

COUNTER OFFER # Two

1 10:15  A.M.  P.M. February 5, 2007

3 The undersigned makes the following Counter Offer to the Purchase Agreement dated February 1, 2007

4 concerning property commonly known as 2805 E. Memorial

5 in Center Township, Delaware County, Muncie

6 Indiana between: Mantock Catering Services INC. as Seller(s)

7 and Rick D. Ullman as Buyer(s).

8 \$23,950.00 KU

9 \* Purchase price to be ~~\$22,000.00~~, financing changed accordingly

10 \* ~~Purchaser requests RESTAURANT EQUIPMENT to remain and would love to have~~

11 ~~business contacts if seller would be willing to share.~~

12 \* Offer subject to seller filing a grandfather letter with the Planning

13 Commission within 7 days after acceptance in order for the property to

14 continue to be operated as a catering business. Purchasers MAY also have

15 to continue the Davidson Catering Name.

16 Line #1 Seller will LEAVE ALL Rest. Equip, Rolling Cooker,

17 will return 3 CamBros (Plastic containers for transporting food)

18 But will NOT remove personal property until final Mtg

19 Note: Seller has the right to accept any other offer and Buyer has the right to withdraw any offer prior to written acceptance Commitment

20 All other terms and conditions of the Purchase Agreement and all previous Counter Offers shall remain in effect except

21 as modified by this Counter Offer.

22 This Counter Offer # Two is void if not accepted in writing on or before 10:00  A.M.  P.M.  Noon

23 on February 6, 2007.

24 This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but

25 all of which together shall constitute one and the same instrument. The parties agree that this Agreement may be transmitted

26 between them electronically or digitally. The parties intend that electronically or digitally transmitted signatures constitute original

27 signatures and are binding on the parties. The original document shall be promptly delivered, if requested.

28 Rick D. Ullman 02/05/2007

29  SELLER  BUYER SIGNATURE DATE  SELLER  BUYER SIGNATURE DATE

30 Rick D. Ullman PRINTED PRINTED

ACCEPTANCE OF COUNTER OFFER # Two

31 The above Counter Offer # Two is accepted at 4:31  A.M.  P.M.  Noon

32 Feb/5, 07, Receipt of a signed copy of this Counter Offer is acknowledged.

33 Bob Mantock 2/5/07

34  SELLER  BUYER SIGNATURE DATE  SELLER  BUYER SIGNATURE DATE

35 Bob Mantock, President PRINTED PRINTED

36 Mantock Catering Services, INC.



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**CLOSING FEE, SURVEY AND TITLE INSURANCE COSTS ARE NOT INCLUDED ABOVE.** Any inspections and charges which are required to be made and charged to Buyer or Seller by the lender, FHA, VA, mortgage insurer, or closing agent, shall be made and charged in accordance with their prevailing rules or regulations and shall supersede any provisions of this Agreement.

- C. **ASSUMPTION: (Attach Financing Addendum)**  
 D. **CONDITIONAL SALES CONTRACT: (Attach Financing Addendum)**  
 E. **OTHER METHOD OF PAYMENT: (Attach Financing Addendum)**

6. **TIME FOR OBTAINING FINANCING:** Buyer agrees to make written application for any financing necessary to complete this transaction or for approval to assume the unpaid balance of the existing mortgage within 5 days after the acceptance of this Agreement and to make a diligent effort to meet the lender's requirements and to obtain financing in cooperation with the Broker and Seller. No more than 25 days after acceptance of the Agreement shall be allowed for obtaining favorable written commitment(s) or mortgage assumption approval. If a commitment or approval is not obtained within the time specified above, this Agreement shall terminate unless an extension of time for this purpose is mutually agreed to in writing.

7. **CLOSING:** The closing of the sale (the "Closing Date") shall be on or before March 2, 2007, or within \_\_\_\_\_ days after \_\_\_\_\_, whichever is later or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. The closing fee shall be paid by  **BUYER**  **SELLER**  **shared equally.**

8. **POSSESSION:**

- A. The possession of the Property shall be delivered to Buyer  **at closing**  **within \_\_\_\_\_ days after closing** or  **on or before \_\_\_\_\_ if closed.** For each day Seller is entitled to possession after closing, Seller shall pay to Buyer at closing \$ - 0 - per day. If Seller does not deliver possession by the date required in the first sentence of this paragraph, Seller shall pay Buyer \$ 100.00 per day as **liquidated damages** until possession is delivered to Buyer; and Buyer shall have all other legal and equitable remedies available against the Seller.
- B. **Maintenance of Property:** Seller shall maintain the Property in its present condition until its possession is delivered to Buyer, subject to repairs in response to any inspection. Buyer may inspect the Property prior to closing to determine whether Seller has complied with this paragraph. Seller shall remove all debris and personal property not included in the sale.
- C. **Casualty Loss:** Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to closing, Buyer, at Buyer's option, may either (a) **terminate this Agreement** or (b) **elect to close the transaction**, in which event Seller's right to all insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer.
- D. **Utilities/Municipal Services:** Seller shall pay for all municipal services and public utility charges through the day of possession.

9. **SURVEY:** Buyer shall receive a (**check ONE**)  **SURVEYOR LOCATION REPORT**, which is a survey where corner markers are not set;  **BOUNDARY SURVEY**, which is a survey where corner markers of the Property are set prior to closing;  **WAIVED**, no survey required at (**check ONE**)  **BUYER'S** expense;  **SELLER'S** expense. The survey shall (1) be received prior to closing and certified as of a current date, (2) be reasonably satisfactory to Buyer, (3) show the location of all improvements and easements, and (4) show the flood zone designation of the Property.

10. **FLOOD AREA/OTHER:** Buyer  **may**  **may not** terminate this Agreement if the Property requires flood insurance or Buyer  **may**  **may not** terminate this Agreement if the Property is subject to building or use limitations by reason of the location.

11. **HOMEOWNER'S INSURANCE:** Completion of this transaction shall be contingent upon the Buyer's ability to obtain a favorable written commitment for homeowner's insurance within 15 days after acceptance of this Agreement.

12. **ENVIRONMENTAL CONTAMINANTS ADVISORY/RELEASE:** Buyer and Seller acknowledge that Listing Broker, Selling Broker and all salespersons associated with Brokers are NOT experts and have NO special training, knowledge or experience with regard to the evaluation or existence of possible lead-based paint, radon, mold and other biological contaminants ("Environmental Contaminants") which might exist and affect the Property. Environmental Contaminants at harmful levels may cause property damage and serious illness, including but not limited to, allergic and/or respiratory problems, particularly in persons with immune system problems, young children and/or the elderly.

Buyer is STRONGLY ADVISED to obtain inspections (see below) to fully determine the condition of the Property and its environmental status. The ONLY way to determine if Environmental Contaminants are present at the Property at harmful levels is through inspections.

2805 E. Memorial, Muncie, IN 47302  
(Property Address)

125 Buyer and Seller agree to consult with appropriate experts and accept all risks for Environmental  
126 Contaminants and release and hold harmless all Brokers, their companies and sales associates from any  
127 and all liability, including attorney's fees and costs, arising out of or related to any inspection, inspection  
128 result, repair, disclosed defect or deficiency affecting the Property, including Environmental Contaminants.  
129 This release shall survive the closing.  
130

131 **13. INSPECTIONS: (Check paragraph letter A or B)**

132  **A. BUYER RESERVES THE RIGHT TO HAVE THE PROPERTY INSPECTED (including Lead-Based Paint)**  
133 independent of and in addition to any inspections required by FHA, VA, or Buyer's lender(s). All inspections  
134 are to be at Buyer's expense (unless noted otherwise or required by lender) by licensed inspectors or  
135 qualified contractors selected by Buyer within the following time periods. Seller shall have water, gas,  
136 electricity and all operable pilot lights on for Buyer's inspections.  
137

138 **INSPECTION/RESPONSE PERIOD:** Buyer shall order all INDEPENDENT INSPECTIONS immediately after  
139 acceptance of the Purchase Agreement. Buyer shall have 15 days beginning the day following the date of  
140 acceptance of the Purchase Agreement to respond to the inspection report(s) in writing to Seller (see "Buyer's  
141 Inspection Response").  
142

143 Inspections may include but are not limited to the condition of the following systems and components:  
144 heating, cooling, electrical, plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space,  
145 well/septic, water, wood-eating insects and organisms, lead-based paint (note: intact lead-based paint that  
146 is in good condition is not necessarily a hazard), radon (tested at lowest livable area either currently  
147 finished or unfinished), mold and other biological contaminants and/or the following:  
148  
149

150  
151 **If the initial inspection report reveals the presence of lead-based paint, radon or mold and other biological**  
152 **contaminants, then Buyer shall have 10 additional days to order, receive and respond in writing to any**  
153 **additional reports.**  
154

155 If the Buyer does not comply with any Inspection/Response Period or make a written objection to any problem  
156 revealed in a report within the applicable Inspection/Response Period, the Property shall be deemed to be  
157 acceptable. If the Buyer reasonably believes that the Inspection Report reveals a **MAJOR DEFECT** with the  
158 Property and the Seller is unable or unwilling to remedy the defect to the Buyer's reasonable satisfaction before  
159 closing (or at a time otherwise agreed to by the parties), then Buyer may terminate this Agreement or waive such  
160 defect and the transaction shall proceed toward closing. Under Indiana law, "Defect" means a condition that would  
161 have a significant adverse effect on the value of the Property that would significantly impair the health or safety  
162 of future occupants of the Property, or that if not repaired, removed, or replaced would significantly shorten or  
163 adversely affect the expected normal life of the premises. BUYER AGREES THAT ANY PROPERTY DEFECT  
164 PREVIOUSLY DISCLOSED BY SELLER, OR ROUTINE MAINTENANCE AND MINOR REPAIR ITEMS  
165 MENTIONED IN ANY REPORT SHALL NOT BE A BASIS FOR TERMINATION OF THIS AGREEMENT. ALL  
166 TIME PERIODS APPLICABLE TO INSPECTION RESPONSES SHALL BE REASONABLE.  
167

168  **B. BUYER HAS BEEN MADE AWARE THAT INDEPENDENT INSPECTIONS DISCLOSING THE CONDITION**  
169 **OF THE PROPERTY ARE AVAILABLE AND HAS BEEN AFFORDED THE OPPORTUNITY TO REQUIRE SUCH**  
170 **INSPECTIONS AS A CONDITION OF THE AGREEMENT. However, Buyer waives inspections and relies**  
171 **upon the condition of the Property based upon Buyer's own examination and releases the Seller, the**  
172 **Listing and Selling Brokers and all salespersons associated with Brokers from any and all liability relating**  
173 **to any defect or deficiency affecting the Property, which release shall survive the closing. Required**  
174 **FHA/VA or lender inspections are not included in this waiver.**  
175

176 Buyer acknowledges the availability of a LIMITED HOME WARRANTY PROGRAM with a deductible paid by Buyer  
177 which  will  will not be provided at a cost of \$ \_\_\_\_\_ charged to  Buyer  Seller.  
178 Buyer and Seller acknowledge this LIMITED HOME WARRANTY PROGRAM will not cover any pre-existing  
179 defects in the Property nor replace the need for an independent home inspection. Broker may receive a fee from  
180 the home warranty provider and/or a member benefit.  
181

182 **14. SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE: (check one)**

183  
184  Buyer acknowledges receipt and execution of a Seller's Residential Real Estate Sales Disclosure Form.  
185  Buyer has not received an executed Seller's Residential Real Estate Disclosure Form.  
186  Seller's Residential Real Estate Sales Disclosure Form is not applicable to this transaction.  
187

188 **15. TITLE APPROVAL:** Prior to closing, Buyer shall be furnished  an ALTA 98 Title Insurance Commitment (if  
189 available) or  an ALTA 92 Title Insurance Commitment in the amount of purchase price or  an abstract  
190 of title continued to date showing marketable title to the Property in Seller's name. The cost shall be paid by

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(Property Address)

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191  Buyer  Seller  shared equally  Seller to pay owner's policy and Buyer to pay mortgage policy  
192  other \_\_\_\_\_ . Any encumbrances  
193 or defects in title must be removed and Seller must convey title free and clear of any encumbrances and title  
194 defects, with the exception of any mortgage assumed by Buyer and any restrictions and easements of record  
195 which will not materially interfere with Buyer's intended use of the Property. Seller shall order the commitment  
196  immediately  after mortgage approval  other \_\_\_\_\_ .  
197 Seller agrees to pay the cost of obtaining all other documents necessary to perfect title (including the cost of the  
198 deed and vendors affidavit), so that marketable title can be conveyed. A title company, at Buyer's request, can  
199 provide information about availability, desirability, coverage, and cost of various title insurance coverages, gap  
200 and other endorsements.

201  
202 **16. TAXES: (Check paragraph A, B or C)**

203  **A.** Buyer will assume and pay all taxes on the Property beginning with the taxes due and payable on  
204 November 10, 2007, and all taxes due thereafter. At or before closing, Seller shall pay all  
205 taxes for the Property payable before that date.

206  **B.** All taxes assessed for any prior calendar year and remaining unpaid shall be paid by Seller, and all taxes  
207 assessed for the current calendar year shall be prorated between Seller and Buyer on a calendar-year basis  
208 as of the day immediately prior to the Closing Date.

209 **For purposes of paragraph A and B:** If the tax rate and/or assessment for taxes assessed in the current year  
210 have not been determined at the closing of the transaction, the rate and/or assessment shall be assumed to be the  
211 same as the prior year for the purpose of such proration and credit for due but unpaid taxes, and this shall be a  
212 final settlement. **WARNING: Buyer is responsible for confirming the status of all tax exemptions and/or**  
213 **credits.**

214  **C. FOR RECENT CONSTRUCTION ONLY.** If the tax rate and/or assessment for taxes is not available, Seller  
215 will give a tax credit of \$ \_\_\_\_\_ to Buyer at closing. If the tax rate and/or assessment for  
216 taxes is available prior to the Closing Date, then paragraph B shall apply.

217 **WARNING: The succeeding year tax bill for recently constructed homes or following reassessment**  
218 **periods may greatly exceed the last tax bill available to the closing agent.**

219 **17. PRORATIONS AND SPECIAL ASSESSMENTS:** Insurance, if assigned to Buyer, interest on any debt assumed or  
220 taken subject to, any rents, all other income and ordinary operating expenses of the Property, including but not  
221 limited to, public utility charges, shall be prorated as of the day prior to the Closing Date. Seller shall pay any  
222 special assessments applicable to the Property for municipal improvements previously made to benefit the  
223 Property. Seller warrants that Seller has no knowledge of any planned improvements which may result in  
224 assessments and that no governmental or private agency has served notice requiring repairs, alterations or  
225 corrections of any existing conditions. Public or municipal improvements which are not completed as of the date  
226 above but which will result in a lien or charge shall be paid by Buyer. Buyer will assume and pay all special  
227 assessments for municipal improvements completed after the date of this Agreement.

228 **18. TIME:** Time is of the essence. Time periods specified in this Agreement and any subsequent Addenda to the  
229 Purchase Agreement are calendar days and shall expire at 11:59 PM of the date stated unless the parties agree in  
230 writing to a different date and/or time.

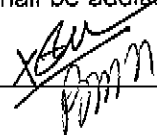
231 **Note: Seller and Buyer have the right to withdraw any offer/counter offer prior to written acceptance and**  
232 **delivery of such offer/counter offer.**

233 **19. HOMEOWNERS ASSOCIATION/CONDOMINIUM ASSOCIATION:** Documents for a **mandatory** membership  
234 association shall be delivered by the Seller to Buyer within n/a days after acceptance of this Agreement. If the  
235 Buyer does not make a written response to the documents within n/a days after receipt, the documents shall  
236 be deemed acceptable. In the event the Buyer does not accept the provisions in the documents and such  
237 provisions cannot be waived, this Agreement may be terminated by the Buyer and the earnest money deposit shall  
238 be refunded to Buyer promptly. Any approval of sale required by the Association shall be obtained by the Seller, in  
239 writing, within n/a days after Buyer's approval of the documents.

240 **Buyer acknowledges that in every neighborhood there are conditions which others may find objectionable.**  
241 **Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off-site**  
242 **conditions that could affect the Property.**

243 **20. ATTORNEY'S FEES:** Any party to this Agreement who is the prevailing party in any legal or equitable proceeding  
244 against any other party brought under or with relation to the Agreement or transaction shall be additionally entitled  
245 to recover court costs and reasonable attorney's fees from the non-prevailing party.

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247 (Property Address)



257 **21. MISCELLANEOUS:**

- 258
- 259 A. Unless otherwise provided, any prorations for rent, taxes, insurance, damage deposits, association
- 260 dues/assessments, or any other items shall be computed through the date of closing.
- 261
- 262 B. Underground mining has occurred in Indiana, and Buyers are advised of the availability of subsidence
- 263 insurance.
- 264
- 265 C. The Indiana Sheriff's Sex Offender Registry ([www.indianasheriffs.org](http://www.indianasheriffs.org)) exists to inform the public about the
- 266 identity, location and appearance of sex offenders residing within Indiana. Broker is not responsible for
- 267 providing or verifying this information.
- 268
- 269 D. Conveyance of this Property shall be by general Warranty Deed, or by \_\_\_\_\_,
- 270 subject to taxes, easements, restrictive covenants and encumbrances of record, unless otherwise agreed.
- 271
- 272 E. Seller represents and warrants that Seller is not a "foreign person" (individual entity) and, therefore, is not
- 273 subject to the Foreign Investment in Real Property Tax Act.
- 274
- 275 F. Any notice required or permitted to be delivered shall be deemed received when personally delivered,
- 276 transmitted electronically or digitally or sent by express courier or United States mail, postage prepaid,
- 277 certified and return receipt requested, addressed to Seller or Buyer or the designated agent of either party.
- 278
- 279 G. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and is
- 280 binding upon the parties' respective heirs, executors, administrators, legal representatives, successors, and
- 281 assigns.
- 282
- 283 H. In case any provision contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the
- 284 invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- 285
- 286 I. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior
- 287 understandings or written or oral agreements between the parties' respecting the transaction and cannot be
- 288 changed except by their written consent.
- 289
- 290 J. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the
- 291 Property.
- 292
- 293 K. Broker(s) may refer Buyer or Seller to other professionals, service providers or product vendors, including
- 294 lenders, loan brokers, title insurers, escrow companies, inspectors, pest control companies, contractors and
- 295 home warranty companies. Broker(s) does not guarantee the performance of any service provider. Buyer and
- 296 Seller are free to select providers other than those referred or recommended to them by Broker(s).
- 297
- 298 L. By signing below, the parties to this transaction acknowledge receipt of a copy of this Agreement and give
- 299 their permission to a Multiple Listing Service, Internet or other advertising media, if any, to publish information
- 300 regarding this transaction.
- 301
- 302 M. Any amounts payable by one party to the other, or by one party on behalf of the other party, shall not be owed
- 303 until this transaction is closed.
- 304
- 305 N. Buyer and Seller consent to receive communications from Broker(s) via telephone, U.S. mail, email and
- 306 facsimile at the numbers/addresses provided to Broker(s) unless Buyer and Seller notify Broker(s) in writing
- 307 to the contrary.
- 308
- 309 O. Buyer discloses to Seller that Buyer holds Indiana Real Estate License # \_\_\_\_\_.
- 310
- 311 P. Where the word "Broker" appears, it shall mean "Licensee" as provided in I.C.25-34.1-10-6.8.

312

313 **22. FURTHER CONDITIONS (List and attach any addenda):**

- 314 \* Purchaser will provide proof of financing from Old National within 10
- 315 days after acceptance or Seller may A) elect to void agreement or B) Mutally
- 316 agree with purchaser to extend days.
- 317 \_\_\_\_\_
- 318 \* Purchaser to verify acceptable zoning by Feb.5th
- 319 \_\_\_\_\_
- 320 \* Limited Agency Applied -- See Attached Addendum

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321 23. EXPIRATION OF OFFER: Unless accepted by Seller and delivered to Buyer by 12:00  A.M.  P.M.  
322  Noon, the 5th day of February, 2007, this Purchase Agreement shall be null and void and all  
323 parties shall be relieved of any and all liability or obligations.  
324

325 24. CONSULT YOUR ADVISORS: Buyer and Seller acknowledge they have been advised that, prior to signing this  
326 document, they may seek the advice of an attorney for the legal or tax consequences of this document and the  
327 transaction to which it relates. In any real estate transaction, it is recommended that you consult with a  
328 professional, such as a civil engineer, environmental engineer, or other person, with experience in evaluating the  
329 condition of the Property.  
330

331 25. ACKNOWLEDGEMENTS: Buyer and Seller acknowledge that each has received agency office policy disclosures,  
332 has had agency explained, and now confirms all agency relationships. Buyer and Seller further acknowledge that  
333 they understand and accept agency relationships involved in this transaction. By signature below, the parties verify  
334 that they understand and approve this Purchase Agreement and acknowledge receipt of a signed copy.  
335

336 This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed  
337 an original but all of which together shall constitute one and the same instrument. The parties agree that this  
338 Agreement may be transmitted between them electronically or digitally. The parties intend that electronically or  
339 digitally transmitted signatures constitute original signatures and are binding on the parties. The original document  
340 shall be promptly delivered, if requested.  
341

342 [Signature] 02/01/2007  
343 BUYER'S SIGNATURE DATE BUYER'S SIGNATURE DATE

344 Rick D. Ullman  
345 PRINTED PRINTED

347 (Check appropriate paragraph letter)

350  A. As the Seller(s) of the property described herein, the above terms and conditions are accepted this  
351 day of \_\_\_\_\_, at \_\_\_\_\_  A.M.  P.M.  Noon.

352  B. The above offer is Rejected.

353  C. The above offer is Countered. Seller should sign both the Purchase Agreement and the Counter Offer.

354  
355 [Signature] 2/1/07  
356 SELLER'S SIGNATURE DATE SELLER'S SIGNATURE DATE  
357

358 MANTOCK CATERING SERVICES INC  
359 PRINTED PRINTED  
360  
361  
362



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