

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT is entered into this _____ day of _____, 20____, by and between _____, (hereinafter referred to as "Seller"), and _____, a _____ limited partnership (hereinafter referred to as "Buyer").

WITNESSETH:

The Seller is currently the owner of that certain property and building situated thereon located in the County of _____, State of _____, and which is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The parties to this Agreement have agreed to the sale and purchase of the Property on the terms and conditions which are set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, the payment of Ten and No/100 Dollars (\$10.00), in hand paid by Purchaser to Seller, the mutual covenants and agreements hereinbelow set forth, the other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties hereto do hereby covenant and agree as follows:

- 1. Agreement to Sell and Purchase.** The Seller agrees to sell the property to Buyer and the Buyer agrees to purchase the property from Seller for the price and on the terms and conditions set forth in this Agreement.
- 2. Earnest Money.** The Buyer will remit directly to the Seller, upon the execution of this Agreement, the sum of _____ (\$ _____) Dollars, of which the Seller hereby acknowledges receipt. Earnest Money Deposit shall be credited to the Buyer at Closing.
- 3. Purchase Price.** The purchase price to be paid by the Buyer to the Seller is _____ (\$ _____) Dollars, as more specifically allocated on Exhibit "B" attached hereto and incorporated herein by reference, which Purchase Price shall be paid by Purchaser to Seller at the Closing in cash, by certified or cashier's check or by wire transfer of funds, less the amount of the Earnest Money and other advances paid by Purchaser and subject to appropriate credits, adjustments and prorations as hereinafter provided.

- 4. Evidence of Title.** Within fifteen (15) days from the date of full execution of this Agreement, Buyer shall, at its sole cost and expense, deliver to its attorney a commitment for a policy (A.L.T.A. Form B) of Owner's Title Insurance, which shall be written by _____ (hereinafter referred to as the "Closing Agent"), as agent for _____ . Copies of all documents constituting the exceptions referred to in the commitment shall be attached thereto. The commitment shall bind the insurer or insuring organizations to deliver to Buyer a policy of Owner's Title Insurance which shall insure Buyer's Title to the property in an amount equal to the purchase price thereof, subject only to liens, encumbrances, exceptions or qualifications as set forth in this Agreement. Buyer shall have fifteen (15) days from the date of receipt of the title insurance commitment to examine same. If title is found to be defective, Buyer shall, within said fifteen (15) day period, notify Seller in writing specifying the defects. If said defects render the title unmarketable, Seller shall have one hundred twenty (120) days from receipt of notice within which time to remove said defects, and if Seller is unsuccessful in removing same within said time, buyer shall have the option of either accepting the title as it then is or demanding a return of the Deposit which shall forthwith be returned to Buyer, and thereafter Buyer and Seller shall be released from all further obligations under this Agreement. Seller agrees that it will, if title is found to be unmarketable, use diligent effort to correct the defects in title within the time limit provided therefor, including the bringing of necessary suits. Further, the title policy to be issued shall have deleted therefrom all "standard exceptions" other than taxes for the year of closing which are not yet due and payable.
- 5. Survey.** Within fifteen (15) days after the date of full execution of this agreement, the Seller shall, at its expense, furnish the Buyer with a copy of a survey of the Property prepared by a licensed land surveyor. The survey shall be certified to the Buyer, Seller and Closing Agent and contain a certification of the acreage contained within the Property and show all easements and other matters which are capable of being located on a survey. If the survey should show any encroachments, overlaps, easements or other matters which would, in Buyer's reasonable opinion, interfere with Buyer's intended use of the Property, written notice to that effect shall be given to the Seller and it shall have the same time to remove such encroachments, overlaps, easements or other matters as this Agreement allows to cure title defects. Buyer shall notify Seller of survey defects within fifteen (15) days of the date of receipt of the survey. If the Seller fails to remove said encroachments, overlaps, easements or other matters within said period of time, then at the option of the Buyer the Escrow Agent shall return the Deposit to the Buyer, whereupon this Agreement shall be terminated and the parties shall be relieved of all further obligations and liabilities hereunder.

6. Inspection of Documents and Premises.

- (a) The Buyer acknowledges that, prior to the execution of this Agreement, he has inspected each of the instruments listed on Exhibit "B" to this Agreement. The Seller warrants that Exhibit "B" is a complete list of all leases and contracts under which the Seller has any obligation or benefit. The Buyer approves each of the instruments on Exhibit "B." The Seller represents that no tenant is entitled to any rebate, concession, or other benefit except as set forth in the leases referred to in Exhibit "B" and that the rentals due or to become due under such leases and other tenancies referred to in Exhibit "B" will not be assigned, or encumbered, or subject to liens at the close of the escrow. The Buyer expressly accepts, assumes and agrees to all of the covenants, agreements, promises, terms, conditions, and provisions contained in each of such instruments to be observed, kept, performed, or complied with by the Seller, and shall hold the Seller harmless from any claim, demand, or cause of action which may be asserted against the Seller by any person arising from a breach, violation, or failure to perform any provision of any of such instruments which is alleged to have occurred after the closing date of the escrow. The Seller shall hold the Buyer harmless from any claim, demand, or cause of action which may be asserted against the Buyer by any person arising from a breach, violation, or failure to perform any provisions of any of such instruments which is alleged to have occurred before the closing date of the escrow.
- (b) Seller has furnished to Buyer (within five [5] business days after the date of full execution of this Agreement, without additional cost or charge to the Buyer, other than nominal copying charges), the following written materials; (1) all surveys, including boundary, tree and topographical, of the Property; (2) all permits, approvals and authorizations issued or granted by any governmental authority relative to the Property. Seller shall assist Buyer if specifically requested to do so in obtaining any of the above-listed materials which are in the possession of others.

7. Representations and Warranties of Seller. Seller represents and warrants to Buyer the following as of the date hereof:

- (a) **Title.** Buyer will acquire hereunder good, marketable and insurable title to, and the entire right, title and interest in, the Property, free and clear of all liens, encumbrances, liabilities, agreements, leases, judgments, claims, rights, easements, restrictions, and other matters affecting title, except for the permitted exceptions, the tenant leases and the continuing contracts.

- (b) **Consents.** Seller has obtained or prior to the closing date Seller shall obtain all consents and permissions related to the transactions herein contemplated and required under any covenant, agreement, encumbrance, law or regulation.
- (c) **Utilities; Access.** The Property has adequate water supply, storm and sanitary sewage facilities, telephone, electricity, fire protection, means of ingress and egress to and from public highways at the existing curb cuts and, without limitation, other required public utilities.
- (d) **Soil Conditions; Encroachments; Flood and Mudslide Hazards.** To the best knowledge of Seller: (1) there are no soil conditions adversely affecting the Property; (2) the building does not encroach onto adjoining land or onto any easements, and there are no encroachments of improvements from adjoining land onto the Property; (3) the location of the building does not violate any applicable setback requirements; and (4) the land is not in an area identified by an agency or department of the federal government as having special flood or mudslide hazards.
- (e) **Hazardous Substances.** Seller has not utilized the Property, nor any part hereof, to treat, deposit, store, dispose of, or place any hazardous substances, as defined by 41 USCA Section 9601(14); nor has Seller authorized any other person or entity to treat, deposit, store, dispose of or place any hazardous substance, as defined above, on the property, or any part thereof; and to the best knowledge of Seller, no other person or entity has treated, deposited, stored, disposed of, or placed any hazardous substance, as defined on the Property; or any part thereof. In the event a release or threatened release of a hazardous substance is discovered on the Property, regardless of whether the Seller was in any way responsible for such release, which subjects the Buyer to liability, in any form whatsoever, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USCA Section 9607, or under any other statutory or common law, Seller agrees to indemnify and hold harmless Buyer from any such liability which may be imposed.
- (f) **Construction; Use; Occupancy.**
- i. Completion; Operation. At the time of execution of this Agreement, the building located on the Property is not built, and will not be completed prior to closing. The Seller is warranting the completion of the project according to the plans and specifications attached and which are acceptable to the Tenant. The manner of construction of the building shall be completed in a good, workmanlike and substantial manner, free from material defects, operated at all times in accordance with the Project Plans and Specifications as approved, the same to fully comply with all federal, state and local laws, ordinances, rules, regulations and orders in existence on or before the date of Closing.

- ii. Licenses, Permits, Certificates of Occupancy, Zoning, etc. (a) All building permits, certificates of occupancy, all other notices, licenses, permits, certificates and authority, including notification of the completion of all punch list items to the satisfaction of the Buyer, required in connection with the construction, use or occupancy of the Property shall be delivered to the Buyer prior to closing; (b) valid and final certificates of occupancy will be issued for the building and each part and portion thereof except those tenant spaces for which, under the laws of the State of _____, only the tenant can obtain the certificates of occupancy, Seller hereby representing and warranting to the best of its knowledge that such certificates of occupancy have been obtained by such tenant(s), and no space has been or will have been as of the closing date leased in violation of any such certificates.
- iii. Notices; Requests. Seller has received no notice or knowledge that any government agency or any employee or official thereof considers the construction on the Property or the operation or use of the same have failed to comply with any law, ordinance, regulation or order or that any investigation has been commenced or is contemplated respecting any such possible failure of compliance. There are no unsatisfied expenses or invoices for repairs, restorations or improvements from any person, entity or authority, including, but not limited to, any tenant, lender, insurance carrier or government authority.
- iv. Maintenance; HVAC. The Property and each part and portion thereof are in good condition and repair, the structure of the building is sound and in all respects adequate for its present tenancies. Seller will maintain its repair between the date hereof and the Closing Date. The heating and air conditioning systems are in good condition and working order and adequate in quantity and quality for all requirements of the existing tenancies.
- v. Liens. Seller shall keep the Property at all times on or before the Closing Date, free and clear of all liens, claims or demands (including, but not limited to, mechanic's liens) in connection with work performed on the Property or any portion thereof and materials provided in connection with such work, where such work was performed on the Property or any portion thereof and materials provided in connection with such work, where such work was performed or such materials were provided on or before the closing date; provided, however, that in the event of the filing of any such lien, Seller, within thirty (30) days after the notice of filing of the same, shall secure the release of the same by bonding or other appropriate means. Without limitation upon the foregoing, Seller shall pay, at or before the time the same shall be due, all assessments, bonds and special

assessments which constitute a lien or encumbrance against the Property as of the closing date.

8. Delivery of Documents; Closing Date.

- (a) The Seller shall deliver to the Closing Agent, on or before the Closing Date, the following documents:
 - i. All documents, correspondence, lease files and related records pertaining to the leases and contracts listed on Exhibit "D."
 - ii. Assignment of all Lease Agreements as listed on Exhibit "C."
 - iii. Those documents and that data which may be necessary for a determination of the prorations to be made, as set forth in paragraph nine (9).
 - iv. Assignment of all Warranties, Service Contracts, Plans, Specifications as to the Construction of the Building, and a complete set of "as built" plans.
 - v. A Bill of Sale transferring the items of personal property included in this sale, free of all liens and encumbrances.

- (b) Closing Date. The Closing (hereinafter referred to as the "Closing"), shall be held on or before the _____ day of _____, 20____, at the offices of _____, at _____, at a time selected by Buyer upon written notice to Seller at least five (5) days prior to the Closing Date.

9. Prorations and Allocations. The following items shall be prorated at closing:

- (a) City and county real and personal property taxes.

- (b) Charges under any and all service contracts. The net balance of said prorations, if in favor of the Seller, shall be added to the cash required to be paid by the Buyer, prior to the Closing Date; or, if in favor of the Buyer, shall be deducted from such cash required. No prorations will be made of public utilities but, in lieu thereof, the Seller will cause the respective utility companies to read the gas, water, electric and power meters on the morning of the Closing Date, and the Seller will pay such invoices when rendered. The Seller will also pay the telephone charges allocable to the period prior to the Closing Date.

- (c) The Buyer shall be responsible for recording the Warranty Deed and all appropriate costs related thereto, with the Buyer bearing the responsibility for recording of any

Mortgages and all appropriate costs related thereto. Each party shall be responsible for its own Attorney's fees. Any items not otherwise designated herein shall be paid equally by the parties hereto.

10. Possession of the Property. Possession of the Property shall be delivered to the Buyer upon conveyance of title and the close of the escrow.

11. Conduct of Business Prior to Closing.

- (a) The Seller shall submit to the Buyer, for his approval, after the execution hereof, any contract or lease relating to the Property which the Seller contemplates executing. The Seller shall not execute any such contract or lease until it is first approved in writing by the Buyer.
- (b) If the Buyer approves any such contract or lease, in writing, and it is subsequently executed by the Seller, an executed copy of the contract or lease shall be deposited by the Seller into the Escrow.
- (c) The Buyer shall accept and assume all of the covenants, agreements, promises, terms, conditions, and provisions to be observed, kept, performed, or complied with by the Seller, contained in each contract or lease which he approves pursuant to subparagraph (c) of this paragraph and which is executed by the Seller, and the Buyer shall hold the Seller harmless from any claim, demand, or cause of action which may be asserted against the Seller by any person arising from a breach, violation, or failure to perform any provisions of any such contract or lease which is alleged to have occurred after the Closing Date; and the Seller shall hold the Buyer harmless from any claim, demand, or cause of action which may be asserted against the Buyer by any person, arising from a breach, violation, or failure to perform any provision of any such contract or lease which is alleged to have occurred before the Closing Date.

12. Passage of Title. The parties do not intend that title to the Property shall pass from the Seller to the Buyer, or that this purchase and sale shall be deemed finally consummated until the Closing Date (said escrow is to be deemed property of Seller regardless of whether the closing is consummated or not, excepting Buyer's inability to obtain financing or a default hereunder by the Seller). The Seller's warranties, covenants, and representations contained herein shall survive the Closing.

13. Effects of Default. If Buyer fails to perform any of covenants of this Agreement, the Deposit paid by Buyer shall be retained by or for the account of Seller as consideration for the execution of this Agreement and in full settlement of any claims for damages, and the Seller and Buyer shall be relieved of all further obligations and liability hereunder. If

Seller fails to perform any of the covenants of this Agreement, the aforesaid Deposit shall, at the option of Buyer, be returned to Buyer on demand, or full satisfaction of its damages.

14. Eminent Domain. In the event of the institution of any proceedings, judicial, administrative, or otherwise, concerning a proposed taking of any portion of the Property being sold and purchased hereunder by eminent domain prior to closing, Buyer shall have the right and option to terminate this Agreement by giving Seller written notice to such effect, at any time after the receipt of a notification of such occurrence or occurrences. Seller agrees to give Buyer written notice of any such condemnation proceedings. Should the Buyer terminate this Agreement pursuant to the provisions of this paragraph, the Escrow Agent shall return the Deposit to the Buyer, and thereupon all parties hereto shall be released of all further obligations and liability hereunder.

15. Closing Procedure. At the closing the parties shall deliver the following:

(a) By Seller:

- i. A duly executed statutory warranty deed conveying fee simple title to the Property to Buyer.
- ii. A duly executed no-lien affidavit in a form satisfactory to Buyer's attorney.
- iii. A duly executed affidavit which complies with the requirements of Section 1445 of the Internal Revenue Code of 1986, [as amended](#).
- iv. Such other duly executed instruments and documents required by this Agreement and as may be reasonably required in order to consummate the transaction herein contemplated.

(b) By Buyer:

- i. A cashier's or bank check drawn on a bank in the State of _____, payable to the order of Seller for the cash to close, or a wire transfer of same, as set forth in Exhibit "B."

16. Assignment. This Agreement shall be assignable by the Buyer and shall be binding upon and enure to the benefit of the successors and assigns of the parties.

17. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto with respect to the transactions contemplated herein, and it supercedes all prior understandings or agreements between the parties.

18. Waiver; Modification. Failure by either Buyer or Seller to insist upon or enforce any of its rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of either party's right to insist upon strict compliance with the provisions hereof. Either party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement. No oral modification hereof shall be binding upon the parties, and any modification shall be in writing and signed by the parties.

19. Titles. The titles to the several paragraphs are not part of this Agreement.

20. Governing Law. This Agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of _____ . The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a Court of subject matter jurisdiction located in the County of _____ , State of _____ . In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, Court costs, and all other expenses, whether or not taxable by the Court as costs, in addition to any other relief to which the prevailing party may be entitled. In such an event, no action shall be entertained by said Court or any Court of competent jurisdiction if filed more than one year subsequent to the date of the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

21. Cumulative Remedies. Except as otherwise provided herein, each and every one of the rights, benefits, and remedies provided to the Buyer or Seller by this Agreement, or any instrument or documents executed pursuant to this Agreement, are cumulative, and shall not be exclusive of any other said rights, remedies and benefits allowed by law or equity to the Buyer or Seller.

22. Notices. Any notices required by this Agreement shall be deemed effective when placed in the United States Mail, postage pre-paid, addressed to the Buyer and Seller at the following addresses:

Buyer:

with a copy to:

Seller:

- 23. Time.** Time is of the essence of this Agreement and of the covenants and provisions hereof. Accordingly, if Seller fails to deliver the title commitment and/or survey to the Buyer within fifteen (15) days of the date of full execution of this Agreement, then all the time periods provided for herein shall be extended by the same number of days that the delivery of the title commitment and/or survey is delayed. To the extent that the last day of any time period stipulated in this Agreement falls on a Saturday, Sunday or legal holiday, the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
- 24. Attorneys' Fees.** In the event that it becomes necessary for either party to bring suit to enforce the terms of this Agreement, then the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees, against the non-prevailing party.
- 25. Survival.** The covenants and agreements set forth herein shall survive the closing of the sale to the extent any restrictions, limitations or agreements are intended to be applied or performed after the [Closing Date](#).
- 26. Notice on Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines [may](#) have been found in buildings in this state. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- 27. Financing.**
- (a) New Financing. If any part of the purchase price is to be financed by a third party, this Agreement for Sale and Purchase is conditioned upon the Buyer obtaining a firm commitment for said loan prior to Closing, at an interest rate not to exceed prevailing market terms and rates, with a term of _____ (_____) years, and a principal amount not less than the current financing on the Property or such other amount that may be acceptable to the Buyer; provided, however, that for purposes of this provision, the Buyer may assume existing finance. Buyer agrees to make application for and to use reasonable diligence to obtain said loan. Should buyer fail to obtain same or to waive Buyer's rights hereunder within said time, either party may cancel this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement the _____ day of _____, 20 ____ .

“Buyer”

Witness

Witness

“Seller”

Witness

Witness

EXHIBIT "A"

EXHIBIT "B"

AMOUNT AND PAYMENT OF PURCHASE PRICE

1. Consideration. As total for the purchase and sale of the property, the Buyer shall pay to the Seller the sum of _____
(\$ _____) dollars, such total consideration to be referred to in this Agreement as the "Purchase Price."

The Purchase Price to be paid by the Buyer is based on a capitalization rate of _____
(_____ %) percent. Should the Net Operation, as projected, be increased or decreased on the day of Closing the Purchase Price, to be paid by the Buyer, will be adjusted accordingly.

2. Manner of Payment. The Purchase Price shall be paid as follows:

(a) Check from Buyer to the Seller, upon execution of this Agreement, in the amount of

(\$ _____) dollars.

(b) Such additional amounts as demanded by the Seller up to the total cash down payment, of _____
_____ (\$ _____) dollars and expenses required by the Seller. If additional amounts are required, the Seller will take back secondary financing of the balance for a period of _____ (_____) years at _____ % interest.

(c) The parties acknowledge that the Seller is using the Buyer's money for the Purchase and Construction of the Property and in consideration thereof shall pay _____
(_____ %) percent A.P.R. interest on said money to the Buyer. Interest shall accrue and be payable at Closing.

3. Allocation of Purchase Price. The Purchase Price shall be allocated for tax purposes as follows:

4. The Property being sold herein is subject to the terms and conditions of the Tenant's Lease as attached to Exhibit "C" as incorporated herein by reference. As part of the aforementioned Lease, certain Provisions therein call for increases and decreases in the cost of improvements, as requested by the Tenant, who will then remit to the Landlord the corresponding increased rent.

Initials:

Seller _____

Buyer _____

EXHIBIT "C"
LEASES

EXHIBIT "D"
CORRESPONDENCE AND DOCUMENTATION AS TO LEASES