Mediation Alternative) or such other mediation service versed in real estate practices of the locality.

**(c) Arbitration.** Any Dispute that is not resolved by informal settlement or mediation shall be resolved exclusively by binding arbitration. Such arbitration shall be held in Nebraska. Such arbitration may be administered by the American Arbitration Association or such other arbitration provider agreed to by the parties. It shall be conducted according to the American Arbitration Association's Commercial Rules-Real Estate Industry Arbitration Rules (Including a Mediation Alternative). The arbiter(s) shall apply Nebraska substantive and procedural law to the arbitration proceeding. Arbitration shall be commenced by written demand made by any one or more of the parties to the Dispute given to all other parties to the Dispute. The demand for arbitration must be in



writing and must be given by personal delivery or certified mail, return receipt requested, within 360 days after the party making the demand knew, or exercising reasonable diligence and care, should have known, of the Dispute. Notwithstanding the previous sentence, in the case that the parties unsuccessfully attempt mediation to resolve a Dispute, the demand for arbitration shall be made within 60 days of the final mediation session. However, in no case shall such demand be made after the statute of limitations on a civil suit based on the Dispute would have run. The prevailing party shall be entitled to costs and fees of the arbitration and, in the discretion of the arbitrator who shall take into account the relative merits of the opponent's case, the arbiter may award attorney's fees to the prevailing party. In determining prevailing party, prevailing party shall be that party for whom the result most closely, in the arbiter's opinion, resembles that party's last offer for settlement of the controversy.

**(d) Provisional Remedies.** The filing of a judicial action to enable the reporting of a notice of pending action, for order of attachment, receivership, injunction, or other like provisional remedies, shall not constitute a waiver of mediation or arbitration under this provision, nor shall it constitute a breach of the duty to arbitrate.

**(e) Exclusions.** The terms of paragraph 28 shall not apply to:

- (1) Any complaint of violation of the Code of Ethics of the National Association of REALTORS®;
- (2) Foreclosure or other action or proceeding to enforce a deed of trust, mortgage or land contract; or
- (3) The filing or enforcement of a construction or similar lien including a commercial broker's lien.
- (4) An action filed and held in "Small Claims Court" as defined in Neb. Rev. Stat. 25-2801 to 25-2804, provided, however, any attempt to transfer a matter filed in small claims court to county court shall be subject to paragraph 28.

**(f) Waiver.** BY SIGNING THIS PURCHASE AGREEMENT, THE PARTIES AGREE THAT EVERY DISPUTE DESCRIBED ABOVE THAT IS NOT RESOLVED BY INFORMAL SETTLEMENT OR MEDIATION WILL BE DECIDED EXCLUSIVELY BY ARBITRATION AND THAT ANY ARBITRATION DECISION WILL BE FINAL AND BINDING. THE PARTIES AGREE THAT THEY WILL RECEIVE ALL THE RIGHTS AND BENEFITS OF ARBITRATION, BUT ARE GIVING UP RIGHTS THEY MIGHT HAVE TO LITIGATE THOSE CLAIMS AND DISPUTES IN A COURT OR JURY TRIAL, OR TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS IN CONNECTION WITH ANY SUCH DISPUTES. NO PARTY TO THIS AGREEMENT SHALL BE ENTITLED TO JOIN OR CONSOLIDATE DISPUTES BY OR AGAINST OTHERS IN ANY ARBITRATION, OR TO INCLUDE IN ANY ARBITRATION ANY DISPUTE AS A REPRESENTATIVE OR MEMBER OF A CLASS, OR TO ACT IN ANY ARBITRATION IN THE INTEREST OF THE GENERAL PUBLIC OR IN ANY PRIVATE ATTORNEY GENERAL CAPACITY.

**29. Entire Agreement.** This document contains the entire Agreement of the parties and supersedes all prior Agreements or representations oral or written with respect to the Property which are not expressly set forth herein or incorporated herein by reference. This Agreement may be modified only by a writing signed and dated by both parties. All express representations and warranties shall survive closing. Both parties acknowledge that they have not relied on any statements of the real estate agent or broker which are not herein expressed except \_\_\_\_\_

**30. Authority to Sign.** The undersigned Seller(s) and Buyer(s) each represent and warrant that they are duly empowered and/or authorized, whether individually, on behalf of any entity or as a fiduciary, to enter into this Purchase Agreement and create a valid and binding contract. Seller represents all parties required to transfer title to the Property are parties to this contract.

**IF PARAGRAPH 28 IS CHECKED, THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES**

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_ ZIP \_\_\_\_\_ PHONE \_\_\_\_\_

**NAMES FOR DEED:** \_\_\_\_\_

Check one: ☐ JTROS ☐ Tenants in common ☐ Other \_\_\_\_\_

Check one: ☐ Husband and Wife ☐ Single Person ☐ Other \_\_\_\_\_

## RECEIPT FOR EARNEST MONEY

RECEIVED FROM: \_\_\_\_\_ the sum of \$ \_\_\_\_\_ by  
☐ check ☐ cash ☐ other \_\_\_\_\_ to apply to the purchase price of the  
Property on terms and conditions as stated. In the event this offer is not accepted by the Seller of the Property within the time specified  
the earnest money shall be refunded.

\_\_\_\_\_ REALTOR® By: \_\_\_\_\_

Complete ***only one*** of A, B or C below:

**A: Acceptance of All Terms:** Seller accepts all of the terms of the above Agreement and agrees to perform all of its terms.

**IF PARAGRAPH 28 IS CHECKED, THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE  
ENFORCED BY THE PARTIES**

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

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

**B. Counter Offer #1 By Seller:** In response to the above Purchase Agreement dated \_\_\_\_\_ for the sale of the Property,  
all of the terms and conditions of the Purchase Agreement are accepted and shall remain the same with the exception of the following:

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

This Counter Offer shall expire \_\_\_\_\_ (date), at \_\_\_\_\_ o'clock \_\_\_\_\_ (hour in the time zone of the office  
of the Seller's agent) and be automatically null and void unless, prior to the time of expiration, Buyer's written acceptance is delivered to  
the Seller's Limited Agent or their Broker's office or the Seller.

If this Counter Offer is accepted, the Purchase Agreement as amended by this Counter Offer shall become a contract between the parties.

Seller reserves the right to withdraw this Counter Offer prior to acceptance. Withdrawal shall be complete if verbal notification of  
withdrawal is made to the Buyer's Agent or Broker of the Buyer's Agent or Buyer before the delivery of Buyer's written acceptance.

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

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

☐ accept ☐ reject this Counter Offer \_\_\_\_\_ (date), at \_\_\_\_\_ o'clock \_\_\_\_\_

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

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

**C. Rejection:** The foregoing offer is rejected

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

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

**RECEIPTS FOR FULLY EXECUTED PURCHASE AGREEMENT**

Buyer acknowledges receipt of executed copy of this Agreement.

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

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

Seller acknowledges receipt of executed copy of this Agreement.

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

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