



BUSINESS PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form BPA, Revised 4/10)

Date _____

1. OFFER:

- A. THIS IS AN OFFER FROM ... ("Buyer"),
B. THE BUSINESS TO BE ACQUIRED is known as ...
C. THE PURCHASE PRICE offered is ...
D. INVENTORY valued at approximately \$...
E. CLOSE OF ESCROW shall occur on ...

2. 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.
B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
Listing Agent ... (Print Firm Name) is the agent of (check one):
Selling Agent ... (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one):

3. PAYMENT OF PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Deposit shall be in the amount of ... \$
(1) Buyer shall deliver deposit directly to Escrow Holder by personal check, electronic funds transfer, or Other ...
OR (2) (If checked) Buyer has given the deposit by personal check ...
B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of ... \$
C. LOAN(S)
(1) FIRST LOAN in the amount of ... \$
This loan will be conventional financing or, if checked, Seller (C.A.R. Form SFA), Small Business Administration, secured by Buyer's own real property, or if real property is included in the sale, then by that real property, Other ...
(2) SECOND LOAN in the amount of ... \$
This loan will be conventional financing or, if checked, Seller (C.A.R. Form SFA), Small Business Administration, secured by Buyer's own real property, or if real property is included in the sale, then by that real property, Other ...
D. 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. The loan shall be at a fixed rate not to exceed ... % or, an adjustable rate with an initial rate not to exceed ... %.

Buyer's Initials () ()

Seller's Initials () ()

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BPA REVISED 4/10 (PAGE 1 OF 9)

Reviewed by _____ Date _____



BUSINESS PURCHASE AGREEMENT (BPA PAGE 1 OF 9)

Property Address: _____ Date: _____

E. ADDITIONAL FINANCING TERMS: _____ \$ _____

F. BALANCE OF PURCHASE PRICE OR DOWNPAYMENT in the amount of _____ \$ _____
to be deposited with Escrow Holder within sufficient time to close escrow.

G. 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.

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to 3l(1) shall, within 7 (or _____) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (If checked, verification attached.)

I. LOAN TERMS:

(1) LOAN APPLICATIONS: Within 7 (or _____) Days After Acceptance, Buyer shall Deliver to Seller a letter from lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in 3C above. (If checked, letter attached.)

(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Obtaining the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. Buyer's contractual obligations to obtain and provide deposit, balance of down payment and closing costs are not contingencies of this Agreement

(3) LOAN CONTINGENCY REMOVAL:

(i) Within 17 (or _____) Days After Acceptance, Buyer shall, as specified in paragraph 25, in writing 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.

J. ALL CASH OFFER (If checked): Buyer shall, within 7 (or _____) Days After Acceptance, Deliver to Seller written verification of sufficient funds to close this transaction. (If checked, verification attached.)

K. BUYER STATED FINANCING: Seller has relied on Buyer's representation of the type of financing specified (including but not limited to, as applicable, amount of down payment, contingent or non contingent loan, or all cash). If Buyer seeks alternate financing, (i) Seller has no obligation to cooperate with Buyer's efforts to obtain such financing, and (ii) Buyer shall also pursue the financing method specified in this Agreement. Buyer's failure to secure alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. ESCROW AND TITLE:

A. ESCROW HOLDER: Buyer Seller shall pay escrow fees _____
Escrow Holder shall be _____

B. (1) 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.

(2) TITLE: Seller shall furnish to Buyer bills of sale and other instruments of transfer or assignment necessary to carry out this Agreement.

5. CLOSING AND POSSESSION:

A. Possession shall be delivered to Buyer at 5 PM or _____ 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.

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 _____

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



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.

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"/> Lease |
| <input type="checkbox"/> Business appraisal | |
| <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: _____

Buyer's Initials (_____) (_____) Seller's Initials (_____) (_____)



Property Address: _____ Date: _____

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: _____

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. **LIENS; ENCUMBRANCES; RESTRICTIONS:** Seller warrants that, to the best of Seller's knowledge, there are no undisclosed liens, encumbrances or restrictions upon the Business.

22. **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 _____

23. **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.

24. **OTHER TERMS AND CONDITIONS,** including attached supplements:

25. **TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

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. Buyer may give Seller a Notice to Seller to Perform (C.A.R. Form NSP) if Seller has not Delivered the items within the time specified.

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 other matters affecting the Business.

(2) (If checked) **BUYER HAS:** 30 (or _____) **Days** After Acceptance to complete geologic, soil and environmental inspections.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)



Property Address: _____

Date: _____

(3) Within the time specified in 25B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller either (i) a removal of the applicable contingency (C.A.R. Form CR), or (ii) a cancellation (C.A.R. Form CC) of this Agreement based upon a contingency or Seller's failure to Deliver the specified items. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in 25A, then Buyer has 5 (or _____) Days After Delivery of any such items, or the time specified in 25B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(4) Continuation of Contingency: Even after the end of the time specified in 25B(1) and before Seller cancels this Agreement, if at all, pursuant to 25C, Buyer retains the right to either (i) in writing remove remaining contingencies, or (ii) cancel this Agreement based upon a remaining contingency or Seller's failure to Deliver the specified items. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to 25C(1).

C. SELLER RIGHT TO CANCEL:

(1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP) may cancel this Agreement. In such event, Seller shall authorize return of Buyer's deposit.

(2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first Delivering to Buyer a NBP may cancel this Agreement for any of the following reasons: (i) if Buyer fails to deposit funds as required by 3A or 3B; (ii) if the funds deposited pursuant to 3A or 3B are not good when deposited; (iii) if Buyer fails to Deliver a letter as required by 3I; (iv) if Buyer fails to Deliver verification as required by 3H or 3J; or (v) if Seller reasonably disapproves of the verification provided by 3H or 3J. In such event, Seller shall authorize return of Buyer's deposit.

(3) Notice To Buyer To Perform: The NBP shall: (i) be in writing; (ii) be signed by Seller; and (iii) give Buyer at least 2 (or _____) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP may not be Delivered 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 an obligation specified in 25C(2).

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 with regard to that contingency or cancellation right conclusively be deemed to have: (i) completed all buyer investigations and review of reports and other applicable information and disclosures; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for repairs or corrections or for inability to obtain financing.

E. CLOSE OF ESCROW: Before Seller or Buyer may cancel this Agreement for failure of the other party to close escrow pursuant to this Agreement, Seller or Buyer must first give the other a demand to close escrow (C.A.R. Form DCE).

F. 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. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

29. MULTIPLE LISTING SERVICE ("MLS"): Brokers are authorized to report to the MLS or property data system ("PDS") a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS or PDS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.

30. EQUAL OPPORTUNITY: The Business is sold in compliance with federal, state, and local anti-discrimination Laws.

31. ATTORNEY FEES: In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 42A.

32. ASSIGNMENT: Buyer shall not assign all or any part of Buyer's interests in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld, unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement.

33. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.

34. COPIES: Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals, and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.

35. RISK OF LOSS: Any risk of loss to the Business shall be borne by Seller until ownership has been transferred to Buyer.

36. 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.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)



Property Address: _____

Date: _____

37. **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.

38. **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 to 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. **"C.A.R. Form"** means the specific form referenced or another comparable form agreed to by the parties.
- C. **"Close Of Escrow"** means the date the grant deed, or other evidence of transfer of title, is recorded.
- D. **"Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.
- E. **"Days"** means calendar days. However, after Acceptance, the last **Day** for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- F. **"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 11:59 PM on the final day.
- G. **"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.
- H. **"Deliver", "Delivered" or "Delivery"**, regardless of the method used (i.e., messenger, mail, email, fax, other), means and shall be effective upon **(i)** personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in paragraph D of the section titled Real Estate Brokers on page 9;
OR (ii) if checked, per the attached addendum (C.A.R. Form RDN).
- 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 party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other party.
- 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. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- L. **"Signed"** means either a handwritten or electronic signature on an original document, Copy or any counterpart.

39. **BROKERAGE:**

- A. **BROKER COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. **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.**
- C. **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.

40. **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 related counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 3, 4, 8B,13, 14A, 17, 18, 20, 24, 25F, 38, 39A, 40, 44, 47, 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 39A, 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 of Buyer's or Seller's funds, or both, as applicable, the respective Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not specifically referenced 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.
- 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 paragraph 39A and paragraph D of the section titled Real Estate Brokers on page 9. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 39A, 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. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement. Escrow Holder shall immediately

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

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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 either Buyer or 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.

41. **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 _____ / _____

42. **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. Buyer and Seller also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. 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 (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, 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. Exclusions from this mediation agreement are specified in paragraph 42C.

B. **ARBITRATION OF DISPUTES:**

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. Buyer and Seller also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 42C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

C. **ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

(1) **EXCLUSIONS:** The following matters shall be 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 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 or violation of the mediation and arbitration provisions.

(2) **BROKERS:** Brokers shall not be obligated or compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

43. **TERMS AND CONDITIONS OF OFFER:**

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all parties initial such paragraph(s), a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. 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.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

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Reviewed by _____ Date _____



Property Address: _____ Date: _____

44. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

45. AUTHORITY: Any person(s) signing this Agreement represent(s) that such person(s) has full power and authority to bind that person's principal, and that the designated Buyer and Seller have full authority to enter into and perform this Agreement. Entering into this Agreement and the completion of the obligations pursuant to this Agreement, do not violate any Articles of Incorporation, Articles of Organization, Bylaws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.

46. 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 AM PM) on _____ (date). Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships.

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 _____

Additional Signature Addendum attached (C.A.R. Form ASA).

47. 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 (C.A.R. Form CO) 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 _____

Additional Signature Addendum attached (C.A.R. Form ASA).

(_____ / _____) **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.**

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

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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 2 above.

C. If specified in paragraph 3A(2), 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. Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) _____
 By _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) _____
 By _____ 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 numbered _____, Seller's Statement of Information and Other _____, and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions if any.

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 # _____

PRESENTATION OF OFFER: (_____) Listing Broker presented this offer to Seller on _____ (date).
 Broker or Designee Initials

REJECTION OF OFFER: (_____) (_____) No counter offer is being made. This offer was rejected by Seller on _____ (date).
 Seller's Initials

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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