



BUSINESS OPPORTUNITY PURCHASE & SALE AGREEMENT

Reference Date: _____

("Buyer") agrees to buy and

("Seller") agrees to sell, on the following terms, the business commonly known as _____
_____ in the City of _____,

_____ County, Washington, legally described on attached Exhibit A.
The Reference Date above is intended to be used to reference this Agreement and is not the date of "Mutual Acceptance" which is defined in Section 26 below.

1. PURCHASE PRICE. The total purchase price, including the earnest money, is _____
_____ Dollars (\$ _____) plus the amount
paid for inventory as determined in Section 10, payable as follows:

- All cash at closing with no financing contingency.
- All cash at closing contingent on new financing in accordance with Section 4 of this Agreement.
- \$ _____ / _____ % of the purchase price in cash at Closing with the balance of the purchase price paid as follows (check one or both, as applicable): Buyer's assumption of any underlying note and security agreements, in accordance with Section 4 of this Agreement; Buyer's delivery at Closing of a promissory note for the balance of the purchase price, secured by the security agreement encumbering the Business, in accordance with Section 4 of this Agreement.
- Other: _____.

2. EARNEST MONEY. The earnest money in the amount of \$ _____ shall be in the form of Cash
 Personal check Promissory note Other: _____ The earnest money shall be held
by Selling Firm Closing Agent, although Selling Firm may transfer the earnest money to Closing Agent.

Buyer shall deliver the earnest money no later than:

- _____ days after Mutual Acceptance.
- The last day of the Feasibility Period defined in Section 9 below.
- Other: _____.

If the earnest money is to be held by Selling Firm and is over \$10,000, it shall be deposited to: Selling Firm's pooled trust account (with interest paid to the State Treasurer) A separate interest bearing trust account in Selling Firm's name. The interest, if any, shall be credited at closing to Buyer. If this sale fails to close, whoever is entitled to the earnest money is entitled to interest.

Selling Firm shall deposit any check to be held by the Selling Firm within 3 days after receipt or mutual acceptance, whichever occurs later. Buyer agrees to pay financing and purchase costs incurred by Buyer. If all or part of the earnest money is to be returned to Buyer and any such costs remain unpaid, Selling Firm or Closing Agent may deduct and pay them therefrom. Unless otherwise provided in this Agreement, the earnest money shall be applicable to the purchase price.

3. This sale shall include all assets of Seller's business other than accounts receivable, cash, and the following other assets which are not included: _____

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In addition to the leases, contracts and agreements assumed by Buyer pursuant to Section 9b below, this sale includes all right, title and interest of Seller to the following intangible property now or hereafter existing with the respect to the business including without limitation: all drawings, plans specifications and other architectural or engineering work product; all governmental permits, certificates, licenses, authorizations and approvals; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any of Seller's obligations; any name of or telephone numbers for the business, and related trademarks, service marks or trade dress; and guaranties, warranties or other assurances of performance received. Notwithstanding the foregoing, if Seller uses the trademarks, service marks, or trade dress for Seller's other businesses, then the Buyer's and Seller's obligations under this Agreement shall be conditioned on their agreement to an irrevocable, royalty-free license (excluding any portion of the purchase price allocated to the license) for the Buyer to use the marks and trade dress for the business purchased under this Agreement. The totality of the assets to be acquired by Buyer, including any interest in real property, are referred to collectively as the "Business."

The purchase price shall be allocated among the assets purchased in the following amounts: real property _____; equipment _____; leasehold improvements _____; supplies _____; noncompete agreement _____; consulting agreement _____; goodwill _____; other (identify) _____.

4. PAYMENT TERMS AND SECURITY.

a. Application for New Financing. If payment of the purchase price is contingent on Buyer obtaining new financing, then Buyer shall submit a complete, written application for financing for the Business within five (5) days after satisfaction of the Feasibility Contingency in Section 9 of this Agreement. Buyer shall pay all required costs and fees and shall make a good faith effort to procure financing at all times during this financing contingency period. Buyer shall not reject those terms of a commitment which provide for a loan amount of at least _____% of the purchase price, interest not to exceed _____% per annum, a payment schedule calling for monthly payments amortized over not less than _____ years, and total placement fees and points not more than _____% of the loan amount. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives Seller written notice that this condition is satisfied or waived on or before _____ days (60 days, if not completed) following mutual acceptance of this Agreement.

b. Assumption of Existing Financing.

- i) Approval of Documents. If payment of the purchase price includes Buyer's assumption of any of Seller's existing financing or debt, Seller shall deliver to Buyer within five (5) days after mutual acceptance of the Agreement a copy of all documents relating to the obligations that Buyer will assume, including the note; any mortgage, deed of trust, or real estate contract; any guaranties, non-recourse carve-outs, or indemnity agreements; and any fixture filings or financing statements (the "Underlying Loan Documents"). Buyer shall be deemed to have approved the Underlying Loan Documents unless Buyer gives notice of disapproval within the Feasibility Period.
- ii) Consent to Assumption. Buyer shall submit a complete, written application for assumption of the Underlying Loan Documents within five (5) days after satisfaction of the Feasibility Contingency in Section 9 of this Agreement. Buyer shall pay all required costs and fees and shall make a good faith effort to assume Seller's financing at all times during this financing contingency period. Upon Buyer's request, Seller shall assist Buyer by requesting the lender's consent to the assumption on Buyer's

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behalf. Unless Buyer has obtained consent or waiving this condition within _____ days (30 days, if not completed) after satisfaction of the Feasibility Contingency, and provided that Buyer has timely complied with its obligations under this Section; this Agreement shall terminate and Buyer shall receive a refund of the earnest money.

- iii) Assumption Fees and Expenses. Buyer shall pay all costs and expenses attributable to assumption of Seller's underlying indebtedness including all application fees, processing charges, assumption fees, or other out-of-pocket expenses
- iv) Release of Seller and Principals. Seller's obligations under this Agreement shall be shall not be (shall not be if not completed) conditioned upon Seller and all guarantors or indemnitors being released from their obligations arising under the Underlying Loan Documents for the period on and after Closing.

c. Seller Financing.

- i) Debt Instruments. If Seller is financing a portion of the purchase price, unless different forms of debt and security instruments are attached to this Agreement, Buyer shall execute and deliver to Seller at closing: (i) LPB Form No. 28A Promissory Note and the DUE ON SALE and COMMERCIAL PROPERTY optional clauses in that form shall apply; (ii) UCC-1 Financing Statement covering the personal property subject to Seller's security interest; and (iii) LPB Form No. 20 Short Form Deed of Trust and CBA Form No. DTR Deed of Trust Rider if real property is included in the sale.

- ii) Payment Terms. The promissory note shall bear interest at the rate of _____% per annum, and shall be payable as follows (**choose one**):

- monthly installments of interest only;
- monthly installments of \$_____;
- equal monthly installments of principal and interest in an amount sufficient to fully amortize the outstanding principal balance at the stated interest rate over _____ years;
- Other _____

Payments shall commence on the first day of the first month following the month in which closing occurs and continuing on the same day of each succeeding month, until (**choose one**):

- _____ months from the date of closing;
- other _____, on which date all outstanding principal and interest shall be due.

Buyer may may not (may, if not completed) prepay the outstanding principal balance without premium or penalty. If Seller receives any monthly payment more than _____ day (15 days if not filled in) after its due date, then Buyer shall be in default and a late payment charge of \$_____ or _____% of the delinquent amount (5% of the delinquent amount if not filled in) shall be added to the scheduled payment. The principal shall, at Seller's option, bear all interest at the rate of _____% per annum (18% or the maximum rate allowed by law, whichever is less, if not filled in) during any period of Buyer's default. Buyer shall have _____ (5 days if not filled in) after written notice from Seller to cure a default before Seller may declare all outstanding sums to be immediately due and payable.

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5. **EXHIBITS AND ADDENDA.** The following Exhibits and Addenda are made a part of this Agreement:

- Earnest Money Promissory Note, CBA Form EMN
- Promissory Note, LPB Form No. 28A
- UCC Financing Statement, Form UCC-1
- FIRPTA Certification, CBA Form 22E
- Assignment and Assumption, CBA Form PS-AS
- Addendum/Amendment, CBA Form PSA
- Back-Up Addendum, CBA Form BU-A
- Financing Addendum, CBA Form PS-FIN
- Defeasance Addendum, CBA Form PS-D
- Business Opportunity Real Estate Addendum, CBA Form PS-2A
- Other _____

6. **PURCHASE OF BUSINESS REAL PROPERTY.** If this sale includes the sale of real property to Buyer, the parties have attached and completed the CBA Form No. PS-2A Real Property Addendum or another addendum regarding the sale of real property.

7. **SELLER'S UNDERLYING FINANCING.** Unless Buyer is assuming Seller's underlying financing, Seller shall be responsible for confirming the existing underlying financing is not subject to any "lock out" or similar covenant which would prevent the lender's lien from being released at Closing. In addition, Seller shall provide Buyer notice prior to the end of the Feasibility Period if Seller is required to substitute securities for collateral for the underlying financing (known as "defeasance"). If Seller provides this notice of defeasance to Buyer, then the parties shall close the transaction in accordance with the process described in CBA Form PS_D or any different process identified in Seller's defeasance notice to Buyer.

8. **LIQUOR/GAMING LICENSES.** This sale does does not (does not, if not filled in) involve the transfer of a State Liquor or Gaming License. If a State Liquor License and/or Gaming License is to be transferred as part of this sale, Buyer shall apply for such transfer(s) within 7 days of mutual acceptance of this Agreement and Seller shall cooperate with Buyer's efforts. If the transfer of either of those licenses is denied or not granted prior to Closing Buyer may, at Buyer's option, terminate this Agreement prior to Closing and the earnest money shall be refunded to the Buyer.

9. **FEASIBILITY CONTINGENCY.** Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Business, including physical and financial condition; the presence of or absence of any hazardous substances on the real property; the contracts and leases affecting the Business; the potential financial performance of the Business; the availability of government permits and approvals; and the feasibility of the Business for Buyer's intended purpose. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives written notice to Seller within _____ days (30 days if not filled in) (the "Feasibility Period") of Mutual Acceptance stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section shall be deemed to be satisfied.

a. Schedule of Assets. Within ten (10) days of Mutual acceptance, Seller shall prepare a schedule setting forth all property to be transferred to Buyer at Closing, whether real, personal, tangible, or intangible. Buyer shall give notice of approval within ten (10) days of receipt of the schedule. If Buyer approves the schedule and Buyer and Seller have not agreed on an allocation of the purchase price in Section 3 above, then Buyer and Seller shall agree on an allocation of the purchase price among the various assets (equipment, furnishings and fixtures, goodwill, etc.). If Buyer fails to give notice of approval of the schedule, or if the parties cannot agree on the allocation of the purchase price within ten (10) days after Buyer's approval of the schedule, this

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Agreement shall terminate. Except as otherwise provided in this Agreement, Seller is not transferring and Buyer is not assuming any accounts payable or other liabilities of Seller, and Seller shall indemnify and hold Buyer harmless from all liabilities of Seller related to Seller's operation of the business. This agreement to indemnify and defend Seller shall survive Closing.

b. Books, Records, Leases, Agreements. Seller shall make available for inspection by Buyer or its agents within _____ days (2 days if not filled in) after mutual acceptance of this Agreement all documents available to Seller relating to the ownership and operation of the Business, including without limitation: (i) statements for utilities, real and personal property taxes and assessments, property management agreements or other agreements with professionals and consultants; (ii) service contracts, franchise agreements, employment contracts, and leases or conditional sales agreements for equipment, fixtures, or other personal property, (iii) plans, specifications, permits, applications, drawings, surveys, studies, warranties and maintenance records regarding the Business or the property, if any, sold hereunder; (iv) books and records regarding the past performance and current financial condition of the business, including state and federal tax returns, financial statements, balance sheets, accounting records and audit reports; and (v) any lease or other agreement for use and occupancy of any premises on which all or a portion of the Business is located or conducted.

Buyer shall determine within the Feasibility Period whether it wishes and is able to assume, as of Closing, all of the foregoing leases, contracts, and agreements which have terms extending beyond Closing, and to determine which leases, contracts and agreements that Buyer does not wish to assume or to be subject. Buyer shall be solely responsible for obtaining any required consents to each assumption. Seller, however, shall cooperate with Buyer in securing any necessary consents but shall not be required to incur any out-of-pocket expenses or liability in doing so. Seller shall transfer the leases, contracts and agreements as provided in Section 14 of this Agreement.

If, at or prior to the end of the Feasibility Period, Buyer notifies Seller that there are certain leases, contracts or agreements that Buyer wants terminated as a condition of Buyer's purchase, Seller shall have ten (10) days from the date of Buyer's notice to terminate each such lease, contract or agreement on terms satisfactory to Seller. Buyer shall incur no liability for any such termination. Unless Seller notifies Buyer by the end of the ten-day period that Seller has been able to terminate each such lease, contract or agreement on terms satisfactory to Seller, this Agreement shall terminate and the earnest money shall be returned to Buyer, unless Buyer, on or before the end of the ten-day period, waives the termination requirement and proceeds to close.

c. Access. Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter the Business at reasonable times to conduct inspections concerning the Business, the real property and improvements, and the feasibility of the Business and the premises for Buyer's intended use. Buyer shall schedule any entry with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security, confidentiality, and disruption of the Business. Buyer shall not perform any invasive testing without obtaining the Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall restore the Business and real property and improvements to the same condition they were in prior to inspection. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Business or real property for purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims, and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Business. This agreement to indemnify and defend Seller shall survive Closing. Buyer may continue to enter the Business in accordance with the foregoing terms and conditions after removal or satisfaction of the feasibility contingency only for the purpose of re-sale or to satisfy conditions of financing.

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d. Lease of Premises by Seller. If Seller is the owner of the premises on which all or a part of the Business is located, and Buyer is not purchasing the premises as part of this Agreement, Seller shall deliver to Buyer within ten (10) days after mutual acceptance a proposed form of lease for the premises. Buyer and Seller shall then have until the end of the Feasibility Period to agree upon a final form of lease. If Buyer and Seller cannot agree on a final form of lease by the end of the Feasibility Period, then Buyer or Seller may terminate this Agreement and the earnest money shall be returned to Buyer.

e. Contact with and Employment of Personnel. Buyer shall not contact any employees of Seller without Seller's permission unless this Agreement is made contingent on hiring such employees.

10. INVENTORY. Within ten (10) days of Mutual Acceptance, Seller and Buyer shall agree in writing on a preliminary inventory setting forth the count and assigned unit values for Business inventory. If Seller and Buyer cannot agree on a preliminary inventory, then this Agreement shall terminate and the earnest money shall be refunded to Buyer. The inventory shall be valued at the lower of Seller's cost for any such item or the fair market value of such item. The inventory to be sold shall consist only of items of quality or quantity commercially usable and saleable in the ordinary course of business. At the close of the last business day prior to Closing, Seller and Buyer shall conduct a final inventory for the purpose of adjusting the inventory count (but not the assigned unit values). The final inventory shall not exceed the preliminary count by more than _____ percent (10% if not filled in). The final inventory value (the final inventory count per item times the assigned unit values per item) shall be added to the purchase price described in Section 1.

11. EMPLOYMENT MATTERS. Seller shall be responsible for all employment obligations of the Business prior to Closing, including wages, taxes, accrued vacation and sick pay, and benefits for all employees and/or contractors engaged by Seller for the Business prior to Closing. Unless otherwise agreed, all employees shall be terminated as of Closing and Buyer shall be responsible after Closing only for those employees or contractors that Buyer hired.

12. OPERATIONS PRIOR TO CLOSING. After Mutual Acceptance, Seller shall continue to operate the business in the ordinary course; shall not sell, pledge, encumber or otherwise transfer any of the property (except for inventory in the ordinary course); shall maintain the assets of the Business in at least the same condition existing on the date of mutual acceptance of this Agreement, ordinary wear and tear and damage by casualty excluded; shall not enter into, modify, or terminate any contracts, leases or other agreements (except in the ordinary course of business), or make capital expenditures in excess of \$5,000 without first obtaining Buyer's consent, which shall not be unreasonably withheld; shall not increase the compensation, benefits or distributions of any of the employees or principals of the business; and shall pay before delinquency all taxes, assessments, and other government charges regarding the Business, its operations and property.

13. POSSESSION. Buyer shall be entitled to possession on Closing _____
_____ (on Closing, if not filled in).

14. CONVEYANCE. Title to the tangible property shall be transferred by bill of sale unless some different method of transfer is dictated by law. Seller warrants that the title to the property shall be free of all liens and claims of any kind, except as otherwise provided in this Agreement. At Closing, Seller and Buyer shall execute and deliver to Closing Agent CBA Form No. PS-AS Assignment and Assumption Agreement transferring all leases, contracts and agreements assumed by Buyer and all intangible property transferred to Buyer.

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- 15. CLOSING OF SALE.** This sale shall be closed on _____ (“Closing”) by _____ (“Closing Agent”) (Seller shall select the Closing Agent, if not completed). Buyer and Seller shall deposit with Closing Agent by 12:00 p.m. on the scheduled closing date all instruments and monies required to complete the purchase in accordance with this Agreement. “Closing” shall be deemed to have occurred when the deed is recorded and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. Sale proceeds shall be considered available to Seller, even though they cannot be disbursed to Seller until the next business day after Closing. Notwithstanding the foregoing, if Seller informed Buyer during the Feasibility Period that Seller's underlying financing requires that it be defeased and may not be paid off, then Closing shall be conducted in accordance with the three-day closing process described in CBA Form PS_D. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided the same are consistent with this Agreement.
- 16. CLOSING COSTS.** Seller and Buyer shall each pay one-half of the escrow fees. Taxes payable in the year of closing, rents and other payments under assumed contracts or leases, license fees for Liquor or Gaming Licenses if closing occurs within ninety (90) days of the start of the license year, utilities, phone company charges, advertising fees, and other operating expenses shall be pro-rated as of closing. Unless otherwise agreed in writing, Buyer shall pay all costs of assuming contracts leases and other agreements. Buyer shall reimburse Seller for lease, utility and other business related deposits not returned to Seller at closing. Buyer shall pay all sales and/or use tax (other than real estate excise tax) arising from the transfer of the Business.
- 17. RISK OF LOSS.** The risk of loss or damage to the Business shall be Seller's until Closing. Buyer may terminate this Agreement and obtain a refund of the earnest money if improvements on the premises or the assets of the Business are materially damaged by casualty before Closing, or if condemnation proceedings are commenced against all or a portion of the premises before Closing. Damage will be considered material if the cost of repair exceeds the lesser of \$100,000 or five percent (5%) of the purchase price stated in this Agreement.
- 18. SELLER'S REPRESENTATIONS.** Except as disclosed to or known by Buyer prior to the expiration of the Feasibility Period, including matters disclosed in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof: (a) Seller is authorized to enter into this Agreement, to sell the Business, and to perform its obligations under this Agreement; (b) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement comprise all material documents in Seller's possession or control regarding the operation and condition of the Business; (c) Seller has not received any written notices that the real property or the Business violate any applicable laws, regulations, codes and ordinances; (d) Seller has all certificates of occupancy, permits, and other governmental consents necessary to own and operate the Business for its current use; (e) There is no pending or threatened litigation which would adversely affect the Business after Closing; (f) There is no pending or threatened condemnation or similar proceedings affecting the real property, and the Business is not within the boundaries of any planned or authorized local improvement district; (g) Seller has paid (except to the extent prorated at Closing) all local, state and federal taxes (other than real and personal property taxes and assessments described in Section 16 above) attributable to the period prior to closing which, if not paid, could constitute a lien on Property (including any personal property)), or for which Buyer may be held liable after Closing; (h) Seller is not aware of any concealed material defects in the Business except as disclosed to Buyer in writing during the Feasibility Period; (i) There are no Hazardous Substances (as defined below) currently located in, on, or under the Business in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the real property; and there is no pending or threatened investigation or remedial action by any governmental agency regarding

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the release of Hazardous Substances or the violation of Environmental Law at the Business. As used herein, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

19. INDEMNIFICATION. Seller agrees to defend and indemnify Buyer from any liability, loss, or damage (including attorneys' fees and costs of litigation) arising from or relating to Seller's breach of the foregoing representations or any of its other obligations set forth in this Agreement. This agreement to indemnify and defend Buyer shall survive Closing.

20. COVENANT NOT TO COMPETE. Seller, and all partners, members, shareholders, officers and directors of Seller, agree that for a period of _____ months following Closing, neither Seller nor its partners, members, shareholders, officers or directors will participate in the ownership or operation of any business that competes directly with the business sold to Buyer that is located within a radius of _____ miles of any business location sold to Buyer under this Agreement. If Seller breaches this covenant, Buyer will be entitled to obtain an injunction to prevent the competitive activity, as well as to recover any money damages, attorney fees, and costs to which Buyer may be entitled.

21. NOTICES AND COMPUTATION OF TIME. Unless otherwise specified, any notice required or permitted in, or related to, this Agreement (including revocations of offers and counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and must be delivered to Seller and Listing Broker with a courtesy copy to any other party identified as a recipient of notices in Section 30. A notice to Seller shall be deemed delivered only when received by Seller, Listing Broker, or the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and must be delivered to Buyer, with a copy to Selling Broker and with a courtesy copy to any other party identified as a recipient of notices in Section 30. A notice to Buyer shall be deemed delivered only when received by Buyer, Selling Broker, or the licensed office of Selling Broker. Selling Broker and Listing Broker have no responsibility to advise of receipt of a notice beyond either phoning the represented party or causing a copy of the notice to be delivered to the party's address provided in this Agreement. Buyer and Seller shall keep Selling Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice. If any party is not represented by a licensee, then notices must be delivered to and shall be effective when received by that party at the address, fax number, or email indicated in Section 30.

Unless otherwise specified in this Agreement, any period of time in this Agreement shall mean Pacific Time and shall begin the day after the event starting the period and shall expire at 5:00 p.m. of the last calendar day of the specified period of time, unless the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which case the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of five (5) days or less shall not include Saturdays, Sundays or legal holidays. Notwithstanding the foregoing, references to specific dates or times or number of hours shall mean those dates, times or number of hours; provided, however, that if the Closing Date falls on a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, or a date when the county recording office is closed, then the Closing Date shall be the next regular business day.

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22. AGENCY DISCLOSURE. At the signing of this Agreement,

Selling Broker _____
represented _____
and the Listing Broker _____
represented _____

Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, Designated Broker, Branch Manager (if any), and Managing Broker (if any), then both Buyer and Seller confirm their consent to Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as a dual agent. If Selling Broker and Listing Broker are the same person representing both parties then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

23. ASSIGNMENT. Buyer may may not (may not, if not completed) assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless provided otherwise herein. If the "may not" option is selected and the words "and/or assigns" or similar words are used to identify the Buyer, then this Agreement may be assigned with notice to Seller but without Seller's consent only to an entity which is controlled by or under common control with the Buyer identified in this Agreement. Any other assignment requires Seller's consent. The party identified as the initial Buyer shall remain responsible for those obligations of Buyer stated in this Agreement notwithstanding any assignment and, if this Agreement provides for Seller to finance a portion of the purchase price, then the party identified as the initial Buyer shall guarantee payment of the Seller financing.

24. DEFAULT AND ATTORNEY'S FEE.

(a) Buyer's default. In the event Buyer fails, without legal excuse, to complete the purchase of the Business, then (**check one**):

- Seller may terminate this Agreement and keep the earnest money as liquidated damages as the sole and exclusive remedy available to Seller for such failure; or
- Seller may, at its option, (a) terminate this Agreement and keep as liquidated damages the earnest money as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.

(b) Seller's default. In the event Seller fails, without legal excuse, to complete the sale of the Business, then (**check one**):

- As Buyer's sole remedy, Buyer may either (a) terminate this Agreement and recover all earnest money or fees paid by Buyer whether or not the same are identified as refundable or applicable to the purchase price; or (b) bring suit to specifically enforce this Agreement and recover incidental damages, provided, however, Buyer must file suit within sixty (60) days from the scheduled date of closing or from the date Seller has informed Buyer in writing that Seller will not proceed with closing, whichever is earlier; or

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Buyer may, at its option, (a) bring suit against Seller for Buyer's actual damages, (b) bring suit to specifically enforce this Agreement and recover any incidental damages, or (c) pursue any other rights or remedies available at law or equity.

Neither Buyer nor Seller may recover consequential damages such as lost profits. If Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. In the event of trial, the amount of the attorney's fee shall be fixed by the court. The venue of any suit shall be the county in which the Business is located, and this Agreement shall be governed by the laws of the state where the Business is located.

25. MISCELLANEOUS PROVISIONS.

a. Complete Agreement. This Agreement and any addenda and exhibits thereto state the entire understanding of Buyer and Seller regarding the sale of the Business. There are no verbal or other written agreements which modify or affect the Agreement.

b. Counterpart Signatures. This Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.

c. Electronic Delivery. Electronic delivery of documents (e.g., transmission by facsimile or email) including signed offers or counteroffers and notices shall be legally sufficient to bind the party the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will replace electronically delivered offers or counteroffers with original documents.

d. Section 1031 Like-Kind Exchange. If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party agrees to cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding Section 23, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

26. ACCEPTANCE; COUNTEROFFERS. Seller has until midnight of _____ (if not filled in, the third business day) following the day Buyer delivers the offer to accept this offer, unless sooner withdrawn. If this offer is not timely accepted, it shall lapse and the earnest money shall be refunded to Buyer. If either party makes a future counteroffer, the other party shall have until 5:00 p.m. on the _____ business day (if not filled in, the second business day) following receipt to accept the counteroffer, unless sooner withdrawn. If the counteroffer is not timely accepted or countered, this Agreement shall lapse and the earnest money shall be refunded to the Buyer. No acceptance, offer or counteroffer from the Buyer is effective until a signed copy is received by the Seller, the Listing Broker or the licensed office of the Listing Broker. No acceptance, offer or counteroffer from the Seller is effective until a signed copy is received by the Buyer, the Selling Broker or the licensed office of the Selling Broker. "Mutual Acceptance" shall occur when the last counteroffer is signed by the offeree, and the fully-signed counteroffer has been received by the offeror, his or her broker, or the licensed office of the broker. If any party is not represented by a broker, then notices must be delivered to and shall be effective only when received by that party.

27. SELLER'S ACCEPTANCE AND BROKERAGE AGREEMENT. Seller agrees to sell the Business on the terms and conditions herein, and further agrees to pay a commission in a total amount computed in accordance with the listing agreement. If there is no written listing agreement, Seller agrees to pay a commission of _____% of the sales price or \$_____. The commission shall be apportioned between Listing Firm and Selling Firm as specified in the listing or any co-brokerage agreement. If there is no

INITIALS: BUYER _____ DATE _____ SELLER _____ DATE _____
BUYER _____ DATE _____ SELLER _____ DATE _____



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listing or written co-brokerage agreement, then Listing Firm shall pay to Selling Firm a commission of _____% of the sales price or \$_____. Seller assigns to Listing Firm and Selling Firm a portion of the sales proceeds equal to the commission. If the earnest money is retained as liquidated damages, any costs advanced or committed by Listing Firm or Selling Firm for Buyer or Seller shall be reimbursed or paid therefrom, and the balance shall be paid one-half to Seller and one-half to Listing Firm and Selling Firm according to the listing agreement and any co-brokerage agreement. In any action by Listing Firm or Selling Firm to enforce this Section, the prevailing party is entitled to reasonable attorneys' fees and expenses. Neither Listing Firm nor Selling Firm are receiving compensation from more than one party to this transaction unless disclosed on an attached addendum, in which case Buyer and Seller consent to such compensation. The Business described in attached Exhibit A is commercial real estate.

28. CONFIDENTIALITY. Until and unless Closing has occurred, Buyer will treat all information obtained in connection with the negotiation and performance of this Agreement as confidential (except for any information that Buyer is required by law to disclose and then only after giving Seller written notice at least three (3) days prior to the disclosure), and will not use or knowingly permit the use of any confidential information in any manner detrimental to Seller.

29. LISTING AGENT AND SELLING LICENSEE DISCLOSURE. EXCEPT AS OTHERWISE DISCLOSED IN WRITING TO BUYER OR SELLER, THE SELLING BROKER, LISTING BROKER, AND FIRMS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OR CONDUCTED ANY INDEPENDENT INVESTIGATION CONCERNING THE LEGAL EFFECT OF THIS AGREEMENT, BUYER'S OR SELLER'S FINANCIAL STRENGTH, BOOKS, RECORDS, REPORTS, STUDIES, OR OPERATING STATEMENTS; THE CONDITION OF THE BUSINESS OR THE PERSONAL PROPERTY ASSETS OF THE BUSINESS; THE FITNESS OF THE BUSINESS FOR BUYER'S INTENDED USE; OR OTHER MATTERS RELATING TO THE BUSINESS, INCLUDING WITHOUT LIMITATION COMPLIANCE WITH APPLICABLE LAWS (INCLUDING LAWS REGARDING ACCESSIBILITY FOR DISABLED PERSONS), OR HAZARDOUS OR TOXIC MATERIALS. SELLER AND BUYER ARE EACH ADVISED TO ENGAGE QUALIFIED EXPERTS TO ASSIST WITH THESE DUE DILIGENCE AND FEASIBILITY MATTERS, AND ARE FURTHER ADVISED TO SEEK INDEPENDENT LEGAL AND TAX ADVICE RELATED TO THIS AGREEMENT.

INITIALS: BUYER _____ DATE _____ SELLER _____ DATE _____
BUYER _____ DATE _____ SELLER _____ DATE _____



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30. IDENTIFICATION OF THE PARTIES. The following is the contact information for the parties involved in this Agreement:

Buyer

Contact: _____

Address: _____

Business Phone: _____

Mobile Phone: _____

Fax: _____

Email: _____

Seller

Contact: _____

Address: _____

Business Phone: _____

Mobile Phone: _____

Fax: _____

Email: _____

Selling Firm

Assumed Name (if applicable): _____

Selling Broker: _____

Address: _____

Business Phone: _____

Mobile Phone: _____

Email: _____

Fax: _____

MLS Office No.: _____

Listing Firm

Assumed Name (if applicable): _____

Listing Broker: _____

Address: _____

Business Phone: _____

Mobile Phone: _____

Email: _____

Fax: _____

MLS Office No.: _____

Licensed Office of Selling Broker

Address: _____

Business Phone: _____

Mobile Phone: _____

Fax: _____

CBA Office No.: _____

Licensed Office of Listing Broker

Address: _____

Business Phone: _____

Mobile Phone: _____

Fax: _____

CBA Office No.: _____

Courtesy Copy of Notices to Buyer to:

Name: _____

Address: _____

Business Phone: _____

Fax: _____

Mobile Phone: _____

Email: _____

Courtesy Copy of Notices to Seller to:

Name: _____

Address: _____

Business Phone: _____

Fax: _____

Mobile Phone: _____

Email: _____

INITIALS: BUYER _____ DATE _____ SELLER _____ DATE _____

BUYER _____ DATE _____ SELLER _____ DATE _____



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IN WITNESS WHEREOF, the parties have signed this Agreement intending to be bound.

_____	_____
Buyer printed name and type of entity	Buyer printed name and type of entity
Buyer _____	Buyer _____
Signature and title	Signature and title
Date signed _____	Date signed _____

_____	_____
Seller printed name and type of entity	Seller printed name and type of entity
Seller _____	Seller _____
Signature and title	Signature and title
Date signed _____	Date signed _____

INITIALS: BUYER _____ DATE _____ SELLER _____ DATE _____
BUYER _____ DATE _____ SELLER _____ DATE _____