

Commercial Purchase Contract



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COMMERCIAL PURCHASE CONTRACT

Contract Number _____

Between
THE SELLER and **THE BUYER**
Name _____ Name _____
Name _____ Name _____

1. THE PROPERTY

1.1 The Property is:

(a) the land located at:

Municipal address: _____

Legal description: Plan _____ Block/Unit _____ Lot _____

Excepting thereout all mines and minerals unless otherwise stated _____

(the "Lands")

(b) all buildings and other improvements on the Lands (the "Buildings");

(c) these unattached goods: _____

(d) the attached goods except for: _____

(e) the following tenancies where the seller is the landlord and the buyer is assuming these leases ("Accepted Tenancies"), or as described in the schedules selected as attached in clause 9.1

If the Property is a condominium, the legal description and details are as described in the Commercial Condominium Property Schedule, selected as attached in clause 9.1 below.

2. PURCHASE PRICE AND COMPLETION DAY

2.1 The purchase price is: \$ _____ plus GST (the "Purchase Price").

2.2 With respect to GST payable if the buyer is:

(a) not a GST registrant under the *Excise Tax Act* (Canada), then the buyer shall remit the applicable GST to the seller's lawyer on or before the Completion Day. The seller shall remit the GST to the Receiver General as required by law, and will indemnify and save the buyer harmless from and against all costs and expenses (including legal fees on a solicitor/client full indemnity basis) that the buyer may incur or become subject to as a result of the seller's failure to remit GST pursuant to this clause; or

(b) a GST registrant under the *Excise Tax Act* (Canada), then the buyer will provide the seller with proof and details of the buyer's GST registration before the Completion Day. The buyer will assume the liability for all GST payable pursuant to the *Excise Tax Act* (Canada) accruing in respect of this transaction, and will indemnify and save the seller harmless from and against all costs and expenses (including legal fees on a solicitor/client full indemnity basis) that the seller may incur or become subject to as a result of the buyer failing to comply with its obligations pursuant to this clause.

2.3 This contract will be completed, the Purchase Price fully paid, and vacant possession given to the buyer at 12 noon on

PREVIOUS PAGE

NEXT PAGE

Commercial Purchase Contract



HOVER over
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information

_____, 20____ (the "Completion Day"), subject to the rights of the tenants in the Accepted Tenancies, if any.

- 2.4 After the date that acceptance of this contract is communicated, the seller shall not make any changes to any of the leases pertaining to the Accepted Tenancies without the buyer's consent in writing.
- 2.5 The seller represents and warrants that on the Completion Day, the Property will be in substantially the same condition as when this contract was accepted and the attached and unattached goods will be in normal working order.

3. GENERAL TERMS

- 3.1 In fulfilling this contract, the seller and buyer agree to act reasonably and in good faith and agree that:
- (a) unless the seller, buyer or both have agreed to alternate representation, the seller and buyer are each represented by their own sole agent and those agents have no agency responsibility to the other party;
 - (b) the laws of Alberta apply to this contract;
 - (c) Alberta time applies to this contract. Time is of the essence, which means times and dates will be strictly followed and enforced;
 - (d) Business Day means every day but Saturday, Sunday and statutory holidays and includes all the hours of the day;
 - (e) a reference to the seller or buyer includes singular, plural, masculine, feminine or an entity like a corporation;
 - (f) the seller will disclose known Material Latent Defects. Material Latent Defects means a defect in the Property that is not discoverable through a reasonable inspection and that will affect the use or value of the Property;
 - (g) the seller and buyer are each responsible for completing their own due diligence and will assume all risks if they do not;
 - (h) the seller will ensure the seller's representations and warranties are true by:
 - (i) reviewing documents such as a Real Property Report ("RPR"), land title, registrations on title, leases and contracts;
 - (ii) determining non-resident status for income tax purposes;
 - (iii) conducting due diligence searches, such as litigation and personal property security registry searches; and
 - (iv) doing other needed research;
 - (i) the buyer may get independent inspections or advice on items such as condominium documents, land title, registrations on title, RPR, current and future use, building and mechanical systems, property insurance, title insurance, size of the Lands and Buildings, interior and exterior measurements, leases, estoppel certificates pertaining to Accepted Tenancies, registrations affecting the unattached goods and attached goods, and other items important to the buyer;
 - (j) sections 12 and 13 of the *Condominium Property Act* (Alberta) relating to sale of units by developers and rescission of purchase agreements do not apply;
 - (k) contract changes that are agreed to in writing will supersede the pre-printed clauses;
 - (l) the seller and buyer will read this contract and seek relevant advice before signing it;
 - (m) the brokerages, real estate board and listing services may keep and disclose relevant information about this transaction for reporting, statistical, property evaluation and closing purposes; and
 - (n) the _____ (seller's or buyer's) brokerage will provide this contract and related documents to the appointed lawyers for the purpose of closing this contract.

4. DEPOSITS

- 4.1 The seller and buyer agree that clauses 4.2 through 4.9 are the terms of trust for the Deposits. "Deposits" means the amounts payable under clauses 4.3 and 4.4, and "Deposit" means either of them.
- 4.2 The seller and buyer appoint _____ as trustee (the "Trustee") for the Deposits.
- 4.3 The buyer will pay a deposit of \$_____, which will form part of the Purchase Price, to the Trustee by _____ (method of payment), on or before _____.

PREVIOUS PAGE

NEXT PAGE

Commercial Purchase Contract



- 4.4 The buyer will pay an additional deposit of \$ _____, which will form part of the Purchase Price, to the Trustee by _____ (method of payment), on or before _____.
- 4.5 If the buyer fails to pay a Deposit as required by this contract, the seller may void this contract at the seller's option by giving the buyer written notice. The seller's option expires whenever the seller accepts a deposit, even if late
- 4.6 The Trustee will deposit the Deposits into a trust account within three Business Days of receipt.
- 4.7 Interest on the Deposits will not be paid to the seller or buyer.
- 4.8 The Deposits will be held in trust for both the seller and buyer. Provided funds are confirmed, the Deposits will be disbursed, without prior notice, as follows:
- (a) to the buyer, if after this contract is accepted:
 - (i) a condition is not satisfied or waived in accordance with clause 8.4;
 - (ii) the seller voids this contract for the buyer's failure to pay an additional deposit in the case where an initial deposit has been paid by the buyer; or
 - (iii) the seller fails to perform this contract;
 - (b) to the seller, if this contract is accepted and all conditions are satisfied or waived and the buyer fails to perform this contract; or
 - (c) applied against the Fee owed by the seller by payment directly out of trust to the brokerage(s), with any excess amount paid in trust to the seller's lawyer no later than three Business Days prior to the Completion Day. "Fee" means the amount, plus GST, owed to a real estate brokerage under a written service agreement.
 - (d) If the seller or buyer fails or refuses to complete this contract, the other party may seek all remedies, such as claims for deposits and damages, and reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 4.9 The disbursement of Deposits, as agreed to in this clause, will not prevent the seller or buyer from pursuing remedies in clause 12.

5. LAND TITLE

- 5.1 Title to the Property will be free of all encumbrances, liens and interests except for:
- (a) those implied by law;
 - (b) non-financial obligations now on title, such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature; and
 - (c) the following encumbrances that the buyer agrees to accept: _____

6. REPRESENTATIONS AND WARRANTIES

- 6.1 The seller represents and warrants to the buyer that:
- (a) the seller has the legal right to sell the Property;
 - (b) the seller is not now nor will it be on the Completion Day a non-resident for the purposes of the *Income Tax Act* (Canada), nor an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada;
 - (c) no one else has a legal right to the included attached and unattached goods.
 - (d) the current use of the Lands and Buildings complies with the existing municipal land use bylaw and any restrictive covenant on title;
 - (e) the location of the Buildings and land improvements:
 - (i) are on the Lands and not on any easement, right-of-way or neighbouring lands unless there is a registered agreement on title or, in the case of an encroachment into municipal lands or a municipal easement or right-of-way, the municipality has approved the encroachment in writing.
 - (ii) complies with any restrictive covenant on title and municipal bylaws, regulations and relaxations, or the Buildings and



HOVER over the icon for content information

[PREVIOUS PAGE](#)

[NEXT PAGE](#)

Commercial Purchase Contract



improvements are “non-conforming buildings” as defined in the *Municipal Government Act* (Alberta);

- (f) known Material Latent Defects, if any, have been disclosed in writing in this contract;
- (g) any government and local authority notices regarding the Property lack of permits for any development on the Property, or notices regarding any environmental conditions or problems known to the seller have been disclosed in writing in this contract;
- (h) there is no legal action outstanding with respect to the Property;
- (i) the Property is in compliance with all applicable environmental laws;
- (j) the seller is not in breach of any contract with respect to the Property which gives rise to an interest in land, including but not limited to, any leases related to Accepted Tenancies
- (k) any leases pertaining to the Accepted Tenancies are valid and in good standing; and
- (l) the seller is not in breach of any obligation to any third party with respect to the Property which gives rise to an interest in land.

6.2 The representations and warranties in this contract including any attached Schedules:

- (a) are made as of, and will be true at, the Completion Day; and
- (b) will survive completion and may be enforced after the Completion Day as long as any legal action is commenced within the time limits set by the *Limitations Act* (Alberta).

7. DISCLOSURE

- 7.1 Within _____ Business Days after the date that acceptance of this contract is communicated, the seller will provide to the buyer true copies of all agreements, documents, reports and other materials respecting the Property that are in the possession or control of the seller (the “Disclosure Documents”), including but not limited to: copies of Permitted Encumbrances; copies of leases with respect to Accepted Tenancies; financial records and statements respecting the Property; any operating agreements that the buyer is to assume; all engineering, mechanical, electrical, plumbing, roof, heating, ventilation, construction or similar reports, assessments, plans, drawing, specifications, relevant correspondence or work orders; environmental reports; and: _____. If the Property is a condominium, the Disclosure Documents shall include condominium documents as detailed in the Condominium Documents Schedule, selected as attached in clause 9.1.
- 7.2 The buyer will keep all information obtained from the seller in strict confidence, and will only make such information available to those of buyer’s employees, agents and professional advisors on a need to know basis. Should this transaction not be completed, the buyer will return the Disclosure Documents including all copies to the seller immediately.
- 7.3 The buyer may enter upon the Property for the purpose of conducting its investigations about the state of the Property, subject to the following:
- (a) the rights of any tenants;
 - (b) the buyer shall not carry out any destructive or physically invasive testing, except with the prior written consent of the seller and shall repair all damage resulting from its investigations;
 - (c) the buyer shall obtain the seller’s prior consent as to the timing and length of any inspections;
 - (d) in conducting its investigations, the buyer shall use commercially reasonable efforts to minimize disruption of the current use of the Property; and
 - (e) the buyer shall indemnify and save the seller harmless from all claims, damages, losses or liabilities of any kind (including legal fees on a solicitor/client full indemnity basis) resulting from the buyer’s investigations upon the Property.
- 7.4 The seller will provide the buyer with such written authorizations and other assistance when reasonably required by the buyer to facilitate the buyer’s inspections, reviews and tests, to satisfy its conditions.

8. CONDITIONS

- 8.1 The seller and buyer will:
- (a) act reasonably and in good faith in trying to satisfy their own conditions, including making reasonable efforts to fulfill them,
 - (b) pay for any costs related to their own conditions, except for the providing of documents in the Condominium Documents Condition



HOVER over
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content
information

PREVIOUS PAGE

NEXT PAGE

Commercial Purchase Contract



(if applicable); and

(c) will obtain professional advice with respect to GST applicable to the transaction.

8.2 Buyer's Conditions

The buyer's conditions are for the benefit of the buyer and are:

(a) Financing

This contract is subject to the buyer securing new financing from a lender of the buyer's choice and with terms satisfactory to the buyer, before _____.m. on _____, 20____. The seller will cooperate by providing access to the Property on reasonable terms.

(b) Due Diligence

This contract is subject to the buyer's satisfaction with the results of its review of the Disclosure Documents and its inspections of the Property, before _____.m. on _____, 20____. The seller will cooperate by providing access to the Property on reasonable terms.

(c) Additional Buyer's Conditions

before _____.m. on _____, 20____.

8.3 Seller's Conditions

The seller's conditions are for the benefit of the seller and are:

before _____.m. on _____, 20____.

8.4 Each party will give the other written notice that:

- (a) a condition is unilaterally waived or satisfied on or before the date upon which it expires. If not, this contract will end after the time indicated for that condition; or
- (b) a condition will not be waived or satisfied prior to the date upon which it expires. This contract will end upon that notice being given.

9. ATTACHMENTS AND ADDITIONAL TERMS

9.1 The selected documents are attached to and form part of this contract:

- ☐ Certificate of Title for the Lands
- ☐ Commercial Condominium Property Schedule
- ☐ Condominium Documents Schedule
- ☐ Financing Schedule (Seller Financing, Mortgage Assumption, Other Value)
- ☐ Addendum
- ☐ Accepted Tenancies
- ☐ Other _____

9.2 If the Property is a condominium, to the best of the seller's knowledge and to be verified by the buyer, the total current monthly condominium contribution for the Property is \$_____.

9.3 The parties agree that the following additional terms shall form a binding part of this contract:

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*HOVER over
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[PREVIOUS PAGE](#)

[NEXT PAGE](#)

Commercial Purchase Contract



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content
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10. CLOSING PROCESS

Closing Documents

10.1 As applicable, the closing documents will be:

- (a) transfer of land (the "Transfer") in registerable form;
- (b) statement of adjustments;
- (c) bill of sale for any unattached goods;
- (d) estoppel certificates for each of the Accepted Tenancies along with assignment of leases;
- (e) GST indemnity certificate;
- (f) RPR (if not yet provided); and
- (g) such other closing documents reasonably requested by the seller's lawyer or the buyer's lawyer

(the "Closing Documents"). The Closing Documents will include an RPR(s) showing the current improvements on the Property according to the Alberta Land Surveyors' Association Manual of Standard Practice, with evidence of municipal compliance or non-conformance and confirming the sellers' warranties about the Lands and Buildings. This obligation will not apply if there are no structures on the Lands. The buyer or buyer's lawyer must have a reasonable amount of time to review the RPR(s) prior to submitting the transfer documents to the Land Titles Office.

Closing Procedure

10.2 The seller or the seller's lawyer will deliver the Closing Documents to the buyer or buyer's lawyer upon reasonable trust conditions for a commercial property transaction, including delivery within a reasonable time before the Completion Day to allow for confirmation of registration of documents at the Land Titles Office, obtain the advance of mortgage proceeds, and verify of the transfer of other value items..

10.3 If a new mortgage is a condition of this contract, the seller agrees to trust conditions that allow the buyer's lawyer to register the Transfer so as to obtain the advance of mortgage funds on the new mortgage, provided however that the buyer's lawyer undertakes, accepts, and complies with reasonable trust conditions imposed by the seller's lawyer until the seller has been paid the total Purchase Price.

Payments and Costs

10.4 The Purchase Price (other than Deposits) shall be paid by certified cheque, bank draft or solicitor's trust cheque.

10.5 All normal adjustments for the Property including but not limited to taxes, local improvement levies and assessments, municipal charges, rents, utilities, monthly condominium contributions, tenant deposits including interest, prepaid rent, and mortgage principal and interest that are applicable with respect to the Property will be the seller's responsibility for the entire Completion Day and thereafter assumed by the buyer.

10.6 The seller's lawyer may use the Purchase Price to pay and discharge all of the seller's financial obligations related to the Property. The seller's lawyer will provide the buyer's lawyer with evidence of all discharges including, where required, a certified copy of the certificate of title and, if the Property is a condominium, an estoppel certificate evidencing the payment of all condominium contributions that are the seller's obligation to pay, within a reasonable time after the Completion Day.

10.7 If the seller has entered into a written service agreement with a real estate brokerage, the seller instructs the seller's lawyer to honour the terms of that agreement, including the Fee and other costs payable to the seller's brokerage.

10.8 The seller will have the right to register a seller's caveat against the title to the Property and the buyer shall have the right to register a buyer's caveat against the title to the Property, upon the date that acceptance of this contract is communicated.

10.9 The seller will pay the costs to prepare the Closing Documents, costs to end any existing tenancies that are not Accepted Tenancies and provide vacant possession to the buyer and costs to prepare, register and discharge any seller's caveat based on this contract.

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PREVIOUS PAGE

NEXT PAGE

Commercial Purchase Contract



10.10 The buyer will pay the costs to prepare, register and discharge any buyer's caveat based on this contract and to register the Transfer and mortgage, if applicable.

Completion Day Delays

10.11 If the seller fails to deliver the Closing Documents in accordance with clause 10.2, then:

- (a) the buyer's payment of the Purchase Price and late interest will be delayed until the buyer or buyer's lawyer has received the Closing Documents and has a reasonable time to review and register them, obtain the advance of mortgage financing, and verify the transfer of other value items, as applicable; and
- (b) if the buyer is willing and able to close in accordance with this contract and wants to take possession of the Property, then the seller will give the buyer possession upon reasonable terms which will include the payment of late interest only on the amount of mortgage being obtained by the buyer at the interest rate of that mortgage.

10.12 If the seller has complied with clauses 10.1 and 10.2, but the buyer is not able to close in accordance with this contract, then:

- (a) the seller may, but is not obligated to, accept late payment of the Purchase Price and give the buyer possession upon reasonable terms; and
- (b) if the seller agrees to accept late payment of the Purchase Price and, whether or not possession is granted, the buyer will pay late interest at the prime lending rate of the Alberta Treasury Branches at the Completion Day plus 3% calculated daily from and including the Completion Day to (but excluding) the day the seller is paid in full. Payment received after 12 noon on any day will be payment as of the next Business Day.

11. INSURANCE

11.1 The seller bears the risk of loss or damage to the Property until the Purchase Price is paid. If such loss or damage occurs before the Purchase Price is paid, any insurance proceeds will be held in trust for the seller and buyer based on their interests.

12. REMEDIES

- 12.1** If the seller or buyer fails or refuses to complete this contract, the other party may seek all remedies, such as claims for Deposits and damages, and reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 12.2** On buyer default, if the seller must restore the Property title, enforce a lien against the Property or regain possession of the Property, the seller may seek all remedies, such as claims for damages, and all reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis
- 12.3** The seller and the buyer agree that the Property is unique. On seller default, the buyer may make a claim for specific performance and other remedies.

13. NOTICE AND DOCUMENTS

- 13.1** A notice under this contract means a written document, including notices required by this contract, and this contract when accepted.
- 13.2** A notice is effective at the time the document is delivered in person or sent by fax or email.
- 13.3** Giving notice means the document is transmitted by one of these methods, and regardless of the method, the notice document is recognized as an original document.
- 13.4** For documents that require a signature, an electronic signature, as defined in the *Electronic Transactions Act* (Alberta), or a digitized signature will have the same function as an ink signature.

14. AUTHORIZATION

14.1 The seller and buyer may each authorize a representative to send and receive notices as described above. Once authorized, notices will be effective upon being delivered in person or sent by fax or email to the authorized representative.

The seller authorizes:

Seller's Brokerage:

Name:

Address:

The buyer authorizes:

Buyer's Brokerage:

Name:

Address:

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HOVER over
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PREVIOUS PAGE

NEXT PAGE

Commercial Purchase Contract



*HOVER over
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Brokerage Representative:

Name: _____

Phone: _____

Fax: _____

Email: _____

Brokerage Representative:

Name: _____

Phone: _____

Fax: _____

Email: _____

14.2 If the seller or the buyer does not authorize a brokerage, then:

The seller authorizes:

Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

The buyer authorizes:

Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

14.3 If the authorization information changes, the seller and buyer agree to give written notice to the other party as soon as the change is known so that future notices may be sent to the proper person and place.

15. CONFIRMATION OF CONTRACT TERMS

15.1 The seller and buyer confirm that this contract sets out all the rights and obligations they intend for the purchase and sale of the Property and that:

- (a) this contract is the entire agreement between them; and
- (b) unless expressly made part of this contract, in writing:
 - (i) verbal or written collateral or side agreements or representations or warranties made by either the seller or buyer, or the seller's or buyer's brokerage or agent, have not and will not be relied on and are not part of this contract; and
 - (ii) any pre-contractual representations or warranties, howsoever made, that induced either the seller or buyer into making this contract are of no legal force or effect.

Seller's Initials: _____

Buyer's Initials: _____

16. LEGAL OBLIGATIONS BEGIN

16.1 The legal obligations in this contract begin when the accepted contract is delivered in person or sent by fax or email. The obligations bind the seller and the buyer as well as their heirs, administrators, executors, successors and assigns.

17. OFFER

17.1 The buyer offers to buy the Property according to the terms of this contract.

17.2 This offer/counter offer shall be open for acceptance in writing until _____ .m. on _____, 20____.

Signed and dated at _____, Alberta at _____ .m. on _____, 20____.

Commercial Purchase Contract



HOVER over
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Signature of Buyer or Authorized Signatory of Buyer

Signature of Witness

Print Name of Buyer or Authorized Signatory of Buyer

Print Name of Witness

Signature of Buyer or Authorized Signatory of Buyer

Signature of Witness

Print Name of Buyer or Authorized Signatory of Buyer

Print Name of Witness

Buyer's GST # _____

18. ACCEPTANCE

18.1 The seller agrees to sell the Property according to the terms of this contract.

Signed and dated at _____, Alberta at _____, m. on _____, 20____.

Signature of Seller or Authorized Signatory of Seller

Signature of Witness

Print Name of Seller or Authorized Signatory of Seller

Print Name of Witness

Signature of Seller or Authorized Signatory of Seller

Signature of Witness

Print Name of Seller or Authorized Signatory of Seller

Print Name of Witness

Seller's GST # _____

INFORMATION

The following is for information purposes and has no effect on the contract's terms:

REJECTION

I/we do not accept this offer/counter offer. No counter offer is being made.

Signed and dated at _____, Alberta at _____, m. on _____, 20____.

Signature of Seller or Authorized Signatory of Seller

Signature of Buyer or Authorized Signatory of Buyer

Signature of Seller or Authorized Signatory of Seller

Signature of Buyer or Authorized Signatory of Buyer

PREVIOUS PAGE

NEXT PAGE

Commercial Purchase Contract

CONVEYANCING INFORMATION

Seller's Information:

Address: _____

Phone: _____ Fax: _____

Lawyer's
Name: _____

Firm: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

Buyer's Information:

Address: _____

Phone: _____ Fax: _____

Lawyer's
Name: _____

Firm: _____

Address: _____

Phone: _____ Fax: _____

Email: _____



*HOVER over
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content
information*

PREVIOUS PAGE

NEXT PAGE