

# OFFER TO PURCHASE

DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

Buyer: \_\_\_\_\_ (hereinafter "Buyer") offers to purchase

Business: \_\_\_\_\_ (hereinafter "Business")

located at: \_\_\_\_\_

Seller: \_\_\_\_\_ (hereinafter "Seller")

**This document is a legally binding contract. If any part is not fully understood the signer should seek appropriate expert advice from those outside of this contract.**

'BULLDOG BROKERS' shall be hereinafter referred to as Broker.

Buyer hereby delivers to Broker 10% of the Total Purchase Price as a Business deposit \$\_\_\_\_\_ Held by the broker for the seller as the buyers intention to consummate. This deposit shall go towards the Total Purchase Price of this Business.

**Business deposit to remain unnegotiated until satisfaction of Buyer's conditions, but no later than two days following acceptance of offer, at which time the Business deposit will be deposited into the Broker's Trust Account.**

## 1. PURCHASE PRICE AND TERMS

### 1.A. TOTAL PURCHASE PRICE:

Buyer agrees to purchase the Business with all its assets including inventory and assumable obligations for Total Purchase Price of \$\_\_\_\_\_

#### TERMS OF PURCHASE

1.A.1 Business Deposit	\$ _____
1.A.2 Cash (due at closing)	\$ _____
1.A.3 Promissory note due to Seller	\$ _____
1.A.4 Other	\$ _____
1.A.5 Other	\$ _____

#### TERMS OF NOTE TO SELLER:

Payable at \$\_\_\_\_\_ per month at \_\_\_ percent simple interest per annum amortized over \_\_\_ years. Security for this note defined in section 1.I. Interest starting 60 days after closing with first payment to be made 90 days after closing. No Prepayment penalty. Note to be considered late after 10 days (10% late fee) and in default after 60 days.

### 1.B REIMBURSEMENTS:

Buyer agrees to reimburse Seller for the following which is due at closing:

- 1.B.1 Any premises' lease deposit or other consideration given lessor according to the lease.
- 1.B.2 Other

### 1.C INVENTORY:

The purchase price detailed in Section 1.A above includes an estimated inventory of \$\_\_\_\_\_

- 1.C.1 Agreed value of inventory is defined as supplies, and good and saleable merchandise as disclosed to Buyer and valued at:
  - invoice cost including freight less any trade discounts
  - retail value less \_\_\_\_\_ percent
  - other \_\_\_\_\_
- 1.C.2 Inventory value shall be determined:
  - jointly by Buyer and Seller
  - outside inventory service
  - other \_\_\_\_\_



- ( ) **1.C.3** *If the agreed actual value of inventory is greater or lesser than the estimated value:*
  - ( ) *the amount of the promissory note listed in Section 1.A.3 will be adjusted upward or downward by the amount of the increase or decrease in the value of the inventory;*
  - ( ) *cash due at closing;*
  - ( ) *payment shall change accordingly; or*
  - ( ) *the term shall change accordingly and payment remain the same.*
- ( ) **1.C.4** *There will be no adjustment for inventory.*
- ( ) **1.C.5** *Any adjustment for inventory will be done by the parties outside of closing.*

**1.D ACCOUNTS RECEIVABLE:**

- ( ) **1.D.1** *Accounts receivable are not included in this sale*
- ( ) **1.D.2** *Accounts receivable are included in this sale and Seller warrants collection of any accounts receivable involved in this transaction. In the event of any accounts receivable due from the Seller's operation of the Business are not paid within 90 days, Buyer has the right to withhold monthly payments on promissory note due Seller until an amount equal to the uncollected accounts receivable is withheld. The amount withheld in this manner will be credited on the promissory note due Seller as though paid to Seller. Any accounts receivable offset against said note shall be reassigned to and become property of Seller. Buyer will use reasonable efforts to collect the account receivables.*
- ( ) **1.D.3** *Buyer agrees to receive accounts receivable payments on behalf of Seller upon demand.*

**1.E BUSINESS PHONE:**

- ( ) **1.E.1** *Seller shall leave existing phone/fax numbers unchanged along with e-mail addresses and any other communications link, and Buyer agrees to be responsible for any Yellow Pages advertising if necessary to maintain phone number. Seller shall sign documents transferring ownership of the above items.*
- ( ) **1.E.2** *The phone number may be changed and ownership of it is not included in the Total Purchase Price of the Business.*

**1.F BUSINESS NAME:**

- ( ) **1.F.1** *The Business name is included in the Total Purchase Price and the assignment of the name and the assumed business name statement form will be filed with the Montana Secretary of State for the benefit of the Buyer by the closing agent or Buyer at Buyer's expense. Seller will execute and file relinquishment of the Business name at Seller's expense within ten (10) days following closing.*
- ( ) **1.F.2** *The Business name will be changed and is **NOT** included in the Total Purchase Price of the Business.*
- ( ) **1.F.3** *The Business name is included for this location only and Seller retains the use of the Business name for any other current or future locations, except those excluded by the terms of any noncompete agreement included in this transaction.*
- ( ) **1.F.4** *If this Business is a Franchise, the Buyer will only have the right to use the Business name as stated in the Franchise Agreement.*

**1.G ALLOCATION OF TOTAL PURCHASE PRICE:**

- ( ) **1.G.1** *Buyer and Seller agree that the allocation of the Total Purchase Price shall be:*

<i>Inventory and Supplies (subject to change)</i>	
<i>Accounts Receivable (subject to change)</i>	
<i>Lease Value</i>	
<i>Use of Leasehold Improvements</i>	
<i>Licenses</i>	
<i>Furniture, Fixtures and Equipment</i>	
<i>Vehicles</i>	
<i>Goodwill and Business Name (if name included)</i>	
<i>Covenant not to Compete</i>	
<i>Training</i>	
<i>Other</i>	

**TOTAL PURCHASE PRICE** \$ \_\_\_\_\_

- ( ) **1.G.2** *To be proposed by the Buyer within fifteen (15) days of acceptance of offer for Seller's approval.*

**TOTAL PURCHASE PRICE** \$ \_\_\_\_\_



**1.H ASSET DEFINITION:**

Unless otherwise specifically excluded in this agreement, assets are defined as all items of value used in the operation of the Business including but not limited to the following:

Lease, use of the leasehold improvements, furniture, fixtures, equipment, inventory, transferable licenses, contracts, trade name, goodwill, covenant not to compete, customer list, menus, recipes, patents, signs, franchises, vehicles, and web page sites (see attachment "A").

Unless otherwise specifically provided for elsewhere in this Agreement, items of value **NOT** included in the sale or transfer of the Business are:

Seller's personal effects, any amounts due Seller at date of transfer, including accounts and notes receivable unless otherwise provided herein, security deposits, cash, bonds or any other liquid assets, excluding merchandise and supply inventory. The following vehicles and other items are hereby specifically excluded in this sale:

Seller's trade names are: \_\_\_\_\_

**1.I SECURITY:**

Security for the promissory note due Seller in Section 1.A.3 shall be an assignment of any premises' leased back to Seller in case of default, the assets sold hereunder to be evidenced by a UCC-1 form filed with the appropriate government agency, and the personal guarantee of Buyer.

**2. CONDITIONS OF SALE**

- ( ) **2.A** Assignment of existing Business premises' lease to Buyer or execution of a new lease by lessor to Buyer.
- ( ) **2.B** Franchisor's consent to assignment of the Business franchise to Buyer.
- ( ) **2.C** Buyer obtaining an alcohol beverage license to operate the Business.
- ( ) **2.D** Assignment of any Business equipment leases to Buyer
- ( ) **2.E** Inspection of the Business financial books and any and all records requested by Buyer. Buyer shall have \_\_\_ days, after Seller provides all requested information to approve or disapprove said books and records, in writing to Broker. This condition to be completed within \_\_\_ days of acceptance of Offer to Purchase by all parties.
- ( ) **2.F** Partnership and/or corporate authorization by ( ) Seller ( ) Buyer needed in order to proceed and complete transaction.
- ( ) **2.G** Seller's approval of Buyer's creditworthiness if Seller is to finance part of this transaction or Buyer is to assume Seller's obligations.
- ( ) **2.H** Other: \_\_\_\_\_

**ALL CONDITIONS TO BE SATISFIED NO LATER THAN \_\_\_/\_\_\_/\_\_\_\_\_. IF BROKER IS NOT NOTIFIED IN WRITING TO THE CONTRARY, THE BROKER IS TO ASSUME THAT ALL CONDITIONS HAVE BEEN SATISFACTORILY MET AND WILL PROCEED TO CLOSE THIS TRANSACTION.**

**3. CLOSING DATE**

The closing of this transaction shall take place on or before \_\_\_\_\_, at the office of the Broker or at an alternative location selected by the Broker. In the event the parties are unable to close for any reason, this Agreement shall be extended for a period of up to an additional thirty (30) days, unless Broker is notified in writing by either the Buyer or the Seller of their intention not to extend the closing date.

**4. PROMISES OF SELLER**

**4.A** Seller promises to secure in writing the lessor's consent of assignment of the Business premises' lease to Buyer or assist Buyer in the execution of new premises' lease.

**4.B** Seller further promises that:

- 4.B.1** All Business equipment will be in good working order at date of possession.
- 4.B.2** All information reasonably requested by Buyer be delivered by Seller to Broker or Buyer immediately.



**4.B.3** In order to train Buyer, Seller shall remain with Buyer for \_\_\_\_ consecutive calendar days, normal Business hours from:

**4.B.4** There is no condition that will stop the effective transfer of the Business to the Buyer and, if such a condition exists, Seller shall cure the condition prior to closing.

**4.B.5** Seller shall promise to Buyer, its successors, assigns and representatives that Seller will not engage, directly or indirectly, in any business the same as, or similar to, or in competition with the Business, either as a principal, agent, manager, employee, owner, partner, stockholder, director or officer of a corporation, trustee, consultant, or otherwise in any capacity whatsoever, that is within a radius of \_\_\_\_ miles from the principal place of the Business for a period of \_\_\_\_ years from the closing date of this Agreement.

**4.B.6** All insurance policies and coverage with respect to the Business shall remain in full force and effect until the closing of this transaction.

**4.B.7** Seller shall indemnify and hold Buyer and the property of Buyer free and harmless from any and all claims, losses, damages, injuries and liabilities arising from or on account of Seller's operation of said Business prior to the closing of this transaction.

**4.B.8** ( ) Seller ( ) Buyer ( ) 50/50 split. Responsibility for the costs associated with the transfer of franchise.

**4.B.9** Seller shall disclose to Buyer any material information that would affect the operation or goodwill of the Business including, but not limited to, disclosing all merchandise Seller expects Buyer to purchase upon possession; franchise agreement or exclusive distribution agreement; equipment leases; sign leases; copy of assignable notes, contracts or chattels; copies of insurance policies to be assumed; union contracts; Yellow Page advertising agreements; any and all past bankruptcies; any complaints filed with the Better Business Bureau, any state or federal regulatory agency, or criminal complaints with respect to the operation of the Business.

**4.B.10** The Business assets transferred to the Buyer will be free and clear of any encumbrances of the Seller unless expressly assumed by the Buyer.

**4.B.11** Neither Seller nor the Business has any pending violation with any state or federal regulatory agency.

**4.B.12** Seller has all the necessary licenses and permits for the conduct and operation of the Business and has no knowledge of any condition which would prevent Buyer from obtaining same.

**4.B.13** All obligations assumed or taken subject to by the Buyer are to be current at the closing of this transaction unless otherwise agreed to in writing.

**4.B.14** Seller shall operate the Business in its present manner to maintain goodwill and to maintain inventories at normal operation levels until the closing of this transaction. There shall be no special sales or other activity that indicates the Business is being sold or closing.

**4.B.15** Seller shall leave existing phone numbers unchanged if required pursuant to section 1.E.1.

**4.B.16** If additional security is offered under section 1.A, Seller promises to satisfy itself of all collateral value, whether real or personal, and to hold Broker harmless from any claim that the collateral is not as represented by the Buyer.

**4.B.17** Seller further promises that all information given to the Broker or Buyer is true and correct and that Broker will be indemnified for any action taken by the Buyer should the said information be incorrect.

**4.B.18** Seller has or will timely file all state and federal sales, payroll and other tax returns and pay all taxes due related to the operation of the Business.

**4.B.19** Seller shall not apply for unemployment benefits and shall inform the Buyer of any former employee that files for such benefits.

**4.C** Seller understands that all promises are material inducements to the Buyer concerning the purchase of the Business.

**4.D** Seller acknowledges that the Business Opportunity Listing Agreement executed by Broker and Seller and the Nondisclosure and Confidentiality Agreement executed by Buyer are incorporated by reference herein and made part of this Offer to Purchase.

**IN WITNESS WHEREOF, I hereby acknowledge, having read and understood the above promises, and agree to abide by these promises,**

**Seller:** \_\_\_\_\_

**Seller:** \_\_\_\_\_



## 5. PROMISES OF THE BUYER

5.A Buyer promises that:

5.A.1 Buyer has cash for the down payment, Buyer's share of the closing costs, sales tax, if applicable, on the transfer of furniture, fixtures and equipment or other personal property transferred herein, prorations, Lease deposits, any alcohol beverage fees, etc., necessary to close this transaction and agrees to pay all these amounts upon the closing of this transaction.

5.A.2 Buyer will deliver to Broker his financial statement, credit check authorization, and resume to present with this Offer to Purchase and agrees to hold Broker harmless from any use of this information.

5.A.3 Buyer will personally examine the Business prior to closing and has been advised by Broker to seek and has sought outside professional advice that Buyer deems necessary, and further agrees to continue to rely on his own expertise or such outside professional advice through the completion of this transaction, including any and all remaining contingencies. Buyer further agrees to indemnify Broker from any action as a result of information supplied by Broker that was provided by Seller and Buyer's own investigation and may not rely upon Broker to verify accuracy of said information.

5.A.4 Prior possession, Buyer shall confirm that all necessary licenses and permits for the conduct and operations of the Business (including any alcohol beverage licenses and permits) pursuant to Buyer's intended use may be obtained.

5.B Buyer understands that all promises are material inducements to Seller concerning the sale of the Business.

**IN WITNESS WHEREOF, I hereby acknowledge, having read and understood the above promises, and agree to abide by these promises,**

Buyer: \_\_\_\_\_

Buyer: \_\_\_\_\_

## 6. MUTUAL PROMISES OF BUYER AND SELLER

6.A Buyer and Seller agree to share equally in any costs associated with:

( ) 6.A.1 Brokers closing costs, estimated to be \$\_\_\_\_\_ which includes attorneys fees to prepare closing documents.

( ) 6.A.2 Outside services securing inventory value or other costs incurred in the taking of inventory.

6.B Buyer and Seller promise to prepare a list of furniture, fixtures and equipment to be used for bill of sale and any security agreement required. This list shall be signed by Buyer and Seller and delivered to Broker within \_\_\_\_\_ days of acceptance of this Offer to Purchase.

6.C Immediately prior to closing this transaction and possession, Buyer and Seller shall submit a mutually signed statement setting forth the value of merchandise inventory and Buyer's acceptance of the working conditions of equipment and fixtures as detailed in section 6.C

6.D Buyer and Seller agree to use their best efforts in completing any conditions or contingencies of this Offer to Purchase which are required to close this transaction.

6.E Buyer and Seller agree to sign Broker's warrantee, disclaimer and acknowledgement at the closing of this transaction.

## 7. BROKERS COMMISSION AND STATEMENTS

7.A Broker promises to use his best efforts to consummate this transaction on terms satisfactory to both Buyer and Seller.

7.B Broker is acting as a Transaction Broker/Dual Agent and Broker's agent may represent both Buyer and Seller and promises to abide by the fiduciary duty due both Buyer and Seller.

7.C Buyer and Seller understand that the purchase and sale of this Business may have legal, tax and accounting consequences and the Broker has advised both Buyer and Seller to seek advice from an accountant, attorney or consultant to satisfy Buyer with respect to any aspect of this transaction. Broker has further advised both Buyer and Seller that all information, data, books and records or other documents supplied to either Buyer or Seller is/are not warranted in any manner by Broker and that Buyer and Seller shall hold Broker harmless from any loss, liability, or damage as a result of any such information. It being the express understanding that the Broker will use his best efforts to satisfy Buyer and Seller in the completion of this transaction, but reliance upon such information by any party is not justified. Buyer and Seller are responsible for the conduct of their respective due diligence.

7.D Buyer and Seller acknowledge that Broker/s shall receive a commission on the Total Purchase Price as provided in section 1.A. Should Seller fail to complete or prevent this transaction from closing, Seller shall be liable to Broker for Broker's commission. Should Buyer fail to complete or prevent this transaction from closing, Buyer shall be liable to Broker for Broker's costs and Broker can retain the Business deposit as partial recovery of the commission due under section 7.D



## 8. GENERAL RECITALS

**8.A** This offer is irrevocable and open until \_\_\_\_\_ at 6:PM

**8.B** This Offer of Purchase contains the entire agreement and any modifications (excluding of Broker's commission) must be in writing and signed by both Buyer and Seller.

**8.C** In the event of default by a party that causes legal action, including a lawsuit, the prevailing party shall be entitled to recover their attorney fees and costs from the other party. The jurisdiction of any legal action arising out of this Offer to Purchase, including any legal action filed to interpret or enforce the provisions, promises, terms and conditions of this Offer to Purchase, shall be in the Eighteenth Judicial District Court, Gallatin County, Montana, and any parties to said legal action waive any and all rights to a trial by jury.

**8.D** After the acceptance of this offer, Broker will order State and County lien searches and tax certificates to assure there are no encumbrances against the assets being transferred, which is a closing cost. If closing does not occur, this closing cost will be withheld from the Business deposit due under Section 7.D.

**8.E** Prorations of taxes, rent, and common area charges will occur at the closing of this transaction. All other prorations including, but not limited to, prepaid expenses or services, lease payments, telephone charges, utilities, advertising, will be done by the parties.

**8.F** If any provision, paragraph, subparagraph, or clause of this Agreement is adjudged by the court to be invalid, illegal, void or unenforceable in whole or in part, this adjudication shall not affect the validity of the remainder of this Agreement, including any other provision, paragraph, subparagraph, or clause. Each provision, paragraph, subparagraph, or clause of this Agreement is separable from every other provision, paragraph, subparagraph and clause, and constitutes a separate and distinct covenant.

**Seller:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Seller:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Broker:** \_\_\_\_\_

## 9. Additional Provisions

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I HAVE READ AND FULLY UNDERSTAND THIS OFFER TO PURCHASE AND ALL ITS PROVISIONS, PROMISES, TERMS AND CONDITIONS, AND HEREBY AGREE TO PURCHASE THE ABOVE BUSINESS ON BASED UPON THOSE PROVISIONS, PROMISES, TERMS AND CONDITIONS. I ACKNOWLEDGE THAT A COPY OF THIS OFFER TO PURCHASE HAS BEEN GIVEN TO ME AFTER I HAVE EXECUTED IT.**

**{ } I further authorize the broker to obtain my consumer credit report and public records from a Credit Bureau and to investigate any personal information on me necessary for the seller to arrive at a decision.**

**BUYER (1)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_

**BUYER (2)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_  
**SOCIAL SECURITY NUMBER:** \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_  
**SOCIAL SECURITY NUMBER:** \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_



I understand that while I have accepted an Offer to Purchase, this transaction has not yet been finalized, and I am at this time still the owner of the Business. I do not desire to receive any further offers from the Broker for the purchase of the Business, and the Broker is hereby specifically instructed not to continue to actively market the Business and Broker is further instructed to advise any other potential purchasers of the Business that an offer for its purchase has been accepted. This is valid until notification by me that Broker is to continue marketing of the Business and present the Seller with other offers.  
 ( ) THIS OFFER IS ACCEPTED SUBJECT TO THE ATTACHED COUNTER OFFER

**I HAVE READ AND FULLY UNDERSTAND THIS OFFER TO PURCHASE AND ALL OF ITS PROVISIONS, PROMISES, TERMS AND CONDITIONS, AND HEREBY AGREE TO SELL THE ABOVE BUSINESS BASED UPON THOSE PROVISIONS, PROMISES, TERMS AND CONDITIONS. I FURTHER REPRESENT THAT I HAVE THE AUTHORITY TO SELL THIS BUSINESS AND IF THIS TRANSACTION IS NOT CONSUMMATED BY MY SPOUSE, PARTNERS, OR CORPORATION, AS THE CASE MAY BE, THEN I AGREE TO BE PERSONALLY RESPONSIBLE FOR THE BROKER'S COMMISSION AND ANY OTHER LIABILITIES, DAMAGES OR COSTS RESULTING FROM THE INABILITY TO SELL THIS BUSINESS.**

**SELLER (1)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
 \_\_\_\_\_  
**TELEPHONE:** \_\_\_\_\_  
**SOCIAL SECURITY NUMBER:** \_\_\_\_\_  
 \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
**DATE:** \_\_\_\_\_

**SELLER (2)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
 \_\_\_\_\_  
**TELEPHONE:** \_\_\_\_\_  
**SOCIAL SECURITY NUMBER:** \_\_\_\_\_  
 \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
**DATE:** \_\_\_\_\_

**BROKER:** \_\_\_\_\_

**COUNTEROFFER**

Section	Amendment

**SELLER (1)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_

**SELLER (2)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_

**BUYER (1)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_

**BUYER (2)**  
**SIGNATURE:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_

**BULLDOG BROKER:** \_\_\_\_\_

