

**NEGOTIATING AND COMPLETING
COMMERCIAL REAL ESTATE CLOSINGS**

The Purchase Agreement:

Presented By:

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Lindquist & Vennum, P.L.L.P.
Minneapolis, MN

Stephen E. Yoch
Felhaber, Larson, Fenlon & Vogt
St. Paul, MN

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The attached annotated Purchase Agreement, for the most part, represents a “negotiated deal” (but not between the co-authors). Because it is “deal specific” the following background may be helpful in understanding why the parties ended up where they did in their negotiations:

The Seller was a developer of retail centers. The Purchaser was a developer for a national retailer of “stand alone” pads in retail centers. The Seller had an option for a large parcel of land from a City’s Economic Development Authority; and while negotiating this pad site with this Purchaser, was also negotiating for an anchor to make the shopping center development viable. Accordingly, there may be more contingencies than one would normally see in a “mature development” or for a parcel that is not part of a larger development.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made and entered into as of _____, 2008 (“**Effective Date**”) by and between **Developer**, a Minnesota limited liability company (“**Seller**”) and **Pad Buyer**, a Delaware limited liability company (“**Purchaser**”). In consideration of the mutual covenants and agreements contained herein, including the costs and expenses incurred by Purchaser to perform due diligence related to the acquisition of the Property, and for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, Purchaser and Seller do hereby make and enter into this Agreement upon the following terms and conditions:

ARTICLE I - PURCHASE AND SALE

1.1 Agreement of Purchase and Sale. Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, the real property consisting of approximately 1.6 acres of land to be located at the southeast corner of the intersection of Easy Street and Hard Knocks Boulevard in the City of Overandover, County of Anoka, State of Minnesota, as shown as “Building 1” on the depiction as set forth on Exhibit A attached hereto and made a part hereof, together with all improvements thereon, and easements and rights benefiting or appurtenant to the property (collectively referred to as the “**Property**”). The Property is a part of the real property depicted on Exhibit A that is intended to be developed as a retail center (“**Development Site**”). Purchaser acknowledges and agrees that Seller is not the current owner of the Development Site and that Seller is in the process of purchasing the Development Site. Purchaser further acknowledges and agrees that the Property is not currently a separately subdivided parcel and that the Development Site needs to be further subdivided in accordance with Section 2.6 below.

1.2 Purchase Price and Manner of Payment. The purchase price for the Property shall be Nine Hundred Seventy-five Thousand and no/100 Dollars (\$975,000) (“**Purchase Price**”). The Purchase Price, subject to prorations and adjustments set forth in this Agreement, shall be payable in full at Closing in cash, by wire transfer of immediately available funds or by a Title Company check to Seller. The parties acknowledge that the amount of the Purchase Price shall not be adjusted at Closing in accordance with the actual square footage of the Property as determined by Seller and shown in the survey provided by Seller pursuant to Section 2.2; provided however, that the square footage may not be less than 1.5 acres nor greater than 2.5 acres.

1.3 Earnest Money. Simultaneously with the execution and delivery of this Agreement, Purchaser shall deposit with the Title Company the sum of Fifteen Thousand and no/100 Dollars (\$15,000.00) in good funds, either by certified bank or cashier’s check or by wire transfer, plus a promissory note in the form of Exhibit B in the amount of \$35,000 (collectively the “**Earnest Money**”). The Earnest Money shall be nonrefundable except as specifically set forth to the contrary in this Agreement. The Title Company shall hold the cash portion of the Earnest Money in an interest bearing account in accordance with the terms and conditions of any escrow agreement entered into by Seller, Purchaser and Title Company in connection with this

Comment [A1]: The Purchase Price is often tied to square footage of the lot itself or "buildable" square feet. For example: "The Purchase Price assumes a total square footage of buildable property of _____ square feet, with a value of \$ _____ per square foot. To the extent the buildable square footage is less than _____, as confirmed by the Survey, the Purchase Price shall be correspondingly reduced at Closing."

Comment [A2]: Purchase agreements often provide for extended due diligence periods and/or delay periods in which the Purchaser must put "hard" (non-refundable) earnest money down to continue its ability to proceed with the Closing. For example: "A second payment of Earnest Money shall be paid on or before the "Contingency Date" (defined below), in the amount of \$50,000 ("**Second Earnest Money**") such payment shall become non-refundable to Purchaser except for: (i) a default by Seller hereunder; or (ii) seller is unable to provide clear title at Closing as set forth below in Article II [(i) and (ii) being referred to as the "**EM Refund Conditions**"]

Agreement. All interest accruing on such sum shall become a part of the Earnest Money and shall be distributed as Earnest Money in accordance with the terms of this Agreement. The promissory note portion of the Earnest Money shall be returned to Purchaser at the Closing or at any termination of this Agreement, except a termination by Seller due to Purchaser's default as set forth in Article IX below, in which case said promissory note shall become immediately due and payable.

ARTICLE II – TITLE, SURVEY AND SUBDIVISION

2.1 Title Examination. Seller shall, at its sole cost and expense, cause to be issued and delivered to Purchaser from First American Title Insurance Company or Commercial Partners Title, LLC (“**Title Company**”) a current ALTA title insurance commitment (“**Title Commitment**”) covering the Development Site within thirty (30) days after the Effective Date. The Title Commitment shall show all matters affecting title to the Development Site and bind the Title Company to issue at Closing an ALTA 2006 Form B Owner's Title Insurance Policy (the “**Title Policy**”) to Purchaser that insures the Property in the full amount of the Purchase Price, subject only to the Permitted Exceptions. The Title Commitment shall be accompanied by copies of all recorded documents affecting the Development Site with proper searches for bankruptcies, taxes, judgments, liens and assessments. Purchaser shall pay the cost of the premium for the Title Policy and any endorsements.

2.2 Survey. Seller shall, at its sole cost and expense, employ a reputable surveyor, licensed or registered by the state where the Property is located, to prepare and deliver to Purchaser an ALTA survey of the Development Site and Property (“**Survey**”). The Survey shall show the Property and set forth the square footage of the Property and the Development Site. The Survey shall also show the grades, adjacent rights of way, and setback requirements. The Survey shall be delivered to Purchaser within sixty (60) days after the Effective Date.

2.3 Conveyance of Title; Permitted Exceptions. Seller shall convey and transfer title to the Property by limited warranty deed subject to the Permitted Exceptions. The definition of “Permitted Exception(s)” shall include: (a) any item contained in the Title Commitment or shown on the Survey, including but not limited to: i) any and all restrictions set forth in the “DA” (defined in Section 4.2(i) below), including the rights to repurchase the Property (the “**Repurchase Right**”) which will be reserved by the current fee owner of the Development Site, the Overandover Economic Development Authority (“**EDA**”), in its deed; ii) those certain covenants, conditions and restrictions (“**CCRs**”) contemplated by the DA and to be filed (or which have been filed) against the Development Site on or prior to the Closing Date, a copy of which has been provided to Purchaser; iii) those certain design standards referenced in the CCRs; iv) Consent Decree in the matter of United States of America vs. Acme Tag Company, et al., filed September 17, 1993, as Document No. _____; v); (b) utility and drainage easements of record or as shown on the plat to be recorded; (c) a declaration or operation and easement agreement to be recorded against the Property concerning access, maintenance, use and operation of the Development Site; (d) a developer's agreement to be recorded against the Property as desired by the City of Overandover concerning the development of the Development Site; (e) any other supplemental title encumbrance, easement or covenant as set forth in Section 2.5; (f) any New Contract as set forth in Section 2.6; and (g) any other exception to title which Purchaser determines, in its sole

Comment [U3]: Seller's counsel will want to list all encumbrances that cannot be removed as “Permitted Exceptions” whereas Purchaser's counsel will resist this, until the document and its impact on the proposed use/development can be analyzed. Whether included or not, Purchaser needs to have the right to do such analysis in the Contingency Period

Comment [U4]: Again Purchaser's Counsel will resist an open ended right to include future documents as Permitted Exceptions. See Comment 6

Comment [U5]: In Redevelopment Projects, there may be a “Redevelopment Agreement” with the City's EDA (such as the “DA” referenced in this Paragraph), but the City will have its “normal” Development Agreement as well, covering matters such as security until public improvements have been installed and accepted by the City.

discretion, to be acceptable. Seller shall provide Purchaser with a copy of all Permitted Exceptions that are documents recorded, or to be recorded, against the Property.

2.4 Title Objections; Cure of Title Objections. Purchaser may make objections or comments to the Permitted Exceptions by written notice to Seller (“**Objection**”). Except as set forth herein, Purchaser shall have until the Contingency Date to notify Seller of any Objection. In the event a Permitted Exception that affects the use of the Property is first provided to Purchaser in writing anytime after fifteen (15) days prior to the Contingency Date, Purchaser shall have a period of fifteen (15) days from receipt thereof to notify Seller of any Objection to such Permitted Exception. If Purchaser does not provide written notice of an Objection within the applicable time period, or if Purchaser previously consented to a Permitted Exception or waived its right to object thereto, then Purchaser shall no longer have any right to make an Objection to such Permitted Exception under this Section, and Purchaser shall be deemed to have approved the Permitted Exception. Upon Purchaser’s proper notice of an Objection, Seller may, but shall not be required to, cure the Objection; provided that Seller shall in good faith attempt to negotiate documentation reasonably objected to by Purchaser. In the event Seller elects to attempt to cure the Objection, Seller shall provide written notice to Purchaser within five (5) days of Purchaser’s notice of Objection. Seller shall have thirty (30) days thereafter to attempt to cure the Objection, during which time the Closing may take place in escrow or may be extended as necessary, at the mutual agreement of Seller and Purchaser.

Comment [U6]: This provision to allow objections, potentially after the Contingency Date is necessary because of the open ended ability to allow Permitted Exceptions that were not in existence at the time of the Purchase Agreement’s execution. See Comment 4

Comment [U7]: Purchaser’s Counsel will want to require good faith attempts to cure. A Seller response of: “take it or leave it” is not the best response to this type of request.

Comment [U8]: This somewhat unusual clause is due to the “future” Permitted Exceptions contemplated. See Comments 4 and 6

If Seller does not cure the Objection within the cure period, or if Seller provides written notice that Seller shall not be able to cure the Objection despite its good faith effort to negotiate documentation, Purchaser shall, at its sole discretion, and as its sole remedy, do one of the following:

- (a) Waive the Objection, accept title subject to the Objection, and proceed to Closing, in which case Seller and Purchaser shall remain obligated to perform pursuant to the terms of this Agreement with no reduction of Purchase Price; or
- (b) Terminate this Agreement by sending written notice to Seller, and upon such notice, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser.

Comment [U9]: A 3rd option is often included, if the Purchaser can negotiate it, to allow a holdback to “cure” Objections. This can apply to all Objections or be limited to “Monetary Liens” such as the following: “With respect to Monetary Liens, withhold from payment of the Purchase Price an amount which, in the reasonable judgment of Title Company: (i) is sufficient to satisfy the Monetary Liens, and apply such amount in payment and satisfaction of the Monetary Liens and (ii) is 150% of the amount to correct the Objection (including attorneys fees) but not in excess of \$25,000.00, which amount shall be escrowed and made available to Purchaser if such objection has not been cured within ninety (90) days after the Closing Date;”

Comment [U10]: See Comments 4, 6 and 8

Purchaser shall elect one of the above options by written notice to Seller within fifteen (15) days after the earlier of the date Seller was to cure the Objection or the date Seller provides notice that it shall not attempt to cure the Objection.

2.5 Supplemental Title Encumbrances. Seller, in connection with the development of the Development Site, may record against the Property and enter into any encumbrance, easement or covenant that affects the Property on or before the Closing provided that as of the Closing any such encumbrance, easement or covenant that is of a liquidated amount (i.e. mortgage or mechanic’s lien) shall be released. Purchaser may object to an encumbrance, easement or covenant as set forth in Section 2.4 and any objection shall be made, cured (at Seller’s election) or waived as set forth in Section 2.4.

2.6 Subdivision Approval. Seller shall, at its sole cost and expense, use reasonable efforts to apply for such platting and subdivision approvals as are necessary to subdivide the Development Site so that the Property is a separate platted lot in compliance with applicable state, county and municipal laws, ordinances and regulations relating to the subdivision or platting of property; provided that the completion of any such subdivision by the Seller, and the filing of any plats or replats relating thereto, shall not be required if Purchaser is in default of this Agreement. If Seller does not obtain the subdivision approval necessary to subdivide the Development Site as set forth herein, on or before the Closing Date (as extended pursuant to Section 2.7 below), either party shall have the right to terminate this Agreement by written notice to the other, in which event the Earnest Money shall be returned to Purchaser and neither party will have any further rights or obligations. Purchaser shall hold Seller harmless from all claims, costs, expenses or damages, including reasonable attorneys' fees actually incurred, related to the subdivision or failure to subdivide the Development Site as contemplated herein. If, in connection with efforts to obtain the subdivision of the Development Site, Seller is requested by any governmental authority to enter into any agreements, contracts, easements or other covenants that affect the Property ("New Contract"), Seller shall notify Purchaser in writing and provide Purchaser with a copy of the New Contract. Purchaser may object to a New Contract as set forth in Section 2.4 and any objection shall be made, cured (at Seller's election) or waived as set forth in said Section.

Comment [A11]: Such government approval is sometimes handled by the Purchaser, even though the property remains in the Seller's control. That is to say, the Purchase Agreement may provide: "The Purchaser and its representatives shall, with the Seller's cooperation, make submittals to the municipality for obtaining approval of the Development Site."

Comment [U12]: If there is "hard" Earnest Money, consideration as to whether this should be an additional "EM Refund Condition". See Comment 2

2.7 Delay in Plat Approval. Seller shall use good faith efforts to obtain final plat approval for the Property on or prior to the Closing Date; however if Seller is unable to obtain final plat approval by said date, the closing shall be postponed for up to a maximum of six (6) months ("Postponement Period") until such plat approval has been obtained; provided, however, such Postponement Period shall not extend the Purchaser's Contingencies, except for 3.2(d) if the plat is required for such approvals, as set forth in Section 3.2 (but Purchaser shall continue to have the right to object to title matters as set forth in Section 2.5 above and any New Contract as set forth in Section 2.6 above); and should Seller fail to obtain such final plat approval during such Postponement Period (unless due to the fault of Purchaser), then either party may terminate this Agreement, but in the event of such termination, the Earnest Money shall be returned to Purchaser. Notwithstanding anything else contained in this Agreement to the contrary, in the event Seller is unable to obtain plat approval, due to reasons attributable to Purchaser, by the end of the Postponement Period, then Seller may terminate this Agreement by notifying Purchaser in writing; and then the Earnest Money shall not be returned to Purchaser, but shall be paid over to Seller.

Comment [A13]: Such "Postponement Period" often involves an ability for a further extension only upon payment by the Purchaser to the Seller of further "hard" Earnest Money. Such payments may or may not be applicable toward the Purchase Price at Closing. See Section 3.4 below

ARTICLE III - INSPECTION AND CONTINGENCIES

3.1 Right of Inspection. During the period beginning upon the Effective Date and ending on the Closing Date, and subject to the prior approval of Seller and the underlying purchase agreement between Seller and the current owner of the Property, Purchaser and its agents shall have the right to access the Property to make physical and visual inspections, investigations and testing as the Purchaser deems necessary. Purchaser agrees that its on-site inspections of the Property shall be conducted at reasonable times and shall not unreasonably interfere with the use of the Property by Seller or the current owner of the Property. Purchaser shall pay all costs and

expenses of such inspections, investigations and testing. Purchaser shall repair and restore any damage to the Property caused by Purchaser's inspections, investigations and testing to substantially the same condition as existed prior to such entry. Purchaser agrees to indemnify and hold Seller and the Property harmless from all claims, costs, expenses or damages, including reasonable attorneys' fees, for damages resulting from such activities. This obligation of Purchaser shall survive Closing or any termination of this Agreement.

3.2 Purchaser's Contingencies. The "Contingency Date" shall be October 1, 2008. The obligations of Purchaser under this Agreement are contingent upon each of the following:

(a) Performance of Seller's Obligations. Seller shall have performed all of the obligations required to be performed by Seller under this Agreement, as and when required by this Agreement, on or before the Closing Date. Included within the obligations of Seller under this Agreement shall be the following:

- (1) Seller shall provide all closing documents referenced in Section 5.2.
- (2) The representations and warranties made by Seller in Section 4.1 shall be true and correct as if made on the Closing Date.
- (3) Subdivision Approval pursuant to Section 2.6 and 2.7.
- (4) Seller shall demolish and remove existing homes or any other structures on the Property, including removing abandoned septic and sewer systems, appropriately capping all wells and disconnecting all utility connections to the satisfaction of the City and any other appropriate governmental agency.

(b) Title and Survey. Title and Survey shall have been found acceptable by Purchaser in accordance with the requirements and terms of Article II.

(c) Testing. Purchaser, in its sole discretion, shall have determined, at its sole cost and expense, on or before the Contingency Date, that it is satisfied with the results of and matters disclosed by soil tests, well tests, engineering inspections, hazardous waste and environmental reviews of the Property, all of which shall be obtained at Purchaser's sole cost and expense.

(d) Government Approvals. Purchaser shall have obtained, at its sole cost and expense, on or before the Contingency Date, such governmental approvals or adequate assurance that Purchaser deems necessary in Purchaser's judgment in order to make use of the Property as Purchaser elects. Purchaser, in its sole discretion, shall have determined, at its sole cost and expense, on or before the Contingency Date, that all applicable zoning ordinances, building and use restrictions and codes, required building permits (including building permits for all units for Purchaser's Project), and any requirements with respect to licenses, permits and agreements necessary for the lawful use and operation of the Property as Purchaser elects (including approvals for ___ lots for Purchaser's Project), have been, can or will be issued and complied with.

(e) Hazardous Substances. Purchaser, in its sole discretion, shall have determined, on or before the Contingency Date, that the Property does not contain Hazardous Substances.

Comment [U14]: Purchaser's Counsel may consider exceptions to this indemnity. The most common is for disturbance of existing contamination. Seller's Counsel may consider requesting proof of CGL insurance, and/or conditioning the return of Earnest Money on lien waivers from those doing testing/investigations

Comment [A15]: Purchase Agreements often provide that the Purchaser has a "free look" period in which they can review the Property and satisfy themselves regarding contingencies and terminate the Purchase Agreement for any reason on or before the Contingency Date. Query whether such a provision makes the Purchase Agreement unenforceable for a lack of mutuality (i.e. an option without option money) See e.g. *Long Investment Co. v O'Donnell*, 3 Wis 2d 291, 88 N.W.2d 674, 676, (Wis. 1958). Subsequent to the Contingency Date, Earnest Money becomes truly non-refundable, unless Seller is unable to give clear title at Closing, or otherwise defaults.

Comment [U16]: Some Purchase Agreements designate Seller controlled matters as "Conditions Precedent" to Purchaser's obligations, rather than as "Contingencies"

Comment [U17]: Although there is a Haz. Mat. Rep by the Seller in Section 4.1(d), it is only to its knowledge and there is no agreement as to Seller removing Haz. Mat. that are found. The responsibility, time frames, etc. for remediation can be drafted but usually only if Haz. Mat are suspected (then generally the Purchaser wants remediation prior to Closing and the Seller wants an out if the costs are too high). If unexpected Haz. Mat. are found, then the parties may negotiate an amendment.

The term “Hazardous Substances” as referenced in this Agreement shall generally mean any pollutant or other toxic or hazardous waste, or other substance regulated, prohibited, restricted, or controlled by any applicable federal, state, county, or local statutes, laws, regulations, rules, ordinances, or codes relating to environmental matters, and shall include asbestos in any form, petrochemical wastes, PCB’s and urea formaldehyde products or any substance or material determined by duly constituted authority to be capable of posing a risk to the health and safety of persons.

(f) Use Restriction. Purchaser shall have determined on or before the Contingency Date that it is satisfied with the use restriction concerning a retail _____ to be recorded against that real estate as set forth in Section 4.1(j).

Comment [U18]: If the Purchaser is buying a pad in a shopping center, for a Burger King® it does not want to have the Seller (or its successors) sell a pad next door to a McDonalds®. Although the parties did not want to expend the energy and time to negotiate all of the “future” Permitted Exceptions, this one was too important to the Purchaser to be left totally up in the air. See Section 4.1(j)

(g) Tenant Approval. Purchaser shall have obtained, at its sole cost and expense, on or before the date that is sixty (60) days after the Effective Date, such tenant approvals or adequate assurance that Purchaser deems necessary in Purchaser’s judgment from _____ for use of the Property as a store location.

Comment [U19]: Sellers do not want to agree to this type of contingency, but here the Seller is likewise trying to negotiate for an Anchor Store (see comment 22), the compromise is to shorten the period for this Contingency.

(h) Site Development Agreement. Purchaser and Seller, on or before the Contingency Date, shall have agreed to the form of a site development agreement consistent with Section 4.1(k) below concerning the construction of certain improvements and the performance of certain other construction work within the Property and Development Site, which is to be executed at Closing.

(i) Buy-Back/Approval Agreement. Purchaser and Seller, on or before the Contingency Date, shall have agreed to the form of the Buy-Back Approval Agreement consistent with Section 4.2(c) below, which is to be executed at Closing.

Comment [U20]: Retail Centers do not want parties buying pads or parcels on speculation. So there is usually an agreement by the Purchaser that it will build and occupy a given store, or, as here, there is a Buy-Back right in favor of the Seller.

(j) Utilities. Purchaser shall be satisfied, in Purchaser's sole discretion, that all utility services are available to the Property.

(k) Financing. Purchaser shall have completed negotiation of an acceptable agreement with a mortgage lender of its selection, or shall have arranged to assume any mortgage financing outstanding with respect to the Property, on or prior to the Closing. Purchaser shall pay applicable financing fees and shall complete application for such financing or assumption, as the case may be, promptly after execution of this Agreement. Purchaser shall have sixty (60) days from the Effective Date to obtain a commitment for such financing which shall provide for a closing date not later than the Closing.

3.3 Purchaser’s Right of Termination. Seller agrees that in the event Purchaser determines that a contingency contained in Section 3.2 has not been satisfied on or before the date specifically set forth for such contingency, Purchaser shall have the right to terminate this Agreement by written notice to Seller on or before the respective date. Upon such termination, the Earnest Money shall be returned to Purchaser. If Purchaser acknowledges the satisfaction or waiver of a contingency by written notice to Seller, Purchaser shall no longer have a right to terminate this Agreement under this Section because of such contingency. If Purchaser does not provide a written notice of satisfaction or waiver of a contingency by the date required above, the

contingency shall be deemed **not** satisfied and this Agreement shall automatically terminate without further action by either party. All the contingencies set forth in Section 3.2 are specifically for the benefit of the Purchaser and Purchaser in its sole discretion can waive any such contingency.

Comment [U21]: Of Course, the parties can provide that failure to terminate by the Contingency Date will result in the Purchase Agreement becoming non-contingent and the Earnest Money automatically becoming "hard".

3.4 Right of Extension of the Governmental Approvals Contingency. Purchaser shall have the right to obtain two consecutive thirty (30) day extensions of only the governmental approvals contingency (Section 3.2(d)) upon written notice to Seller; provided however that such extensions shall be available to Purchaser only if Seller is able to obtain extensions of its "Option Agreement" (as defined in Section 4.2(g) below) to a date beyond any such Closing Date to occur subsequent to any such extension of the governmental approvals contingency (which extensions Seller shall utilize its best commercially reasonable efforts to obtain). Purchaser acknowledges that the Closing Date must occur prior to October 15, 2008, if Seller has not been able to extend its Option Agreement. Upon such extension by the Purchaser, the governmental approvals contingency date shall be changed to such extended date. To exercise the first thirty (30) day extension, Purchaser shall provide written notice prior to the expiration of the Contingency Date. To exercise the second thirty (30) day extension, Purchaser shall provide written notice prior to the expiration of the first thirty (30) day extension. As consideration for each extension, Purchaser shall pay concurrently with the notice the sum of Ten Thousand and no/100 Dollars (\$10,000.00), which sum shall constitute an additional nonrefundable fee ("**Extension Fee**") paid directly to Seller. The nonrefundable Extension Fee paid by Purchaser to extend the Governmental Approvals Contingency shall not be considered Earnest Money but shall be applied to the Purchase Price at Closing.

3.5 Conditions Precedent to Seller's Performance. The obligations of Seller under this Agreement are conditioned upon each of the following occurring:

(a) Purchase of Property. The acquisition by Seller of marketable fee simple title to the entire Development Site from the EDA, pursuant to the "Option Agreement" (as defined in Section 4.2(g) below), subject to the provisions of Section 4.2(g) to have title conveyed directly to Purchaser from the EDA.

(b) [Name of Anchor Store]. Seller shall have entered into and actually closed upon a sale agreement for space located within the Development Site for a [Name of Anchor Store] store.

Comment [U22]: In this Purchase Agreement, The Seller does not own the Property, but has an option, which it intends to exercise only if it can negotiate a transaction with its anchor store.

(c) Site Development Agreement. Purchaser and Seller, on or before the Contingency Date, shall have agreed to the form of a site development agreement consistent with Section 4.1(j) below concerning the construction of certain improvements and the performance of certain other construction work within the Property and Development Site, which is to be executed at Closing.

Comment [U23]: Note that this Condition and the next were also Contingencies for the Purchaser. Each party needs to have the right not to proceed if they cannot come to terms on these two Agreements.

(d) Buy-Back/Approval Agreement. Purchaser and Seller, on or before the Contingency Date, shall have agreed to the form of the Buy-Back Approval Agreement consistent with Section 4.2(c) below, which is to be executed at Closing.

3.6 Seller's Right of Termination. Purchaser agrees that in the event Seller determines that a condition set forth in Section 3.5 has not been satisfied on or before the Closing Date (as the same may be extended as provided herein), Seller shall have the right to terminate this Agreement by written notice to Purchaser on or before the Closing Date. Upon such termination, the Earnest Money and any Extension Fee shall be returned to Purchaser. If Seller does not provide a written notice of termination by the Closing Date, the contingency shall be deemed satisfied. All the contingencies set forth in Section 3.5 are specifically for the benefit of the Seller.

Comment [U24]: If there is "hard" Earnest Money, this Section needs to be reconciled as to whether this is an "EM Refund Condition". See Comment 2

3.7 Contingency Concerning Closing of the Property. Except as extended by Purchaser in this section, in the event that the Closing of the Property does not occur on or before April 30, 2009 because the Property has not been purchased by Seller as of said date, then this Agreement shall automatically terminate on such date and be of no further force and effect. Upon such termination, the Earnest Money and any Extension Fee shall be returned to Purchaser and neither Purchaser nor Seller shall have any liability to the other, except that each party shall remain liable for its breach or default of this Agreement and such liability shall survive termination of the Agreement. Notwithstanding anything to the contrary in this section, if Purchaser is not in default of this Agreement, then Purchaser may extend this contingency for ninety (90) days by written notice to Seller prior to the expiration of the contingency. Purchaser can extend this contingency for an unlimited number of times provided that only one extension can be exercised during a period.

Comment [U25]: With so many contingencies/conditions precedent on each side, it is prudent to have a drop dead date. Here however, the Purchaser wanted the right to "hang in there" as long as Closing was a possibility and its tenant was willing to do the same.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Seller. Seller represents and warrants to Purchaser as follows:

- (a) Organization and Authority. Seller is a limited liability company duly organized and validly existing in good standing under the laws of Minnesota. Seller has the requisite power and authority to enter into and perform this Agreement and to transfer all of the Property in accordance with this Agreement. The person signing this Agreement and Seller's closing documents on behalf of the Seller is authorized to do so. Seller's employer identification number, or social security number, as applicable, is _____.
- (b) Rights of Others to Purchase Property. The Seller has not entered into any other contracts for the sale of the Property, nor has Seller granted any rights of first refusal or options to purchase the Property or any other rights to others that might prevent the consummation of this Agreement and Seller will not enter into any such contracts relating to the sale of the Property with any other parties unless this Agreement is terminated pursuant to its terms.
- (c) Proceedings. There is no action, litigation, investigation, condemnation, eminent domain or proceeding of any kind pending or threatened against the Property to the best of Seller's knowledge as of the Effective Date.

(d) Hazardous Substances. To the extent any representations and/or warranties of the EDA with respect to Hazardous Substances made to Seller under the DA do not already run directly to Purchaser and are assignable to Purchaser, Seller hereby assigns the same to Purchaser. Seller does represent to Purchaser that Seller has knowledge that Hazardous Substances were removed from the Property and hauled off-site by the City of Overandover and/or EDA prior to Seller's Option Agreement with the EDA. Seller further represents that fill soil was replaced after the Hazardous Substances were removed.

(e) Disclosures Required. The following disclosures are required by law:

- (i) Statutory Methamphetamine Disclosure Statement. Pursuant to Minn. Stat. §152.0275, Seller certifies that as of the date hereof no methamphetamine production has occurred on the property.
- (ii) Well Disclosure. Seller certifies that as of the date hereof the Seller does not know of any wells on the Property.
- (iii) Sewage Treatment Disclosure. Seller certifies that there is no abandoned individual sewage treatment system on the Property and that sewage generated on the Property will either go to a facility permitted by the Minnesota Pollution Control Agency or to an individual sewage treatment system which is in compliance with applicable law.

(f) Title/Purchase of Property. Seller is not the current owner of the Development Site (of which the Property is a part). Seller has entered into the Option Agreement with the EDA for the Development Site. Seller shall exercise reasonable efforts to acquire the Development Site, subject to 3.5(b) above.

(g) Liens and Encumbrances. Upon Seller's receipt of the Purchase Price at Closing, the Property will be free and clear of all liens, security interests, encumbrances, easements, leases, mortgages, mechanics' liens or other restrictions, except the Permitted Exceptions. Notwithstanding anything else contained in this Agreement to the contrary, this representation shall merge with the deed to be delivered at Closing.

(h) Governmental Approvals. Seller shall cooperate in all reasonable respects with Purchaser in obtaining governmental approvals, and shall execute such applications, permits and other documents as may be reasonably required. Seller shall not be entitled to any compensation in connection with such cooperation. Seller shall not be required to expend any funds or monies to obtain governmental approvals for Purchaser's intended use of the Property.

(i) Access to Records. Seller shall provide to Purchaser, within sixty (60) days after the Effective Date, copies of all existing soil and environmental tests, engineering reports,

surveys and other pertinent documents relating to the Property which are in Seller's possession or control.

(j) Use Restriction. Seller shall, record a use restriction (or shall include the use restriction in a declaration or operation and easement agreement) against the following real estate: i) that portion of the Development Site as identified on Exhibit A as "Building 2" and "Building 3" and ii) the Northeast approximately 70,000 square feet of area of Lot _____, Block _____, [Name of Addition], Anoka County, Minnesota as approximately shown on the attached Exhibit A as the "Future Building/Parking" (the "**Development Lot**") to be separately platted (collectively the "**Use Restriction Land**"). Said use restriction shall be recorded against the Use Restriction Land identified in clause i) on or before the Closing Date; and against the _____ Development Lot at such time as it is separately platted as a legal lot, but prior to its conveyance to a third party or its development. The use restriction shall contain language substantially similar to the following:

So long as the Property is utilized as a retail _____ and Purchaser, its successors or assigns, is not in default under any term or condition of this use restriction, no portion of the Use Restriction Land shall be used for the operation of a retail _____ without the prior written approval of Purchaser, its successors or assigns, which approval may be withheld in the sole discretion of Purchaser, its successors or assigns. The aforesaid restriction shall not apply to any [Name of store] store or any other store that is greater than 45,000 square feet located within the Use Restriction Land. If purchaser discontinues the use of the Property as a retail _____ for a period of ninety (90) continuous days, Seller, its successors or assigns, shall notify Purchaser, its successors or assigns, that unless upon receipt of such notice, Purchaser, its successors or assigns can demonstrate (1) or (2) below, the restriction set forth in this Section shall terminate. Notwithstanding anything to the contrary contained in this section, the restriction set forth in this section shall not terminate if the aforesaid use is discontinued for a period of ninety (90) or more continuous days resulting from (1) substantial remodeling of the Property and Purchaser proceeds with diligence to complete the remodeling; or (2) an event of *force majeure*. Upon termination of this restriction, any portion of the Use Restriction Land may be used as a retail _____. The aforesaid restriction may be waived or terminated in writing by the Purchaser and Seller, their respective successors or assigns.

Comment [U26]: This convoluted description was necessary because the Use Restriction Land was not to be applicable to the Anchor store, and the land was not yet platted into the lot to be used by the Anchor store.

(k) Site Development Agreement. Seller shall use reasonable efforts to agree to the form of a mutually acceptable site development agreement with Purchaser on or before the Contingency Date. The site development agreement shall be executed at Closing and shall provide, among other matters: i) remedies in the event of default by either party; ii) the repurchase right as set forth in Section 4.2(c) below; iii) require Seller, at its cost and expense, to provide plans to Purchaser for certain grading, landscaping, utilities, storm ponds and roadways to be constructed within the Property and/or Development Site ("**Site Plans**"). Purchaser shall have the opportunity to review and approve these Site

Plans as they relate to the Property, which approval shall not be unreasonably withheld, delayed or conditioned. The site development agreement shall also provide that Seller shall, at its cost and expense, remove existing improvements (including any foundations) on the Property and perform rough grading of the Property together with wetland mitigation, soil correction and compaction for a building pad area (using conventional spread footings), and soil correction and compaction for a parking lot, all in accordance with the Site Plans. The building pad area shall be 11 inches below the grade shown on the Site Plans for the remainder of the Property. Seller shall substantially complete this grading on the Property, in connection with the grading of the Development Site, but prior to the installation of the utilities and access road as set forth hereafter; and in no event (other than matters beyond Sellers control) later than 60 days subsequent to the Closing Date. The site development agreement shall also provide that Seller shall, at its cost and expense, construct water, sanitary sewer and storm sewer utility lines to a connection point within ten (10) feet of the boundary of the Property and sufficient in line size for Purchaser's use of the Property as contemplated under this Agreement, including a six inch (6") Fire Line, all in accordance with the Site Plans. Seller shall coordinate the substantial completion of the construction of the water, sanitary sewer and storm sewer utility lines with Purchaser so that the same occur on or before substantial completion of a prototype _____ Store with a retail _____ that Purchaser intends to develop on the Property ("**Purchaser's Project**"). The site development agreement shall further provide that Seller shall, at its cost and expense, construct certain access roads to publicly dedicated and/or private streets and certain offsite improvements for pedestrian and vehicular traffic, generally as shown on Exhibit A. Seller shall coordinate the substantial completion of the construction of such access roads and related improvements with Purchaser so that the same occur on or before substantial completion of Purchaser's Project. Except as set forth above and in Section 6.2, it is understood that Purchaser shall not be responsible to construct (or for the cost to construct) the offsite improvements (*i.e.* improvements to the Development Site outside of the Property) required under the development agreement between Seller and the City of Overandover. Purchaser shall be responsible for any landscaping which may be required under the development agreement with the City (whether such development agreement is with Purchaser or Seller) for the Property itself. In the event that any improvements required to be constructed by Seller under the site development agreement are not constructed prior to the Closing Date, Seller shall not be required to establish any escrow account or provide any additional security to Purchaser.

(l) Sight Line Restriction. Seller shall, on or before the Closing Date, record a building structure set back restriction against the _____ Lot to preserve the sight lines to the Property from and to Hard Knocks Boulevard NW, in the approximate area shown by the diagonal line on the attached Exhibit A.

(m) Right In/Right Out. To the extent requested by Purchaser, Seller shall use its best commercially reasonable efforts to assist Purchaser in obtaining approval from the City of Overandover, prior to the Contingency Date, for the right to have a curb-cut installed on the private street bordering the Westerly side of the Property known as Easy Street, which

could be utilized for a right in/right out vehicular ingress/egress to and from the Property and Easy Street.

(n) Option Expiration Date. Seller has until October 15, 2008 to exercise its rights under the Option Agreement.

(o) Anti-Terrorism Representations. Neither Seller nor, to the Knowledge of Seller, any person or entity holding any legal or beneficial interest whatsoever in Seller (whether directly or indirectly), nor, to the Knowledge of Seller, any Seller employees, agents or representatives, is (a) named on any list of persons issued by the Office of Foreign Assets Control of the United States Department of the Treasury (“**OFAC**”) pursuant to Executive Order 13224 or the Annex thereto issued by the President of the United States, as amended and as in effect on the Closing Date, or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the “**OFAC Lists**”), or any other laws, policies, lists or other requirements of any Governmental Entity addressing or in any way related to terrorist acts or acts of war, including the Terrorism Sanctions Regulations (31 C.F.R. Part 595), the Terrorism List Governmental Sanctions Regulations (31 C.F.R. Part 596), the Foreign Terrorist Organizations Sanctions Regulations (31 C.F.R. Part 597) and the Foreign Narcotics Kingpin Sanctions Regulations (31 C.F.R. Part 598) (collectively, the “**Anti-Terrorism Laws**”), or (b) included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons referred to or described in any OFAC Lists, or (c) otherwise in violation of any Anti-Terrorism Laws. None of the Property or interests in property of Seller is subject to being “blocked” under any Anti-Terrorism Laws. Neither the execution nor performance of this Agreement by Seller is or will be in violation of any Anti-Terrorism Laws.

The representations and warranties contained in this Section shall be true and correct on the Effective Date and the Closing Date. Subject only to the express representations and warranties contained herein, Purchaser is purchasing the Property “as is” and “where is” based on its own investigation and inquiry and is not relying on any representation or warranty of Seller. Seller shall indemnify and hold Purchaser harmless from, any expenses or damages, including reasonable attorneys’ fees, that Purchaser incurs by reason of, or arising out of, any breach by Seller of any of the above representations and warranties. This indemnification obligation of Seller shall survive Closing or any termination of this Agreement for a period of one year from the Closing Date.

4.2 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller as follows:

(a) Organization and Authority. Purchaser is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware. Purchaser has the requisite power and authority to enter into and perform this Agreement and to acquire all of the Property in accordance with this Agreement. The person signing

this Agreement on behalf of the Purchaser is authorized to do so. Purchaser's employer identification number is _____.

(b) Purchaser Solvency. Purchaser is solvent and has the financial capacity to consummate the transaction contemplated hereby.

(c) Anti-Terrorism Representations. Neither Purchaser nor, to the knowledge of Purchaser, any person holding any legal or beneficial interest whatsoever in Purchaser (whether directly or indirectly), is (a) named on any list of persons issued pursuant to any Anti-Terrorism Laws, or (b) included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons referred to or described in any OFAC Lists, or (c) otherwise in violation of any Anti-Terrorism Laws. Neither the execution nor performance of this Agreement by Purchaser is or will be in violation of any Anti-Terrorism Laws.

(d) Indemnification for Purchaser's Investigation, Studies and Engineering. Purchaser shall promptly pay when due any and all charges for engineering or other studies or investigations which are specifically commissioned or requested by Purchaser.

(e) Use of Property. Purchaser intends to develop and use the Property for the operation of a prototype _____ Store with a retail _____ and for related purposes. In the event that Purchaser does not begin construction of a _____ Store at the Property within one year of the Closing Date, Seller shall have the right to buy back the Property for the Purchase Price plus reasonable third party due diligence costs incurred by Purchaser related to the development of the Property as a _____ Store, all as set forth in the site development agreement. Purchaser shall only construct improvements within the Property in accordance with the site development agreement or operation and easement agreement and pursuant to a site plan approved by Seller, which approval shall not be unreasonably withheld, conditioned or delayed. This Representation shall survive the Closing and shall be memorialized in a separate agreement to be recorded at Closing (the "**Buy-Back/Approval Agreement**").

(f) Governmental Approvals. Purchaser shall cooperate in all reasonable respects with Seller in obtaining governmental approvals, and shall execute such applications, permits and other documents as may be reasonably required for the development of the Development Site. Purchaser shall not be entitled to any compensation in connection with such cooperation. Purchaser shall not be required to expend any funds or monies to obtain governmental approvals for Seller's intended use of the Development Site.

(g) Employee Benefit Plan. Purchaser is not acquiring the Property with the assets of an employee benefit plan as defined in the Employee Retirement Income Security Act of 1974.

(h) Site Development Agreement. Purchaser shall use reasonable efforts to enter into a mutually acceptable site development agreement with Seller on or before the Contingency Date as set forth in Section 4.1(k).

(i) Ownership of Property. Purchaser acknowledges that Seller does not currently own the Property, has not had possession of the Property at any time prior to the date hereof, but has an option to acquire the Property from the EDA pursuant to a Development Agreement dated _____ ("DA"), and an Option Agreement dated _____ as amended ("**Option Agreement**"). On the Closing Date, Purchaser agrees (if Seller has not yet obtained fee simple title to the Property from the EDA) to accept a direct deed from the EDA (in substantially the form as set forth in Exhibit C, attached hereto) of the Property *in lieu* of the deed required of Seller by Subsection 5.2 of this Agreement. Purchaser agrees to cooperate and comply with the DA, to the extent applicable to the Property and its Project.

Comment [U27]: By having the Purchaser agree to accept a direct deed, the transaction is essentially transformed into Seller transferring for the Purchase Price, its right to exercise the Option Agreement with respect to this Property, thus saving the payment of double deed taxes. This of course also requires to Option Agreement to have been drafted in such a way so as to allow this.

The representations and warranties contained in this Section shall survive Closing and shall be true and correct on the Effective Date and Closing Date. Purchaser shall indemnify and hold Seller harmless from, any expenses or damages, including reasonable attorneys' fees, that Seller incurs by reason of, or arising out of, any breach by Purchaser of any of the above representations and warranties. This indemnification obligation of Purchaser shall survive Closing or any termination of this Agreement.

ARTICLE V - CLOSING

5.1 Time and Place. Except as extended pursuant to this Agreement or mutually agreed upon by the parties, the closing of the purchase and sale transaction contemplated by this Agreement ("**Closing**") shall occur on a date ("**Closing Date**") that is the later of thirty (30) days after the Contingency Date or the date of the closing of the purchase of the Development Site by Seller, but prior to the expiration of Seller's Option Agreement and on or after the satisfaction of Seller's contingencies of 3.5 Section above. The Closing shall occur at 10:00 am at the offices of the Title Company, or at time and place mutually agreed upon by the parties. Purchaser agrees that the Closing shall be simultaneous with the closing of the purchase of the Development Site if reasonably accommodable within the terms and conditions of this Agreement. In the event the Closing does not happen on or before April 30, 2009, Section 3.7 shall apply.

Comment [U28]: The parties almost always choose another location.

5.2 Seller's Obligations at Closing. At the Closing, Seller shall:

(a) Deed and Possession. Deliver to Purchaser a duly executed limited warranty deed in recordable form, conveying to Purchaser fee simple title to the Property and all rights appurtenant, free and clear of all encumbrances except the Permitted Exceptions. Seller shall also deliver possession of the Property to Purchaser at the Closing.

(b) Authority. Deliver to Purchaser such evidence as Purchaser's counsel and/or the Title Company may reasonably require as to the authority of the persons executing documents on behalf of Seller.

(c) Seller's Affidavit. Deliver to Purchaser an affidavit duly executed by Seller that on the Closing Date, there are no outstanding unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Property; that there has been no skill, labor or material furnished to the Property at the request of Seller for which payment has not been made and that there are no unrecorded interests in the Property known to Seller.

(d) FIRPTA Affidavit. Deliver to Purchaser an affidavit duly executed by Seller that Seller is not a "foreign person" and containing such other information as required by Section 1445 of the Internal Revenue Code.

(e) IRS Designation Agreement. Deliver to Purchaser an agreement designating the Title Company as the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.

(f) Well Certificate. If required by law, deliver to Purchaser a certificate signed by Seller warranting to the best of Seller's knowledge that there are no wells on the Property, or, if there are wells, a certificate in the form required by law.

(g) Bring-down Certificate. Deliver to Purchaser an affidavit duly executed by Seller that reaffirms the truth and accuracy of Seller's representations and warranties set forth in this Agreement as of the Closing Date.

(h) Site Development Agreement. The parties shall mutually execute the site development agreement which has been previously agreed to prior to the Contingency Date.

(i) Other Documents. Deliver to Purchaser all other documents reasonably necessary to consummate the transaction contemplated by this Agreement.

(j) Settlement Statement. A Closing settlement statement reflecting the financial provisions of the Closing, consistent with the provisions of this Agreement.

5.3 Purchaser's Obligations at Closing. At Closing, Purchaser shall:

(a) Purchase Price. Pay to Seller the full amount of the Purchase Price, as increased or decreased by prorations or adjustments set forth in this Agreement, in cash, by wire transfer of immediately available funds, or by a Title Company check. Purchaser and Seller agree that the Earnest Money shall be delivered to Seller at the Closing and applied towards payment of the Purchase Price.

(b) Authority. Deliver to Seller such evidence as Seller's counsel and/or the Title Company may reasonably require as to the authority of the persons executing documents on behalf of Purchaser.

(c) IRS Designation Agreement. Deliver to Seller an agreement designating the Title Company as the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.

(d) Site Development Agreement. The parties shall mutually execute the site development agreement which has been previously agreed to prior to the Contingency Date.

(e) Buy-Back/Approval Agreement. Deliver to Seller the Buy-Back/Approval Agreement which has been previously agreed to prior to the Contingency Date.

(f) Other Documents. Deliver to Seller all other documents reasonably necessary to consummate the transaction contemplated by this Agreement.

(g) Settlement Statement. A Closing settlement statement reflecting the financial provisions of the Closing, consistent with the provisions of this Agreement.

5.4 Closing Costs. Seller and Purchaser agree to the payment of costs in connection with the Closing as follows:

(a) Closing Fee. On the Closing Date, Seller and Purchaser each will pay one-half of any reasonable and customary fee or charge imposed by the Title Company or other closing agent for the Closing, including escrow fees.

(b) Deed Tax. On the Closing Date, Seller shall pay all state deed tax for the recording of the deed to be delivered by Seller under this Agreement. The Purchaser shall pay all mortgage registry tax for the recording of any mortgage associated with Purchaser's financing.

(c) Recording Costs. On or before the Closing Date, Seller shall pay the cost of recording all documents necessary to place record title in the condition warranted by Seller in this Agreement. Purchaser will pay the cost of recording the deed conveying the Property to Purchaser.

(d) Attorneys' Fees. Purchaser and Seller will pay their own attorneys' fees for the transaction contemplated by this Agreement, except as set forth in Section 10.15.

(e) Other Costs. Purchaser and Seller shall pay any other costs required to be paid by such party pursuant to this Agreement, including but not limited to those set forth in Article VI below, and shall authorize the Title Company to adjust the Purchase Price by such amount.

5.5 Escrow Closing/Closing Instructions. Purchaser and/or Seller may close this transaction by deed and money escrow. Purchaser and/or Seller may require the Title Company to follow supplemental closing instructions; provided such closing instructions do not conflict with the closing requirements set forth in this Agreement, or are consented to in writing by the other party.

Comment [U29]: Sit down closings with documents being executed by the clients at a closing table seem to be getting fewer and farther between. But with a complicated closing with a real deadline (*viz.* the expiration of the Option Agreement) that type of closing should be an option.

ARTICLE VI - REAL ESTATE TAXES, SPECIAL ASSESSMENTS AND DEVELOPMENT COSTS

6.1 Real Estate Taxes and Special Assessments. On or before the Closing Date, Seller shall pay all general real estate taxes for the Property due and payable in years prior to the year of Closing. Seller shall also pay, on or before the Closing Date, all deferred taxes for the Property (including green acre taxes) and all special assessments levied or pending against the Property as of the Closing Date, including, without limitation, any installments of special assessments (or estimates thereof) and interest thereon payable after the Closing Date. General real estate taxes for the Property due and payable in the year of Closing shall be apportioned between Purchaser and Seller based on a 365 day calendar year as if Purchaser were vested with title to the Property on the Closing Date. In the event the actual amount of general real estate taxes or special assessments owed by Seller has not been determined, Seller shall pay the general real estate taxes and special assessments owed by Seller based on, at the option of Purchaser, an estimate determined by the proper governmental authority or one hundred ten percent (110%) of the general real estate taxes and special assessments contained in the most recent tax bill. Upon final determination of the actual amount of such general real estate taxes or special assessments, Seller or Purchaser shall immediately pay to the other the amount necessary to reconcile the estimate with the actual amount. The obligations of Purchaser and Seller contained in this Section shall survive Closing or any termination of this Agreement. Notwithstanding anything to the contrary contained in this Section, Purchaser shall be responsible for its costs and expenses set forth in Section 6.2.

6.2 Development Costs. Seller shall pay the following costs related to the initial development of the Development Site by Seller, including, but not limited to: (a) any and all soft and hard costs for work required to be completed under a development agreement between Seller and the City of Overandover, including any costs to install the ponds and private access roads shown generally on Exhibit A; (b) any costs related to the subdivision of the Development Site and Property in accordance with this Agreement; and (c) any costs for any site work to be performed by Seller under this Agreement. Notwithstanding anything to the contrary contained in this section, Purchaser shall pay all costs related to the specific development and use of the Property by Purchaser, including, but not limited to, any further subdivision of the Property by Purchaser, all utility connection fees (including SAC and WAC) specific to the connection of any building located at the Property, landscaping costs within the Property (whether required by any development agreement between Seller and the City of Overandover or the EDA or required as part of Purchaser's permits and approvals) and park dedication fees for the Property. The obligations of Purchaser and Seller contained in this Section shall survive Closing or any termination of this Agreement.

Comment [U30]: If the Purchaser knows how it will further subdivide the Property, it can be done by the Seller with some cost sharing by the Purchaser.

ARTICLE VII - COMMISSIONS

7.1 Brokerage Commissions. Purchaser and Seller agree that the other party shall not be liable for any real estate commissions resulting from a party’s actions with respect to the transaction contemplated under this Agreement. Purchaser and Seller agree to indemnify and hold harmless the other party from any loss, liability, cost, damage or expense resulting from, or relating to, any claim for such commissions or finder’s fees. This obligation of Purchaser and Seller shall survive Closing or any termination of this Agreement. Except as stated herein, each party represents and warrants that no commission is being paid by either party with respect to this transaction, except Seller is paying a commission to _____ and _____ Brokerage LLC.

ARTICLE VIII - CASUALTY AND EMINENT DOMAIN

8.1 Casualty. Intentionally **Omitted**.

Comment [U31]: Of course, flood, earthquake and even tornado events could affect even “unimproved” real estate such as to make a Purchaser want to re think its purchase. The parties may think such risk too minimal to be dealt with.

8.2 Eminent Domain. If eminent domain proceedings are commenced prior to the Closing Date against all or any material part of the Property, Seller shall immediately give notice to Purchaser, together with a legal description of the property being taken, and Purchaser shall have the right, at its option, to terminate this Agreement by giving **notice**. If Purchaser gives notice of termination of the Agreement under this Section, the Agreement shall terminate and the Earnest Money shall be returned to Purchaser. If Purchaser does not give such notice within fifteen (15) days following Seller’s notice, then the parties shall proceed to Closing, with no reduction in the Purchase Price, and Seller shall assign to Purchaser all of Seller’s right, title and interest to appear in and receive any award related to the Property from the eminent domain proceeding. In the event any award related to the Property is made prior to Closing, Seller shall place such award in escrow with the Title Company, which will release such award to Purchaser upon Closing or to Seller upon termination of this Agreement.

Comment [U32]: Some Purchase Agreements make the right to terminate mutual.

ARTICLE IX - DEFAULT AND REMEDIES

9.1 Default. Purchaser or Seller shall be in default under this Agreement if either fails to observe, perform or comply with any term, condition or obligation of this Agreement and such failure continues for a period of ten (10) days after written notice of the failure to the Purchaser or Seller from the other party (except if the remedy being exercised is the termination of this Agreement pursuant to law, then said ten (10) day notice shall be waived and only the thirty (30) day notice as so required by Minnesota Statutes §559.21 shall need be given).

9.2 Remedies. Upon default by a Purchaser or Seller, the other party shall have the following remedies:

- (a) Purchaser’s Remedies. Upon Seller’s default under this Agreement, then the remedies available to Purchaser shall be (1) to terminate this Agreement pursuant to law by written notice to Seller and to receive the return of the Earnest Money, and (2) to seek

specific performance of this Agreement on or before six (6) months after Seller's default during which time the Closing will be postponed until such time as Seller has cured its default. Purchaser expressly waives its rights to seek damages in the event of Seller's default. In the event the default of Seller is a breach of the representations and warranties of Section 4.1 above, then: i) with respect to any matter of which Purchaser had actual knowledge at Closing, Purchaser shall be deemed to have waived any such breach; or ii) with respect to any matter of which Purchaser had no knowledge at Closing, Purchaser's sole remedy will be for actual damages incurred due to such breach and in no event shall Purchaser be entitled to consequential or punitive damages or lost profits or other speculative damages. This Section shall survive Closing or any termination of this Agreement for a period of one year and thereafter shall be deemed time barred and waived, unless suit be commenced prior to said period.

Comment [U33]: Many Purchase Agreements provide that the only remedies are to terminate or specific performance, which leaves remedies for a breach of warranty claim ambiguous.

(b) Seller's Remedies. Upon Purchaser's default under this Agreement, then Seller may terminate this Agreement pursuant to law by written notice to Purchaser and upon such termination receive the Earnest Money (cash plus the promissory note). Nothing contained herein shall be deemed to prohibit (and Purchaser specifically consents to) the collection of such Thirty-Five Thousand and no/100 Dollars (\$35,000.00) promissory note subsequent to such termination of this Agreement, plus all reasonable costs related to collecting the Earnest Money, including, without limitation, reasonable attorneys' fees and legal costs and collection costs ("**Seller Damages**"). Upon such termination and payment to Seller of: i) the cash portion of the Earnest Money by the Title Company, ii) the payment by Purchaser of the promissory note portion of the Earnest Money, and iii) any Seller Damages by Purchaser (collectively i) through iii) shall be referred to as the "**Liquidated Damages**"), each party shall be released from all liability hereunder and neither party shall have further rights or obligations under this Agreement. Seller expressly waives its rights to seek damages in excess of the Liquidated Damages in the event of Purchaser's default. The parties have agreed to these Liquidated Damages because of the difficulty of ascertaining Seller's actual damages given the uncertainties of the real estate market, fluctuating lease rates and property values and differences of opinion with respect to such matters. The ability of Seller to exercise the rights and remedies of this Section shall survive Closing or any termination of this Agreement for a period of one year, but shall be time barred and waived unless suit is commenced prior to said one year.

Comment [U34]: Obviously, cash Earnest Money is to be preferred by Sellers over a promissory note.

ARTICLE X - MISCELLANEOUS

10.1 Successors or Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns.

10.2 Severability. In the event any provision of this Agreement shall be held to be invalid, unenforceable or in conflict with the law of the jurisdiction, the remaining provisions of this Agreement shall continue to be valid, enforceable and not be affected by such holding.

10.7 Third Party Beneficiaries. The provisions of this Agreement and of the documents to be executed and delivered at Closing are for the benefit of Purchaser and Seller only and are not for the benefit of any third party. No third party shall have the right to enforce the provisions of this Agreement or the documents to be executed and delivered at Closing.

10.8 Termination. If this Agreement is terminated by either Purchaser or Seller pursuant to a right of termination expressly set forth in this Agreement, neither party shall have any further rights or obligations under this Agreement, except for the obligations concerning the Earnest Money as set forth in this Agreement and to the extent any rights or obligations expressly survive such termination.

10.9 Time of Essence. Time is of the essence of this Agreement.

10.10 Calculation of Time Periods. Except as specifically set forth in this Agreement, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is on a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the state where the Property is located.

10.11 Governing Law. This Agreement shall in all respects be interpreted, construed and enforced according to the laws of the state where the Property is located.

10.12 Counterparts and Facsimile Copies. This Agreement may be executed separately and independently in any number of counterparts and each and all of which together shall be deemed to have been executed simultaneously and regarded as one agreement dated the Effective Date. A facsimile signature on a facsimile copy of this Agreement shall have the same force and effect as an original and shall bind a party to the terms and conditions hereof; however, all parties agree to execute and exchange four original counterparts of the Agreement signed by facsimile.

10.13 IRC §1031 Exchange. Either party (the "**Exchanging Party**") may consummate the sale of the Property as part of a so-called like kind exchange (the "**Exchange**") pursuant to §1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that (i) the Exchanging Party shall effect the Exchange through an assignment of its rights under this Agreement to a qualified intermediary, but the Exchanging Party will remain liable notwithstanding such assignment; (ii) the other party (the "**Non-Exchanging Party**") shall not be required to take an assignment of this Agreement for the replacement property, be required to acquire or hold title to any real property for purposes of consummating the Exchange or be required to incur any liability or expend any additional costs or expenses to effect the Exchange; (iii) the Date of Closing will not be extended to effectuate the Exchange without the consent of both parties; (iv) the Exchange shall not be a condition or contingency to Closing; (v) the Non-Exchanging Party shall not by this Agreement or acquiescence to the Exchange be responsible for compliance with or be deemed to have warranted to the Exchanging Party that the Exchange in fact complies with §1031 of the Code; and (vi) subject to the other provisions of this Section, the Non-Exchanging

Party agrees to reasonably cooperate with the Exchanging Party, at the Exchanging Party's sole cost and expense, to the extent necessary to consummate the Exchange.

10.14 Captions. The captions and headings contained in this Agreement are for convenient reference only and shall not affect the interpretation of this Agreement.

10.15 Construction. Seller and Purchaser and their respective counsel have reviewed and revised this Agreement. Seller and Purchaser acknowledge that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10.16 Attorneys' Fees and Costs. In the event of litigation arising out of breach or claimed breach of this Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses incurred as a result, including attorneys' fees and costs.

10.17 Survival. Except to the extent set forth in this Agreement, all of the terms of this Agreement, including, without limitation, the representations and warranties contained herein, shall survive and be enforceable after the Closing and delivery of the deed for a period of four (4) months after the Closing Date.

10.18 Exhibits. Exhibit A is for informational purposes only, and is not a warranty, representation or agreement that the Property or Development Site will be developed as the retail center shown on the exhibit, or that any buildings, common areas or occupants shown on the exhibit will be located within the Development Site.

10.19 Entire Agreement/Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and fully supersedes all prior written or oral agreements between the parties with respect to such matters. No other agreement, statement or promise made by any party and no amendment, modification or other change of any provision of this Agreement shall be effective unless in writing signed by the parties.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Purchase and Sale Agreement as of the Effective Date.

SELLER:

Developer,
a Minnesota limited liability company

By: _____
_____, Executive Vice President

By: _____
_____, Vice President

PURCHASER:

Pad Buyer,
a Delaware limited liability company

By: _____
Print: _____
Its: Manager

Exhibit A to Purchase and Sale Agreement

**Proposed Legal Description of Property together with a
Depiction of Property and Development Site**

Proposed Legal Description: Lot _____, Block _____, _____ Addition, Anoka
County, Minnesota

Depiction: A depiction of the Property and Development Site is attached.

EXHIBIT A

Exhibit B to Purchase and Sale Agreement

**Proposed \$35,000 Earnest Money Promissory Note
PROMISSORY NOTE**

\$35,000.00

May ____, 2008

For value received the undersigned, **Pad Buyer**, a Delaware limited liability company (the "**LLC**"), promises to pay to the order of Developer, a Minnesota limited liability company, (the "**Noteholder**") at _____ Office Center, _____ Street, Bloomington, MN. 55431, the principal sum of Thirty-five Thousand and No/100ths Dollars(\$35,000.00), with interest thereon computed on the basis of actual days elapsed, but utilizing an assumed three hundred sixty (360) day year, at a per annum interest rate of zero percent (0.0%) until demand is made for payment hereof, and thereafter at the rate of four and three fourths percent (4.75%) per annum. The entire unpaid principal balance of this Note plus all interest accruing thereafter shall be due and payable in full upon Noteholder's demand.

If the Noteholder demands payment of the indebtedness evidenced by this Note and the same is not immediately paid, then the undersigned agrees to pay all costs of collection, including attorney's fees.

The undersigned hereof waive demand of payment, presentment for payment, notice of dishonor, protest and notice of protest. The Noteholder may rearrange, adjust, and extend the times and amounts of payment of interest and/or principal of this Note by agreement with the LLC, without notice to or consent of and without releasing any party liable hereon. The undersigned agrees to pay this Note according to its terms.

None of the terms and provisions contained in this Note shall ever be construed to create a contract for use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Minnesota. The undersigned or any guarantor, endorser of other party now or hereafter becoming liable for the payment of this Note shall never be required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Minnesota, and the provisions hereof and of any other instrument executed in connection herewith which may be in apparent conflict with this paragraph. In the event the Noteholder shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by the laws of the State of Minnesota, all such sums deemed to constitute interest in excess of the maximum rate shall, at the option of the Noteholder, be credited to the payment of principal or returned to the undersigned.

MAKER: Pad Buyer

By: _____
Its: _____

Exhibit C to Purchase and Sale Agreement

Proposed Deed

(RESERVED FOR RECORDING INFORMATION)_____

DEED

STATE DEED TAX: \$_____

Date: _____, 2008

FOR VALUABLE CONSIDERATION, _____, a body corporate and politic under the laws of the State of Minnesota, Grantor, hereby conveys and warrants to Pad Buyer, a limited liability company under the laws of Delaware, Grantee, real property in Anoka County, Minnesota, described as follows:

See attached Exhibit A.

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:
See Exhibit B.

This conveyance is expressly made subject to the following rights, which are hereby created and reserved by the Grantor:

The Grantor shall have the right to repurchase the real property conveyed hereby pursuant to the terms and conditions of that certain Development Agreement, dated September 25, 2001, as amended. Said right to repurchase shall terminate upon the recording of a Certificate of Completion from Grantor as provided by the provisions of Section 4.4 of said Development Agreement.

Grantor certifies that Grantor does not know of any wells on the described real property.

(SIGNATURES ON NEXT PAGE)

By _____
, President

By _____
, Executive Director

STATE OF MINNESOTA)
)SS.
COUNTY OF ANOKA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008,
by _____ and _____, the President and Executive
Director, respectively, of _____, a body corporate and politic
under the laws of Minnesota, on behalf of the municipal corporation.

Notary Public

Check here if all or part of the land is Registered
(Torrens)

Tax Statements for the real property described in this
instrument should be sent to (Include name and address of
Grantee):

.THIS INSTRUMENT DRAFTED BY:
LINDQUIST & VENNUM P.L.L.P. (LBG)
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 371-3211