

COMMERCIAL REALTY PURCHASE AND SALE AGREEMENT

This REALTY PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of _____, 20____, is entered into by and between:

NAME: _____
ADDRESS: _____
_____ ("Seller").

and

NAME: _____
ADDRESS: _____
_____ ("Buyer").

In consideration of the mutual promises and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

1. **Public Auction.** This Agreement provides for the sale and conveyance of real property offered at public auction (the "Auction") on _____, 20____ by Double A Auction and Realty, 621 Main Street, Kenbridge, VA 23944 ("Auctioneer").

2. **The Property.** The real property subject to this Agreement (the "Property") is described as follows:

Street: _____
Municipality: _____
County: _____
State: _____
Zip Code: _____

Approximate Acreage: _____

Property Identification Number: _____

Total acreage of the Property is approximately _____ (_____) acres, more or less. Seller believes the amount of acreage of the Property to be accurate, but neither Seller nor Auctioneer makes any representation or warranty as to the actual acreage amount. Buyer acknowledges and agrees that Buyer has had the opportunity to verify acreage prior to the Auction, by survey or otherwise, and Buyer waives any and all claims against Seller and Auctioneer regarding, or in any way respecting, the actual acreage of the Property.

3. **Personal Property; Fixtures.** The following items located in, at, or about the Property will convey with the Property:

4. **High Bid Price.** Buyer was the successful high bidder for the Property at the Auction, with a bid in the amount of _____ Dollars (\$ _____) (the "High Bid Price").

5. **Buyer's Premium.** Buyer is responsible for paying a Buyer's Premium to Auctioneer, for Auctioneer's own account, in an amount equal to _____ percent (____%) of the High Bid Price (the "Buyer's Premium").

6. **Purchase Price.** The total purchase price for the Property (the "Purchase Price") is

_____ Dollars (\$ _____), calculated as follows:

High Bid Price \$ _____
plus Buyer's Premium \$ _____
Purchase Price \$ _____

7. **Sale and Purchase of the Property.** As set forth in this Agreement, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller, for the Purchase Price.

8. **Payment of Purchase Price.** The Purchase Price will be paid, as follows:

- (i) **Deposit.** A deposit paid by Buyer to Auctioneer on the signing of this Agreement (the "Deposit") in the amount of _____ Dollars (\$ _____), and
- (ii) **Balance of Purchase Price.** The balance of the Purchase Price will be paid in cash, by certified check, or by other immediately available funds at Settlement.

9. **Escrow.** The Deposit will be held by Auctioneer in a non-interest bearing account. Auctioneer will not be liable to Seller or Buyer for any acts or omissions regarding the Deposit unless taken or suffered in bad faith, in willful disregard of this Agreement, or involving gross negligence. Seller and Buyer will jointly and severally indemnify, defend and hold Auctioneer harmless from and against all costs, claims, and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Auctioneer's duties under and pursuant to this Section, except with respect to acts or omissions taken or suffered by Auctioneer in bad faith, in willful disregard of this Agreement, or involving gross negligence. In no event will Auctioneer be liable for unearned interest with respect to the Deposit. If Buyer defaults under this Agreement, Auctioneer will be entitled to retain any and all amounts owing to Auctioneer, including, without being limited to, Auctioneer's expenses, Commission, and Buyer's Premium, from the Deposit prior to distributing any remaining portions of the Deposit to Seller or otherwise disbursing such monies.

10. **No Buyer Contingencies.** This Agreement, and the transactions contemplated hereunder, are not subject to any Buyer contingencies whatsoever, including, without being limited to, mortgage or financing contingencies, property or system inspection contingencies, environmental contingencies, zoning or land use contingencies, sale of real property contingencies, simultaneous closing contingencies, attorney approval contingencies, or otherwise, all of which are waived by Buyer. Buyer understands that any and all repairs, inspections, surveys, or permits are solely and exclusively Buyer's obligation and at Buyer's expense.

11. **Choice of Settlement Agent.** Buyer has the right to select the Settlement Agent to handle the closing of this transaction.

12. **Settlement and Possession.** Except as otherwise agreed, Settlement will be made at the office of Buyer's Settlement Agent, and will take place within _____ (____) days after ratification of this Agreement, with the actual date of Settlement being referred to as the "Settlement Date". Buyer will notify Seller of the actual Settlement Date not less than five (5) business days in advance. Possession will be given at Settlement, unless otherwise Seller and Buyer agree otherwise in writing. Buyer agrees and acknowledges that **TIME IS OF THE ESSENCE** with regard to Settlement.

13. **Deed.** At Settlement, Seller will deliver a Special Warranty Deed (or an Executor's Deed, Administrator's Deed or Trustee's Deed if Seller holds title as an Executor, Administrator, or Trustee) to Buyer (the "Deed"), subject to existing easements, covenants, conditions and restrictions of record.

14. **Title.** At Settlement, Seller will convey good and marketable title to the Property, in fee simple absolute, free and clear of any and all liens, encumbrances, and easements, excepting, however, any (i) any building restrictions, (ii) any ordinances, (iii) any easements of roads, (iv) any easements, privileges, or rights of public service companies, (v) any easements or servitudes visible upon the ground or apparent from an inspection of the Property, (vi) any variation in location or dimensions, conflict with lines of adjoining property, encroachments, projections or other matters that might be disclosed by an accurate survey of the Property, (vii) any covenants, restrictions, and easements of public record, and (viii) any reservations, restrictions, conveyances, or limitations.

Title Insurance Notification. Buyer may wish at Buyer's expense to purchase owner's title insurance. Depending on the particular circumstances of the transaction, such insurance could include affirmative coverage against possible mechanics' and materialmen's liens for labor and materials performed prior to Settlement and which, though not recorded at the time of recordation of the Buyer's deed, could be subsequently recorded and would adversely affect Buyer's title to the Property. The coverage afforded by such title insurance will be governed by the terms and conditions thereof, and the dollar amount of the cost of obtaining such title insurance coverage.

15. **Title Defects.** If Seller is unable to convey and transfer good and marketable title to the Property as required under this Agreement, Seller may cancel this Agreement on written notice to Buyer, and on return of the Deposit to Buyer, the parties will have no further liability to each other.

16. **Settlement Fees, Expenses and Prorations.** Buyer will pay all recording and transfer fees including Grantor's tax and congestion relief fund, title searches, title insurance charges, survey costs and recordation fees. Buyer will be responsible for obtaining any municipal certificates or licenses required in connection with this purchase. To the extent commissions are due to Buyer's agent and/or Seller's agent, such commissions will be paid from Buyer's Premium. Seller agrees to pay the expense of preparing the deed, certificates for non-foreign status and state residency and the applicable IRS Form 1099. All taxes and assessments, if any, will be prorated as of the Settlement Date.

17. **Apportionment of Taxes and Periodic Costs.** Taxes and all other periodic realty costs, if any, will be apportioned *pro rata* as of the Settlement Date. All taxes will be considered to be on a calendar year basis, with the exception of school taxes, which will be pro-rated on a fiscal year basis. Seller will pay for all days up to and including the Settlement Date, and Buyer will pay for all days following the Settlement Date.

18. **Roll Back Taxes.** If the Property is under a special land use assessment and roll back taxes are assessed due to a change in use by Buyer, then Buyer will be solely responsible for any "Roll Back" taxes that may be assessed.

19. **Environmental Issues.** Neither Seller nor Auctioneer has made any representations as to any environmental, health or safety conditions that which exists or may arise at the Property. Buyer assumes responsibility for any and all clean-up costs, and will indemnify Seller, and hold Seller harmless, with respect to the same.

20. **Zoning; Land Use.** Neither Auctioneer nor Seller has made any representations or warranties as to the zoning of the Property or any other land use restrictions affecting the Property, and Buyer is not relying on any representations by Auctioneer or Seller concerning zoning or other land use restrictions affecting the Property. Buyer is relying exclusively on Buyer's own inquiries and investigations to confirm the applicable zoning and land use restrictions affecting the Property. The purchase of the Property by the Buyer is not contingent in any way on zoning or land use restrictions, or on whether the Buyer may put the real property to any desired use.

21. **Property Condition. BUYER ACKNOWLEDGES AND AGREES THAT THE PROPERTY, INCLUDING THE REAL ESTATE AND ANY PERSONAL PROPERTY AND FIXTURES CONVEYING WITH THE REAL ESTATE, IS SOLD "AS IS" AND "WHERE IS," IN ITS CURRENT CONDITION, "WITH ALL FAULTS AND DEFECTS," AND BUYER HEREBY RELEASES AND FOREVER DISCHARGES SELLER, AUCTIONEER, AND ALL AGENTS AND SUB-AGENTS FROM ANY AND ALL CLAIMS LIABILITIES, LOSSES, DAMAGES, COSTS, AND EXPENSES RESULTING THEREFROM, OR IN CONNECTION THEREWITH. BUYER ACKNOWLEDGES AND AGREES THAT BUYER HAS NOT RELIED ON ANY REPRESENTATION, CLAIM, ORAL UNDERSTANDING, ADVERTISING, PROMOTIONAL ACTIVITY, BROCHURE, OR PLAN OF ANY KIND MADE BY SELLER, AUCTIONEER, OR ANY AGENTS AND SUB-AGENTS IN CONNECTION WITH THIS AGREEMENT OR BUYER'S PURCHASE OF THE PROPERTY. SELLER, AUCTIONEER, AGENTS AND SUB-AGENTS MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, OF ANY KIND WHATSOEVER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO WARRANTIES OR REPRESENTATIONS HAVE BEEN MADE REGARDING: THE AREA, SIZE, SHAPE, ALLOWABLE USES, ZONING, SOIL TYPE OR QUALITY, FLOOD PLANES AND ZONES OR TOPOLOGICAL CHARACTERISTICS OF THE LAND, THE PROPERTY MEETING STATE STANDARDS, ENVIRONMENTAL HAZARDS OR LACK THEREOF AFFECTING THE USE OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO ASBESTOS, UNDERGROUND TANKS, ABOVE GROUND TANKS, DUMPING GROUNDS, OR ANY OTHER ENVIRONMENTAL CONCERNS. SELLER MAKES NO WARRANTIES OR REPRESENTATIONS AS TO MATTER AFFECTING ADJACENT PARCELS. SELLER, AUCTIONEER, AGENTS AND SUB-AGENTS MAKE NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED WITHIN THE BROCHURE, WEBSITE, OR INFORMATION PACKET OR ANY OTHER MATERIAL. BUYER, FURTHER, ACKNOWLEDGES AND AGREES THAT BUYER HAS RELIED SOLELY ON BUYER'S OWN THOROUGH INVESTIGATIONS, INSPECTIONS AND DUE DILIGENCE REGARDING THE PROPERTY AND ALL OF THE FOREGOING MATTERS, INCLUDING REVIEW OF ANY AND ALL DOCUMENTS, INFORMATION, AND ALL OTHER FACTORS CONCERNING THE PROPERTY AND SUCH MATTERS.**

22. **Opportunity for Inspection Prior to Bidding; Other Inspections Waived.** Buyer acknowledges and agrees that Buyer was afforded the opportunity to view and inspect the Property prior to bidding. Any and all other inspections, including, without being limited to, the following inspections, are not material to Buyer's purchase of the Property, and are waived, and that Buyer will purchase the Property regardless of whether serious or substantial deficiencies are revealed by reason of any such inspections subsequently commissioned by or on behalf of Buyer:

- (i) Termite/Pest/Wood Infestation Inspection;
- (ii) Radon Testing;
- (iii) Structural Inspection (including roof and foundation);
- (iv) Electrical Inspection;
- (v) Plumbing Inspection;
- (vi) Heating System Inspection;
- (vii) Water analysis to determine potability;
- (viii) Percolation Inspection;
- (ix) Septic/Sewage Disposal System Inspection;

- (x) Inspections to determine environmental hazards and/or toxic wastes or substances;
- (xi) Wetland Studies; and
- (xii) Lead Testing.

BUYER HEREBY RELEASES, QUIT CLAIMS AND FOREVER DISCHARGES AND RELEASES SELLER AND AUCTIONEER FROM ANY AND ALL CLAIMS, LOSSES OR DEMANDS, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURIES AND PROPERTY DAMAGE AND ALL OF THE CONSEQUENCES THEREOF, WHETHER NOW KNOWN OR NOT, WHICH MAY ARISE FROM THE PRESENCE OF TERMITES OR OTHER WOOD-BORING INSECTS, RADON, LEAD-BASED PAINT HAZARDS, ENVIRONMENTAL HAZARDS, ANY DEFECTS IN THE INDIVIDUAL ON-LOT SEWAGE DISPOSAL SYSTEM OR DEFICIENCIES IN ANY ON-SITE WATER SERVICE SYSTEM, OR ANY DEFECTS OR CONDITIONS ON THE PROPERTY. THIS DISCHARGE AND RELEASE WILL SURVIVE SETTLEMENT.

23. **Compliance; Certificate of Occupancy.** Buyer understands and agrees that any and all requirements needed for compliance with all federal, state, or local laws, ordinances, inspections, permits, zoning, or occupancy are strictly and solely Buyer's responsibility at Buyer's sole cost and expense. Without limiting the generality of the foregoing: (i) it is the Buyer's obligation, at Buyer's sole cost and expense, to obtain any necessary Certificate of Occupancy, and no Certificate of Occupancy will be acquired or provided by Seller; and (ii) Seller will not provide any Certificates of Compliance or any other evidence that the improvements that are a part of the Property comply with building codes and ordinances.

24. **Risk of Loss.** Risk of loss or damage to the Property by fire or other casualty is assumed by the Seller until Settlement. If the Property suffers material damaged prior to Settlement, either party may cancel this Agreement, and on return of the Deposit, neither party will have any further obligations or liability to the other. If this Agreement is not cancelled pursuant to this Section, any insurance proceeds (or Seller's claim to insurance proceeds) will be transferred to Buyer.

25. **Brokerage Fees.** Each of the parties represents and warrants to the other that, except for (i) fees payable to Auctioneer, (ii) brokerage participation fees expressly agreed to by Auctioneer, or (iii) as otherwise expressly set forth in this Agreement, there are no brokerage, realtor or other fees or commissions due by either of them concerning the sale and/or purchase of the Property. In the event that any fees or commissions, of whatever nature, are due and owing, the party incurring the same will have the sole and exclusive liability for payment. Each party agrees to hold the other safe and harmless from any and all fees and commissions due or payable in conjunction with the sale and/or purchase of the Property.

26. **Buyer's Default.** If Buyer fails to comply with the terms and conditions of this Agreement,

Seller may retain the Deposit as liquidated damages (and not as a penalty), and, thereafter, Seller may proceed to make a resale of the Property, either at public or private sale.

Seller may retain the Deposit to be applied against damages suffered on account of Buyer's breach, and Seller may pursue any and all remedies available to Seller at law or equity, including, without being limited to, the costs and expenses of a resale of the Property, any diminution in price at resale, and any and all attorneys' fees incurred as a consequence of Buyer's breach.

27. **Seller's Default.** If Seller is unable to deliver good and marketable title to the Property, or otherwise defaults under this Agreement, Buyer's sole and exclusive remedy will be the return of the Deposit. Under no circumstances will Buyer be entitled to incidental or consequential damages, lost profits, or specific performance.

28. **Notices.** All notices, requests, demands, directions, and other communications required or permitted under the provisions of this Agreement, or otherwise with respect hereto, must be in writing and: (i) mailed by first class registered or certified mail, return receipt requested, postage prepaid; or (ii) sent by next day business courier (such as Federal Express or the like); or (iii) personally delivered; or (iv) transmitted by email, fax, telegram or telex (with a hard copy to follow within twenty-four (24) hours by first class registered or certified mail, return receipt requested, postage prepaid, or by next day business courier [such as Federal Express or the like], or by personal delivery), and addressed as follows:

if to Seller, to:

 Email: _____
 Fax: _____

if to Buyer, to:

 Email: _____
 Fax: _____

Either party may, in writing delivered to the other party as provided herein, change the address for receipt of notices.

- 29. **Agreement Not to be Recorded.** This Agreement will not be recorded in the Office for the Recorder of Deeds or in any other office or place of public record, and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.
- 31. **Assignment.** This Agreement may not be assigned or transferred by Buyer without the prior written consent of Seller, which consent will not be unreasonably withheld or delayed.
- 32. **Binding Effect.** This Agreement will be binding on, and will inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns as the case may be.
- 33. **Time of the Essence.** Time is of the essence in the performance of this Agreement
- 34. **Headings.** The headings used in this Agreement are for the convenience of reference only and will not control the interpretation of any term or condition hereof, and will not have independent significance.
- 35. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, and supersedes any and all prior written or oral understandings or agreements and any and all contemporaneous oral understandings or agreements with respect to the subject matter of this Agreement.
- 36. **Amendment.** This Agreement may only be modified or amended by a writing signed by both parties.
- 37. **Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, including its statutes of limitations, but without regard to its rules governing conflict of laws.
- 38. **Jurisdiction and Venue.** All claims, disputes, and other matters between the parties will be brought in the state or federal courts sitting in and for _____, _____, which courts will have exclusive jurisdiction, and will be the exclusive venue, for any and all such claims, disputes, and other matters between the parties.
- 39. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which, taken together, will constitute one and the same instrument.

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Check if Applicable

Seller's Confirmation. This Agreement and the sale of the Property under this Agreement are subject to Seller's confirmation and approval. This Agreement will not be binding on Seller, and Seller will have no obligation to sell, transfer, or convey the Property to Purchaser, unless and until this Agreement is signed by Seller.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement as of the date first written above.

SELLER:

BUYER:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Entity Name, if applicable)

(Entity Name, if applicable)

By: _____

By: _____

Name: _____

Name: _____

Its: Authorized Representative

Its: Authorized Representative